

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.10.2019
PRONOUNCED ON: 14.11.2019
CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.34 of 2013
and
M.P.No.1 of 2013

D.Prema Kumari ... Appellant/ Defendant

Vs.

D.Muthuraman ... Respondent/Plaintiff

Prayer:

First Appeal filed under Section 96 of C.P.C., r/w Order 41 Rule 1 & 2 of C.P.C., against the judgment and Decree on the file of the 2nd Additional District Judge, Thiruvallur at Poonamallee in O.S.No.2 of 2006 dated 06th October 2012.

For Appellant : Mr.V.Raghavachari

For Respondent: Mr.R.Bharath Kumar

J U D G M E N T

1. Aggrieved over the Judgment and Decree dated 06.10.2012 passed in O.S.No.2 of 2006 on the file of the II Additional District Court, Thiruvallur at Poonamallee, the defendant has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for specific performance.

4. Briefly stated, according to the case of the plaintiff, on the representation made by the defendant that she is the absolute owner of the suit property and has the authority to sell the suit property, pursuant to the same, the plaintiff agreed to purchase the suit property for a sum of Rs.10,24,000/- and paid a sum of Rs.74,000/- as advance on 31.08.2003 to the

defendant and on the same day, an agreement of sale was executed by the defendant in favour of the plaintiff and in the sale agreement, instead of August month, September has been written, however the agreement had been effected only on 31.08.2003 and six months time is stipulated for the execution of the sale deed, however time is not the essence of the contract. Originally the suit property belonged to Masillamani, the father of the defendant and on his demise, the defendant had secured the power of attorney deed from the other legal heirs of Masillamani by way of a registered power deed dated 03.04.1989 and however, even prior to the execution of the sale agreement dated 31.08.2003, one of the principals i.e., Mary rose had died and the defendant had no other document of title except the power of attorney deed and therefore the defendant had been directed to obtain the release deed from the other legal heirs of the deceased Masilamani and after the great efforts of the plaintiff, the defendant obtained the release deed from the other legal heirs of the deceased Masillamani by way of a release deed dated 17.03.2004 and thereby the defendant became the absolute owner of the suit property. Thereafter, the defendant wanted to settle the suit property in favour of her children and the plaintiff towards the same, spent substantial amount and got three settlement deeds ready and the plaintiff is always ready and willing to perform his part of the contract by paying the balance sale consideration and obtain the execution of the sale deed from the defendant as per the terms of the sale agreement, however the defendant had been delaying the transaction. Therefore the plaintiff was unable to get the approval from the appropriate authorities to complete the other formalities. The defendant had handed over the possession of the suit property to the plaintiff and pursuant to the same, the defendant had levelled the land and incurred expenses and whileso, the defendant issued a notice dated 07.04.2004, as if, she is always ready and willing to perform her part of the contract and complete the sale transaction and the plaintiff sent a suitable reply to the same containing true facts. The plaintiff has spent considerable amount as detailed in the plaint amounting to Rs.91,500/- with the object of completing the sale transaction. whileso, the defendant attempted to sell the suit property to the third parties for a higher price. The plaintiff therefore levied O.S.No.338 of 2004 against the defendant for the relief of permanent injunction restraining the defendant from alienating the suit property and the suit is still pending. Whileso, the defendant sent another notice dated 27.10.2004 requiring the plaintiff to fulfill his part of the contract within 31.12.2004, failing which, the sale agreement would stand cancelled and the advance amount would be forfeited. The plaintiff approached the defendant immediately to perform his part of the contract, however the defendant demanded some more amount than the agreed amount and the same had been

