

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2018

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

S.A.No.7 of 2013
and
M.P.No.1 of 2013

1. Saraswathi Ammal
2. Durai
3. Thandavamurthi
4. Dhandapani

... Appellants

Versus

Nagaraj

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 07.08.2012 passed by the Subordinate Court, Vaniyambadi, in A.S.No.1 of 2012, in confirming the judgment and decree passed by the Principal District Munsif Cum Judicial Magistrate, Vaniyambadi, Vellore District, in O.S.No.67 of 2003, dated 27.09.2011.

For Appellants : Mr.V.Raghavachari
For Respondent : Mr.K.A.Ramakrishnan
and Mr.S.Sukumar

J U D G M E N T

This Second Appeal has been filed against the judgment and decree passed by the Subordinate Court, Vaniyambadi (first Appellate Court) in A.S.No.1 of 2012, in confirming the judgment and decree passed by the Principal District Munsif Cum Judicial Magistrate, Vaniyambadi, Vellore District (trial Court) in O.S.No.67 of 2003, dated 27.09.2011.

2. For the sake of convenience, the parties herein shall be referred hereinafter as per the rank assigned in the suit, unless and otherwise, they are specifically referred to as per the status in this Second Appeal.

3. The unsuccessful defendants are the appellants herein.

4. The plaintiff filed the suit for the relief of permanent injunction and for costs.

5. The case of the plaintiff, as averred in the plaint, in short are as follows:-

i) The suit property is an ancestral property and originally it belonged to one Rathinamal and Santha Bai. Since the predecessors in title of the property were unable to maintain the property, they leased out the property in favour of the plaintiff's father by name Kumara Goundar, vide Muchalika, dated 04.05.1964, on an yearly rent of Rs.1213/-. Pursuant to such lease hold right, the plaintiff's father was enjoying the property as a cultivating tenant and got registered himself as cultivating tenant under the Tamil Nadu Tenancy Act. The owners were not in the practice of issuing any receipt in regard to the rent paid by the plaintiff's father. Thereafter, in the year, 1974, the first defendant and her husband purchased the property and even after the said purchase, the plaintiff's father was in enjoyment of the property as a cultivating tenant. After the purchase, the first defendant and her husband demanded higher rent, and since the plaintiff's father refused to pay higher rent, the first defendant and her husband filed a petition under the Cultivating Tenants Protection Act, on 21.04.1986, for collecting the arrears of rents due from the plaintiff's father from 1974 to 1983, for a total sum of Rs.12,000/- and in the said case, a compromise was entered into between the parties, wherein, the plaintiff's father agreed to settle the amount to the first defendant and her husband and memo was also

filed to that effect, and the said memo is filed as one of the documents in this case. Henceforth, the plaintiff's father remained as cultivating tenant and was enjoying the property.

ii) Again, the first defendant and her husband filed a case before the Revenue Court, Cuddalore, in C.T.P.No.7 of 1996, demanding arrears of rent. However, in the meantime, during the year 1997, the plaintiff's father died and the Petition filed in C.T.P.No.7 of 1996 was dismissed for default on 21.05.1998, for non appearance of the parties. According to the plaintiff, after the demise of his father, he was recognized as a cultivating tenant.

iii) The husband of the first defendant passed away during the year 2003. Thereafter, the plaintiff not paid the rent for 2002-2003, for, due to drought, no agricultural activity took place during the said period. After the demise of the first defendant's husband, the first defendant and her children, viz., respondent 2 to 4 with an intention to evict the plaintiff were in the habit of causing hindrances and troubles to the agricultural activities carried out by him and they also with the assistance of the henchmen, trespassed into his property, so as to evict him. The plaintiff is a poor man,

though some how he managed such hectic situation and retained the property in his hold, since the defendants are affluent and they can achieve whatever they desire, the plaintiff apprehends that the defendants may trespass into his property at any point of time, and disturb his peaceful possession and enjoyment of the property. Therefore, the plaintiff filed the present suit seeking for the relief of permanent injunction, restraining the defendants, either directly or through their men, agents, etc. to enter into his property, except, under due process of law and for mesne profits, as stated supra.

