



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.06.2019

PRONOUNCED ON: 24.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.659 of 2009

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1. P.C.Muthusamy
2. Minor Guhan
3. Minor Dharun
4. P.K.Senthilkumar Minor rep by their
next friend guardian and mother Hemalatha

... Appellants/Defendants

Vs.

M.Loganathan

... Respondent/Plaintiff

Prayer: Appeal Suit filed under section 96 of Civil Procedure Code against the judgment and decree dated 10.11.2008 passed in O.S.No.15 of 2007 on the file of the Additional District Court Cum Fast Track Court No.1, Erode.

For Appellants : Mr.T.Arul

For Respondent : Mr.M.Guruprasad

J U D G M E N T

Aggrieved over the judgment and decree dated 10.11.2008, passed in O.S.No.15 of 2007, on the file of the Additional District Court cum Fast Track Court No.1, Erode, the defendants have preferred the appeal.

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

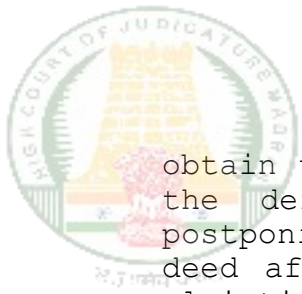
3. Suit for specific performance.

4. In brief, according to the plaintiff, the first defendant is the Kartha of the joint family consisting of himself and his two minor children, the defendants 2 and 3 and the 4th defendant agreed to sell the suit properties belonging to them to the plaintiff for a sum of Rs.9,00,000/- and thereby entered into an agreement of sale with the plaintiff on 17.12.2002 and received a sum of Rs.2,00,000/- as advance on the same day and as per the terms of the sale agreement abovestated, the plaintiff has to pay the balance sale consideration of Rs.7,00,000/- to the defendants on or before 30.05.2003 and get the sale deed executed by the defendants and the possession of the properties free of all encumbrances. However, time was not intended to be the essence of the contract. The abovesaid sale



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agreement had been entered into by the first defendant for family necessity and for the benefit of the joint family estate consisting of himself and the defendants 2 and 3. On 07.10.2002, the plaintiff had purchased the land adjacent to the suit properties from the defendants and obtained the possession of the same. Even on the said date, the defendants had orally agreed to sell the suit properties in his favour and to have an agreement of sale executed later, inasmuch as the plaintiff had intended to put up the construction of residential house and hotel in the land purchased by him on 07.10.2002 and the land agreed to be purchased by him later, accordingly, the plaintiff and the defendants mutually agreed that the possession of the suit properties should also be delivered to the plaintiff so as to enable him to put up construction as stated above and accordingly, on 07.10.2002 itself, the suit properties had been delivered to the plaintiff and he had put up construction of a hotel and a residential house over the portion of the suit properties and a portion of the property purchased by him on 07.10.2002 and running the hotel as well as residing in a portion with his family. In the light of the abovesaid factors, as the plaintiff had put up the construction in the suit properties based on the oral agreement of sale in respect of the suit properties between the parties by spending a huge amount, the defendants, under the principles of promissory estoppel, are bound to execute the sale deed in favour of the plaintiff. Only on the basis of the earlier oral agreement of sale, the written agreement of sale was entered into between the parties on 17.12.2002. As abovestated, after the execution of the sale agreement, the plaintiff came to know about the pendency of the suit in O.S.No.621 of 2002, on the file of the Subordinate Court, Erode, between one Seerayammal and one K.Swaminathan, wife and son of Krishnaswamy, claiming right to the suit properties against the defendants and on questioning the defendants about the same, according to the plaintiff, the defendants admitted the pendency of the suit and assured the plaintiff not to bother about the same and further assured to settle the matter and complete the sale, however, the defendants could not settle the suit in O.S.No.621 of 2002. On the other hand, the defendants requested the plaintiff to pay a further sum of Rs.1,00,000/- as advance towards the sale of suit properties and accordingly, on 30.05.2003, the plaintiff paid an additional advance sum of Rs.1,00,000/- to the defendants and they had formally extended the time upto 30.10.2003 and endorsed the same in the agreement dated 17.12.2002. Further, also requested the plaintiff to advance a further sum of Rs.2,00,000/- and accordingly on 22.09.2003, the plaintiff paid a sum of Rs.2,00,000/- to the defendants and the defendants had made an endorsement with reference to the same on the sale agreement. Despite the position that the plaintiff has always been ready and willing to pay the balance sale consideration and



