

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 08.01.2018****PRONOUNCED ON : 11.01.2018****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S.A.No.847 of 2003**

Chinnakannu Ammal

Vs.

Appellant

1.Velayutha Padayachi
2.Chinnamarga Padayachi
3.Narasinga Padayachi
4.Murugesan

...

Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and decree dated 24.02.2003 made in A.S.No.98 of 2001 on the file of the Principal Sub Court, Villupuram, reversing the judgment and decree dated 24.08.2000 made in O.S.No.362/1997 on the file of the I Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet.

For Appellant

: Mr.A.Nilaphar
for Mrs.R.Meenal

For Respondent : Mr.N.Suresh

JUDGMENT

This second appeal is directed against the Judgement and decree dated 24.02.2003 passed in A.S.No.98 of 2001 on the file of the Principal Sub Court, Villupuram, reversing the judgment and decree dated 24.08.2000 passed in O.S.No.362/1997 on the file of the I Additiional District Munsif cum Judicial Magistrate Court No.1, Ulundurpet.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to Kuppu W/o. Sevuthaan and his children and after they had been in possession and enjoyment of the suit property, they had alienated the suit property in favour of the plaintiff for a valid consideration by way of a sale deed dated 29.04.1991 and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit property by digging a Well and erecting an oil Engine and cultivating the suit property by obtaining patta and paying kist etc., and accordingly, on account of the long, continuous possession and

enjoyment of the suit property by the plaintiff and her predecessors in interest, the plaintiff has also acquired title to the suit property by way of adverse possession. The defendants have no title or right in respect of the suit property and the defendants own lands adjacent to the suit property and requested the plaintiff to sell the suit property to them, which, the plaintiff refused and therefore, developing animosity against the plaintiff, according to the plaintiff, the defendants attempted to interfere with her possession and enjoyment of the suit property and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that they had denied the claim of title to the suit property by the plaintiff by way of the sale deed dated 29.04.1991 said to have been executed by Kuppu and others and they also denied the claim of title to the suit property set out by the plaintiff by way of adverse possession and according to the defendants, the suit property is classified as Adi Dravida Tharisu and in respect of the suit property, Kuppayee was granted conditional patta by the Government on 17.07.1977 and as Kuppayee failed to obey the conditions stipulated in the patta, the said patta had been cancelled and the land was resumed by the Government by way of the proceedings dated 23.07.1983 and therefore, they had contended that

the plaintiff's claim that the suit property belonged to Kuppayee and others as stated in the plaint is false and hence, according to them, Kuppayee had no competency to convey the suit property in favour of the plaintiff by way of the sale deed dated 29.04.1991 and the plaintiff has never been in possession and enjoyment of the suit property as projected by her and the plaintiff cannot claim to have purchased the land classified as Adi Dravida Tharisu from Kuppayee and others and there is an Odai running in between the suit property North to South and the defendants own lands in survey No.396/1, having purchased the same by way of the sale deed 23.11.2002, which is situated to the East of the suit property and accordingly, the defendants had encroached into 0.37 cents in the suit survey number at the eastern side and enjoying the same along with their properties purchased by way of the sale deed dated 23.11.1992 and the Government has also not disturbed the possession and enjoyment of the above said extent of 0.37 cents in the said survey number by the defendants and inasmuch as the suit property had been vested with the Government, the suit laid by the plaintiff, without impleading the State of Tamil Nadu, is bad for non-joinder of necessary party and the sale deed dated 29.04.1991, under which, the plaintiff claims title to the suit property is invalid and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A4 were marked. On the side of the defendants, DWs1 to 3 were examined and Ex.B1 was marked. Exs.X1 to X5 were also 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 decree the suit as prayed for. On appeal preferred by the defendants, it is found that by way of an application preferred by the defendants, an additional document has come to be marked in support of the defendants' case, which has been marked as Ex.X6 and the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been laid.

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

"(i) Whether in law the lower appellate Court was right in allowing

I.A.No.210/2002 when the requirements under Order 41 rule 27 CPC were not satisfied?

(ii) Whether in law the lower appellate Court was right in relying on the X series documents, which were issued pending suit, especially since the files relating to the assignment proceedings were admittedly not available?

(iii) whether in law the lower appellate Court was not wrong in omitting to note that Exs.A2 to A4 having been admitted by the VAO (DW3) as valid documents, the appellant's title and possession were proved and that she was entitled to a decree?"