6. The second defendant contested the suit by filing a written statement, wherein, it is stated as follows:-

i) There is no landlord and tenant relationship between the defendants and the plaintiff. According to the defendants, after the death of the plaintiff's father, the plaintiff has not been cultivating the property by contributing any physical labour and their father, Chenna Kesava Nainar never demanded higher rent from the plaintiff, as alleged in the plaint and also denied their refusal to receive the same. Since there was arrears of rent

to be payable by the plaintiff's father, proceedings was initiated before the Revenue Court on 21.04.1986, pursuant to which, the plaintiff paid a sum of Rs.12,000/- to their parents.

ii) The defendants also specifically denied that after the death of the plaintiff's father, the plaintiff has been recognized as a cultivating tenant and he is in possession of the property. It is the defendants, who are in possession and enjoyment of the suit property by virtue of their own right and title, and being the lawful owners of the property, it is necessary for them to enter into the suit property, and therefore, the question of alleged trespass does not arise. Nor they made any forcible attempts with the help of the henchmen to trespass into the property so as to evict the plaintiff. Consequently, there was no cause of action for filing the suit. Further, the plaintiff is not at all in possession of the suit property in any capacity as on the date of filing of the suit or earlier, therefore, he has no legal right to sue against the defendants.

iii) Further, it is averred that the suit has not been properly valued and the Court fee paid is incorrect. Therefore, the defendants

strongly opposed the claim of the plaintiff that he is in possession of the suit as a cultivating tenant, when his possession itself is illegal. Consequently, the suit instituted by him is baseless and the same is nothing but an attempt to threat the defendants. Therefore, he prayed for dismissal of the suit.

7. Before the trial Court, on the plaintiff's side, the plaintiff and one other person were examined as P.W.1 and P.W.2 and nine documents were marked. On the defendants' side, the second defendant examined himself as D.W.1 and no documents were marked.

8. The trial Court taking into consideration the fact that, except, the second defendant, no other person were examined and no documents were marked by the defendants either to prove their ownership in respect of the suit property or denying the plaintiff's claim and also by referring to Exs.A.5, viz., the document produced by the plaintiff with regard to the payment of lease rent to the defendants, came to the conclusion that the plaintiff is the cultivating tenant in the suit property and decreed the suit as prayed for. Further, the trial Court relied upon Ex.A.4, viz., the Petition filed by the plaintiff, in C.T.P.No.7 of 1996 to declare him as a cultivating

tenant. Though the said case was dismissed by the Revenue Court for non appearance of the parties and as against the said dismissal, the plaintiff has preferred an Appeal, the same is pending before the Appellate Court as on date. Thus, taking into consideration all these facts, the trial Court decreed the suit in favour of the plaintiff.

9. Aggrieved by the judgment and decree of the trial Court, the defendants preferred the first Appeal in A.S.No.1 of 2012, and the first Appellate Court upheld the findings of the trial Court by stating that, admittedly, the plaintiff's father paid a sum of Rs.12,000/- towards arrears of rent from 1974 to 1983 before the Revenue Court in a Petition filed by the first defendant and her husband on 21.04.1986 and the said amount was also received by the first defendant and her husband. Further, the first Appellate Court also held that the defendants failed to produce any supportive documents to prove that they are in possession of the suit property, though the first Appellate Court agreed the contention of the defendants that it is duty of the plaintiff to establish his claim that he is in enjoyment of the suit property as cultivating tenant and not the defendants, however, held that, even assuming that burden is on the plaintiff to prove his case, as per

Ex.A.5, it is seen that after the demise of the plaintiff's father, the plaintiff has paid the lease rent. Further, the defendants failed to substantiate their case as to when they took possession of the property after the death of the plaintiff's father. Therefore, the first Appellate Court based on Exs.A.4, A.5 and A.6 arrived at a finding that the plaintiff is in possession of the property as cultivating tenant and concurred with the findings of the trial Court and dismissed the first Appeal. Aggrieved against the judgment and decree passed by the first Appellate Court, the present Second Appeal is preferred.

10. At the time, when the Second Appeal was admitted, the following substantial questions of law were framed :-

i) Whether the Courts below have committed an error in holding that the Civil Court can go into the question of prima facie establishment of the status of the plaintiff as a cultivating tenant when his application before the record of tenancy officer has been dismissed?

ii) Whether the Courts below have committed an error in decreeing the suit for injunction on the premise that the plaintiff is a cultivating tenant in respect of the suit property?

