

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2018

PRONOUNCED ON : 02.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1940 of 2003

1. Block Development Officer,
Vellore.

2. Special Officer,
Vellore Panchayat Union
Vellore Taluk and District.

3. President,
Panchayat Board,
Chitheri,
Vellore Taluk and District.

...

Appellants

Sri Ramalinga Swami Nilayam,
Represented by its Trustee,
V.Devarajan,
Chitheri,
Vellore Taluk and District.

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.08.1999 passed in A.S.No.34 of 1995 on the file of the Additional District Court, Vellore, reversing the Judgment and Decree dated 31.08.1994 passed in O.S.No.829 of 1986 on the file of the District Munsif Court, Vellore.

For Appellants : Mr.V.Ravi

For Respondent : No appearance
Set exparte
(vide order dated 27.02.2018)

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 31.08.1999 passed in A.S.No.34 of 1995 on the file of the Additional District Judge/Chief Judicial Magistrate Court, Vellore, reversing the Judgment and Decree dated 31.08.1994 passed in O.S.No.829 of 1986 on the file of the District Munsif Court, Vellore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that he is the trustee for time being for the Sri.Ramalingaswamy Nilayam, Chitheri, Vellore Town and one Backiammal, the mother of the present trustee, has sold the plaint schedule property to the plaintiff's Nilayam by way of a registered sale deed dated 25.08.1952 and put the plaintiff in possession of the same and one C.R.Kandaswamy Reddiyar was the then trustee of the plaintiff's Nilayam and the plaintiff was the trustee of the plaintiff's Nilayam before 1940 and Kandaswamy Reddiyar was the trustee of the plaintiff's Nilayam from 1940 to 1955 and while he was the trustee, Kandaswamy Reddiyar fraudulently executed a settlement deed of the plaint schedule property in favour of the first defendant by way of a registered settlement deed

dated 09.03.1968, but, the settlement deed was not given effect to and the first defendant was not put in possession of the plaint schedule property and after the present trustee had assumed office of the plaintiff's Nilayam in 1955, he has apprised to the then president of the Panchayat Union, about the invalidity of the settlement deed and that, the plaint schedule property could not be transferred or alienated to any person and accordingly, the then president of the first defendant Union returned the settlement deed to the plaintiff's trustee and the plaintiff's Nilayam continue to be in the possession and enjoyment of the plaint schedule property and the plaint schedule property belonged only to the plaintiff's Nilayam and any alienation by the trustee of the plaint schedule property is *ab initio void* and while so, the first defendant high handedly trespassed into the suit property and put up a shed therein and the attitude of the first defendant is illegal and he is liable to surrender the possession of the suit property to the plaintiff's Nilayam, after removing the superstructure put up therein by him and hence, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

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5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The allegations that the present trustee is the trustee of the plaintiff's Nilayam from 1955 and the trustee Kandasamy Reddiar had no right to execute the settlement deed and the settlement deed dated 09.03.1968 was not acted upon are

all false and the plaint schedule property was purchased by Kandasamy Reddiar alone and he has got every right to settle the same in favour of the Panchayat and the plaintiff's Nilayam was founded at Chitheri by Kandasamy Reddiar and he was running the same for some time as the sole trustee thereof and no other person acted as the trustee after him nor appointed the trustee of the plaintiff's Nilayam and since Kandasamy Reddiar found certain difficulties in running and maintaining the plaintiff's Nilayam, as the sole founder thereof, settled the plaint schedule property to the Panchayat for the public use and handed over the possession of the same to the Panchayat and at present, there is no institution like the plaintiff's Nilayam at Chitheri and V.Devarajan, who has laid the suit, is not the trustee of the plaintiff's Nilayam and the plaintiff's Nilayam is not in existence as such and not in possession of the plaint schedule property and has no right or title to the same and V.Devarajan has no locus standi to file the suit and cannot maintain the suit on behalf of the plaintiff's Nilayam and the allegation that the then president of the first defendant returned the original settlement deed disclaiming title to the suit property is false. The then president Munuswamy Mudalier is the brother-in-law of V.Devarajan and in collusion, they had acted and the same would not be binding upon the Panchayat and there is no resolution passed by the Panchayat to handover the possession to V.Devarajan and the first defendant alone is the absolute and full owner of the suit property and also in possession and enjoyment of the same and the settlement deed

executed in favour of the Panchayat is valid and binding on all and the same was accepted and acted upon and the present suit is barred by limitation. The Panchayat had put up a building for noon meal centre in the suit property and enjoying the same and hence, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined and Exs.A1 to A3 were marked. On the side of the defendants, DWs1 to 5 were examined and no documentary evidence has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been preferred.