9. The plaintiff claims title to the suit property by way of purchase of the same from Kuppayee and others under a sale deed dated 29.04.1991, which has been marked as Ex.A1. According to the plaintiff, prior to her purchase under Ex.A1, the suit property had been in possession and enjoyment of her vendors and accordingly, they had conveyed the suit property in her favour by virtue of Ex.A1. No doubt,

in Ex.A1, there is no clear description of the source of title, by which, the plaintiff's vendors had acquired title to the suit property. Be that as it may, from the pleas set out by the defendants in the written statement and also the evidence projected in the matter, it is seen that it is the admitted case of the defendants that the suit property belonging to the Government had been originally assigned in favour of Kuppayee. In this connection, DW1 examined on behalf of the defendants, who is the first defendant, even during the course of chief examination has admitted clearly that the suit property originally belonged to the Government and in respect of the same, patta had been granted in favour of Kuppayee Ammal and during the course of cross examination, he has further admitted that the suit property is comprised in Patta No.252 and in respect of the suit property, Kuppayee had been granted patta and the same had been cancelled by the Government in the year 1983 and since then, the suit property is remaining as Adi Dravida Tharisu and further, he has also admitted that he has not filed any document to evidence that the patta/assignment granted in favour of Kuppayee in respect of the suit property had been cancelled by the Government and further also admitted that he has not filed any document to show that the suit property has been subsequently classified as Adi Dravida Tharisu. In

addition to that, he has also, during the course of cross examination, though has denied the suggestion that the entire extent of the suit property is in the possession and enjoyment of the plaintiff pursuant to Ex.A1, admitted that the extent available to the West of the Odai lying in the suit property is in the possession and enjoyment of the plaintiff only and the plaintiff is cultivating the same and the Government has, till date, not obstructed the plaintiff's possession and enjoyment of the said extent available in the suit survey number situated to the West of the Odai and also admitted that it is correct to state that it is only the plaintiff, who is keeping the extent in the suit survey number to the West of the Odai by cultivating the same with the help of the Oil Engine etc.. From the above admission of DW1 examined on behalf of the defendants, it is evident clearly that the suit property originally belonging to the Government had been assigned in favour of Kuppayee Ammal, the vendor of the plaintiff and though the defendants would claim that the patta/assignment granted in favour of Kuppayee ammal had been cancelled in the year 1983, to buttress their above said claim, admittedly, no document has been produced by the defendants as per the evidence of DW1 and that apart, they had also not placed any material to show that since the date of the alleged cancellation, the suit property had been classified as Adi Dravida Tharisu once again

by the Government. On the other hand, DW1 has clearly admitted that till date, the entire extent in the suit survey number lying to the West of Odai is in the possession and enjoyment of the plaintiff and that, the plaintiff is cultivating the said extent by erecting oil Engine etc.,

10. The defendants admittedly had purchased the adjacent property situated in survey No.396/1 by way of Ex.B1 and as regards the same, there is no dispute between the parties and the case of the defendants is that along with the lands purchased by them under Ex.B1, they had also encroached an extent of 0.37 cents situated on the eastern side of the survey number i.e. lying to the East of Odai and the said extent is in their possession and enjoyment. However, as regards the above said claim of the defendants that they had encroached an extent of 0.37 cents of land in the suit survey number and paying penalty to the Government, it is admitted by DW1 that there is no document to evidence the same and though he would claim that the said documents are available, for the reasons best known to the defendants, they had not chosen to place any material to show that they are in possession and enjoyment of an extent of 0.37 cents in the suit survey number on the eastern side by paying penal charges to the Government. If really, the suit property had been resumed by

the Government after cancelling the patta/assignment granted in favour of Kuppayee ammal and thereafter, the land had been classified once again as Adi Dravida Tharisu and if the case of the defendants that they had encroached into an extent of 0.37 cents on the eastern side and been enjoying the same by paying necessary penal charges to the Government is true, as rightly argued, necessary documents pointing to the same would have been placed by the defendants and on the other hand, it is seen that admittedly, as also found by the Courts below, no proof, whatsoever, has been placed by the defendants to show that they are in possession and enjoyment of an extent of 0.37 cents in the suit survey number as pleaded by them.

