

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 02.07.2019

ORDER PRONOUNCED ON : 09.07.2019

A.No.4119 of 2015

in

O.P.No.408 of 2014

1.G.Srinivas

2.G.Geethanjali

... Petitioners

Vs.

1.M.Swaminathan

2.Naresh

3.T.Inderkumar

4.T.Charulatha

5.T.Girishi

... Respondents

PRAYER:- This Application has been filed seeking to revoke the Probate granted by this Hon'ble Court dated 25.02.2015 in O.P.No.408 of 2014.

For Petitioners : Mr.S.Parthasarathy, Senior Counsel
for Mr.C.Ramesh

For Respondents : Mr.J.Krishnamachary for R1
Mr.R.Umasuthan for R2 to R5

ORDER

The instant application is one seeking revocation of grant of Probate of the Will dated 27.03.1998 said to have been executed by G.Parvathi W/o. G.Ramakrishna who died on 24.04.1998.

2. The Original Petition was filed by the Executor seeking Probate. The Legatees who are the brother's grandchildren of Testator were cited as respondents in the Original Petition.

3. Upon their filing consent affidavits, this Court had granted Probate on 25.02.2015. The applicants who claim to be the second wife and son born through the second wife of G.Ramakrishna, husband of the Testatrix had come forward with this application seeking revocation of Probate.

4. According to the applicants, the Testatrix Parvathi had married G.Ramakrishna who was a renowned telugu actor some time in the year 1963. There were no children born out of the said wedlock. According to the applicants, the deceased G.Ramakrishna married the 2nd applicant on 18.01.1973 and out of the said wedlock, the 1st applicant was born on

23.03.1974. The applicants would also contend that Parvathi died intestate on 24.04.1998 and on her death, the property devolved on her husband G.Ramakrishna. On the death of G.Ramakrishna on 23.10.2001, the property devolved on the 1st applicant who is the son through the second marriage.

5. Therefore, according to the applicants, the 1st applicant would have inherited the estate in the event of intestacy of late G.Parvathi. Hence, he should have been made a party to the Original Petition and notice should have been issued to him. Inasmuch as the 1st applicant was not made a party to the Original Petition, the applicants seek for revocation of Probate under Section 263 of the Indian Succession Act.

6. The application is being resisted by the respondents viz., Executor as well as the Legatees contending that there was no marriage between the 2nd applicant and the said G.Ramakrishna. In the absence of proof of marriage, the 1st applicant cannot be construed to be an illegitimate son. Therefore, he has no caveatable interest and as such, he cannot seek revocation of Probate.

7. The matter was heard by the Hon'ble Mr.Justice C.V.Karthikeyan. By an order dated 06.11.2017, the applicants were called upon to prove the marriage of the 2nd applicant with G.Ramakrishna and also establish that they have caveatable interest. Hence, the matter was posted before the learned Additional Master for recording of evidence. Before the learned Additional Master, the 2nd applicant was examined as PW1, one T.S.Aswin Kumar, the purohit who claims to have performed the marriage of the 2nd applicant with G.Ramakrishna was examined as PW2. The elder sister of the 2nd applicant S.Swarnalakshmi was examined as PW3. The applicants also marked 11 documents as Ex.P1 to Ex.P11. The respondents did not let in any evidence.

8. The only issue that arises for consideration in this application is as to whether there was a marriage between the 2nd applicant and G.Ramakrishna and whether the 1st applicant as an illegitimate son born out of the said wedlock could be said to be the person having caveatable interest in order to enable him to oppose the grant of Probate.

9. I have heard Mr.S.Parthasarathy, learned Senior Counsel appearing for Mr.C.Ramesh, for the applicants, Mr.J.Krishnamachary, learned counsel for the

1st respondent/ Executor and Mr.R.Umasuthan, learned counsel for the respondents 2 to 5/ Legatees.

10. Mr.S.Parthasarathy, learned Senior Counsel appearing for the applicants would vehemently contend that the evidence on record would show that there was a marriage between G.Ramakrishna and the 2nd applicant. He would further point out that the evidence would also show that the 1st applicant was born out of the said wedlock.

