

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03-07-2017

DELIVERED ON : 09-11-2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

S. A. No.1011 of 2011

and M.P.No.1 of 2011

1. Ravikumar
2. M/s.Vijaya Ravikumar
Appellants 1 and 2 are represented
By their Authorised Power Agent
Mr.Senapathy
3.Senapathy
4.N.CT.Nachiappan
5.Visalakshi
6.Alamelu

...Appellants/Defendants 1,2,3,7,8,9

...Versus...

1.T.K.Pandiayan 1st Respondent/Plaintiff

2.Annamalai

3.Vijayalakshmi @ Vanitha Rajarajan

4.Suresh

...Respondents 2,3,4

/ Defendants 4,5,6

PRAYER:- This Second Appeal has been filed under Section 100 of CPC, against the judgment and decree dated 29.9.2010 made in A.S. No 34/2009 passed by the learned Subordinate Judge, Chidambaram , confirming the judgment and decree dated 9.9.2009 passed by the learned Additional District Munsif, Chidambaram in O.S. No. 332/6.

For Appellants .. M/s. T.R.Rajagopalan, Senior Counsel
For M/s.U.Karunakaran

For Respondents .. M/s.Srinath Sridevan for R1.
R2 to R4 - No appearance.

J U D G M E N T

The Defendants 1,2,3,7,8 & 9 are the Appellants in this Second Appeal. The suit property to the extent of 1.26 Acres (out of 4.26 Acres) Comprised in R.S.No.25/3A (Western Portion) in Usuppur Village, Chidambaram Taluk, Cuddalore District was the absolute property of one Velu Padaiyachi. He mortgage the property to one Lakshmana Pathar and then Mortgage the property to one Rajagopal Nadar. One Baby @ Seshammal was friendly with one V.A.Govindasamy Padaiyachi son of Arunachala Padaiyachi and it was only this V.A.Govindasamy Padaiyachi who kept Baby @ Seshammal out of love, affection and affinity with him in his residence at No46 Lalpetti street, Chidambaram and they have been living together as husband and wife. While so the above said property was purchased by V.A.Govindasamy Padayachi from the said Velu Padayachi in the name of one Baby @ Seshammal.

2. It is the further case of the plaintiff that the said V.A.Govindasamy Padayachi purchased the said property ostensibly in the name of Baby @ Seshammal under a Registered Sale Deed dated 26.6.1957 (Ex. A5) for a consideration of Rs.3400/- and the consideration for the sale was fully met by him. According to the Plaintiff, even though the property was purchased in the name of Baby @ Seshammal, V.A.Govindasamy Padayachi was always in possession and enjoyment of this property. He further claimed that Baby @ Seshammal orally gifted the property to V.A.Govindasamy Padayachi in 1969. The plaintiff therefore claimed that V.A.Govindasamy Padayachi is the full owner of the suit property and as his foster son, he is entitled to the property after the death of V.A.Govindasamy Padayachi. The plaintiff's further claim was that even if the claim as foster son cannot be sustained, he being the brother's son of V.A.Govindasamy Padayachi along with his brothers and sisters are entitle to the property as V.A.Govindasamy Padayachi died intestate. In EX.A15, he claimed that he is the son of V.A.Govindasamy Padayachi. The Plaintiff also claimed title by prescription. It is admitted in the Plaint in para 5 that Baby @ Seshammal shifted to Bangalore and was staying with Suguna Murthy (daughter) and layout of the suit property was done by one G.Subramaniam, Power of Attorney of Baby Ammal by obtaining approval from the President, Komaratchi Panchayat Union on 18.4.1990. It is the further contention of the Plaintiff that Baby @ Seshammal's thumb impression was obtained on an alleged Power Deed dated 9.5.1991 in favor of G.Subramaniam, and that the will executed by her on 25.2.1994, bequeathing the suit property to her grandson K.Sridhar Babu is not valid. According to him, the Power Deed was never acted upon and the will dated 25.2.1994 never came into force. It is further stated by the

Plaintiff that the Sale Deeds were executed in favor of the Defendants 1 and 2 on 21.8.1995 wrongly describing the property as plots in the layout called Sri Surya Nagar' and the said Sale Deeds are sham and nominal.