refused by the plaintiff, hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit by contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted the execution of the sale agreement between the plaintiff and the defendant in respect of the suit property on 31.08.2003, for a sum of Rs.10,24,000/- and the payment of the advance amount of Rs.74,000/- was made by the plaintiff on the date of the sale agreement and according to the defendant, the time of six months stipulated for the sale agreement is the essence of the contract. The defendant had informed the plaintiff that she had already committed to purchase another property at Thiruverkaadu and accordingly entered into the sale agreement and also for meeting the marriage expenses of her daughter likely to be confirmed shortly. In such circumstances, time fixed under sale agreement is made the essence of the contract. There was no clarity as regards the title of the defendant over the suit property. The legal heirs of the deceased Masillamani had executed the registered power of attorney deed dated 03.04.1989 in favour of the defendant. Relying on the same, the plaintiff had entered into the sale agreement. The defendant had been always ready and willing to perform her part of the contract, however the plaintiff had been delaying the same. Further the defendant had also made ready the release deed and even after the obtainment of the release deed by the defendant from the legal heirs of the deceased Masillamani, the plaintiff did not evince interest to pay the balance sale consideration. Hence, the defendant issued a notice calling upon the plaintiff to pay the balance sale price on or before 30.04.2004. The plaintiff had failed to comply with the demand within the extended time limit. Again the defendant extended further time as final opportunity to the plaintiff to pay the balance sale price on or before 31.12.2004 by way of the legal notice dated 27.10.2004. Even thereafter, the plaintiff failed to comply with the conditions and not paid the sale consideration within the extended time limit, The suit in O.S.No.338 of 2004 has been filed by the plaintiff only with a view to delay the matter and to gain the maximum time and postpone the execution of the sale deed. The claim of the plaintiff that he spent a sum of Rs.91,000/- for the purpose of achieving the object of sale agreement is false and the possession of the suit property always remained with the defendant. It is false to state that the expenses for the preparation and the registration of the release deed was made by the plaintiff, but the same has been incurred by the defendant. There is no need or necessity in law to prepare the three settlement deeds and three power of attorney deeds from the children of the defendant especially when the suit property had been derived by the defendant from

her father, hence the alleged expense said to have been incurred by the plaintiff with reference to the obtainment of the settlement deeds and the power of attorney deeds are false. The defendant has given the detailed reply to the reply notice issued by the plaintiff and hence according to the defendant, the plaintiff is not entitled to secure the reliefs prayed for and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

i. Whether the plaintiff is entitled for specific performance of contract of sale agreement dated 31.08.2003 entered between the plaintiff and the defendant?

ii. Whether the suit is barred by limitation as alleged in the written statement?

iii. Whether the suit is hit by under Order 2 Rule 2 of CPC as alleged in the written statement?

iv. To what relief the plaintiff is entitled?

Additional Issues:

i. Whether the plaintiff was not ready and willing to perform his part of contract despite the fact that the defendant has extended the time for performance twice?

ii. Whether the defendant was not come forward to execute the settlement deeds and the power deeds in favour of her 2 sons and 1 daughter and the 3 power deeds from them in favour of the plaintiff as agreed by the defendant on 17.03.2004 when the defendant obtained release deed from the legal heirs of the deceased Mani @ Masilamani and breached her oral commitment to the plaintiff?

iii. Whether the time is essence of contract as averred by the defendant?

iv. Whether the defendant has not come forward to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration without any encumbrance?

7. It is found that the suit laid by the plaintiff in O.S.No.2 of 2006 for specific performance has been jointly tried with the suit levied by the plaintiff for the relief of permanent injunction against the defendant in O.S.No.338 of 2004 and it is seen that the common evidence has been recorded in both the suits and in support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A10 were marked. On the side of the defendant, D.Ws.1 to 4 were examined. Exs.B1 to B10 were marked.

8. 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 in favour of the plaintiff as prayed for in O.S.No.2 of 2006. Aggrieved

over the judgment and decree of the trial court, the First Appeal has been preferred by the defendant.

9. The following points arise for determination in the First Appeal:

i. Whether the plaintiff has been always ready and willing to perform his part of the contract?

ii. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 31.08.2003?

iii. To what relief the plaintiff is entitled to?

iv. To what relief the defendant/appellant is entitled to?

Point Nos.1 & 2:

10. It is not in dispute that the plaintiff and the defendant had entered into an agreement of sale in respect of the suit property on 31.08.2003 and the parties had agreed the sale consideration at Rs.10,24,000/- and it is also not in dispute that the plaintiff had paid the sum of Rs.74,000/- to the defendant as advance on the date of the sale agreement. From the recitals contained in the sale agreement marked as Ex.A1, it is found that the parties had agreed to complete the sale transaction within six months from the date of the sale agreement. According to the plaintiff, time fixed under the sale agreement is not the essence of the contract. However, according to the defendant, time fixed under the sale agreement is the essence of the contract.