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obtain the sale deed, due to the pendency of O.S.No.621 of 2002, the defendants were unable to execute the sale deed and postponing the matter assuring that they would execute the sale deed after the abovesaid litigation is over. Accordingly, the plaintiff believed the promises of the defendants 1 to 4 and however, the suit in O.S.No.621 of 2002 did not come to any finality and on the other hand, the defendants assured the plaintiff that they are anticipating the settlement in O.S.No.621 of 2002 and requested the plaintiff to pay a further sum of Rs.2,00,000/- towards the sale price and accordingly, believing the assurance of the defendants, the plaintiff further paid a sum of Rs.2,00,000/- to them on 31.05.2004 and the defendants also made an endorsement with reference to the same in the sale agreement. However, the suit in O.S.No.621 of 2002 was not settled and the plaintiff had however paid a sum of Rs.7,00,000/- in toto, to the defendants towards the sale price and the sum of Rs.2,00,000/- only remains to be paid on the part of the plaintiff towards the sale consideration and the plaintiff had been always ready and willing to pay the abovesaid balance sum and complete the transaction and on the other hand, the transaction could not be completed on account of the default by the defendants and the failure to settle O.S.No.621 of 2002. In third week of October 2005, the plaintiff was informed that the suit in O.S.No.621 of 2002 had come to an end and thereupon, approached the defendants to come forward and execute the sale deed after receiving the balance sum of Rs.2,00,000/-. However, the defendants did not properly respond to the same and evaded to execute the sale deed for one reason or the other, hence, the plaintiff issued a legal notice to the defendants on 28.10.2005, directing them to complete the sale transaction as per the terms of the sale agreement. However, the defendants knowing about the same, evaded to receive the notice and accordingly inasmuch as the defendants had not come forward to comply with their part as per the terms of the sale agreement, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants resisted the plaintiff's case in toto and wholly disputed all the averments contained in the plaint as false and according to the defendants, they had never agreed to sell the suit properties in favour of the plaintiff either orally on 07.10.2002 or entered into an agreement of sale with reference to the sale of the suit properties on 17.10.2002 as put forth in the plaint. The defendants also disputed the payment of Rs.2,00,000/- as advance by the plaintiff on the date of sale agreement and also disputed the claim of the plaintiff to have purchased the another property of the defendants on 07.10.2002 and disputed the case of the plaintiff that the defendants had handed over the possession of the suit properties to the plaintiff on 07.10.2002, for enabling him to put up hotel



and residential house in the suit properties as well as in the property purchased by him on 07.10.2002. Furthermore, the defendants also disputed that the plaintiff had come to know about the pendency of the suit in O.S. No.621 of 2002 subsequent to the agreement of sale. The defendants also disputed that they had assured the plaintiff that they would settle the abovesaid suit and come forward to execute the sale deed as per the sale agreement. Furthermore, the defendants have also disputed the payment of Rs.1,00,000/-, Rs.2,00,000/- and Rs.2,00,000/- to them by the plaintiff on 30.05.2003, 22.09.2003 and 31.05.2004 respectively, as put forth in the plaint and also disputed the case of the plaintiff that the defendants had made endorsements in the sale agreement with reference to the same. The abovesaid endorsements alleged to have been made in the sale agreement are also false and created by the plaintiff to suit his case. The defendants also disputed the case of the plaintiff that they assured the plaintiff that they would complete the sale transaction after the settlement of the suit in O.S.No.621 of 2002. The defendants further disputed that the plaintiff had paid a total sum of Rs.7,00,000/- under the sale agreement and only Rs.2,00,000/- remains to be paid on the part of the plaintiff. The defendants further disputed the claim of the plaintiff that he has been always ready and willing to pay the balance sum of Rs.2,00,000/- to them. The defendants also denied the claim of the plaintiff about the issuance of a legal notice. According to the defendants, no such notice has been received by them. In toto, according to the defendants, the plaintiff has come forward with the suit on the basis of the fabricated records and without any cause of action and accordingly, prayed for the dismissal of the plaintiff's suit.