3. It is the further case of the Plaintiff that Defendants 1 to 3 instigated Defendants 4 to 9 and tried to interfere with the Plaintiff's peaceful possession and enjoyment of the suit property based upon the sale Deeds standing in their name. According to the Plaintiff, he filed the present suit on the basis that the real owner was only V.A.Govindasamy Padayachi and as his legal heirs, he, his brothers and sisters are entitled to the property. The plaintiff filed the present suit seeking a Permanent Injunction on the basis that V.A.Govindasamy Padayachi was always in possession and all the registered documents by which Baby @ Seshammal transferred the property to the Defendants are sham and nominal.

4. The suit was contested by the Defendants/ Appellants claiming exclusive title on baby @ Seshammal who, with the help of her power of Attorney, her daughter and son-in-law, laid out the property into plots, got approval from the Panchayat and the property was sold to the Defendants. The Defendants' claim that the property was always in the possession of Baby @ Seshammal and after the purchase by them, they are in possession of the same. The Defendants specifically denied the case of the Plaintiff that baby @ Seshammal was kept by V.A.Govindasamy Padayachi in his residence. The Defendant's contention was that she never lived with him. Baby @ Seshammal's husband was on Sundara Mudaliar who was a Driver in a Bus Transport Company, and she was cultivating the suit property with the help of her husband.

5. According to the Defendants, the entire sale consideration was paid only by Seshammal and she was the absolute owner of the property. The mere fact that V.A.Govindasamy Padayachi got the Sale Deed from the registrar's Office and made payment on her behalf at the time of registration cannot create any right for him over the property. The Plaintiff's claim of oral gift was absolutely false and the property was never in the possession of V.A.Govindasamy Padayachi or the Plaintiff. The production of 5 Kist Receipts will not establish possession of the property either by V.A.Govindasamy Padayachi or the Plaintiff. The fact that layout of the property was done in 1990 itself and the approval was obtained will clearly establish that the property was always in her possession. Apart from the above fact, the Sale Deeds in respect to the suit property from 1993 onwards will prove beyond doubt that the Plaintiff has come forward with this speculative suit and trying to grab the property illegally. The Defendants

therefore claim that the property was always in the possession of Baby @ Seshammal and after purchase by Defendants, they are in possession of the property.

6. The said Baby @ Seshammal died, leaving a Will dated 25.2.1994, bequeathing the property to her grandson Sridhar Babu, who as owner, sold the plots 1, 2, 4 to 6, 8, 8 & 19 of the suit property to the 1st Defendant, plot 3 to one K.Ramanujam from whom the 1st Defendant purchased the property in 1995 and plt 7 was purchased by one Chakravarthy from whom the 1st Defendant purchased the property in 1998. Plot Nos. 10 to 18 were sold by Sridhar Babu to Dr.Vijaya Ravikumar, the 2nd Defendant herein, on 21.8.1995. The Sale Deeds were executed by Sridhar Babu along with his parents and sisters as the purchasers insisted on all the legal heirs of Baby @ Seshammal be parties to the Sale Deeds. The Defendants further contended that Defendants 1 & 2 executed a Power of Attorney on 20.8.2004 in favour of the 3rd Defendant authorizing him to sell the suit property to third parties. The 3rd Defendant, as a Power of Attorney, sold Plot No.12 to the 4th Defendant under a Registered Sale Deed dated 21.4.2005, plot No.6 to the 5th Defendant under a Sale Deed dated 27.4.2006, Plot No.15 to Defendants 7 to 9 on 28.6.2006 and Plot No.16 to 6th Defendant.

7. The Exhibits B.11 to B20, Sale of Deeds in favour of Defendants from 1993 to 2006, clearly establish that the property was always in the possession of the Defendants and the Plaintiff had rushed to Court with a prayer for Permanent Injunction after coming to know of the fact that Defendants 4 to 9 purchased the same from Defendants 1 & 2 through their Power Agent D3. Apart from the above material facts which were not divulged by the plaintiff in the Plaint, the suit as framed for Permanent Injunction without seeking declaration of title is not maintainable as the plaintiff is not only claiming title over the property, but also disputing the title of Baby @ Seshammal and the subsequent purchasers from her successor-in-interest. Thus the Defendant contends that the suit as framed is not maintainable and prays to dismiss the suit.