11. According to Mr.S.Parthasarathy, learned Senior Counsel, even assuming that the marriage is invalid in view of Section 16 of the Hindu Marriage Act, the 2nd applicant as illegitimate child of G.Ramakrishna would be entitled to inherit the estate of G.Ramakrishna. He would also take me through the evidence of PW1, wherein, PW1 has specifically deposed that she was married to G.Ramakrishna on 18.01.1973 at her residence at Luz Avenue, Mylapore, Chennai. He would also rely upon the evidence of PW2 viz., the purohit who performed the marriage and the evidence of PW3, sister of the 2nd applicant who had also spoken about the marriage.

12. Mr.S.Parthasarathy, learned Senior Counsel would also invite my attention to the documents filed on the side of the applicants which would atleast establish that the 1st applicant G.Srinivas was born out of the wedlock between Geethanjali, 2nd applicant and G.Ramakrishna.

13. Contending contra, Mr.R.Umasuthan, learned counsel appearing for the respondents 2 to 5 would submit that though the 2nd applicant had in her evidence claimed that the marriage took place on 18.01.1973, during her cross examination, she had in fact stated that the marriage took place on 23.03.1973. Drawing my attention to the said contradiction, the learned counsel would submit that the marriage cannot be held to have been proved.

14. He would also point out the discrepancy relating to the timing of the marriage. While PW2 and PW3 would depose that the marriage took place some time between 8.30 a.m and 10.00 a.m, the 2nd applicant as PW1 had at one point during her cross examination deposed that the marriage took place between 6.00 a.m and 7.00 a.m on 23.03.1973.

15. According to the learned counsel, the evidence of the purohit cannot be relied upon, as even according to him, he was only 19 years of age at the time when the marriage was said to have been taken place. He would also point out that the purohit, PW2 as well as the sister of the 2nd applicant, PW3 were not able to give the correct date of marriage.

16. Mr.J.Krishnamachary, learned counsel appearing for the 1st respondent would adopt the arguments of Mr.R.Umasuthan.

17. Let me first consider the documentary evidence that is relied upon to show that there was a marriage between G.Ramakrishna and Geethanjali, 2nd applicant. Ex.P1 is the birth certificate of the 1st applicant issued by the Chennai Corporation. The 1st applicant is shown to be born on 23.03.1974, his mother's name is given as Geethanjali and father's name is given as G.Ramakrishna.

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18. Ex.P5 is the Voters ID of Geethanjali, 2nd applicant, wherein her husband name is shown as Ramakrishna. They are shown to be resident of Door

No.71, Habibullah Road, T.Nagar, Chennai. Ex.P9 is the Family Card of G.Ramakrishna and the same discloses that the applicants are the members of the family of the deceased G.Ramakrishna.

19. Ex.P11 is a sale deed dated 2nd January 1979 executed by one J.Jamuna in favour of G.Ramakrishna and the 2nd applicant. The said sale deed describes the 2nd applicant as wife of G.Ramakrishna residing at No.93 Habibullah Road, Chennai - 17. Ex.P12 is the another sale deed dated 17.03.1995 executed by late G.Ramakrishna and the 2nd applicant Geethanjali. The said sale deed also describes the 2nd applicant Geethanjali as the wife of late G.Ramakrishna.

20. Apart from the above documents certain photographs said to have been taken at the time of the marriage that is said to have taken place on 18.01.1973 have also been produced along with a report of an expert as Ex.P13. Since the negatives of the photographs were not available, the applicants have referred the photographs to M/s. Truth Labs and got an opinion which states that the photographs have not been morphed or tampered with. The expert who have given opinion has also been examined as PW4.

21. PW3, the sister of 2nd applicant had identified the 2nd applicant and G.Ramakrishna in the said photographs. From the photographs it is seen that a certain form of marriage had taken place between the said G.Ramakrishna and the 2nd applicant.

22. Relying upon the aforesaid documents, Mr.S.Parthasarathy, learned Senior Counsel appearing for the applicants would contend that the marriage has been proved and the 1st applicant being the son born through the said marriage would be an illegitimate son and would be entitled to succeed to the estate of his father in view of Section 16 of the Hindu Marriage Act.