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

(i) Whether the Court below was

right in decreeing the suit when possession is admittedly with the defendants Panchayat?

(ii) Whether the Court below was right in accepting one self interested oral evidence of PW1, by ignoring the documentary evidence Ex.A2 settlement Deed, which may also acted upon?

(iii) Whether the Court below was right in decreeing the suit while Exs.A1 and A2 documents were marked by the plaintiff himself and not succeeded in disproving the same?"

9. The suit has been laid for declaration and possession. According to the plaint averments, the plaintiff's Nilayam is being represented by its trustee V.Devarajan. The specific plea has been taken by the defendants in the written statement that as on the date of the institution of the suit, the plaintiff's Nilayam is not in existence and V.Devarajan is not the trustee representative of the plaintiff's Nilayam and on the above ground also resisted the plaintiff's claim for seeking the reliefs as prayed for. Materials placed on record go to show that at one point of time, the plaintiff's Nilayam was in existence and accordingly, it is found that the plaintiff's Nilayam, represented by the then trustee C.R.Kandaswamy Reddiar, had acquired the suit property by way of a registered sale deed

dated 25.08.1952 from one Backiammal and the said document has come to be marked as Ex.A1. Though the defendants would contend that by way of the said document, the suit property had been acquired by C.R.Kandaswamy Reddiar in his individual capacity and not as the trustee of the plaintiff's Nilayam, from the recitals contained in Ex.A1 sale deed, it is evident that the suit property had been alienated only in favour of the plaintiff's Nilayam and accordingly, the then trustee C.R.Kandaswamy Reddiar had purchased the suit property from Backiammal on behalf of the plaintiff's Nilayam and it is thus found that by way of Ex.A1, it is only the plaintiff's Nilayam, which was then in existence, represented by its the then trustee C.R.Kandaswamy Reddiar, had purchased the suit property. Therefore, the contention putforth by the defendants that the suit property had been acquired by C.R.Kandaswamy Reddiar in his individual capacity as such cannot be accepted.

10. Materials placed on record further go to show that C.R.Kandaswamy Reddiar, trustee of the plaintiff's Nilayam, thought it fit that the suit property should be given to the general public and accordingly, it is found that representing the plaintiff's Nilayam, he had settled the suit property in favour of the first defendant Panchayat by way of a registered settlement deed dated 09.03.1968, which document has come to be marked as Ex.A2. From the recitals contained in Ex.A2, it is evident that the said document has come to be executed by the trustee

of the plaintiff's Nilayam, C.R.Kandaswamy Reddiar, with a view to ensure that the suit property is utilised for the general public and accordingly, with that intention, settled the property in favour of the Panchayat and the recitals contained in the settlement deed would go to show that by way of the settlement deed, the possession of the suit property had been entrusted to the Panchayat, empowering them to construct the building thereon and utilise the same, for a public purpose. Now, according to the defendants, Ex.A2 settlement deed had been accepted and acted upon and the materials placed on record further go to show that as on date, a Noon Meal Centre is functioning in the suit property. Though it is contended by the plaintiff that Ex.A2 had not been accepted and acted upon and the possession had not been handed over to the Panchayat and on the other hand, the plaintiff's Nilayam continued to retain the possession of the suit property, despite the execution of Ex.A2 settlement deed, however, there is no material placed on record to evidence that even after Ex.A2, the plaintiff's Nilayam still continue to retain the possession of the suit property and as such, enjoying the same. With reference to the above case of the plaintiff, there is nil material. On the other hand, the recitals found in Ex.A2 itself would go to disclose that the possession of the suit property had been entrusted to the Panchayat and accordingly, the Panchayat having taken the possession of the suit property, it is found that the building had been put up thereon and presently, the same is being used as Noon Meal Centre

