

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2019  
PRONOUNCED ON : 30.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.819 of 2010

A. Balamani ...Appellant/Plaintiff

Vs.

1. S.Murugesan  
2. S.Santhamani  
3. Manimekalai  
4. S.Sakunthala ...Respondents/Defendants

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.524 of 2006 on the file of the I Additional District Judge at Coimbatore dated 12.03.2010.

For Appellant : Mr. N. Manokaran  
for M/s. S.Doraisamy

For Respondents: Mr. C.R.Prasanan for R1 & R2  
No appearance for R3 & R4. Set exparte  
vide order dated 06.08.2019 and made herein

JUDGMENT

Aggrieved over the judgment and decree dated 12.03.2010 passed in O.S.No.524 of 2006 on the file of the I Additional District Court, Coimbatore, the plaintiff 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 or in the alternative for the refund of the advance amount with interest.

4. Briefly stated, according to the plaintiff, the suit properties belong to the defendants and that the defendants entered into an agreement of sale with the plaintiff for selling

the suit properties on 27.11.2003 for a sale consideration of Rs.7,50,000/- and received a sum of Rs.1,50,000/- as advance on the date of sale agreement and the parties had agreed that the sale should be completed within a period of three months from the date of agreement. However, according to the plaintiff, time is not considered as the essence of the agreement and the plaintiff has been always ready and willing to perform his part of the contract and had approached the defendants on several occasions for offering the balance amount and requesting them to execute the sale deed as per the agreement. Despite the same, the defendants did not come forward to execute the sale deed on some pretext or the other. Hence, the plaintiff sent a legal notice on 26.10.2006 calling upon the defendants to receive the balance amount and execute the sale deed and to the same, the defendants sent a reply containing false allegations and hence according to the plaintiff, the need for the suit for appropriate relief.

5. The first defendant resisted the plaintiff's suit contending that the sale agreement dated 27.11.2003 projected by the plaintiff is a created document with the help of one Chinnappa Gounder and, the first defendant and the other defendants borrowed money from Arumugam and Pushpathal and for discharging the said loan, they had sought the help of Chinnappa Gounder, their relative, and he acted as a middle man for discharging the said loan and at that time, he had secured the signatures of the defendants in blank stamp papers and blank papers and promised to secure the original documents from Arumugam and Pushpathal and agreed to hand over the same to the defendants. Since Chinnappa Gounder was their relative, the defendants did not raise any suspicion over him and however, Chinnappa Gounder though had received back the original documents from Arumugam and Pushpathal, however, making use of the signed blank papers and blank stamp papers, had fabricated the suit sale agreement in the name of the plaintiff and hence, according to the first defendant, the plaintiff is not entitled to seek any relief based on the suit sale agreement and further it is stated that the suit properties are valued more than seventy lakhs and furthermore, the suit laid by the plaintiff is barred by limitation and accordingly prayed for the dismissal of the plaintiff's suit.

6. The other defendants resisted the plaintiff's suit on similar lines and contended that they had never entered into any agreement with the plaintiff for selling the suit properties on 27.11.2003 as put forth by the plaintiff and according to them, on 31.10.1994, they had borrowed a sum of rupees one lakh from Arumugam and Pushpatha and discharged the same in the year 1996 and at the time of discharge, Chinnappan, the alleged witness in the suit sale agreement, was present and after the discharge of

the loan amount, Arumugam and Pushpathal had agreed to return the original documents i.e. the papers in which the signatures of the defendants were obtained at the time of lending the loan, after one week and Chinnappan represented that he would obtain the documents from them and Chinnappan had received the documents from Arumugam and Pushpathal, however, did not return the same to the defendants and he being the defendants' close relative, the defendants did not raise doubt over him and taking advantage of the said documents, Chinnappan had created the suit sale agreement in the name of the plaintiff and filed the vexatious suit and further it is stated that Chinnappan had already set up one K.Balasubramaniam and filed a suit in O.S.No.218 of 2004 for specific performance on the file of the Subordinate Court, Tiruppur on the basis of the alleged sale agreement dated 27.10.2004. The plaintiff has never demanded the defendants to execute the sale deed as pleaded and the sale agreement is a fraudulent document and the defendants never agreed to sell the suit properties to the plaintiff and the suit properties are highly valued even in the year 2003 and hence prayed for the dismissal of the plaintiff's suit.