23. As regards the oral evidence, the learned counsel for the respondents would point out that there is a discrepancy in the date of marriage in the evidence of PW1. No doubt, during the cross examination on 06.02.2018, PW1 had deposed that the marriage took place on 18.01.1973 at her residence in Luz Avenue, Mylapore, Chennai. She has also named the Priest who performed the marriage. However, at the later point of cross examination i.e., on 20.02.2018, the same witness had deposed that the marriage was solemnized on 23.03.1973 between 6.00 a.m and 7.00 a.m.

24. According to Mr.R.Umasuthan, learned counsel appearing for the respondents 2 to 5, this discrepancy in the evidence of PW1 would show that there was no marriage and the entire case of the applicants is that a marriage had infact taken place between G.Ramakrishna and the 2nd applicant has been brought out only in order to enable them to claim caveatable interest and to seek revocation of grant of Probate.

25. No doubt, true, that there is a discrepancy in the date of marriage in the evidence of PW1. PW1 has studied only upto VIII Standard and she has deposed in the year 2018 about the marriage that had taken place in the year 1973 i.e., nearly about 45 years after the event. There is bound to be certain discrepancy in the evidence which is tendered about an event after 45 years of its happening.

26. Ex.P1, the birth certificate of the 1st applicant shows that he was born on 23.03.1974 and the date of marriage in the cross examination on 20.02.2018 is given as 23.03.1973. There appears to be a bonafide mistake in the said evidence. I am therefore of the opinion that the marriage cannot be dis-believed only on the basis of the said contradiction alone. The evidence of PW2 and PW3 are cogent and convincing.

27. Of course, Mr.R.Umasuthan, would strenuously contend that the two witnesses viz., PW2 and PW3 were not able to give the exact date of marriage. But, from the evidence, I find that both the witnesses have spoken very cogently and convincingly to the effect that the marriage had taken place on Guru Poornima day in January 1973. Mr.R.Umasuthan, learned counsel would also contend that the Priest who had performed the marriage had not undertaken any proper training in the rituals through a recognized or established Institution.

28. PW2 has categorically stated that he trained under his father who was Purohit and Pandit. It is not unusual for a Priest or Purohit to get trained under his father and continue the profession hereditarily. The evidence of PW2 in my opinion is quite cogent and convincing and non-mentioning of date of marriage does not render his evidence unbelievable.

29. PW3 who is the sister of the 2nd applicant had also deposed about the fact that the marriage took place on a Guru Poornima day in January 1973 at the residence at Luz Avenue, Mylapore. Nothing has been brought about in her cross examination so as to discredit the evidentiary value of her deposition.

30. Even if I am to conclude that the applicants have not proved the factum of marriage, the documents available would show that the 2nd applicant and G.Ramakrishna lived as husband and wife at No.93, Habibullah Road, Chennai - 17. There is overwhelming evidence in the form of documents to show that they were living as husband and wife and were treated as husband and wife by the society at large.

31. Ex.P1 which is the birth certificate of the 1st applicant contains the name of the parents. Validity or genuineness of the said document is not disputed by the parties. Ex.P5, Voters ID of the 2nd applicant gives her husband's name as Ramakrishna and the place of residence at No.71, Habibullah Road, T.Nagar, Chennai. Ex.P11 and Ex.P12 are two sale deeds of the year 1979 and 1995. Ex.P11 is the sale deed executed by one J.Jamuna on 2nd January 1979 in favour of G.Ramakrishna and the 2nd applicant, the said sale deed describes the 2nd applicant as wife of G.Ramakrishna. Ex.P12 is the another sale deed dated 17.03.1995 executed by late G.Ramakrishna and the 2nd applicant in favour of one Mr.K.Anand, wherein, the property purchased under Ex.P11 sale deed has been conveyed by them. The said sale deed also

describes the 2nd applicant as wife of the deceased G.Ramakrishna. These two sale deeds had admittedly come into existence at the time when there was no dispute between the parties.

