

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2019

PRONOUNCED ON : 23.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.131 of 2013

and

M.P.No.1 of 2013

Sowmiya

(Sole Appellant declared as major
Next friend uncle Velusamy discharged
from the guardianship vide order of court
dated 08.03.2019 made in CMP.No.5282
of 2019 in SA.No.131 of 2013)

... Appellant/ first Respondent in AS / Plaintiff in OS
Vs.

1.Thiruvenkadam

2.Ramayal @ Mani

3.Manimekalai

... Respondents/ Appellant/ Defendants1&2

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree dated 26.07.2012 passed in
A.S.No.15 of 2010 on the file of the First Additional District
Judge, Erode, reversing the judgment and decree dated 30.09.2009
and made in O.S.No.134 of 2004 on the file of the Second
Additional Sub-Judge, Gobichettipalayam.

For Appellant : Mr.N.Manokaran

For R1 : Mr.N.Sankaravadivel

For R2 & R3 : Set ex-parte

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J U D G M E N T

This Second Appeal has been filed by the plaintiff
against the judgment and decree passed by the First Additional
District Judge, Erode, in A.S.No.15 of 2010 dated 26.07.2012
reversing the judgment and decree passed by the Second
Additional Sub-Judge, Gobichettipalayam. in O.S.No.134 of 2004
dated 30.09.2009.

2. The appellant herein had filed a suit in O.S.No.134 of 2004 on the file of the Second Additional Sub-Judge, Gobichettipalayam, to cancel the registered release deed dated 15.07.2004 as void document and to divide the item 1 of the suit properties into 16 equal shares and allot 5 such shares to her and item 2 and 3 of the suit properties into 4 equal shares and to allot one such share to her. The learned Second Additional Sub-Judge, Gobichettipalayam by the judgment dated 30.09.2009, passed a preliminary decree for partition as prayed for. Further, he declared that the registered release deed dated 15.07.2004 is invalid, null and void and not binding upon the minor plaintiff. He further held that as far as the defendants 1 and 2 are concerned, the said release deed is valid and binding upon them. Aggrieved by the same, the third defendant had filed an appeal in A.S.No.15 of 2010 on the file of the First Additional District Judge, Erode. The learned First Additional District Judge, Erode by the judgment dated 26.07.2012 had allowed the said appeal and set aside the judgment and decree passed by the Trial Court. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

4. The averments made in the plaint are in brief as follows:

a). The plaintiff is the daughter of second defendant. The plaintiff's father Subramaniam @ Subbana Gounder @ Subbu had two wives. The first wife of the plaintiff's father namely Lakshmi died on 09.03.1994. Through the first wife, the defendants 2 and 3 were born. After the death of the first wife, the father of the plaintiff married the first defendant, viz, Ramayal on 13.07.1994. The second defendant got married on 22.01.1994. The plaintiff was born on 24.02.1996. Item 1 of the suit properties is the ancestral property and the same was got by the plaintiff's father under a registered partition dated 06.05.1972 which took place between him and his father. Item 2 and 3 of the suit properties originally belonged to the mother of plaintiff's father, Marayal. The said Marayal gifted the items 2 and 3 of the suit properties to her son Subramaniam @ Subbana Gounder @ Subbu under two registered settlement deeds dated 20.08.1973 and 01.06.1977 respectively. Hence, items 2 and 3 are the self-acquired properties of the plaintiff's father. He died intestate on 17.05.2004 leaving behind the plaintiff and defendants as his legal heirs. Since, item 1 is the ancestral property, in which the plaintiff, the defendants 2 and 3 are entitled to 5/16th share each and the first defendant is entitled to 1/16th share. Items 2 and 3 being the separate properties of plaintiff's father, in which the plaintiff and the defendants

are entitled to 1/4th share each.

b). The fact remains so, the third defendant with a view to grab the entire family properties, in collusion with the defendants 1 and 2 obtained a release deed from the defendants 1 and 2 on 15.07.2004. The first defendant executed the said document for herself and also as the guardian for the plaintiff along with the second defendant. The said release deed is not a true and valid document and it will not bind upon the plaintiff. The first defendant under law, has no right or authority to deal with the share of plaintiff in the suit properties. Without obtaining the statutory permission from the District Court, the first defendant has acted against the interest and welfare of the plaintiff. The alleged consideration of Rs.30,000/- being a share of the plaintiff is false and no consideration was passed under the release deed. The market value of plaintiff's share in the suit property will be more than that. Hence, the said document is void ab-initio and it will not bind upon the plaintiff. Hence, the said document has to be cancelled and the suit properties shall be divided and 5/16th share in item-1 and 1/4th share in items 2 and 3 shall be allotted to the plaintiff.

5. The averments made in the written statement filed by the third defendant are in brief as follows:

The relationship stated in the plaint is true, but it is false to say that the first defendant was acting against the interest of the minor and colluded with the defendants 2 and 3 and executed the release deed dated 15.07.2004. The first defendant and the minor plaintiff are residing under the same roof and only at the instigation of the first defendant, the present suit has been filed. The next friend who is representing for the minor plaintiff namely Velusamy is the husband of the first defendant's elder sister and he is not entitled to act as next friend or guardian while the natural guardian mother is alive. The allegation that no consideration was passed for the release deed is false and a sum of Rs.30,000/- being the share of plaintiff received by the plaintiff's mother (first defendant) for education purpose of the plaintiff. In the absence of father, the first defendant being the natural guardian, is entitled to execute the release deed on behalf of minor plaintiff and therefore, the said document is valid and bind upon the plaintiff. The minor plaintiff is not in possession of the suit properties and hence, the suit is not maintainable. Therefore, the third defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned Second Additional Sub-Judge, Gobichettipalayam, had framed necessary issues and tried the suit. During trial on the side of the plaintiff, the plaintiffs next friend namely K.Velusamy was examined as P.W.1 and one more witness was examined as P.W.2.