11. DW2 Kasilingam examined on behalf of the defendants, during the course of chief examination, has also admitted that the suit property measuring an extent of 2.10 acres originally belonged to the Government and he has also clearly admitted that it is only the plaintiff, who is in possession and enjoyment of the Odai portion running in the suit survey as well as the portion running to the west of Odai and also the portion running to the East of Odai and thus, it is seen that according to DW2, it is only the plaintiff, who is in possession and enjoyment of the entire suit property and further according to

DW2, the patta, in respect of the suit property, was originally granted in favour of Kuppayee ammal and however, he would claim that the patta granted in favour of Kuppayee ammal had been cancelled as she had not cultivated the lands as per the terms of the patta. During the course of cross examination, it has been admitted by DW2 that the plaintiff had endeavoured to measure and demarcate the suit property by way of survey measurement and on account of the resistance put forth by the defendants, the surveyor had not chosen to measure the property and according to DW2, only on the representation of the first defendant that the suit property had been classified as Adi Dravida Tharisu, the surveyor did not choose to measure the suit property. Therefore, it is seen that as per the evidence of DW2 only on the representation put forth by the defendants, the surveyor accepting the same on the face value, had not measured the suit property, which exercise, was endeavoured by the plaintiff. Further, DW2 has also admitted that he is not in possession of any document to show that the suit property has been classified as Adi Dravida Tharisu and also further admitted that the patta in respect of the entire extent measuring 2.10 acres in the suit survey number was granted in favour of Kuppayee ammal and Kuppayee ammal in turn had sold the said property in favour of the plaintiff and also further admitted that there

is no water running in the Odai portion lying in between the suit survey number and therefore, as per the clear testimony of DW2 also, it is found that though he has also admitted the assignment/patta granted in faovur of Kuppayee ammal in respect of the suit property, it is seen that he is also not aware of any document, by which, the said patta had been cancelled by the Government. Accordingly, he has clearly admitted that the entire suit property is in the possession and enjoyment of the plaintiff by way of her purchase of the same from Kupayee ammal and thus, it is found that it is only the plaintiff, who has been in possession and enjoyment of the suit property in its entirety pursuant to Ex.A1 from her vendors.

12. The main defence projected by the defendants to decline the reliefs sought for by the plaintiff is that the assignment/patta granted in favour of the plaintiff's vendors in respect of the suit property had been cancelled and therefore, according to the defendants, the plaintiff's vendor had no legal competency to sell the suit property in favour of the plaintiff under Ex.A1 and since the date of cancellation, the suit property had been classified only as Adi Dravida Tharisu and therefore, the plaintiff cannot claim to be the title holder of the suit property and further, according to the defendants, inasmuch as the

suit property had been classified as Adi Dravida Tharisu, the plaintiff, without impleading the Government as a party to the suit proceedings, cannot obtain the reliefs sought for and hence, it is stated that the suit is bad for non-joinder of necessary party and therefore, the suit is liable to be dismissed.

13. As above seen, according to the plaintiff, she had purchased the suit property from her vendors under Ex.A1. Further, according to the plaintiff's case, the Government has not disturbed her title, possession and enjoyment of the suit property and in such view of the matter, it is seen that there is no need for the plaintiff to implead the Government as a party to the suit proceedings and inasmuch as only the defendants, who are only encroachers, had attempted to interfere with her possession and enjoyment, she had been necessitated to institute the suit against the defendants for appropriate reliefs.

14. The contention put forth by the respective parties, in respect of the suit property, being of the above nature, it is found that the evidence of VAO, examined as DW3 assumes importance. Mainly, the defendants rely upon Exs.X1 to X6 for upholding their version. DW3, in his evidence, during the course of chief examination, has admitted

that in the suit survey number, for an extent of 1.58 cents the Government had granted patta/assignment in favour of Kuppammal in 1977. Further, according to DW3 by way of the proceedings dated 23.07.1983, the said assignment /patta had been cancelled. He has also admitted that after the sub division of survey No. 396/4 into survey No.396/12, the extent in survey number 396/12 had been assigned in favour of Kuppammal and he has also further admitted that an extent of 1.88 acres of land in survey No.396/12 is in possession and enjoyment of the plaintiff and according to him, the Odai is in an extent of 5 cents in the suit survey number and to the East of Odai, the first defendant is in possession and enjoyment of nearly 15 cents of land. Therefore, it is found that DW3 also does not support the case of the defendants that they are in possession and enjoyment of 0.37 cents of land in the survey number to the east of Odai. As above stated, the defendants mainly rely upon Exs.X1 to X6 for upholding their version. DW3, during the course of cross examination, has admitted that there is no proceedings available with them that the patta granted in respect of the suit survey number in favour of Kuppayee ammal had since been cancelled as mentioned in Ex.X2. Further, he has also admitted that there is no document available to show that thereafter the suit survey number had been