11. From the materials placed on record, it is found that the suit property originally belonged to Masilamani, the father of the defendant. It is found that the defendant based on the power of attorney deed executed in her favour by the other legal heirs of Masilamani on 03.04.1989 and relying upon the same, it is found that the plaintiff had also chosen to enter into the sale agreement in respect of the suit property on 31.08.2003. It is found that according to the plaintiff as one of the legal heirs of Masilamani namely his wife Mary Rose had died prior to the execution of the sale agreement Ex.A1, as could be gathered from the materials available on record, the plaintiff had been insisting to obtain the release deed from the other legal heirs of Masilamani for the purpose of proceeding further under the sale agreement Ex.A1. It is also found that the defendant had obtained the release deed in her favour from the other legal heirs of Masilamani by virtue of the release deed dated 17.03.2004, which document has come to be marked as Ex.B9. However, the fact remains, the sale agreement Ex.A1 had been entered into between the parties, particularly on the part of the plaintiff by only relying upon the power of attorney deed dated 03.04.1989 obtained by the defendant marked as Ex.B10.

12. Inasmuch as Ex.B9 release deed had come to be

secured on 17.03.2004 after the time limit fixed under the Ex.A1 sale agreement had expired and as even thereafter, as the plaintiff had not come forward to pay the balance sale consideration as agreed to and complete the sale transaction, it is found that the defendant had issued a legal notice dated 07.04.2004 calling upon the plaintiff to pay the balance sale consideration immediately to complete the sale transaction. The receipt of the legal notice dated 07.04.2004 marked as Ex.A2 has not been controverted by the plaintiff. On a perusal of Ex.A2 notice, it is found that the defendant had called upon the plaintiff to pay the balance sale consideration on or before 30.04.2004, failing which, apprised that the agreement would stand cancelled and also the plaintiff would forfeit the advance sum of Rs.74,000/- paid under the sale agreement. The plaintiff has sent a reply notice dated 12.04.2004 to Ex.A2 legal notice and the reply notice has been marked as Ex.A3. By way of Ex.A3 notice, it is found that the plaintiff had put forth the case as if, the defendant had intended to settle the suit property in favour of her three children and according to the plaintiff, for the said purpose, he had spent substantial amount and made the three settlement deeds ready for registration, however put forth the case that the defendant had subsequently turned around and failed to complete the abovesaid settlement transactions. Further the plaintiff would also aver in the reply notice Ex.A3 that he had been informed that after the execution of the settlement deed in favour of the defendant's children, he has to prepare three general power of attorney deeds to be executed by the defendant's three children in favour of the plaintiff and according to the plaintiff, the abovesaid power of attorney deeds had also been prepared by him by spending a substantial amount. Thus, by way of Ex.A3 reply notice, it is found that the plaintiff had put forth the new case not incorporated under the sale agreement Ex.A1 for the delay in the payment of the sale consideration and the completion of the sale transaction. It is thus found that the plaintiff had projected an oral agreement said to have been entered into between the parties, post the written agreement namely Ex.A1 and according to the plaintiff by way of the oral agreement, the defendant had sought to execute the settlement deeds in respect of the suit property in favour of her three children and that the defendant had also assured to execute the power of attorney deeds in favour of the plaintiff by her children. However, as rightly put forth by the defendant's counsel, when Ex.A1 sale agreement does not make any mention about any such oral agreement having entered into between the parties with reference to the execution of the settlement deeds in favour of the defendant's children or the execution of the power of attorney deeds in favour of the plaintiff by the defendant's children after the obtainment of the settlement deeds, it does not stand to reason as to how the abovesaid oral agreement put forth by the