8. As the case came up for trial, the trial court has framed the following issues:-

- 1.Whether the plaintiff is entitled to the relief of permanent injunction as sought for.
- 2).Whether the suit is maintainable without seeking the prayer of declaration of title.
- 3).What other reliefs the plaintiff entitled?

On the side of the plaintiff 5 witnesses were examined as PW1 to 5 and exhibits A1 to A26 were marked. On the side of the defendants 4 witnesses were examined as D.W.1 to D.W.4 and

Exhibits B1 to 22 were marked. On considering the material on record the trial court found that the plaintiff is in possession and enjoyment for long period and the same is proved through oral and documentary evidence and also found that the plaintiff produced sufficient evidence to prove his title to the suit property and as such, the suit is maintainable without seeking the prayer of declaration. Therefore the trial court decreed the suit as prayed for without cost.

9. Aggrieved over the same the defendants preferred appeal in A.S.No.34 of 2009 on the file of the Sub-Ordinate Judge, Chidambaram and the first appellate court after considering the material on record raised the following points:

1. Whether the judgment and decree of the trial court is liable to be set-aside?
2. Whether this appeal to be allowed?

10. The first appellate court on appreciation of the materials available on record was pleased to dismiss the first appeal preferred by the defendants as per the judgment and decree dated 29-09-2010 made in A.S.No.34 of 2009 without cost

11. Aggrieved over the concurrent judgment and decree of the courts below the defendants preferred this second appeal.

12. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:-

1. Whether the Courts below are right in granting injunction when the title of the 1st respondent/plaintiff was challenged, in the absence of any prayer for declaration of the 1st respondent's title to the suit property?
2. Whether the Courts below were right in granting injunction having regard to Ex.B-10 the order and Ex.B-11 to B-20 the sale deeds in favour of the appellants.

13. Heard both side counsel and perused the records. It is contented by the appellant/Defendant that it is clear from Ex.A15-Notice dated 4.5.2006 , prior to the institution of the suit, that the Plaintiff has claimed that he is the son of V.A.Govindasamy Padayachi, that Baby @ Seshammal was the owner of the suit property, that in 1969, she gifted the property to his father V.A.Govindasamy Padayachi and was in possession of the property. It was his further case in the notice that the said V.A.Govindasamy Padayachi, acquired title by adverse possession of the property. It is to be noted that even in the notice, the Plaintiff makes a claim on the basis of adverse possession by V.A.Govindasamy Padayachi. It is also admitted in the said notice that the property was laid out by the relatives of Baby @ Seshammal , and the same was known as 'Surya Nagar'.

However, when the suit was filed, the Plaintiff came up with the case that he is the adopted son of V.A.Govindasamy Padayachi, and as such, after the death of his father, he is entitled to the suit property. He pleaded an alternative case that even if the adoption is not established, he being the brother's son of late V.A.Govindasamy Padayachi, himself and his brothers and sisters being the legal heirs, are entitled to the suit property. He denied the right of Baby @ Seshammal in the Plaint. His case was that the property was purchased by V.A.Govindasamy Padayachi for his benefit and that he alone is in possession of the property right from the date of the purchase.

14. It is seen from ex.A15 suit notice, the Plaint as well as the evidence that the Plaintiff admits the fact that the suit property was purchased in the name of Baby @ Seshammal. He accepts her title and pleads specifically that in 1969, Baby @ Seshammal orally gifted the property to V.A.Govindasamy Padayachi. There is absolutely no evidence to show that Baby @ Seshammal was living with V.A.Govindasamy Padayachi as the documents clearly show that Seshammal was living with her husband Sundara Mudaliar in a different property and not in the residence of V.A.Govindasamy Padayachi. There is absolutely no evidence to prove those facts. On the other hand, Ex.A5, the document by which Baby @ Seshammal gets title to the property clearly show that she was living with her husband at Lalpetti Theru and possession was handed over to her. Exs. A4 & A6 clearly establish that baby @ Seshammal was living at Lalpetti Theru and she is the wife of Sundara mudaliar. Those documents will further show that V.A.Govindasamy Padayachi was living at Sabanayagar Street. The above said facts was not considered by the courts below.