reclassified as Adi Dravida Tharisu. Further also admitted that Exs.X1 & X2 do not refer to the existence of any Odai in the suit survey number. Therefore, it is found that inasmuch as there is an endorsement of the cancellation of the patta in favour of Kuppayee ammal available in Ex.X2, it is contended that the assignment/Patta granted in her favour had been cancelled. However, as per the evidence of DW3, other than the said endorsement found in Ex.X2, there is no proceedings available with them to show that the patta/assignment granted in favour of Kuppayee ammal had been really cancelled. If the patta/assignment granted in favour of Kuppayee ammal had been cancelled on account of infraction of the conditions of patta, definitely, necessary proceedings would have been issued to Kuppayee ammal and necessary order would have been passed. However, as regards the same, other than the endorsement found in Ex.X2, there is no material placed on behalf of the defendants through DW3 to hold that the Patta /assignment granted in favour of Kupayee ammal had been cancelled in accordance with law. Accordingly, it is found that neither the defendants nor DW3 are able to place the proceedings of the Government, under which, the assignment/patta granted in favour of Kupayee ammal had been cancelled, apart from Ex.X2. When Ex.X2 has been challenged by the

plaintiff, it is for the defendants to establish their case by placing the best evidence to show that the patta, which had been granted in favour of Kupayee ammal, had since been cancelled as mentioned or reflected in Ex.X2.

15. Further, though the endorsement or entries found in Exs.X3 to 5 are also pressed into service by the defendants, however, it is found that as per the admission of DW3, the above said entries/endorsements found in Exs.X4 & 5 were made by him just one day prior to the date of his deposition in the Court and therefore, it is found that the above said documents have come into existence after the institution of the suit. In such view of the matter, the same cannot be relied upon safely to uphold that the patta/assignment granted in favour of Kupayee ammal had been validly cancelled. Accordingly, it is seen that as rightly argued by the plaintiff's counsel, Exs.X4 & 5 cannot at all be accepted to hold that the patta/assignment issued in favour of Kupayee ammal in respect of the suit property had been validly cancelled in accordance with law. Similarly, it is also noted that Ex.X6 has also come into existence, after the institution of the suit and when the proceedings by which the patta/assignment granted in favour of Kupayee ammal had been cancelled, has not been placed by

the defendants, it is seen that the certificate marked as Ex.X6, with reference to the same, issued after the institution of the suit as such cannot be relied upon for upholding the defence version. Ex.X3 by itself do not serve any purpose to serve the defendants' case. It is thus found that the documents marked as Exs.X1 to 6 in toto cannot at all be countenanced since the defendants have failed to place the actual proceedings, under which, the patta issued in favour of the Kuppayee ammal had been cancelled and that, the suit property has been since resumed by the Government. Even Ex.X2 is found to have come into existence and issued only after the institution of the suit and therefore, no safe reliance also could be attached to the same for accepting the defendants' case.

16. It is the specific case of the plaintiff that she and her predecessors in interest had been in possession and enjoyment of the suit property since the date of assignment /patta and the defendants, without any legal authority, are attempting to interfere with her possession and enjoyment. It is further the specific case of the plaintiff that she had paid necessary Kists in respect of the patta granted for the suit property and also marked the kist receipts as Exs.A2 & A3. Ex.A4 is the encumbrance certificate, which only depicts the sale

transaction in favour of the plaintiff. If really, the suit property had been resumed by the Government by cancelling the patta issued in favour of Kuppayee ammal, necessary entries with reference to the same would have been reflected in Ex.A4 also. However, the same is missing in Ex.A4. Further, according to the plaintiff, the patta number in respect of the suit property is 252 and she has paid the kists for the same under Exs.A2 & A3. With reference to the above case of the plaintiff, the VAO examined as DW3 has admitted that it is he, who had issued the kist receipts marked as Exs.A2 & A3 and firmly admitted the said kist receipts are issued in the name of the plaintiff for the patta No.252 for the fasali 1404 and 1406 respectively and also admitted that the amount paid by the plaintiff by way of the kist had been since remitted to the Government and therefore, it is seen that inasmuch as the plaintiff had validly purchased the suit property from her vendors under Ex.A1, accordingly, it is seen that she had been in possession and enjoyment of the suit property by obtaining patta paying kist etc., and the said case of the plaintiff has been strengthened by the admission of the Village Administrative Officer DW3, who has clearly accepted that it is he, who had issued the kist receipts marked as Exs.A2 & A3 in favour of the plaintiff for her enjoyment of the suit property comprised in Pata No. 252. If really,