11. When the matter was heard before this Court, Mr.V.Raghavachari, the learned counsel appearing on behalf of the appellants raised a new plea that the plaintiff is not the tenant of the property and after the death of his father, he has not paid any rent to the defendants either directly or through the Revenue Court. After the demise of the plaintiff's father, the defendants took possession of the property and they are in occupation of the same. Therefore, the claim of the plaintiff is illegal. Even assuming that the defendants are occupying the property and their occupation is illegal, it is even admitted by the plaintiff himself that he has not paid the rent and it was paid through Ex.A.5, which is the proof for payment of rent for the year 1996. Therefore, the learned counsel draw the attention of this Court to frame the additional substantial question of law for consideration:-

12. The learned counsel for the respondent submitted that he has no objection for framing the addition substantial question of law?

13. Therefore, in addition to the two substantial questions of law already framed at the time of admission of the Second Appeal, the following substantial question of law has been framed and arguments were

advanced by both the Counsels on all the substantial questions of law.

Whether the plaintiff is entitled to seek the relief of permanent injunction, restraining the defendants from entering into his peaceful possession and enjoyment property, when his possession of the property itself is illegal and against law and that too, when he is a defaulter in payment of rent, which is clear from the terms and conditions of Ex.A.1, Muchalika, dated 04.05.1964?

14. Mr.V.Raghavachari, the learned counsel appearing for the appellants submitted that the plaintiff is not the cultivating tenant in the suit property and it is an admitted fact that the defendants are the title holders of the suit property. This is clear from the fact that since the plaintiff is not the cultivating tenant, he allowed the Petition before the Revenue Court filed during the year, 2004, to declare him as a cultivating tenant to be dismissed for default. Thereafter, though the plaintiff states that against the said dismissal order, he has preferred an Appeal and the same is pending before the Appellate Court till date, the dismissal order passed by the Revenue Court has not at all been set aside by the Appellate Court as on date. Hence, the plaintiff has no case, for, virtually, he has not been declared

as cultivating tenant even as on today. Ignoring the same, if it is the case of the plaintiff that he is a cultivating tenant, then, it is not known as to what prevented him from pursuing the proceeding before the Revenue Court and obtain an order, declaring him as cultivating tenant to substantiate his case.

15. Therefore, the learned counsel for the appellants contended that the proceeding initiated by the plaintiff to declare him as cultivating tenant is pending for the past 15 years and as long as there is dispute with regard to the plaintiff's claim that he is in possession of the property as a cultivating tenant, the Courts below ought not to have granted the relief of permanent injunction by relying upon Exs.A.4, A.5 and A.6. It is his further submission that merely because, the Petition to declare him as cultivating tenant was filed and the same was dismissed for default, as against which, the plaintiff filed Appeal, that by itself would not prove the plaintiff's claim, as it is the specific case of the defendants that they are in possession of the suit property by virtue of right / title. Added to that, it is even admitted by the plaintiff that he has not paid the rent to the defendants but paid through the Revenue Court for the year 1996 alone, as evident from Ex.A.5. Therefore, learned counsel submitted that the Courts below, without

application of mind, by merely placing reliance on Exs.A.4, A.5 and A.6, came to the wrong conclusion that the plaintiff is the cultivating tenant in the suit property and decreed the suit as prayed for.

16. Further, the learned counsel for the appellants contended that the Courts below should not have entertained the suit for permanent injunction. When the issue regarding whether the plaintiff is a cultivating tenant or not has not been decided by the appropriate Court, the Courts below ought not to have held that the plaintiff is a cultivating tenant by referring Exs.A.5,A.6 and A.7. That apart, it is a well settled law that the Civil Court cannot decide the issue as regards the right of a person as cultivating tenant and in such circumstances, the Courts below ought not to have decreed the suit by relying ExsA.5, A.6 and A.6. Further, Ex.A.5, produced by the plaintiff only relates to the payment effected by his father to the parents of the defendants 2 to 4 in the year, 1996, pursuant to the proceeding initiated in C.T.P.No.7 of 1996 and the plaintiff cannot take advantage of the same. Further, on perusal of Ex.A.5, it is clear that the Courts below had not at all considered the contents of the document- Ex.A5 and blindly applied the mind, as if, the plaintiff has paid the rent upto to the

date of filing of the suit. Therefore, it is contended that the Courts below ought not to have decreed the suit holding that the plaintiff is the cultivating tenant in the suit property in the absence of documents produced by the plaintiff, such as kist receipt, adangal to prove that he is in possession of the property as cultivating tenant after the demise of his father.