32. These descriptions would go long way to show that the deceased G.Ramakrishna and the 2nd applicant lived as husband and wife at Habibullah Road, T.Nagar. In fact in the rejoinder filed by the Executor there is a candid admission of the fact that the 2nd applicant and the deceased G.Ramakrishna were in fact living as husband and wife. The 1st respondent, Executor had in the said rejoinder had stated as follows:-

“The contention that the applicants are the legal heirs of Shri. G.Ramakrishna based on the legal heirship certificate number D.Dis.No.46789/01 dated 07.11.2001 is only in respect of the property purchased by him during his life time and the address mentioned in certificate namely No.185, Habibullah Road, T.Nagar, Chennai - 600 017 where he had been living as early as from 1974 and holding a ration card at this address, and not in respect of the property purchased by the Testatrix Smt.G.Parvathi out of her own earnings and savings.”

33. This statement made in the reply affidavit of the Executor would definitely show that the deceased G.Ramakrishna was living with the 2nd applicant at No.185, Habibullah Road, Chennai - 17 and she was also treated as his wife.

34. No doubt, the legal heirship certificate issued by Tahsildar is not a material piece of evidence to show that the heirs mentioned therein are in fact the heirs of the deceased person. However, for the limited purpose of showing that the Executor had admitted the relationship, the said document could be looked into.

35. Mr.S.Parthasarathy, learned Senior Counsel would also submit that even assuming that the marriage has not been proved, a valid marriage can be presumed by long cohabitation. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K.Devi and others*** reported in 1996 (4) SCC 76, wherein, the Hon'ble Supreme Court had held that the children of void second marriage would inherit a share in the properties of their parents by operation

of amended Section 16. The Hon'ble Supreme Court had also concluded that a valid second marriage could be presumed by long cohabitation.

36. Mr.S.Parthasarathy, learned Senior Counsel would also place reliance on the judgment of the Hon'ble Supreme Court in ***Badri Prasad Vs. Deputy Director of Consolidation and others*** reported in (1978) 3 SCC 527, wherein, the Hon'ble Supreme Court had held that if a man and woman have been living together for 50 years, a strong presumption of marriage between them arises and heavy burden lies on any one who seeks to rebut the presumption.

37. Reliance is placed on another judgment of the Hon'ble Supreme Court in ***S.P.S.Balasubramanyam Vs. Suruttayan Alias Andali Padayachi and others*** reported in 1994 (1) SCC 460, wherein, the Hon'ble Supreme Court had presumed a second marriage between a man and woman if they have been living together for long number of years as husband and wife.

38. In fact in the case of ***S.P.S.Balasubramanyam Vs. Suruttayan Alias Andali Padayachi and others***, the court had presumed the marriage between Chinnathambi and Pavayee who had been living together as husband and wife

for quite a long time, even though it was claimed that Pavayee had left her husband and had come to live with Chinnathambi. Therefore, there is no prohibition in law for presuming a second marriage between a man and woman if it is shown that they have been living together for considerably long time and the public at a large were lead to believe that they are husband and wife.

39. The oral and documentary evidence that are available in the case on hand would definitely show that G.Ramakrishna and the 2nd applicant have been living as husband and wife and were treated as such by the society at large. While the sale deed viz., Ex.P11 dated 2nd January 1979 describes the 2nd applicant as wife of late G.Ramakrishna and the sale deed dated 17th March 1995, Ex.P12 also describes Geethanjali as wife of G.Ramakrishna. G.Ramakrishna is the Executant of the sale deed dated 17th March 1995 along with the 2nd applicant. These factors would undoubtedly lead to a presumption that there was a valid marriage between the 2nd applicant and late G.Ramakrishna.

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40. Mr.R.Umasuthan, learned counsel appearing for the respondents 2 to 5 would submit that Section 16 would be available only to those children who

had born out of a valid marriage which was rendered void for violation of any one of the conditions described under Section 5 of the Hindu Marriage Act.