15. It is pointed out that the plaintiff had not produced any documents of title to establish that V.A.Govindasamy Padaiyachi had got title to the suit property. There is no proof that Baby @ Seshammal had orally gifted the suit property in favour of V.A.Govindasamy padaiyachi. The few Kist receipts filed by the plaintiff do not show whether the Kist was paid by the V.A.Govindasamy Padaiyachi or by any another person who was in possession from the year 1957. The courts below have gone into irrelevant facts and shifted the burden on the defendants to prove the title, which is complete departure from well settled position of law. Thus the appellant sought for allowing the appeal.

16. Per contra, the learned counsel for the plaintiff would submit that available material on record oral and documentary evidence clearly established that the plaintiff is in possession of the property and the title also stands in favour of the plaintiff and considering all those facts, the courts below decreed the suit in his favour. There is no necessity to

interfere with the findings of the courts below. Hence the learned counsel for Plaintiff prayed to dismiss the second appeal.

17. The rival submission made by both side is considered. It is an admitted fact that the suit property originally belonged to one Velu Padaiyachi as per Ex.A1. It is further admitted that the said Velu Padaiyachi mortgaged the property on 14-6-1954 in favour of one Rajagopal Natar vide Ex.A3. It is further admitted that the said Velu Padaiyachi executed a registered sale deed Ex.A5 in favour Baby @ Seshammal vide document No.1643 of 1957 subject to discharge of the above mortgage. On perusal of the above document it is found that the purchaser Baby @ Seshammal is the wife of Sundara Mudaliar. The recital of the sale deed would reveal that the total sale consideration is Rs.3,400/- out of that Rs.100/- was paid by Seshammal and Rs.1,379/- was paid by V.A.Govindasamy Padaiyachi on behalf of Baby @ Seshammal. The remaining amount shall be paid to one RajaGopal Natar who is the mortgagee of the vendor. Subsequent to the said sale, the mortgage amount was discharged on 20.02.1958 and 11.06.1960 by V.A.Govindasamy Padaiyachi on behalf of Bay @ Seshammal wife of Sundara Mudaliar. Further on 04-10-1961 the said Rajagopal Natar made an endorsement in the mortgage infavour of Baby @ Seshammal wife of Sundara Mudaliar. The above documents even though is submitted by the plaintiff, the recitals of the documents would clearly prove that the said Baby @ Seshammal was not living along with Govindasamy Padaiyachi as husband and wife. The recital in the said document would reveal that she is the wife of one Sundara Mudaliar. Further the above documents would reveal that the Baby @ Seshammal is the absolute owner of the suit property.

18. The alleged oral gift settlement by the Baby @ Seshammal in favour of V.A.Govindasamy Padaiyachi cannot be legally valid and nothing can paid on to the said person. Therefore the suit property does not belong to V.A.Govindasamy Padaiyachi. The Plaintiff is claiming title only through the said V.A.Govindasamy Padaiyachi. Once it is concluded that the property does not belong to V.A.Govindasamy Padaiachy then the plaintiff cannot not claim title through the said V.A.Govindasamy Padaiyachi.

19. The Plaintiff made an alternative plea of adverse possession of the suit property. Once he claims adverse possession, first of all, he has to admit that the property does not belong to him and that the property belongs to some other specific person. However, nothing is pleaded in detail in that regard in the Plaint. Apart from that the plaintiff has to submit relevant document to prove that he is in possession of the suit property continuously without any interruption of anybody including the original owner for twelve completed years.

The suit was filed in the year 2006 and the last document filed by the plaintiff is dated 6-2-1992 which is the Kist receipt and thereafter no subsequent document is filed by the plaintiff. It is therefore clear that immediately before filing of the suit, that is, from 1992 to till the date of filing suit no documents is filed by the plaintiff to prove his title by way of adverse possession. Considering all those facts it is found that there is a cloud on the tile of the plaintiff over the suit property and under such circumstances to seek declaration will be necessary. Further, the Plaintiff who comes to Court is bound to establish his title and possession and cannot rely upon the weakness of the Defendants' case. In the case reported in 2008 (4) SCC 594 [Anathula Sudhakar Vs. P.Buchi Reddy], the Hon'ble Supreme Court held as follows :

"We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration."