7. On the basis of the abovesaid pleas, following issues were framed by the trial court for consideration.

1. Whether the plaintiff is entitled to specific performance as prayed for?
2. Whether the plaintiff is ready and willing to perform the agreement dated 27.11.2003?
3. Whether the agreement was created and fabricated by the plaintiff in connivance of the Chainnappan?
4. To what relief?

8. In support of the plaintiff's case, P.Ws. 1 to 3 were examined and Exs. A1 to A6 were marked. On the side of the defendant, D.W.1 was examined and Ex.B1 was marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decline the relief of specific performance prayed for by the plaintiff and on the other hand, granted the alternative relief in favour of the plaintiff directing the defendants to return the advance amount of Rs.1,50,000/- with interest at the rate of 7.5% interest per annum from the date of agreement till the date of realisation with costs and also held that till such realisation there shall be charge over the suit properties and accordingly disposed of the said suit. Aggrieved over the same, the present first appeal has been preferred by the plaintiff.

10. The following points arise for consideration in this first appeal.

1. Whether the sale agreement dated 27.11.2003 is true, valid and binding on the defendants?
2. Whether the plaintiff has been ready and willing to perform her part of the contract qua the sale agreement dated 27.11.2003?
3. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 27.11.2003?
4. To what relief the plaintiff / appellant is entitled to?
5. To what relief the defendants are entitled to?

Point Nos.1 to 3

11. According to the plaintiff, the defendants agreed to sell the suit properties belonging to them and accordingly the parties had entered into an agreement of sale with reference to the same on 27.11.2003 fixing the sale price at Rs.7,50,000/- and it is stated that on the date of sale agreement, the plaintiff has paid a sum of Rs.1,50,000/- as advance towards the sale price to the defendants and put forth the case that the parties had agreed to complete the sale transaction within a period of three months, however, according to the plaintiff, the time is not the essence of the contract and further according to the plaintiff, she had been always ready and willing to perform her part of the contract and in fact, had approached the defendants on several occasions for offering the balance sale consideration and requested them to execute the sale deed. According to her, the defendants had been postponing the same on some pretext or the other and hence according to the plaintiff, she had been necessitated to send the legal notice on 26.10.2006 to the defendants directing them to execute the sale deed as per the sale agreement and the defendants had repudiated the same by sending a false reply dated 31.10.2006 and hence according to the plaintiff, the need for the suit for appropriate relief.

12. The defendants mainly resisted the plaintiff's case contending that the suit sale agreement had been created by the plaintiff with the help of her henchman and according to them, they had borrowed a sum of rupees one lakh from one Arumugam and Pushpathal in the year 1996 and discharged the same and at the time of discharge, Chinnappan, their relative, was present and he was assisting them with reference to the same and Arumugam and Pushpathal had agreed to return the original documents, i.e. the papers in which the signatures of the defendants were obtained at the time of lending the loan, after one week and Chinnappan represented that he would get the documents from them

and hand over the same to the defendants and though Chinnappan had obtained the said documents from Arumugam and Pushpathal, did not return the same to the defendants. Chinnappan being their relative, the defendants did not raise any suspicion over his conduct, however, according to the defendants, Chinnappan, taking advantage of the abovesaid original documents had fabricated the sale agreement in the name of the plaintiff and filed the vexatious suit and hence according to the defendants, they had not agreed to sell the suit properties to the plaintiff and not entered into the suit sale agreement with her as put forth in the plaint and not received Rs.1,50,000/- as advance from the plaintiff on the date of sale agreement and further according to the defendants, to the notice sent by the plaintiff, they had sent a suitable reply containing true facts and also disputed the case of the plaintiff that she has been repeatedly requesting the defendants to execute the sale deed and according to the defendants, the abovesaid case of the plaintiff is a false one and hence according to the defendants, the suit laid by the plaintiff is devoid of any cause of action and liable to be dismissed.