41. No doubt true that Section 16 of the Hindu Marriage Act provides that only children born out of a marriage which is rendered void would be deemed to be illegitimate children of male Hindu. Section 16 of the Hindu Marriage Act reads as follows:-

16. Legitimacy of children of void and voidable marriages--

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the

decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

42. The Hon'ble Supreme Court in ***Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K.Devi and others*** reported in **1996 (4) SCC 76** as well as in ***S.P.S.Balasubramanyam Vs. Suruttayan Alias Andali Padayachi and others*** reported in **1994 (1) SCC 460** had concluded that a second marriage could be presumed and children born out of such long cohabitation would also be entitled to benefits of Section 16 of Hindu Marriage Act. I am therefore of the considered opinion that the applicant had established that there was a marriage between the 2nd applicant and late G.Ramakrishna and the 1st applicant was born out of the said wedlock.

43. Mr.R.Umasuthan, learned counsel appearing for the respondents 2 to 5 would rely upon the judgment of the Single Judge of this Court in ***Raviprakash Ramprasad Jaiswal*** made in ***A.No.111 of 2008 and A.No.3733 of 2008 in O.P.No.565 of 2001*** to contend that the applicant cannot seek revocation of grant without establishing that they have a caveatable interest.

44. There is no dispute regarding the principle of law stated in the said judgment. Only a person who has a caveatable interest can seek revocation. In order to find out whether a person has got caveatable interest or not necessarily this court has to go into the question as to whether the said person who claims to have caveatable interest would inherit the estate in the absence of a testamentary instrument. In the case on hand, in the absence of the Will, the 1st applicant would have inherited the property and therefore he has a caveatable interest.

45. The next decision relied upon by the counsel is by another Single Judge of this Court in ***Thilagavathy another Vs.Kuppammal and others*** made in ***S.A.No.965 of 1996***. The benefit of succession under Section 16(2) of the

Act was denied to the plaintiffs on the ground that the factum of solemnization of marriage was not proved and even long cohabitation was not established. On the above conclusion, the Court also concluded that there could not have been a valid marriage, inasmuch as the 1st plaintiff was a Hindu and the intestate Mariaselvam was a Christian. Under these circumstances, the court refused to draw an inference regarding a valid marriage between the two.

46. In *Jerry Garman Vs. A.S.Sethuraman* made in *C.M.A.No.2535 of 2015*, the Division Bench of this court had while considering the application for rejection of the Original Petition under Section 10(1)(x) of the Indian Divorce Act had held that the photographs cannot be relied upon unless they are marked with negatives through competent witness. It was also found that the respondent was Christian and even on the date of the marriage she has not been converted to Hindu, therefore, the court held that the petition filed under Section 10(1)(x) of the Indian Divorce Act cannot be rejected.

47. In the case on hand, the photographs alone have been produced and the negatives have not been produced, *dehors* the photographs, there is enough evidence to conclude that a marriage had in fact taken place between the 2nd applicant and G.Ramakrishna on 18.01.1973.

48. Mr.R.Umasuthan, learned counsel would also rely upon the judgment of a Single Judge of this Court in ***S.C.Shanthi Vs. P.Venkatesh*** reported in ***1996 (1) CTC 658***, wherein, the Hon'ble Judge held that in the absence of proof of the fact that the essential requirements of a Hindu marriage had been complied with, the marriage cannot be said to be valid. The appeal therein arose out of the proceeding in the suit that was filed for declaration that the marriage between the two Hindus as a nullity.

49. Therefore, the learned Judge held that in order to establish a valid marriage it should be shown that the marriage was celebrated in accordance with Hindu Customary rights. The said judgment in my view does not apply to the facts of the present case.

50. Reliance is also placed on the judgment of the learned Single Judge of the Madhya Pradesh High Court in ***Ramkali Vs. Mahila Shyamwati*** reported in ***AIR 2000 Madhya Pradesh 288***, wherein, it was held that a presumption of marriage cannot be raised only on the ground of cohabitation. The conditions of habit and repute are necessary that its existence must be satisfied beyond doubt.

51. In the case on hand, we have enough oral and documentary evidence which goes to show beyond doubt that the deceased G.Ramakrishna and the 2nd applicant were in fact living as husband and wife at Habibullah Road in T.Nagar for over 50 years. In the light of the said evidence, I am constrained to observe that the applicants have in fact made out a strong case for presumption of valid marriage between the 2nd applicant and the deceased G.Ramakrishna and nothing has been elicited to discredit the said evidence and no evidence has been placed in rebuttal of the said presumption.