20. This decision was followed by the Hon'ble Supreme Court in 2008 (15) SCC 150. The above decisions clearly hold that when there is a real dispute over title, that is, denial of title by the defendant or challenge to plaintiff's title, a prayer for declaration of title will be necessary. In the present case, property was purchased by one Baby @ Seshammal and the plaintiff is not only denying her title, but also claims title on himself.

The defendants are disputing his title. Further, the documents filed by the defendants as Ex.B10 to B20 clearly establish that the layout of the property was done by Baby @Seshammal when she was alive through her Power of Attorney and the properties were dealt with only by the legatee under her will along with other legal heirs and Defendants 1 & 2 became the exclusive owners of the property. As pointed out already in Ex.A15, neither the plea that baby @ Seshammal was kept by Govindasamy in his house nor the claim that Plaintiff is the adopted son of Govindasamy was pleaded. It is also pointed out that when the Plaintiff approached Sub-Collector, Chidambaram, questioning the transfer

of patta, the Plaintiff was directed to establish his title in a Civil Court. It is pointed out that in spite of that the plaintiff has filed the present suit for Permanent Injunction only. In 2015 (5) CTC 730, this court held that in a case where the plaintiff's title is disputed, the suit for bare injunction is not maintainable.

21. A reading of the impugned judgment of the First Appellate Court which is under challenge, will clearly show that the Learned Judge has completely ignored the inconsistent case pleaded by the plaintiff and the admitted facts, viz., title of Baby Ammal and the subsequent dealings by her successors-in-interest of the suit property.

22. In this case there is a real dispute over title and the title of the plaintiff and his predecessor is denied by the defendant and challenged the same even in the written statement itself. Therefore the above said Ruling will squarely apply to the facts of this case on hand. Hence it is decided that the courts below are not right in granting injunction when the title of the 1st respondent/plaintiff is challenged and in the absence of any prayer for declaration of 1st respondent/plaintiff title to the suit property. Thus for the reasons stated above, the first substantial question of law raised by the appellant is answered in their favour.

23. It is contended by the Appellant/ Defendant that Ex.B-10 is the order passed by the sub-collector on the appeal filed by the 1st respondent/plaintiff dated 15-09-2006, wherein it is held that the Plaintiff herein has to approach the civil court to establish his title. In spite of that the plaintiff has not chosen to come forward with a suit for declaration. Thus the Defendant contends the plaintiff is not entitled for the relief of permanent injunction. It is relevant at this stage to refer to the exhibit B10 order passed by Sub-Collector of Chidambaram. The Defendants 1 and 2 got the patta transferred in their name pursuant to the purchase from the legal heirs of Baby ammal. The Plaintiff filed the Appeal before the Sub-Collector questioning the transfer of patta. The Plaintiff only produced the kist Receipts and a notice issues under UDr Scheme to support his claim. The Defendants 1 & 2 produced the Sale Deed of the year 1957 in favour of Baby Ammal, her will dated 25.2.1994 and the Sale Deed in their name dated 18.8.1995. The Sub-Collector pointed out in the order after referring to RTR 4143/04-05 that patta of the scheduled property was in the name of Baby Ammal and the computer print-out of the 10(1) chitta of the scheduled properties signed by the Deputy Tahsildar dated 11.2.2005 was in

the file. Hence, the Sub-Collector found that Baby @ Seshammal is the holder of Patta No.516. It is also pointed out by the Sub Collector that the document, viz., notice issued under UDR Scheme, noting Appellant as holder of patta No.247 , does not mention the Survey number. The Sub-Collector also points out that perusal of 'A' register of the village created after the UDR Scheme reveals that V.A. Govindasamy Padayachi's name was not mentioned and patta No.247 stood in the name of one Arunachala Padayachi and P. Selvaraj. While dismissing the Appeal of the Plaintiff, the Sub-Collector points out that it is open to him to apply for cancellation of patta after a competent Civil Court declares the title of the Appellant over the scheduled property. In spite of the said order in Ex.B.10 and the admitted dispute on title, the Plaintiff chose not to seek declaration of title over the suit property.