6. Based on the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial Court for determination:

1. Whether it is true that the plaintiff and the defendants entered into an agreement of sale dated 17.12.2002 for a sum of Rs.9,00,000/- and the plaintiff had paid a sum of Rs.2,00,000/- as advance to the first defendant?

2. Whether the first defendant had orally agreed to sell the suit properties in favour of the plaintiff on 07.10.2002?

3. Whether the plaintiff had paid a sum of Rs.2,00,000/- on 31.05.2004 towards part of the sale consideration?



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claimed in the plaint?

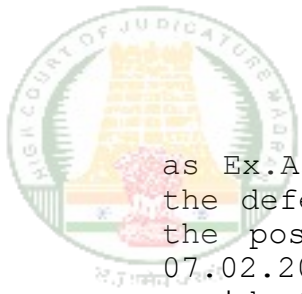
6. To what other reliefs, the plaintiff is entitled to?

7. To what other reliefs, the defendants/appellants are entitled to?

Point Nos: 1 to 5

10. Inasmuch as the issues covered under point nos. 1 to 5 are interlinked with one another, they are taken up for consideration jointly. It is not in dispute that the suit properties belong to the defendants. Now, according to the plaintiff, the defendants had agreed to sell the suit properties to him for a sum of Rs.9,00,000/- and in that connection, entered into an agreement of sale with him on 17.12.2002 and it is also put forth by the plaintiff that on the date of the sale agreement, the defendants had received a sum of Rs.2,00,000/- as advance from him. Further, it is the case of the plaintiff that as per terms of the sale agreement he has to pay the balance sale consideration of Rs.7,00,000/- to the defendants on or before 30.05.2003 and obtain the sale deed executed from the defendants in respect of the suit properties free of all encumbrances. The abovesaid sale agreement projected by the plaintiff has been marked as Ex.A1. The plaintiff has levied the suit for claiming the relief of specific performance in respect of Ex.A1 sale agreement.

11. Though Ex.A1 sale agreement recites that the sale transaction should be completed on or before 30.05.2003, according to the plaintiff, time was not intended to be the essence of contract entered into between the parties. The plaintiff has also pleaded that he had purchased the property belonging to the defendants lying adjacent to the suit properties by way of the sale deed dated 07.10.2002 and according to the plaintiff, inasmuch as he had proceeded to put up a hotel and residential building in the property purchased by him by way of the abovesaid sale transaction as well as in the suit properties, according to him, the defendant had mutually agreed to sell the suit properties to him on 07.10.2002 itself and with a view to enable him to put up the construction abovestated in the suit properties as well as in the property covered under the sale deed dated 07.10.2002, as per the case of the plaintiff, the suit properties had been entrusted with his possession on 07.10.2002 itself and following the same, it is put forth by the plaintiff that he had put up a hotel building and the residential building in a portion of the suit properties as well as in the property acquired by him under the sale deed dated 07.10.2002. The certified copy of the sale deed dated 07.10.2002, executed by the defendants, in respect of the property lying adjacent to the suit properties, has been marked



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as Ex.A5. The sale deed marked as Ex.A5 is not controverted by the defendants. To evidence that the defendants had handed over the possession of the suit properties to him on the date of 07.02.2002 itself and that he had put up the hotel and the residential building in the suit properties as well as in the property acquired under Ex.A5 sale deed, the plaintiff has placed the bills paid by him for the current consumption, the telephone bills and the invitations concerned with reference to the functions conducted by him in respect of the hotel put up by him and other functions. The same have come to be marked as Exs.A6 to A36. Considering the abovesaid documents, in toto, as rightly found by the trial Court, it is found that inasmuch as the plaintiff had been entrusted with the possession of the suit properties much prior to the sale agreement Ex.A1 i.e., 17.10.2002 itself, it is found that thereupon, the plaintiff had put up the hotel and residential building in the suit properties as well as in the property covered under Ex.A5 sale transaction and accordingly, it is found that the plaintiff has placed reliable documents evidencing his possession and enjoyment of the abovesaid building as above stated. Accordingly, the trial Court has rightly determined that the plaintiff had been entrusted with the possession of the suit properties on 07.10.2002.