52. As already pointed out, oral evidence of PW1 to PW3 coupled with the effect of the documents viz., Ex.P1 birth certificate of the applicant, Ex.P5 Voters ID of the 2nd applicant, Ex.P9 family card of deceased G.Ramakrishna and Ex.P11 and Ex.P12 the sale deeds would go to show that there was a marriage between G.Ramakrishna and the 2nd applicant and the 1st applicant was born out of the said marriage.

53. Once it is found that the 1st applicant was born out of the marriage between the deceased G.Ramakrishna and the 2nd applicant, he would be

illegitimate child of the deceased G.Ramakrishna entitled to the benefits of Section 16(2) of the Hindu Marriage Act. In the absence of the Will, the 1st applicant would be natural heir and he would have inherited the property which would have devolved upon the deceased G.Ramakrishna.

54. In the light of the said unimpeachable evidence, I am constrained to hold that the applicants particularly, the 1st applicant has established that he has a caveatable interest and he should have been notified before the grant of Probate. The fact that the 1st applicant was not impleaded as party to the Original Petition and no citation was issued to him before grant makes the grant revocable.

55. Hence, this application is allowed and the grant of Probate in O.P.No.408 of 2014 is hereby revoked. However, in the circumstances no order as to costs. It will be open to the Executor to implead the 1st applicant in the Original Petition and seek to prove the Will in a common form.

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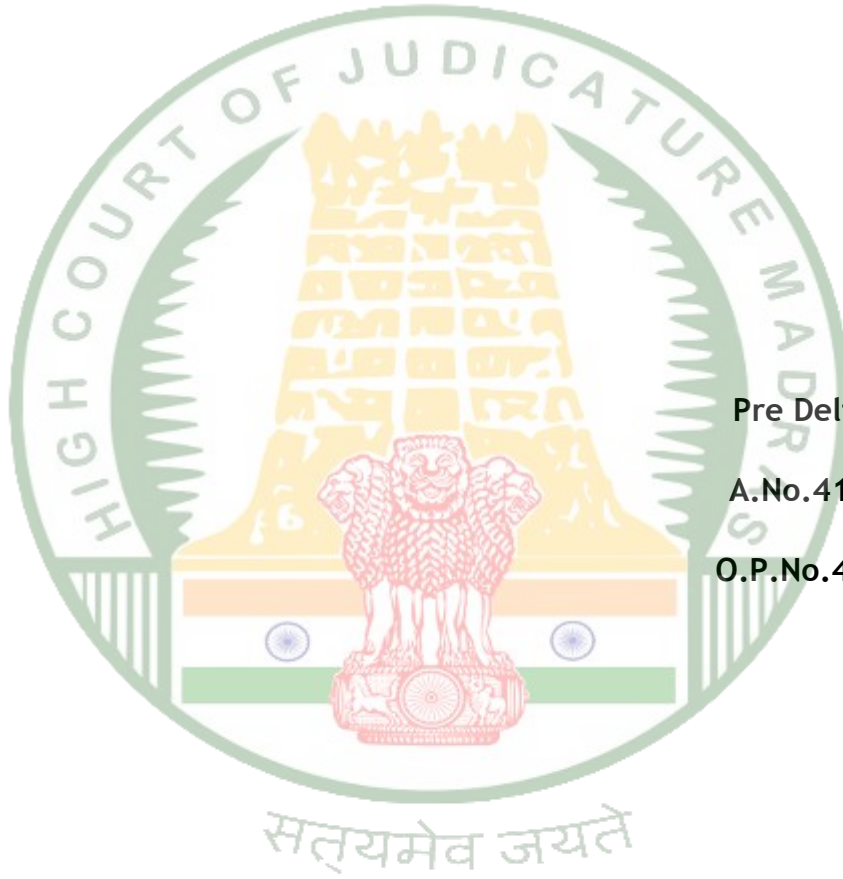
Index : Yes

Internet: Yes

Speaking order

R.SUBRAMANIAN,J.

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