17. Lastly, the learned counsel for the appellants assailed the judgements and decrees passed by the Courts below on two fold:- Firstly, whether the suit is maintainable, as there was no cause of action for filing the suit, since the plaintiff is not a cultivating tenant. Secondly, whether the plaintiff is entitled to seek the relief of permanent injunction against the real owners/defendants, when his possession of the property itself is illegal and against law and that too, when he is a defaulter in payment of rent. In support of such contentions, the learned counsel placed reliance on the following judgments and the relevant para from those judgments are also extracted herein below:-

a) **(2008) 3 MLJ 711 in the case of Johnson Vs. Chatha**

Eravi Ollittar Trust, Kaniyakumari District and others

Apart from the finding that the appellant/plaintiff had not proved the cause of action for the suit, the Courts below have also assigned the following reasons for non-suiting the appellant/plaintiff. They are

(i) The appellant/plaintiff has not proved him to be a cultivating tenant;

(ii) As per the scheme framed by the Court for the Management of the properties of the first respondent Trust, lease could be granted for one year period alone and for each year, fresh lease deed should be executed, whereas, it is not so in the case of appellant/plaintiff and hence, he cannot legally claim to be a lessee; and

(iii) The appellant/plaintiff, being a defaulter in payment of rent, cannot get the equitable relief of injunction against the real owner?

b) AIR (2001) Madras 417 in the case of Saraswathi

Ammal Vs. Viveka Primary School.

10. Learned counsel for the respondent Mr.Subramanian fairly conceded that there cannot be any permanent injunction against the landlord from evicting the tenant from the premises. Hence, the decree may be modified by stating that the landlord, the appellant cannot evict the tenant, the respondent without due process of law.

11. This Court carefully considered the contentions of both the learned counsel. As stated already, the relief sought for in the plaint is one for permanent injunction restraining the appellant herein, her men and her agents from evicting the respondent institution from the scheduled mentioned property. Hence, it is clear that the relief sought for by the respondent is a permanent injunction against the landlord, the appellant herein from evicting the respondent herein. When, admittedly, such a relief cannot be granted, the decrees of the Courts below also cannot be sustained, since it is an embargo on the right of the appellant to enjoy the property. Hence, the judgement and decrees of the Courts below cannot be sustained. Further, there cannot be a permanent lease in favour of the respondent.

c) **Manu /TN/4156/2011 in the case of Ramalingam Vs.**

Jayaraman;

“16. In response, it is the contention of the learned senior counsel for the respondent that the first appellate court took into account the attendant facts and circumstances of the case in an integral fashion and also scrutinised the oral and documentary evidence produced on both and came to the right conclusion that in respect of 1 to 4 items of A schedule properties and in respect of a B Schedule property, the appellant/plaintiff had a right over the same and accordingly, granted the relief of declaration, confirming the finding of the trial Court in this regard. Further, it rightly set aside the relief of possession in respect of A schedule 1 to 4 items granted by the trial Court and prayed for dismissal of the second appeal.

17. The learned counsel for the appellant/plaintiff cites the decision of this Court in Johnson Vs. Chathan Ervi Ollittar Trust, Urithiran Kalkandan Sasthankoil Family Trust, rep. By its Trustee, Kaniyakumari District and others (2003) 3 MLJ 711 at page 713, wherein, it

is held that a defaulting tenant is not entitled for the relief of permanent injunction against the real owner. Also, in the aforesaid decision, it is laid down that the relief of permanent injunction will not be granted in favour of the tenants when he is seeking to pre-empt the landlord from taking steps to evict the tenant on the ground of default in payments of rent and the continuance of the lease is in violation of the scheme decree.”

18. Thus, the learned counsel submitted that the aforesaid three aspects were not properly appreciated by the Courts below. Therefore, the judgement and decree passed by the trial Court in favour of the plaintiff is totally against law and the first Appellate Court's judgment and decree confirming the same without considering the legal position is illegal and liable to be set aside.