13. In the light of the abovesaid pleas put forth by the respective parties, it is found that it is for the plaintiff to establish the truth and validity of the suit sale agreement dated 27.11.2003 marked as Ex.A1. To sustain her case that the defendants had executed the sale agreement Ex.A1 in her favour in connection with the selling of the suit properties for a sum of Rs.7,50,000/- and also that they had received a sum of Rs.1,50,000/- on the date of sale agreement, the plaintiff has tendered evidence as P.W.1 and also examined one of the attestors to the sale agreement Eswara Murthy as P.W.2. It is also found that P.W.3, the husband of the plaintiff is a witness to the sale agreement. Accordingly, it is found that both P.Ws.1 and 2 in particular have tendered clear evidence that the defendants had agreed to sell the suit properties to the plaintiff for a sum of Rs.7,50,000/- and received Rs.1,50,000/- on the date of sale agreement and accordingly it is found that the sale agreement had been indeed entered into between the parties for the sale of the suit properties in favour of the plaintiff as put forth by the plaintiff. As rightly found and determined by the trial court, considering the evidence of P.Ws.1 and 2 in particular and when their evidence are found to be clear, convincing and trustworthy and despite the cross examination, nothing has been culled out from them to discredit their evidence in any manner as well as the receipt of Rs.1,50,000/- by the defendants on the date of sale agreement and when as pointed out by the trial court, the defendants infact having not disputed their signatures in the sale agreement and only would put forth the plea that the sale agreement had been created with the aid of their signatures

obtained in blank papers and blank stamp papers at the time of receipt of the loan by them from Arumugam and Pushpathal, on the whole, it is found that the trial court is found to be totally justified in upholding the truth and validity of Ex.A1 sale agreement based on the appreciation of the evidence of P.Ws.1 and 2 in toto. In this appeal no valid reason has been projected by the defendants in particular for disbelieving the evidence of P.Ws 1 and 2 as well as the evidence of P.W.3 and accordingly it has to be held that the sale agreement Ex.A1 is true, valid and binding upon the defendants.

14. As regards the plea of the defendants that the sale agreement had been created by Chinnappan in the name of the plaintiff, qua the abovesaid case of the defendants, according to them they had received a loan of rupees one lakh from Arumugam and Pushpathal and had discharged the said loan and it is stated that Chinnappan, their relative was assisting them in the discharge of the said loan and Arumugam and Pushpathal had agreed to return the original papers i.e. the papers in which the signatures of the defendants were obtained at the time of lending the loan after one week and Chinnappan had agreed to get the said documents from them and hand over the same to the defendants and fuhrer according to the defendants, Chinnappan had retrieved the said documents from Arumugam and Pushpathal, however, failed to return the same to the defendants and he being the relative of the defendants, according to the defendants, they did not raise any suspicion over his conduct and therefore, now, according to the defendants, Chinnappan had fabricated the sale agreement in the name of the plaintiff with the aid of the abovesaid papers and laid the vexatious suit and hence the sale agreement Ex.A1 is not a genuine document. However, with reference to their abovesaid pleas, namely the borrowal of the loan from Arumugam and Pushpathal, the discharge of the same, their handing over of the papers containing their signatures to Arumugam and Pushpathal at the time of receipt of the alleged loan, the presence of Chinnappan at the time of discharge of the loan and the assurance said to have been given by Chinnappan that he would retrieve the original papers from the creditors, etc., absolutely there is no reliable material on the part of the defendants and in such view of the matter, merely on the bald claim put forth by the defendants without any basis and in the absence of any proof on their part in support of the abovesaid defence version and furthermore, when the sale agreement is found to have been attested by the husbands of the defendants 2 and 3 and when as above pointed out, the evidence of P.Ws.1 and 2 are clear, convincing and trustworthy as regards the execution of the sale agreement by the defendants in favour of the plaintiff as put forth in the plaint and the defendants having not examined their relative Chinnappan as well as the other attestors of the sale agreement to buttress their version,

in such view of the matter, the abovesaid defence version put up by the defendants for disputing the genuineness of the sale agreement cannot at all be accepted in any manner and the trial court is found to have rightly turned down the said plea of the defendants.