24. It is therefore clear from the above said Ex.B10 order that the possession of the suit property is with the defendants and the Patta also stands in their name. Ex.B-11 to B-20, the sale deeds stands in the name of the defendants. As against the Ex.B10 order passed by the Sub-Collector, Chidambaram, no revision is filed by the plaintiff before the competent authority.

25. In such circumstances the trial court as well as the First Appellate Court materially committed error of Law in holding that the suit for Permanent Injunction without seeking the relief of declaration of title is maintainable even after noting the fact that there is a substantial dispute raised by the Plaintiff himself on title to the property.

26. In view of the above said discussion, it is apparent that there is no merit in the claim of the plaintiff for seeking Permanent Injunction. The Defendants contends that they have not only established their title over the property, but have also established their possession based upon the documents Ex. B.10 to B.20. The Plaintiff completely ignored Ex.B10 order while filing the suit. He has no explanation to offer on the observations made by the sub-collector.

27. From the foregoing discussion it is clear that the courts below have not properly considered the Ex.B-10 to 20 with respect to title and possession of the suit property and erroneously granted permanent injunction without any prayer for declaration. For the above said reasons, the second substantial question of law is also answered in favor of the Appellant/ Defendant. As such, the concurrent finding of the court below in allowing the suit filed by the Plaintiff is unsustainable and the same is liable to be set aside. Thus the second appeal is to be entertained.

28. In the result, the second appeal is allowed and the judgment and decree of both the courts below are set aside and the suit filed by the 1st Respondent/ Plaintiff in O.S. No. 332 of 2006 on the file of the District Munsif Court, Chidambaram is dismissed. Considering the facts and circumstances of the case the respective parties shall bear their own cost throughout. The connected miscellaneous petitions if any are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

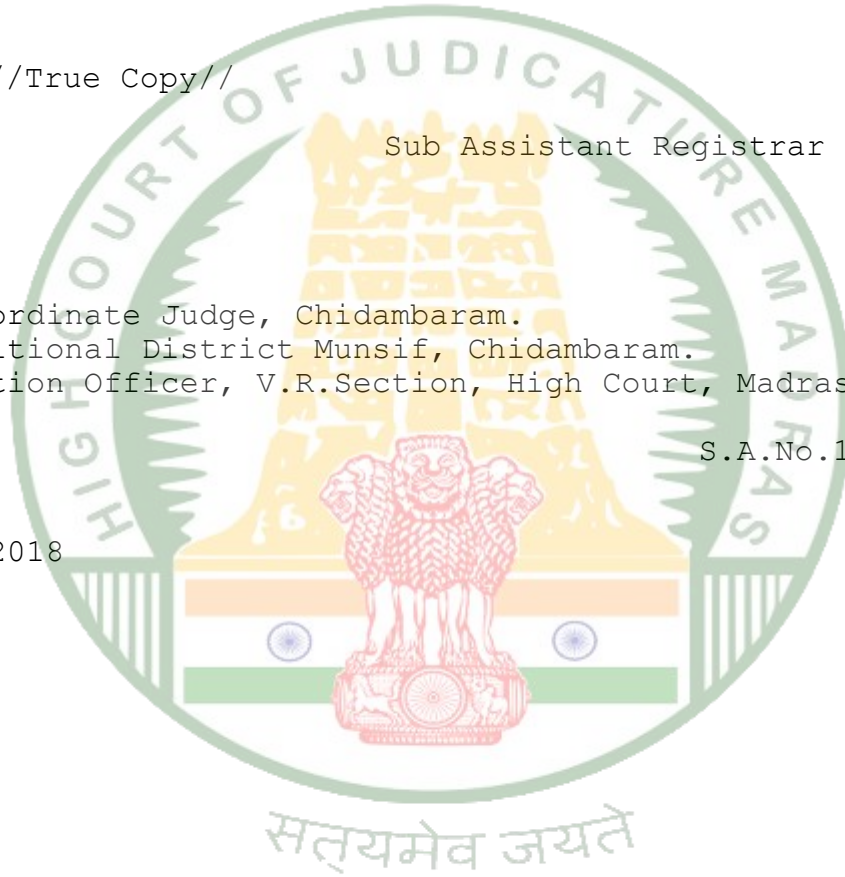
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To

- 1.The Subordinate Judge, Chidambaram.
- 2.The Additional District Munsif, Chidambaram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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