19. Per contra, the learned counsel appearing for the respondent/plaintiff advanced his arguments stating that, as per Ex.A.5, the plaintiff paid the rent and he is in possession of the property and also cultivating the same as on today. Though the Petition filed before the

Revenue Court to declare the plaintiff as cultivating tenant was during the year 2004, i.e. one year after the filing of the suit, however, the same was dismissed for non prosecution and against the same, he has preferred an Appeal and the same is pending before the Appellate Authority for final orders. Therefore, the learned counsel contended that the Courts below have rightly taken the same into consideration and came to the conclusion that the plaintiff is in possession of the property as cultivating tenant and established the same and held that the defendants failed to establish their possession over the property. Therefore, the learned counsel contended that the findings of the trial Court, which were upheld by the first Appellate Court are correct and the burden is shifted on the defendants to prove their ownership.

20. Further, the learned counsel for the respondent fairly conceded that the plaintiff has not paid the rent after the demise of his father and in this connection, he referred to Ex.A.5, which pertains to the year 1996, when the plaintiff's father was alive and when claim was made against his father upto to the year 1996. Further, it is contended that the Petition filed by the first defendant and her husband during the year 1996 for

recovery of arrears of rent was dismissed. However, the same was restored and the plaintiff paid the rent due upto 1996 on behalf of his father. Further, he contended that the plaintiff took possession after the demise of his father in the year, 1997, and since the defendants tried to evict him illegally, without following due process of law, the plaintiff filed the suit and the same was decreed by the trial Court and the first Appellate Court also concurred the judgment and decree of the trial Court and said concurrent judgments and decrees does not warrant interference in this Second Appeal. Further, he contended that the independent evidence produced by the plaintiff also establishes that he is in possession of the property. Therefore, he submitted that the Second Appeal is liable to be dismissed and the judgments relied upon by the learned counsel for the appellants are also not applicable to the case on hand.

21. This Court carefully perused the records, evidences both oral and documentary produced by the plaintiff and the defendants before the trial Court marked as Exs.A.1 to A.9 and the deposition of P.W.1, D.W.1 and D.W.2 and the arguments advanced by both the counsels.

22. The issue before this Court is whether the Courts below are right in granting the relief of permanent injunction in favour of the plaintiff by holding that he is a cultivating in the suit property, when his Application to declare him as cultivating tenant is pending before the Appellate Authority for the past 14 years and when the plaintiff is a defaulter in payment of rent, which is even admitted by the plaintiff. And, when he is a defaulting tenant, can he be entitled to seek equitable relief of permanent injunction against the owners of the property.

23. The plaintiff's claim solely proceeds on the footing that he is a cultivating tenant in the suit property and he filed the present suit to protect his tenancy right. Admittedly, the plaintiff has not been declared as cultivating tenant and the proceedings related to the same is pending before Appellate Authority for the past 14 years. Therefore, when such proceeding is pending, the plaintiff cannot be recognized as cultivating tenant under the Cultivating Tenants Protection Act. Therefore, he can no longer claim that he is a cultivating tenant and seek for relief of permanent injunction. If the plaintiff's claim is genuine, he would not have allowed the Petition before the Revenue Court, Cuddalore, filed during the year, 2004, to declare him as

a cultivating tenant to be dismissed for default and though it is his case that he has filed appeal to set aside the ex parte order of dismissal, he would not have dragged on the appeal proceeding for long time, i.e. 14 years under the pretext of pursuing the Appeal remedy. This aspect was not properly appreciated by the Courts below. The Courts below by merely taking into consideration that the Petition filed by the plaintiff to declare him as cultivating tenant was though dismissed by the Revenue Court as against the said dismissal, the plaintiff has preferred an Appeal, the same is pending before the Appellate Court as on date, as such, came to the conclusion that the plaintiff is a cultivating tenant and granted the relief of permanent injunction. Hence, this Court is forced to interfere with the findings of the Courts below and has no hesitation to set aside the same.