15. On a perusal of the sale agreement Ex.A1, it is found that the parties had agreed to fix the time limit of three months for completing the sale transaction. Ex.A1 is dated 27.11.2003. The plaintiff would claim that she had been always ready and willing to perform her part of the contract and would further claim by stating that she had been repeatedly approaching the defendants for offering the balance sale transaction and requesting them to execute the sale deed, however, the defendants had been postponing the same on some pretext or the other. The abovesaid case put forth by the plaintiff has been seriously controverted by the defendants. The parties had agreed for the completion of the sale transaction within three months from the date of the sale agreement. Though time may not be the essence of the contract, insofar as the immovable properties are concerned, be that as it may, when the parties had chosen to fix the particular time limit for completing the sale transaction, the time limit fixed by the parties cannot be ignored in toto.

16. As rightly found by the trial court, from the terms contained in the sale agreement Ex.A1, we could gather that in the event of failure of the performance on the part of both the parties, the sale agreement prescribes certain obligations and consequences as against both the parties, in such view of the matter, the trial court is found to be justified in holding that the time stipulated in the agreement cannot be ignored altogether and in such view of the matter, the plaintiff being the agreement holder should establish her readiness and willingness in performing her part of the contract within the stipulated time for obtaining the discretionary and equitable relief of specific performance.

17. As regards the claim of the plaintiff that she had been always ready and willing to perform her part of the contract by approaching the defendants repeatedly for paying the balance sale consideration and requesting them to execute the sale deed and the defendants had been postponing the same on some pretext or the other, with reference to the said version of the plaintiff, other than the evidence of P.W.1, the plaintiff, there is no acceptable and reliable material. If really the plaintiff had been possessed of sufficient funds and had been approaching the defendants right from the inception of the sale agreement to pay the balance sale consideration and requesting them to execute the sale deed and if really the defendants had

been evading the same on some pretext or the other, the plaintiff knowing fully that a particular time limit has been fixed in the sale agreement for the completion of the sale agreement, in such view of the matter, immediately on noting the evasive conduct of the defendants in not coming forward to receive the balance sale consideration and execute the sale deed, as a prudent person, the plaintiff should have immediately taken further appropriate steps for enforcing the sale agreement in the manner known to law. On the other hand, to say tat the plaintiff had been repeatedly approaching the defendants for paying the balance sale consideration and repeatedly requesting them to execute the sale deed for a period of nearly three years from the date of sale agreement and the defendants had been evading the same on some pretext or the other and even thereafter the conduct of the plaintiff in not taking further steps available to her under law would only expose that the abovesaid case of the plaintiff is not true. As the plaintiff is not possessed of sufficient funds, not been always ready and willing to perform her part of the contract in paying the balance sale consideration within the time stipulated in the sale agreement and even thereafter and not approached the defendants to pay the sale consideration and request them to execute the sale deed and the defendants having also not evading the same as put forth by the plaintiff on some pretext or the other, particularly when the defendants have taken the plea of creation of the sale agreement on the part of the plaintiff as put forth by them, in such view of the matter, it is found that till the issuance of legal notice on 26.10.2006, there is no reliable and convincing material on the part of the plaintiff to evidence her readiness and willingness in establishing her capacity or means to pay the balance sale consideration to the defendants and her readiness and willingness to pay the said sum to the defendants and obtain the sale deed from them qua the suit properties. In such view of the matter, as rightly determined by the trial court from 27.11.2003 till 25.10.2006, nearly for a period of three years, there is absolutely no material on the part of the plaintiff evidencing her capacity to pay the balance sale consideration and her readiness and willingness to pay the same to the defendants and in such view of the matter, the trial court is found to be totally justified in determining that the plaintiff has failed to establish her readiness and willingness to perform her part of the contract as per the terms of the sale agreement.

18. The defendants have disputed the case of the plaintiff that she had been always ready and willing to perform her part of the contract and been approaching them on several occasions to pay the balance sale consideration and obtain the sale deed. Even assuming for the sake of argument that no such plea has been raised by the defendants and they are not entitled to raise

such pleas particularly they having taken the plea of fabrication of the sale agreement on the part of the plaintiff as put forth by them, still, the plaintiff, as an agreement holder, seeking the discretionary and equitable relief of specific performance should establish that she has been always ready and willing to perform her part of the contract as contemplated under Section 16(c) of the Specific Relief Act, 1963 and as abovenoted, when prior to the issuance of legal notice on 26.10.2006, the plaintiff has failed to establish her readiness and willingness as claimed by her in performing her part of the contract Ex.A1, the contention of the plaintiff's counsel that the trial court has erred in holding that the plaintiff has not been ready and willing to perform her part of the contract as per the terms of Ex.A1, as such, cannot be countenanced in any manner.