and it is thus found that the settlement deed had been accepted by the Panchayat and given effect to, accordingly, as per the recitals found in the settlement deed, the Panchayat had put up a building and utilising the same for the benefit of the general public i.e. Noon Meal Centre. When it is found that the suit property had been settled in favour of the Panchayat by way of Ex.A2 and the recitals contained therein as well as the admitted position that the suit property is only in the possession and enjoyment of the Panchayat as above discussed, it is found that pursuant to Ex.A2, the plaintiff's Nilayam, even if the same is in existence on the date of the institution of the suit, ceased to have any right over the same and on the sole ground, it is found that the plaintiff's suit is not maintainable. Though it is contended by the plaintiff that Panchayat Union trespassed into the suit property recently and put up a superstructure thereon etc., further, when the same is specifically denied by the defendants and when there is no material placed on record on the part of the plaintiff to show that the suit property has been in its possession and enjoyment, even after the execution of Ex.A2, it is found that inasmuch as the plaintiff had entrusted the possession of the suit property with the Panchayat by way of Ex.A2 accordingly, it is noted that there is no material available on the part of the plaintiff to establish that it continue to retain the possession of the suit property even after the execution of Ex.A2.

11. It is not the case of the plaintiff that the Panchayat had by exercising fraudulent methods or other illegal means, obtained the settlement deed from the plaintiff's Nilayam through its trustee C.R.Kandaswamy Reddiar. There is no such averment contained in the plaint and it is found that suo motu and voluntarily, the then trustee of the plaintiff's Nilayam had settled the suit property in favour of the Panchayat Union. That being the position, the case of the plaintiff that the settlement deed executed by C.R.Kandaswamy Reddiar by way of Ex.A2 is not valid as such cannot be accepted in any manner.

12. As above seen, the case of the defendants is that the plaintiff's Nilayam is not in existence and the plaintiff's Nilayam was originally founded only by C.R.Kandaswamy Reddiar and thereafter, C.R.Kandaswamy Reddiar viewed and opining that it not possible to continue the plaintiff's Nilayam, as the sole founder, further thought it fit that the property acquired in the name of the plaintiff's Nilayam should be made use of by the general public and accordingly, settled the suit property in favour of the Panchayat Union empowering them to put up a superstructure thereon and utilise the same for a public purpose. Thus, it is found that as per the case of the defendants, the plaintiff's Nilayam had been solely established by C.R.Kandaswamy Reddiar and run by him for a certain period and thereafter, settled the property of the plaintiff's

Nilayam in favour of the Panchayat finding the continuous running of the plaintiff's Nilayam not possible and accordingly, it is found that the plaintiff's Nilayam had not functioned or found to be in existence pursuant to the execution of the Ex.A2. Still, to controvert the abovesaid defence projected by the defendants, there is no material placed on the part of the plaintiff to establish that even after the execution of Ex.A2, the plaintiff's Nilayam continued to function and retain the possession of the suit property.

13. It has to be noted at this point of time that in the plaint itself, there is no averment clearly made as to for what purpose or for what object, the plaintiff's Nilayam was established and who had established the plaintiff's Nilayam, when it was established and who was the trustee of the plaintiff's Nilayam at the time of its establishment etc., The particulars, with reference to the establishment, the management and the functioning of the plaintiff's Nilayam are not clearly spelt out in the plaint, other than stating that the plaintiff's Nilayam is in existence. When a specific plea has been taken by the defendants that the plaintiff's Nilayam ceased to be in existences, particularly, after the execution of Ex.A2 settlement deed, at least, to controvert the same, some reliable materials should have been placed by the plaintiff to establish that the plaintiff's Nilayam still continues to be in existence and functions as such. Further, when the purpose or the object of the establishment of the plaintiff's