plaintiff would be the basis for seeking the reliefs prayed for in the suit. In otherwards, as rightly putforth by the defendant's counsel by projecting/creating the abovesaid oral agreement qua the execution of the settlement deeds and the power of attorney deeds, the plaintiff has putforth the new case than set out under Ex.A1 sale agreement and in such view of the matter, it is found that as contended by the defendant's counsel, if the plaintiff is endeavouring only to enforce the oral agreement said to have been entered into between the parties post the written sale agreement Ex.A1, if that be so, the plaintiff should have endeavored, as contended by the defendant's counsel, to implead the children of the defendant as parties to the suit and sought for the enforcement of the agreement against them also. When the suit has been laid by the plaintiff only for enforcing the sale agreement Ex.A1 and when there is no material or proof on the part of the plaintiff that the defendant had intended to settle the suit property in favour of her three children and also assured to execute the power of attorney deeds in favour of the plaintiff by her children as putforth by the plaintiff and when with reference to the same, there is no proof on the part of the plaintiff other than his ipse dixit testimony and when the same had been controverted by the defendant in toto, the case of the plaintiff that on account of the failure of the defendant to execute the settlement deeds in favour of her three children and also obtain the power of attorney deeds in favour of the plaintiff from her three children, the same is the reason for the delay in paying the balance sale consideration, as such, cannot be countenanced in any manner. In such view of the matter, the case of the plaintiff that he had incurred expenses with reference to the same and equally the documents projected by him with reference to the same marked as Ex.A5 to A10 would not in any manner advance the plaintiff's case, particularly, when the abovesaid case of the plaintiff has no basis or legs to stand and more particularly, when no such understanding had been entered into between the parties with reference to the same under Ex.A1 sale agreement. When it is found that the defendant had become the absolute owner of the suit property on the obtainment of the release deed Ex.B9 from other legal heirs of the deceased Masilamani and even prior to the same, she had agreed to convey the suit property in favour of the plaintiff and entered into the sale agreement Ex.A1 and also received a sum of Rs.74,000/- as advance and when the parties had agreed to complete the sale transaction within the specific time limit, in such view of the matter, there is no basis for projecting any settlement deeds to be executed in favour of the defendant's children as well as the execution of the power of attorney deeds in favour of the plaintiff by the defendant's children, when the subject matter involved is sought to be conveyed in favour of the plaintiff by the defendant based on Ex.A1 sale agreement. Therefore, the

very case of the plaintiff that the defendant had agreed to settle the suit property in favour of her three children and also assured to obtain the power of attorney deeds in favour of the plaintiff from her three children, being without any rhyme or reason whatsoever and when there is no necessity at all for the execution of the abovesaid documents and when there is no evidence worth acceptance on the part of the plaintiff that the defendant had indeed accepted to the abovesaid course and the occasion for the same does not also arise for consideration, particularly, when the defendant had already agreed to sell the suit property in favour of the plaintiff under Ex.A1 sale agreement, as rightly putforth by the defendant's counsel, the abovesaid case projected by the plaintiff is found to be totally absurd and as contended by the defendant's counsel by projecting the abovesaid pleas , the plaintiff seeks to project a new case completely contrary to the terms set out in Ex.A1 sale agreement and when the plaintiff has instituted the suit only to enforce the sale agreement Ex.A1 and not the alleged oral agreement said to have been subsequently entered into between the parties and when the alleged oral sale agreement said to have been entered into has also not been established by the plaintiff in any manner and when the documents projected by him with reference to the same marked as Exs.A5 to A10 are found to be concocted documents at the instance of the plaintiff to suit his case one way or the other, in such view of the matter, the trial court seems to have blindly accepted the abovesaid case of the plaintiff as the justification for his failure to pay the balance sale consideration within the time limit or the extended time limit. Therefore, the trial court is found to have overlooked the fact that Exs.A5 to A10 are not sought to be enforced in any manner and it is only the Ex.A1 sale agreement which is sought to be implemented by the plaintiff and if the plaintiff intends to enforce only the subsequent alleged oral agreement, by way of the same, the trial court should have held that the plaintiff had abandoned the sale agreement Ex.A1 and automatically the only conclusion that could have been arrived at by the trial court is to dismiss the plaintiff's suit. On the other hand, without any basis and blindly the trial court seem to have accepted the plaintiff's case qua the alleged oral agreement said to have been entered into between the parties with reference to the execution of the settlement deeds and the power of attorney deeds as abovestated and thereby endeavored to justify the plaintiff's failure to pay the balance sale consideration. The abovesaid approach and determination of the trial court in favour of the plaintiff is found to be totally perverse, illogical and irrational and without any basis and also contrary to any acceptable reasonings.