19. According to the defendants, the suit properties are valued more and further put forth the case that considering the delay on the part of the plaintiff in performing her part of the contract and the plaintiff having issued the legal notice at the fag end of the period of limitation i.e. 26.10.2006 and thereafter having instituted the suit against them and when the materials placed on record go to show that the plaintiff is not aware of the terms of the sale agreement as admitted by her and she also having admitted that she had never visited the suit properties and not verified the original documents and also not endeavoured to secure the original documents from the defendants, the abovesaid conduct of the plaintiff would also falsify her case of readiness and willingness as determined by the trial court. Furthermore, it is found that the suit properties are situated within 2 KMS from Tiruppur Palani Main road and the plaintiff having admitted that lay out had been developed near the suit properties and the plaintiff's husband having admitted that a handloom shed is available in the suit properties and that the first defendant is residing in the suit properties and further having admitted that two textile companies are located near the suit properties and when it is further noted that by way of Ex.B1 that the plaintiff has purchased 2 cents of land for more than Rs.52,000/- in the year 2006, all the above facts would go to show that the value of the suit properties had escalated and accordingly when it is found that the sale agreement had been entered in the year 2003 and the parties had fixed the time limit of three months for completing the sale transaction, if really the plaintiff had been genuine and earnest in completing the sale transaction, the plaintiff should have taken all the steps in performing her part of the contract as per law and when as above pointed out, the plaintiff has miserably failed to establish her capacity and readiness and willingness to pay the balance sale consideration to the defendants within the time stipulated and even thereafter

and only at the fag end of the limitation period, she having sent the legal notice and considering the raise in price of the suit properties in the meanwhile, particularly, the location of the same, as above pointed out, in all, it is found that the abovesaid factors cannot be totally ignored. Though the escalation of the price of the suit properties by itself may not be the sole criteria for negating the relief of specific performance, however, insofar as this case is concerned, considering the abovesaid factors coupled with the factor of the absence of readiness and willingness of the plaintiff in performing her part of the contract, in such view of the matter, the trial court is justified in holding that if specific performance is granted in favour of the plaintiff, the same would be causing unfair disadvantage to the defendants and unfair advantage to the plaintiff and accordingly justified in refusing the relief of specific performance in favour of the plaintiff. As determined by the trial court, merely from the conduct of the plaintiff that she had deposited the balance sale consideration in the court following the exparte decree obtained by her at the first instance, on that score alone, we cannot infer that the plaintiff was possessed of sufficient funds within the period of three months in paying the balance sale consideration to the defendants and been always ready and willing to pay the same to the defendants within the stipulated time and even thereafter and in such view of the matter, the trial court, on the whole, is found to be justified in declining the relief of specific performance prayed for by the plaintiff.

20. In support of his contentions, the plaintiff's counsel placed reliance upon the following decisions reported in

1. (2010) 7 Supreme Court Cases 717 (Laxman Tatyaba Kankate and another vs. Taramath Harishchandra Dhatrak)
2. (1993) 1 Supreme Court Cases 519 (Chand Rani by lrs vs. Kamal Rani by lrs)
3. (2015) 1 Supreme Court Cases 597 (K.Prakash vs. B.R.Sampath Kumar)
4. (2015) 1 Supreme Court Cases 705 (Zarina Siddiqui vs. A.Ramalingam alias R.Amarnathan)
5. (2017) 7 MLJ 823 (S.Pathma vs. V.Radhakrishnan rep. by his legal heirs and others)
6. (2017) 6 MLJ 190 (M.Meenambal and others vs. A. Bama)
7. 2018 (2) MLJ 167 (P.K. Subramanian vs. Pongiannan and others)
8. 2018 (1) MWN (civil) 165 (M.R.Subramaniam vs. G.S.Abimunissa)
9. 2017 (4) CTC 734 (S.Deivanai and others vs. V.M.Kothandaraman and others)