Nilayam itself is not clearly spelt out in the plaint and as to who had established the plaintiff's Nilayam, who are the trustees etc., are not clearly spelt out, the case of V.Devarajan, who claim to be the trustee of the plaintiff's Nilayam and has instituted the suit that he was the original trustee of the plaintiff's Nilayam before 1940 and continued to be the trustee of the plaintiff's Nilayam till Kandaswamy Reddiar assumed office and that Kandasamy Reddiar was trustee of the plaintiff's Nilayam from 1940 - 1955 and thereafter, he was made again the trustee of the plaintiff's Nilayam etc., all the abovesaid facts cannot be accepted when there are no materials pointing to the same. Absolutely, there is no record placed on the part of the plaintiff to establish that V.Devarajan functioned as the trustee of the plaintiff's Nilayam prior to 1940 and thereafter, Kandaswamy functioned as the trustee of the plaintiff's Nilayam only from 1940-55 and thereafter V.Devarajan again continued to function as a trustee of the plaintiff's Nilayam. If as putforth by the plaintiff, V.Devarajan had been duly appointed as the trustee and also been appointed as the trustee after Kandaswamy Reddiar, there should be some records available pointing to the same. Further, when no scrap of paper has been placed to establish that V. Devarajan was appointed as the trustee for certain period etc., the case of the plaintiff as putforth by V.Devarajan that he had been acting as the trustee for such and such period and Kandaswamy Reddiar had acted as the trustee of the plaintiff's Nilayam only for such and such period, as such cannot be straight away

accepted without any proof in support of the same. At the foremost, it is seen that V.Devarajan has not placed any material to show that he had ever acted as the trustee of the plaintiff's Nilayam. Such being the position, the contention putforth by V.Devarajan examined as PW1 that he had been acting as the trustee of the plaintiff's Nilayam as above pointed out does not merit acceptance when there is no material placed in support of the same.

14. V.Devarajan has pleaded that the settlement deed executed by C.R.Kandaswamy Reddiar is not valid and he had not been authorised to settle the suit property in favour of the Panchayat Union. However, there is no material placed on the part of the plaintiff that the property belonging to the plaintiff's Nilayam is not capable of alienation by its trustee and the properties belonging to the plaintiff's Nilayam should not at all be disposed of under any circumstances. The constitution of the plaintiff's Nilayam, the way of its functioning etc., powers of the trustees of the plaintiff's Nilayam etc., are not at all whispered in the plaint and no evidence has also been placed with reference to the same. Only oral evidence has been adduced stating that some members of the public use to nominate a person to act as the trustee and accordingly, the nominated person had been acting as the trustee of the plaintiff's Nilayam. However, it has not been established that the members of the general public are competent to appoint the trustee of the plaintiff's

Nilayam. It is thus found that without any proof whatsoever a very vague plea has been made in the plaint that V.Devarajan had been acting as the trustee and also was a trustee on the date of laying of the suit and accordingly, in such view of the matter, when there is no acceptable material placed to establish the constitution of the plaintiff's Nilayam as putforth during the course of evidence, it is found that inasmuch as the plaintiff's Nilayam is not functioning, as putforth by the defendants, the plaintiff is unable to place any material with reference to its function as such.

15. The further case of the plaintiff that C.R.Kandaswamy Reddiyar had fraudulently settled the suit property in favour of Panchayat Union and hence, the settlement deed is not valid also cannot be accepted. If really, C.R.Kandaswamy Reddiar had acted in violation of the object or the principles and the rules and regulations of the plaintiff's Nilayam and if really V.Devarajan had been subsequently nominated as the plaintiff's trustee, it has not been explained as to what further action had been taken against the then trustee C.R.Kandaswamy Reddiar with reference to his settling the suit property in favour of the Panchayat Union. Absolutely not a whisper has been made as to whether any action at all had been taken against him legally by V.Devarajan who claim to be the successor trustee of the plaintiff's Nilayam. It is thus found that as rightly putforth by the defendants inasmuch as it is only