24. It is an admitted fact that the title of the property is in the name of the defendants and therefore, when the plaintiff claims that he is the cultivating tenant in the suit property, he ought to have paid the rent to the defendants. The respondent/plaintiff to prove that he has paid rent produced only Ex.A.5, which relates to the payment of rent for the year 1996 only. When this Court put a question to the learned counsel for the

plaintiff across the bar as to whether there is any evidence marked before the Courts below pertaining to the payment of any rent by the plaintiff from the year, 1997 to till date, he replied that except Ex.A.5, no document was marked and stated that due to drought, the plaintiff was not able to pay the rent from 2002 to 2003, and for the remaining year, he was not able to answer but he only referred to the document Ex.A.5, which is in no way relates to the payment of rent from 1997 to 2003 i.e. upto the date of filing of the suit. Further, the learned counsel for the respondent fairly admitted that the plaintiff has not paid any rent from 2007 to till date, but, he expressed the willingness and readiness of the plaintiff to pay the rent even today.

25. Therefore, the respondent/plaintiff admits the fact that he has not paid any rent from the year 1997 to 2003, i.e. till the date of filing of the suit. Even after filing the suit, till today, no rent has been paid by the respondent to the defendants. Unfortunately, both the Courts below committed an error by heavily relying upon Ex.A.5, to arrive at a conclusion that the plaintiff has continued to pay the rent to the defendants after the demise of his father and came to the conclusion that he is in possession of

the property as cultivating tenant and decreed the suit as prayed for. Mere perusal of Ex.A.5 would clearly show that the rent was paid only for the year 1996 and not from 1997 to till date.

26. Therefore, it is clear that the plaintiff is a defaulter in payment of rent. Hence, the relief of permanent injunction cannot be granted in his favour, as it will put an embargo on the rights of the defendants, real owners to enjoy the property. On the other hand, the Courts below without appreciating this aspect, granted the relief of permanent injunction, and therefore, findings on this aspect is also perverse and liable to be set aside. Further, this Court relies on the decisions rendered in the case of i) **Johnson Vs. Chathan Ervi Ollittar Trust, Urithiran Kalkandan Sasthankoil Family Trust, rep. By its Trustee, Kaniyakumari District and others**, ii) **Ramalingam Vs. Jayaraman** and iii) **Saraswathi Ammal Vs. Viveka Primary School** to support such view.

27. Further, even assuming that the plaintiff is in possession of the property as per the independent evidence, if the Court based on the such independent evidence comes to the conclusion that the plaintiff is in

possession of the property, he being a defaulter in payment of rent and not recognized as cultivating tenant by appropriate Authority, is of the view that he is not entitled to any equitable relief of injunction against the real owners of the property.

28. Though the learned counsel for the respondent relied upon decisions rendered in the case of i) **Sampoornam and others Vs. Annachi Ammal and others** reported in [(2010) CJ (Mad) 3324] and ii) **Veermalai Muthiriar Vs. E. Srinivas Muthiriyar and another** reported in [AIR (1985) Madras 1280], the same are not applicable to the case on hand, as this Court is of the view that the plaintiff has been occupying the property without payment of rent and though he is ready and willing to pay the rent even today, this Court is not inclined to grant indulgence and is bound to interfere with the judgment and decree passed by the Courts below. Accordingly, all the substantial questions of law are answered in favour of the appellants/defendants and against the respondent/plaintiff.

29. In the result, the Second Appeal is allowed by setting aside the judgments and decrees passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

21.12.2018

Index :Yes/No.
Speaking/Non-Speaking order
sd

To

1. The Subordinate Court,
Vaniyambadi.
2. The Principal District Munsif Cum Judicial Magistrate,
Vaniyambadi, Vellore District,