13. Though the plaintiff would claim that he has been always ready and willing to perform his part of the contract,

however there is absolutely no material to hold that the plaintiff was possessed of sufficient means and willing to pay the same within the stipulated time or within the extended time. The plaintiff would claim that he had approached for the payment of the balance sale consideration to the defendant along with one Renganathan, however with reference to the abovesaid case, there is no reliable material and the plaintiff has not endeavored to examine the said Renganathan and as abovestated, the post oral agreement said to have been entered into between the parties as projected by the plaintiff is a false theory. Therefore, it is found that despite the defendant calling upon the plaintiff to pay the balance sale consideration on or before 30.04.2004 under Ex.A2 notice, the plaintiff has failed to comply with the same and on the other hand, endeavor to project a false post oral agreement which has been held to be a false theory putforth by the plaintiff to delay the payment. As abovenoted, to Ex.A2 notice, the plaintiff has sent a reply marked as Ex.A3. Seeing the attitude of the plaintiff, it is found that the defendant had sent another legal notice on 27.10.2004, calling upon the plaintiff to pay the balance sale consideration on or before 31.12.2004 failing which, the sale agreement would be stand canceled and the advance amount would be forfeited. The abovesaid notice has been marked as Ex.A4. The receipt of Ex.A4 notice has not been controverted by the plaintiff. However, no reply has been sent by the plaintiff to the same. Be that as it may, the plaintiff has failed to comply with the demand made by the defendant under Ex.A4 notice and failed to pay the balance sale consideration within the extended time. On the other hand, it is found that the plaintiff had thereafter chosen only to institute the present suit and the present suit is found to have been laid by the plaintiff on 29.09.2006.

14. Meanwhile, it is found that the plaintiff has levied the suit against the defendant in O.S.No.338 of 2004 for the relief of permanent injunction against the defendant to restrain her from alienating the suit property to third parties.

15. From the materials available on record, when it is found that the defendant had intended to sell the suit property only for the purpose of securing another property and also for meeting the expenses of his daughter and when the plaintiff had been put on notice of the same and accordingly when the parties had also fixed a particular time for completing the sale transaction and when the defendant had also established his clear title to the suit property on the obtainment of the release deed Ex.B9, even thereafter, when it is found that the plaintiff had not endeavored to pay the balance sale consideration immediately and not only that, despite Ex.A2, notice, the plaintiff having not endeavored to pay the balance

sale consideration on or before 30.04.2004 and on the other hand, had come forward with a false oral agreement theory for justifying the delay in the payment of balance sale consideration and when the oral agreement projected by the plaintiff is found to be a false approach and plan only made to gain time and when it is further seen that despite the issuance of the second legal notice on the part of the defendant marked as Ex.A4 calling upon the plaintiff to pay the balance sale consideration on or before 31.12.2004 and even thereafter, when it is found that the plaintiff has not evinced any interest to comply with the said demand and to pay the balance sale consideration and obtain the sale deed and on the other hand, would only endeavor to restrain the defendant from alienating the suit property to third parties by levying the suit in O.S.No.338 of 2004 by way of the relief of permanent injunction and when the abovesaid conduct of the plaintiff viewed in toto, the same is found only to acquire time to pay the balance sale consideration and delay the execution of the sale deed one way or the other and when the defendant had intended to sell the suit property to the plaintiff only for meeting her urgent needs as above pointed out and accordingly a specific time limit had been fixed between the parties for the completion of the sale transaction, despite the same, when the plaintiff is found to have deliberately and wilfully not paid the balance sale consideration even within the extended time limit under Exs.A2 and A4 and on the other hand, appears to have been gaining and hiking the time by delaying the completion of the sale transaction one way or the other and furthermore, when there is no material on the part of the plaintiff worth acceptance to evidence that he was possessed of sufficient means to pay the balance sale consideration within the original time limit or the extended time limit and also not endeavored to deposit the balance sale consideration in the Court, all put together would only go to expose the complete absence of readiness and willingness on the part of the plaintiff in performing his obligations under the sale agreement and in such view of the matter, as rightly put forth by the defendant's counsel, the plaintiff cannot be extended and granted the equitable and discretionary relief of specific performance as prayed for based on the sale agreement dated 31.08.2003.

16. The trial court had failed to consider the abovesaid aspects of the matter and proceeded to uphold the plaintiff's case by blindly accepting and relying upon the oral agreement projected by the plaintiff that too without any reliable materials pointing to the same and in such view of the matter, the reasonings and conclusions of the trial court for upholding the plaintiff's case are found to be not based on the proper appreciation of the materials on record and on the other hand, the trial court had proceeded to accept the plaintiff's

case without any rhyme or reason particularly without any proof on the part of the plaintiff in support of the same. In such view of the matter, the reasonings and conclusions of the trial court in granting the relief of specific performance prayed for by the plaintiff do not stand scrutiny in the eyes of law and the same being found to be totally perverse, illogical and irrational and in such view of the matter, the grant of discretionary and equitable specific performance in favour of the plaintiff by the trial court is liable to be set aside.