12. Though the defendants would challenge the case of the plaintiff that there had been an oral agreement of sale with reference to the suit properties on 07.10.2002 and that the plaintiff had been handed over the possession of the suit properties on 07.10.2002 itself, considering the inaction on the part of the defendants in not initiating any action against the plaintiff with reference to the construction put up by him in the suit properties and when it is found that the defendants are also the residents of the area where the suit properties are lying, if really, there had been no oral agreement between the parties concerned in respect of the suit properties and if really, the suit properties had not been entrusted with the possession of the plaintiff on 17.10.2002, the defendants would not have been the silent spectators to the construction put up by the plaintiff in the suit properties and on the other hand, considering the abovesaid factors in toto, as determined by the trial Court, it is seen that the suit properties had been entrusted with the possession of the plaintiff only pursuant to the oral agreement of sale entered into between the parties with reference to the alienation of the same.

13. Thus, according to the plaintiff, following the oral sale agreement, in order to put the terms of the contract entered into between the parties in writing, the parties had entered into a written agreement of sale on 17.12.2002, marked as Ex.A1. The defendants would also challenge the truth and



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validity of Ex.A1 sale agreement. According to the defendants, Ex.A1 sale agreement had been created by the plaintiff for the purpose of the case and that they had not executed the said agreement in favour of the plaintiff as put forth in the plaint. To sustain his case that Ex.A1 sale agreement had been entered into between the parties concerned, the plaintiff has examined himself as PW1 and also examined the attesor of the sale agreement as PW2 and the scribe of the sale agreement as PW3. PWs 2 and 3 have clearly deposed that the parties had entered into the sale agreement with reference to the sale of the suit properties for a sum of Rs.9,00,000/- and accordingly, the parties had incorporated the sale agreement by way of writing on 17.12.2002 and PW3, the scribe, has clearly deposed about the scribing of the said agreement as well as the knowledge of the contents of the same to the plaintiff and the defendants and PW2 has clearly deposed about the attestation of the sale agreement along with another witness to the knowledge of the executants of the sale agreement. The abovesaid evidence of PWs 2 and 3, despite their cross examination on the part of the defendants, has not been shown to be untrustworthy or unbelievable. On the other hand, considering the evidence of PWs 2 and 3 and PW1, in toto, it is seen that the sale agreement had been entered into between the parties concerned for a sum of Rs.9,00,000/- and accordingly, based on the sale agreement, it is further seen that the defendants had received Rs.2,00,000/- from the plaintiff on the date of sale agreement itself and it is also found that the parties had agreed to complete the sale transaction on or before 30.05.2003. In the light of the abovesaid factors, it is found that the trial Court has rightly analyzed and assessed the evidence of PWs 1 to 3 in toto and found them to be acceptable, inspiring and trustworthy. No enmity, as such, has been attributed against PWs 2 and 3 for deposing in favour of the plaintiff and against the defendants. Furthermore, as could be seen from the evidence adduced by the respective parties, particularly, the evidence of DW1, namely, the fourth defendant, the sale deed executed by the defendants in favour of the plaintiff marked as Ex.A5, has also been scribed by PW3. Therefore, it is found that there is no specific motive on the part of PWs 2 and 3 to testify against the defendants with reference to the sale agreement and on the other hand, as determined by the trial Court, inasmuch as the parties had entered into a sale agreement with reference to the sale of the suit properties as put forth by the plaintiff, accordingly, PWs 2 and 3 having witnessed the abovesaid transaction as the attesor and the scribe, they had clearly deposed about the same without any ambiguity and in such view of the matter, the plaintiff by way of the evidences of PWs 2 and 3 has clearly established that Ex.A1 sale agreement had been executed by the defendants in his favour with reference to the sale of the suit properties for a sum of Rs.9,00,000/- and that