the suit property had been resumed by the Government after the cancellation of the patta issued in favour of Kuppayee ammal and the plaintiff had not validly purchased the suit property from her vendors under Ex.A1, DW3, the VAO, an official of the Government, would not have endeavoured to collect the kists amount paid by the plaintiff under Exs.A2 & 3 in respect of the suit property and the above said facts would only disclose that the defence version that the Government had resumed the suit property is a false theory and on the other hand, inasmuch as it is only the plaintiff, who is in possession and enjoyment of the suit property as the full owner thereof, it is found that accepting her title, the VAO, DW3 has collected the kist paid by her for the patta in respect of the suit property and these facts would only go to show, without any doubt, that the suit property had not been taken by the Government by cancelling the patta issued in favour of Kuppayee ammal and on the other hand, it is only the plaintiff, who has been enjoying the suit property by keeping the same in her possession and enjoyment by obtaining patta, paying kist etc.. Inasmuch as the defendants have failed to establish that the Government had taken the suit property after the cancellation of the patta as put forth by them, it is seen that the Government, not being the owner of the suit property as projected by the defendants and accordingly, it is found that when

the Government has not disturbed the plaintiff's possession and enjoyment of the suit property and on the other hand, admitting her title, possession and enjoyment by way of her purchase of the same under Ex.A1, it is seen that the Government had been collecting the kist paid by the plaintiff in respect of the suit property and the same had also been remitted into the account of the Government as admitted by DW3 and accordingly, it is seen that as argued by plaintiff, the Government at no point of time, interfered with her title, possession and enjoyment of the suit property and in such view of the matter, as rightly put forth, there is no need for the plaintiff to implead the Government as a party to the suit proceedings, and as rightly further argued, inasmuch as it is only the defendants, who attempted to challenge the plaintiff's title, possession and enjoyment of the suit property, accordingly, it is seen that the plaintiff had been necessitated to lay the suit only against the defendants for appropriate reliefs. In the light of the above position, as rightly argued, the State of Tamil Nadu is not a necessary party to the suit proceedings.

17. The counsel for the defendants contended that the plaintiff, by way of the present suit proceedings, is attempting to grab the Odai lying in the suit property. However, from the materials placed, it is

found that the Odai as such is not in existence as above seen through the evidence of DW2. Further, in the documents marked as EXs.X1 to X6, there is no reference about the Odai in the suit survey number as admitted by DW2. In any event, when it is found that inclusive of the Odai lying in the suit survey number, the plaintiff's vendors had been granted the assignment, it is seen that the defendants do not have any entitlement to contend that the plaintiff is attempting to annex the Odai portion by way of the suit proceedings, inasmuch as the plaintiff's vendors had alienated the entire extent of the property given to her by way of assignment in favour of the plaintiff's under Ex.A1. In such view of the matter, it is seen that the contention put forth by the defendants' counsel that the plaintiff's suit should fail as such cannot be accepted.

18. In the light of the above discussions, it is found that the first appellate Court has erred in relying upon the X series documents filed in the matter as they had come into existence pending the institution of the suit and further, when the same are challenged by the plaintiff and when the defendants have failed to place the necessary files relating to the assignment proceedings/cancellation of assignment proceedings, etc., it is seen that no safe credence could be attached to

Exs.X1 to X6 for upholding the defence version and the first appellate Court has erred in accepting the defence version on the basis of the above said documents and accordingly, it is seen that the approach of the lis by the first appellate Court is erroneous and found to be unsustainable in the eyes of law and cannot be countenanced. Similarly, it is noted that the first appellate Court has failed to consider the materials placed on record, particularly, the documents marked as Exs.X1 to X6 and the evidence of DWs1 to 3 in the right perspective and accordingly, it is seen that the first appellate Court has committed a manifest error in holding that the plaintiff has no title, possession and enjoyment of the suit property, when the documents and materials placed show otherwise. Though the first appellate Court has entertained the additional document projected by the defendants as Ex.X6, erred in accepting the same, when it is obviously seen that the same had come into existence after the institution of the suit and particularly, when the defendants have not placed the materials papers/files before the Court with reference to the assignment proceedings. It is thus found that the determination of the first appellate Court in accepting the defendants' version and rejecting the plaintiff's case based on Exs.X1 to 6 is found to be erroneous in law and cannot be allowed to sustain further. The substantial questions of

law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendants.