17. The defendant's counsel, in support of his contentions placed reliance upon the decisions reported in

1. 2008 (5) CTC 428 [M.Ranganathan Vs. M.Thulasi Naicker (deceased) and eight others]
 2. 2010 (6) CTC 95 [S.Gananatha Perumal Vs. S.Valliappan]
 3. 2017 SCC Online Mad 11547 : 2017 (3) Mad LJ 96: 2017 (3) MWN (Civil) 193 [V.Rajmanohar and two others Vs. V.Mohamed Sadiq Rep. by his Power of Attorney Agent, Mr.K.Mohamed Ali]
 4. 2002 (3) MLJ 244 [Kabirdass Vs. Vinothambal, Ganapathy]
 5. AIR 1997 SC 1751 [K.S.Vidyanadam and others Vs. Vairavan]
- The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. In the light of the abovesaid discussions, I hold that the plaintiff has not been ready and willing to perform his part of the contract and therefore I hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 31.08.2003 and accordingly the Point Nos.1 and 2 are answered.

Point Nos.3 and 4:

19. For the reasons aforesaid, the Judgment and Decree dated 06.10.2012 passed in O.S.No.2 of 2006 on the file of the II Additional District Court, Thiruvellore at Poonamallee are set aside and resultantly the suit laid by the plaintiff in O.S.No.2 of 2006 is dismissed with costs. Accordingly, the First Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mfa

To

The II Additional District Judge,
Thiruvallur at Poonamallee.

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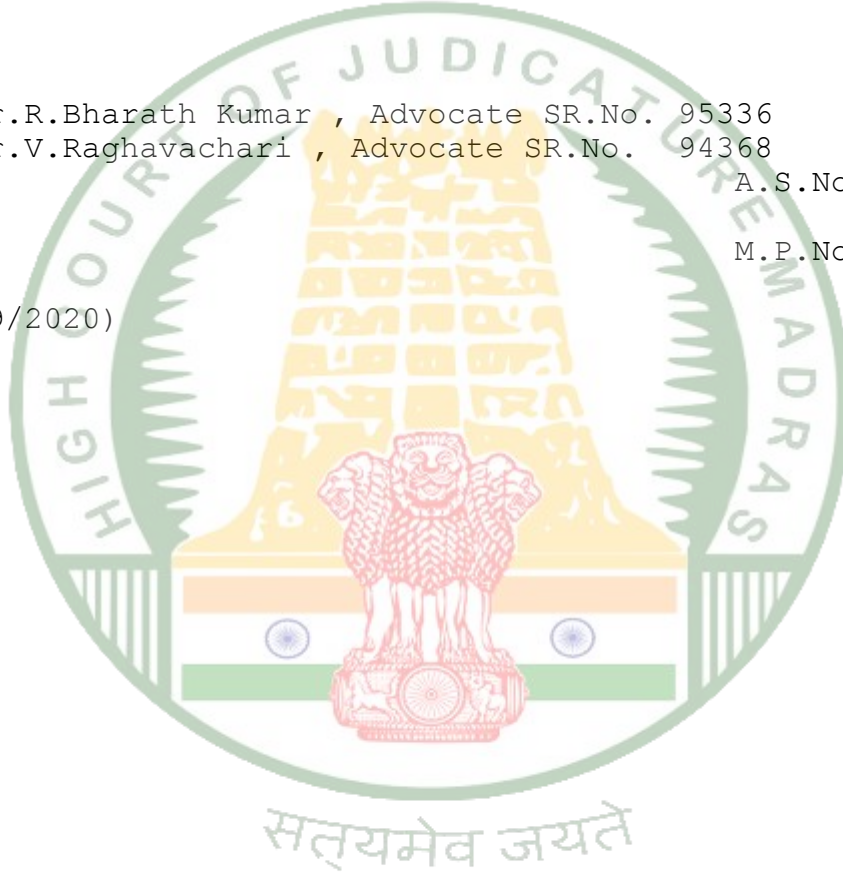
The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.R.Bharath Kumar , Advocate SR.No. 95336

+1cc to Mr.V.Raghavachari , Advocate SR.No. 94368

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and
M.P.No.1 of 2013

A.SK(03/09/2020)



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