he had paid a sum of Rs.2,00,000/- on the date of the sale agreement. In the light of the abovesaid position, the contention of the defendants that the plaintiff should have solicited the assistance of an expert for establishing the truth and validity of Ex.A1 sale agreement, as such, cannot be accepted when the plaintiff has established his case convincingly through the evidence of PWs 2 and 3 as well as his evidence qua the truth and validity of Ex.A1 sale agreement. In such view of the matter, the trial Court is found to be justified in declining the contention put forth by the defendants that the plaintiff should have subjected the sale agreement for expert's scrutiny to uphold the truth of the same. If really, the sale agreement had not been entered into by the defendants with the plaintiff on 17.12.2002, nothing prevented the defendants from subjecting the said document for expert's scrutiny as contemplated under law. However, the defendants had not endeavored any action with reference to the same and therefore, it has to be held that the sale agreement dated 17.12.2002 is true, valid and binding on the defendants. Considering the enjoyment of the suit properties by the plaintiff from 07.10.2002, it has to be held that, as put forth by the plaintiff, the parties had entered into an oral agreement of sale with reference to the suit properties and accordingly, based on the said understanding, the defendants had entrusted the possession of the suit properties to the plaintiff for enabling him to put up the hotel and residential building in the suit properties as put forth in the plaint.

14. As per the terms of the sale agreement, the transaction should be completed on or before 30.05.2003. Now, according to the plaintiff, after the execution of the sale agreement, he had come to know about the pendency of the suit in O.S.No.621 of 2002, on the file of the Subordinate Court, Erode and according to him, one Seerayammal and one K.Swaminathan, wife and son of Krishnaswamy had laid a claim of title in respect of the suit properties against the defendants in the abovesaid suit and according to the plaintiff, when he questioned the defendants about the same, it is pleaded that the defendants had assured that they would settle the said suit amicably and come forward with the enforcement of the sale agreement. That the suit in O.S.N.621 of 2002 has been pending with reference to the suit properties could be gathered from the evidence adduced in the matter and the same has not been controverted by the defendant. As such, according to the plaintiff, the defendants had requested him to pay a further sum of Rs.1,00,000/- on 30.05.2003, Rs.2,00,000/- on 22.09.2003 and a sum of Rs.2,00,000/- on 31.05.2004 towards the sale price of the suit properties on the footing that the suit properties had been already handed over to him and on the assurance that they would come forward with the execution of the sale deed after settling



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the suit in O.S.No.621 of 2002 and believing their abovesaid assurance, according to the plaintiff, he has paid the abovesaid sums on the aforesaid dates and according to the plaintiff, the defendants had acknowledged the receipt of the amounts by making appropriate endorsements regarding the same in the sale agreement itself and the abovesaid endorsements had been marked as Exs.A37 to 39. The defendants had also disputed the receipt of the abovesaid payments and the endorsements alleged to be made by them which have been marked as Exs.37 to 39. According to the plaintiff, PW3 is the scribe of the said endorsements and according to the plaintiff, PW2 and the other witness attested the endorsements and accordingly, it is found that both PWs 2 and 3 had also tendered evidence clearly as regards the payments made by the plaintiff to the defendants on various dates and the endorsements made by the defendants with reference to the same in the sale agreement marked as Exs.37 to 39. The evidence adduced by PWs 2 and 3 with reference to the same, despite cross examination, has not been shown to be unacceptable and untrustworthy and on the other hand, considering the evidence of PWs 2 and 3, in toto, plus the evidence of PW1, the plaintiff, with reference to the same, in all, it is found that as the plaintiff had already been entrusted with the possession of the suit properties and on the assurance given by the defendants that they would come forward with the execution of the sale deed after settling the suit in O.S.No.621 of 2002, accordingly it is found that the plaintiff had also made the aforesaid payments to the defendants amounting to Rs.5,00,000/- and accordingly the defendants had also made necessary endorsements acknowledging the receipt of the abovesaid payments marked as Exs.A37 to 39. The abovesaid conduct of the defendants, in toto, would also go to show that inasmuch as the time was not intended to be the essence of the contract, in such view of the matter, it is found that even after the time fixed under the sale agreement had expired, it is seen that the defendants had received the part payments made by the plaintiff towards the sale consideration at request and accordingly, the trial Court is found to be fully justified in holding that time was not intended to be the essence of the contract between the parties and accordingly, by accepting the payments even after the expiry of the time limit fixed under Exs.A37 to 39, it is found that the defendants had acknowledged the truth and validity of Ex.A1 sale agreement and thereby had rendered themselves liable to execute the sale deed in favour of the plaintiff in respect of the suit properties pursuant to Ex.A1 sale agreement.