19. In conclusion, the Judgement and decree dated 24.02.2003 passed in A.S.No.98 of 2001 on the file of the Principal Sub Court, Villupuram, are set aside and the judgment and decree dated 24.08.2000 passed in O.S.No.362/1997 on the file of the I Additional District Munsif cum Judicial Magistrate Court No.1, Ulundurpet, are confirmed. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Index : Yes / No.
Internet : Yes / No.
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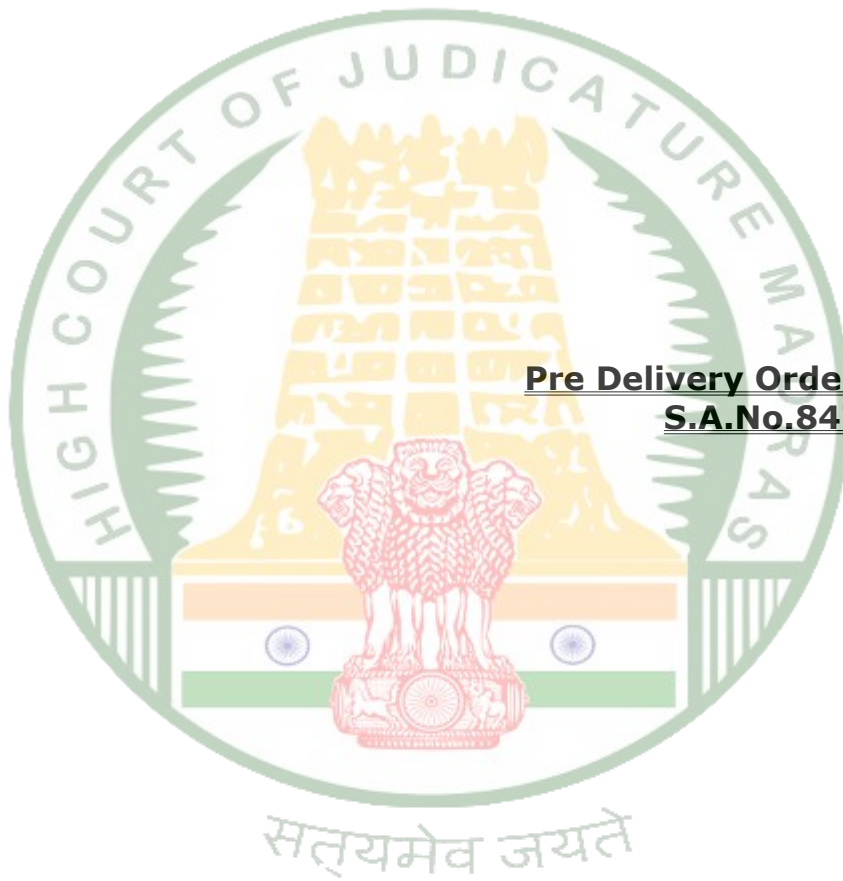
To

1. The Principal Sub Court, Villupuram.
2. The I Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet.

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T.RAVINDRAN., J.

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Pre Delivery Order made in
S.A.No.847 of 2003