C.R.Kandaswamy Reddiar who had established the plaintiff's Nilayam and running the same for a certain period and accordingly, finding the continuance of the same impossible at one point of time, thought it fit to divest the properties belonging to the Nilayam and also opining that the property of the plaintiff's Nilayam should be utilised only for the use of general public, resultantly settled the suit property in favour of the Panchayat Union empowering them to put up a superstructure and utilise the same for the use of the general public and thereafter, it is found that the plaintiff's Nilayam ceased to exist and accordingly, it is found that the plaintiff's Nilayam represented by the alleged trustee is unable to place any record whatsoever to establish that the plaintiff's Nilayam still continue to function and he has been appointed as the trustee of the Nilayam duly in accordance with the rules and regulations and the constitution of the plaintiff's Nilayam. When it is not made clear as to who are all empowered to act as the trustee and who are all empowered to appoint the trustee etc., details and proof with reference to the same are also not forthcoming and moreover, when the object of the constitution of the plaintiff's Nilayam has not been established to be in existence for the continuance of the Nilayam as such, accordingly, it is found that the trustee C.R.Kandaswamy Reddiar finding that there is no purpose in continuing the plaintiff's Nilayam, settled the suit property in favour of the Panchayat Union and in such view of the matter, it is found that the present alleged trustee V.Devarajan without establishing that the

plaintiff's Nilayam still continues and that he has been duly appointed as the trustee cannot lay a claim over the suit property after the suit property had been duly settled in favour of the Panchayat Union by the then president C.R.Kandaswamy Reddiar.

16. In the light of the above position, particularly, when Ex.A2 settlement deed has come to be executed by the competent person on behalf of the plaintiff's Nilayam and when the plaintiff has not placed any material to show that the trustee of the plaintiff's Nilayam had no power to alienate the suit property as such and further, when it has also not pleaded and established that C.R.Kandaswamy Reddiar had misused his position as the trustee and settled the suit property to achieve any ulterior motive, on the other hand, when it is found that he had settled the suit property only for the use of general public and accordingly, settled the same in favour of the Panchayat Union, the case of the plaintiff that the settlement deed had not been given effect to and therefore, the further case of the plaintiff that the Panchayat cannot derive title to the suit property by way of the settlement deed as such cannot be accepted in any manner.

17. Legally speaking, once it is found that the settlement deed had been executed in respect of the suit property in favour of the Panchayat Union and the possession had also been entrusted to the Panchayat Union

and the materials placed on record go to show that the suit property is only in the possession and enjoyment of the Panchayat Union and the case of the plaintiff that Panchayat Union had illegally trespassed into the suit property is not made out by placing any proof whatsoever and when it is found that pursuant to Ex.A2, the plaintiff ceased to retain the possession of the suit property in any manner and admittedly, the Panchayat Union had put up the superstructure and utilising the suit property as Noon Meal Centre for the use of the general public as well as the children, the case of the plaintiff that despite the execution of the settlement deed in favour of the Panchayat Union, it continue retain the title of the suit property as such cannot be accepted in any manner. The plaintiff's Nilayam even assuming to be in existence as such when it is found that the trustee is not shown to be incompetent to settle the property in favour of the Panchayat Union, on the execution of the settlement deed, it is found that the plaintiff Nilayam ceased to retain any title over the suit property and in such view of the matter, it is found that the suit laid by the plaintiff claiming the relief of declaration and possession in respect of the suit property cannot be sustained in any manner for the reasons aforestated.

18.Though it is found that the original settlement had been produced by the plaintiff, that by itself, would not in any manner divest the title to the Panchayat Union in respect of the suit property. Now,

according to the defendants V.Devarajan had obtained the settlement deed from the then president of the Panchayat Union, they being close relatives and therefore, it is contended that the then Panchayat president had not been empowered to return the settlement deed to V.Devarajan. Once the property had been settled in favour of the Panchayat Union without any resolution passed by the Panchayat Union, there is no question of returning the title deed of the property belonging to the panchayat Union in favour of the settlor or a third party. It is not the case of the plaintiff that the panchayat Union has passed a resolution to give up its title over the suit property and thereby, entrusted the settlement deed back to the plaintiff. In such view of the matter, merely on the production of the settlement deed by V.Devarajan, that by itself, would not advance the case of the plaintiff to show that Panchayat Union had ceased to retain the title of the suit property pursuant to Ex.A2 settlement deed.