15. A plea has also been taken by the defendants that the first defendant has not obtained the sanction of the Court for selling the shares of the minor defendants 2 and 3 in respect of the suit properties. However, the abovesaid plea put forth by the defendants has been rightly turned down by the trial Court

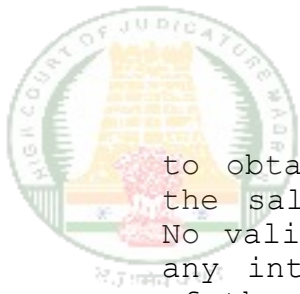


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considering the fact that inasmuch as the suit properties are the ancestral properties belonging to the defendants, in such view of the matter, the first defendant admittedly being the Karta of the joint family consisting of himself and the defendants 2 and 3 and considering the nature of the suit properties, they being the joint family properties of the defendants 1 to 3 also, in such view of the matter, Section 8 of the Hindu Minority and Guardianship Act, 1956 would not be applicable to the case of the sale of such properties when disposed of by the Karta of the joint family. It is found that the sale agreement had been entered into by the first defendant on behalf of defendants 1 and 2 only for the family necessity as similar to the transaction entered into by him with reference to the sale transaction covered under Ex.A5.

16. According to the plaintiff, on coming to know that the suit in O.S.No.621 of 2002 had come to an end in the third week of October 2005, he had immediately called upon the defendants to receive the balance sum of Rs.2,00,000/- towards the sale price and execute the sale deed and noting the disinclination of the defendants in coming forward to execute the sale deed as claimed, it is found that the plaintiff had also issued the legal notice on 28.10.2005, marked as Ex.A2. No doubt, the legal notice sent to the defendants had been returned. However, considering the abovesaid factual scenario in entirety, when it is found that time has not been fixed as the sine qua non factor for the completion of the sale agreement and even after the expiry of the time fixed under the sale agreement, the defendants had been found to have received the part of the sale price from the plaintiff on various dates and the sale transaction could not be completed on account of the pendency of the suit in O.S.No.621 of 2002 and when even after the conclusion of O.S.No.621 of 2002, inasmuch as the defendants had not come forward to execute the sale deed as claimed by the plaintiff, it is seen that the plaintiff, left with no other alternative, has come forward with the suit for appropriate reliefs after the issuance of legal notice and considering the abovesaid facts and circumstances, in toto, in such view of the matter, it is found that the plaintiff has been always ready and willing to perform his part of the contract as set out in the sale agreement Ex.A1 and only on account of the pendency of O.S.No.621 of 2002 and the other delaying tactics adopted by the defendants, the sale transaction could not be completed one way or the other.

17. In the light of the abovesaid discussions, it is found that the trial Court has correctly determined the issues involved between the parties by appreciating the materials placed on record in the right perspective both factual wise and legal wise and rightly determined that the plaintiff is entitled



to obtain the relief of specific performance with reference to the sale agreement dated 17.12.2002 as claimed in the plaint. No valid reason has been projected by the defendants warranting any interference with the abovesaid reasonings and conclusions of the trial Court for upholding the plaintiff's case. In view of the foregoing reasons, the point nos.1 to 5 are accordingly answered in favour of the plaintiff and against the defendants.

Point Nos: 6 and 7

18. In conclusion, the judgment and decree dated 10.11.2008, passed in O.S.No.15 of 2007, on the file of the Additional District Court cum Fast Track Court-I, Erode are confirmed and the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Additional District Court cum
Fast Track Court No.1, Erode.

copy to
The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.Guruprasad Advocate sr 51534
+1 cc to Mr.T.Arul Advocate sr52587

A.S.No.659 of 2009

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