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Pre-delivery Judgment made

in S.A.No.847 of 2003

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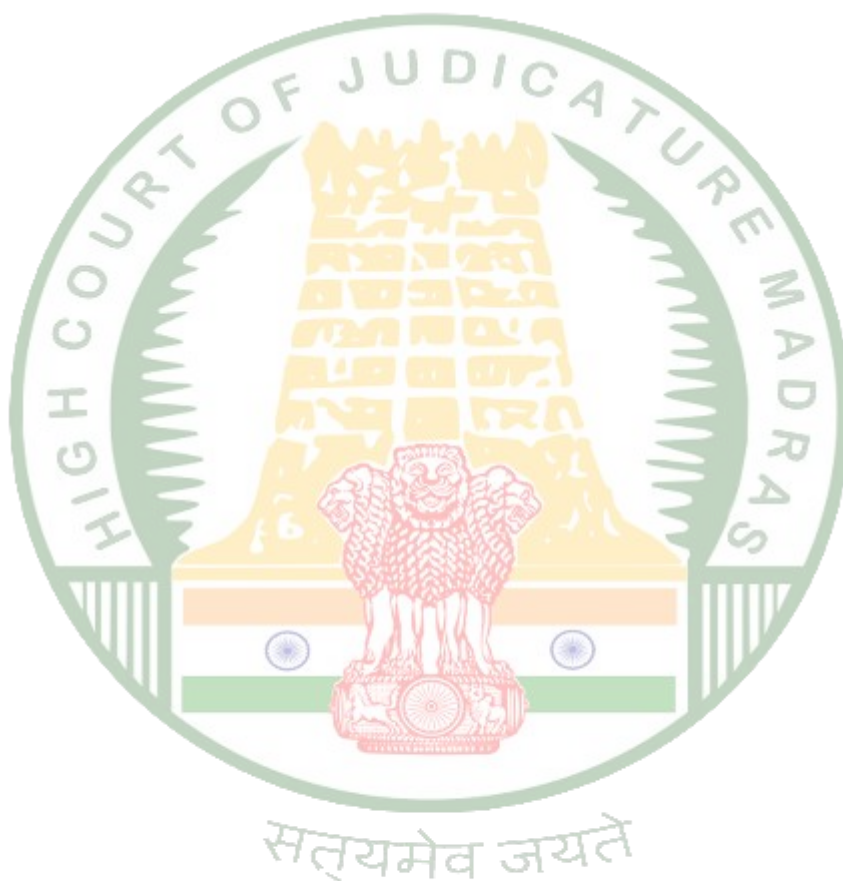
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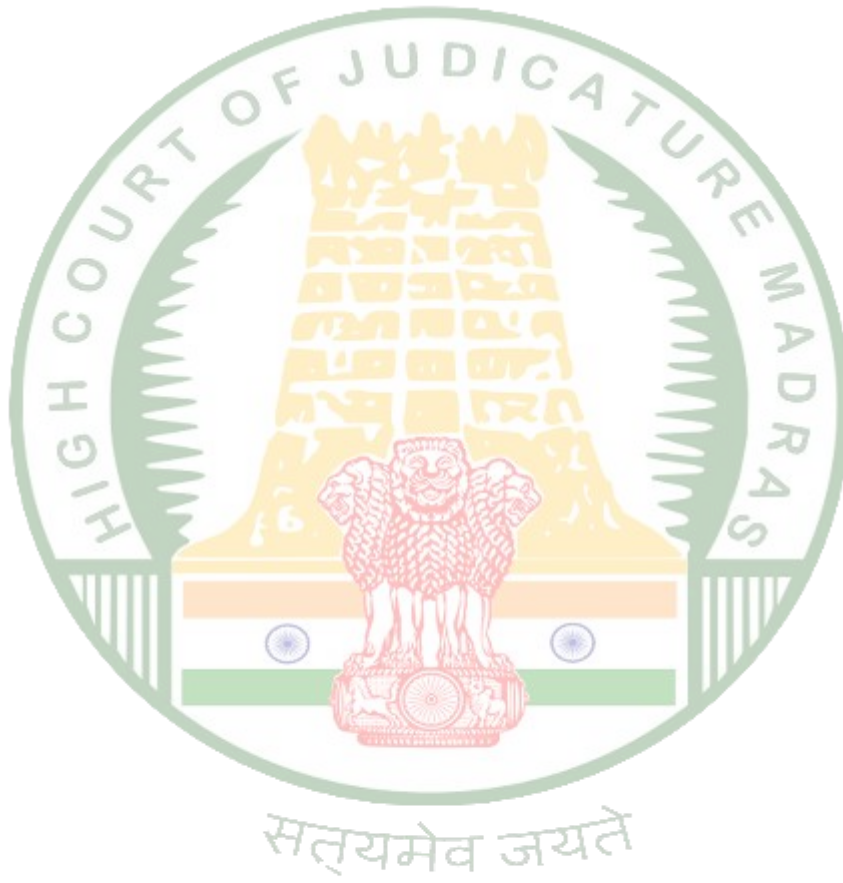
Most respectfully submitted

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P.A.to the Hon'ble Judges



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