WEB COPY

Krishnan Ramasamy,J.,

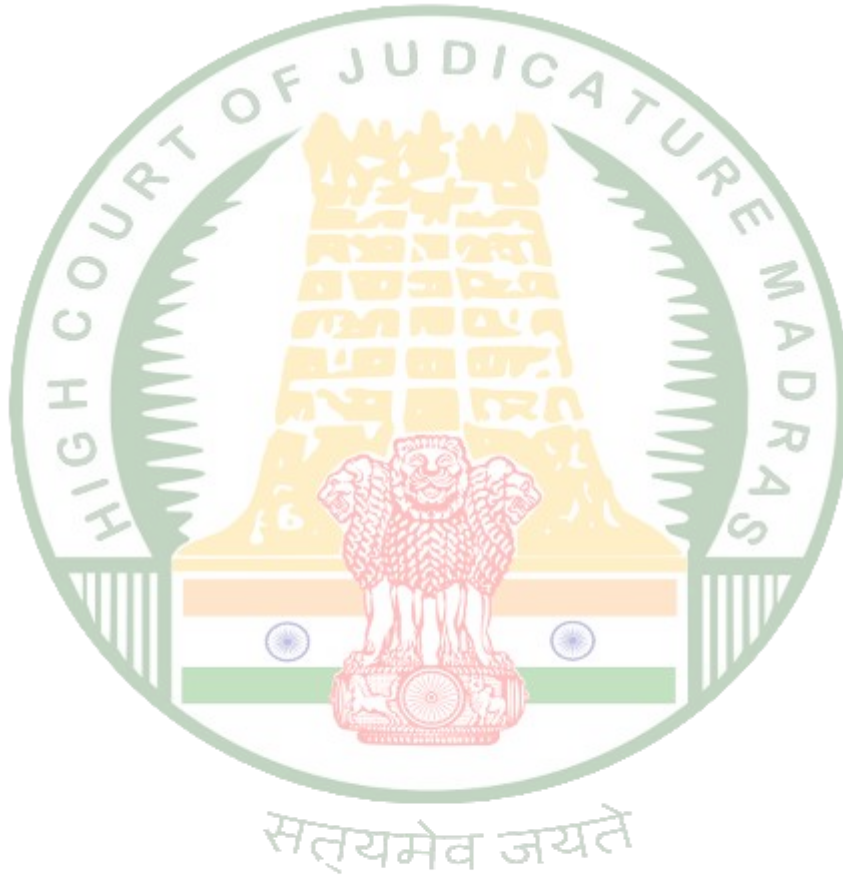
sd



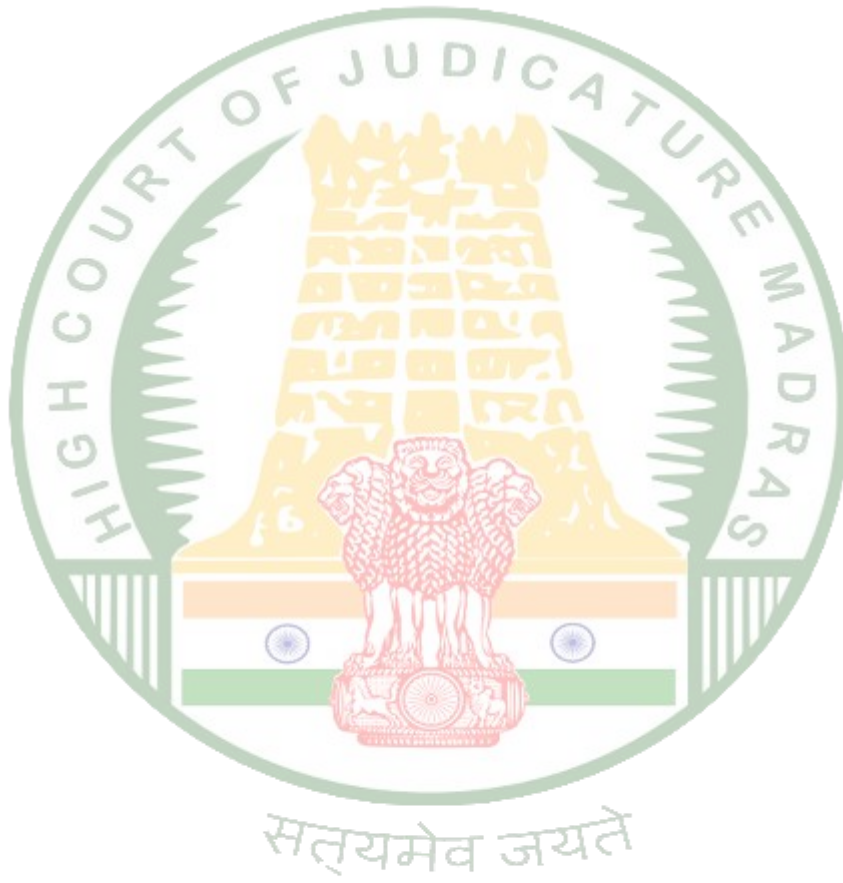
S.A.No.7 of 2013

WEB COPY

21.12.2018



WEB COPY



WEB COPY