Similarly, in support of his contentions, the defendants' counsel placed reliance upon the following decisions reported in

1. 2014 (3) MWN (civil) 100 (P.Samiappan and another vs. Rukmani and others)
2. (2019) 3 Supreme Court Cases 704 (Makal Kumar vs. Premlata Joshi and others)
3. 2019 (1) MWN (Civil) 225 (Adhiaman Engineering college vs. Narayanappa).
4. 2019 (1) MWN (Civil) 391 (Ramarajan vs. Shanmugam)
5. 2018 (6) CTC 56 (T.R.Murugesan vs. S. Balakrishnan and others)
6. (2011) 2 Supreme Court Cases 429 (J.P. Builders and another vs. A.Ramadas Rao and another)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

21. In the light of the abovesaid discussion, though it is found that the sale agreement dated 27.11.2003 is a true and valid document, inasmuch as the plaintiff has failed to establish her readiness and willingness throughout from the inception of the sale agreement and also considering the escalation of the price of the suit properties based on the materials available on record, in all, it is found that as determined by the trial court, the plaintiff is not entitled to obtain the relief of specific performance qua the sale agreement dated 27.11.2003 and accordingly the points numbers 1 to 3 are answered.

Point Nos. 4 and 5

In the light of the abovesaid discussions, the judgment decree dated 12.03.2010 passed in O.S.No.524 of 2006 on the file of the I Additional District Court, Coimbatore, are confirmed and resultantly the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CS VIII)

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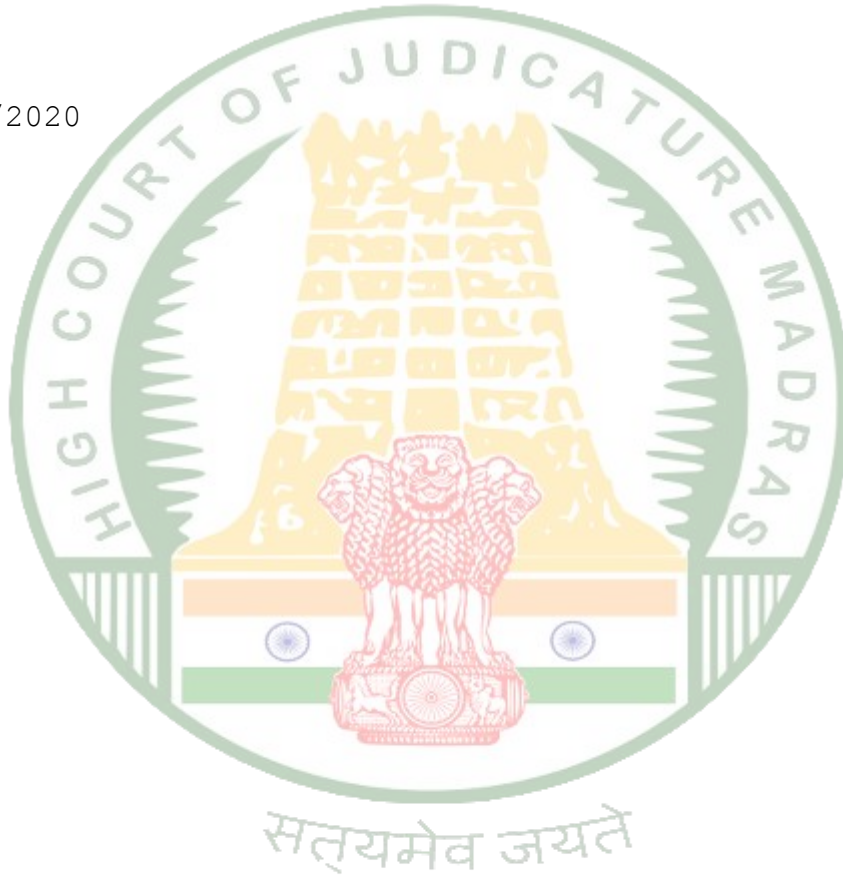
The I Additional District Judge,  
Coimbatore.

+1cc to Mr.C.R.Prasanan, Advocate Sr.75920

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