19. In the light of the above discussions, it is found that it is only the Panchayat Union, which has title to the suit property following the execution of the settlement deed in its favour marked as Ex.A2 and it is further found that the settlement deed Ex.A2 had been accepted and acted upon and accordingly, it is found that it is only the Panchayat Union, which has been in possession and enjoyment of the suit property and in such view of the matter, the first appellate Court is found to have

erred in upholding the plaintiffs case on the basis of the oral evidence adduced by the plaintiff's Nilayam without any reliable and acceptable material corroborating the same and particularly, when the plaintiff has failed to establish that the plaintiff's Nilayam is in existence on the date of the institution of the suit or has been in existence after the execution of the settlement deed Ex.A2 and accordingly, it is found that the first appellate Court has committed an error in decreeing the suit as prayed for, based upon unacceptable reasonings and conclusions and it is thus found that the judgement and decree of the first appellate Court cannot be allowed to sustain any further and the substantial questions of formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiff.

20. The counsel for the defendants, in support of his contentions, placed reliance upon the decision reported in **1999 (1) CTC 245 (Rajiah Nadar Vs. Manonmani Ammal)**. The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

In conclusion, the Judgement and Decree dated 31.08.1999 passed in A.S.No.34 of 1995 on the file of the Additional District Judge/Chief Judicial Magistrate Court, Vellore, are set aside and the Judgment and Decree dated 31.08.1994 passed in O.S.No.829 of 1986

on the file of the District Munsif Court, Vellore, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

02.04.2018

Index : Yes / No

Internet : Yes / No

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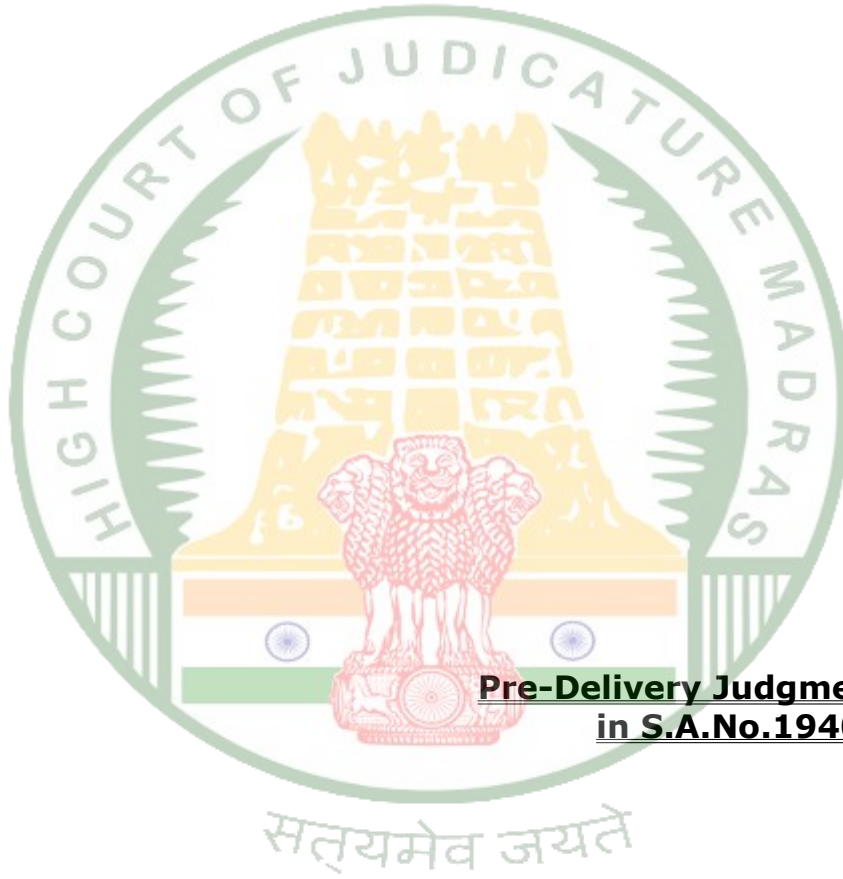
1. The Additional District Court, Vellore.
2. The District Munsif Court, Vellore.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1940 of 2003**

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02.04.2018