Exs.A1 to A31 were marked on the side of the plaintiff. On the side of the third defendant, third defendant examined himself as D.W.1 and he also examined three more witnesses as D.W.2 to D.W.4. He had marked Ex.B1 to Ex.B10 as exhibits.

7. The learned Second Additional Sub-Judge, Gobichettipalayam, after considering the materials placed before him found that the first defendant should have obtained permission from the Court under Section 8 of Hindu Minority and Guardianship Act, 1956, before executing the release deed, but she has not obtained any such permission from the Court and hence, she is not entitled to execute the said release deed. Accordingly, he held that the said release deed will not bind upon the minor plaintiff and finally passed a preliminary decree for partition to divide item 1 into 16 equal shares and 5 such shares be allotted to the plaintiff and item 2 and 3 have to be divided into 4 equal shares and one such share be allotted to the plaintiff. Aggrieved by the same, the third defendant had filed an appeal in A.S.No.15 of 2010 on the file of the First Additional District Judge, Erode. The learned First Additional District Judge, Erode, had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

8.This Court, at the time of admitting the Second Appeal, has formulated the following substantial questions of law:

"(1). Whether the first Appellate Court is right in invoking Section 12 of the Hindu Minority and Guardianship Act, 1956 mandates that in respect of the minor's interest in the undivided joint family property, the natural guardian cannot automatically be taken as the guardian having the power to represent the minor's interest in the undivided interest in the joint family?"

(2) Whether the first Appellate Court has committed an error in dismissing the suit for partition by relying upon the Release Deed dated 15.07.2004 (Ex.A10) particularly when Ex.A10 is a void document in the eye of law?

(3) Whether there is any perversity or illegality in the judgment and decree of the first Appellate Court in not properly considering the validity of Ex.A10 which is vitiated in view of fraud and misrepresentation played by the defendants? "

9. Heard Mr.N.Manokaran, the learned counsel for the appellant/plaintiff and Mr.N.Sankaravadivel, the learned counsel

for the first respondent. The respondents 2 and 3 remained ex-parte.

10. Substantial Questions of Law 1, 2 and 3:

The learned counsel for the appellant/plaintiff has submitted that the First Appellate Court erred in reversing the well considered judgment of the Trial Court. He further submitted that in view of the specific bar under Section 8 of the Hindu Minority and Guardianship Act 1956, the natural guardian is not empowered to deal with the minor's property without getting permission from the competent Court. He further submitted that the First Appellate Court failed to note that Section 12 of the said Act will not come into rescue the third defendant since the necessity for such alienation has neither been pleaded nor proved in the manner known to law. He further submitted that the First Appellate Court failed to note that the first defendant being a female member cannot act as Kartha of the joint family and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the First Appellate Court and restore the judgment and decree passed by the Trial Court.

11. The learned counsel for the appellant/plaintiff, in support of the aforesaid contentions relied upon the following decisions:

- 1). Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Nagpur Vs. Seth Govindram Sugar Mills, AIR 1966 (SC) 24;
- 2). L. Sundaram and another Vs. Lakshmanan (Died) and others, (2003) 1 MLJ 95;
- 3). Brammagiri Vs. Minor Sivasubramaniam and another, 2007 (3) CTC 718;
- 4). Koothayyan Vs. Minor Ayyappan, rep by next friend/father Umapathi, (2008) 6 MLJ 1004;
- 5). Ammaniammal Vs. M. Palanisamy and 14 others, 2008 (4) CTC 392;
- 6). Saroj Vs. Sunder Singh & Ors. 2013 (6) CTC 775

12. Per Contra, the learned counsel for the first respondent/third defendant has submitted that the evidence of D.W.2 would show that the plaintiff is under care and custody of her mother (first defendant) only. He further submitted that the

first defendant after receiving a sum of Rs.30,000/- towards minor's share, executed Ex.A10, release deed on her behalf and also on behalf of her minor daughter. He further submitted that in the said document itself, it is clearly stated that the said document was executed after receiving a sum of Rs.30,000/- towards education expenses and for maintaining the minor and as such, the said document was executed only for the benefit of the minor plaintiff. He further submitted that as per Section 12 of the Hindu Minority and Guardianship Act 1956, any adult member of the family in the management of the joint Hindu family property can act as a guardian for the minor and dispose of the property. He further submitted that the Appellate Court judgment would show that the third defendant apart from the aforesaid amount of Rs.30,000/-, had deposited additional sum of Rs.1,00,000/- in the name of the minor plaintiff and as such, the plaintiff cannot contend that she has been cheated by the defendants 1 and 3. He further submitted that the Trial Court without considering the aforesaid facts in a proper perspective had decreed the suit. But, the First Appellate Court after considering facts in proper perspective had rightly allowed the appeal and set aside the judgment and decree passed by the Trial Court and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

13. The learned counsel for the first respondent/third defendant in support of the aforesaid contentions relied upon the decision in Sri Narayan Bal and Others Vs. Sridhar Sutar and Others, (1996) 8 SCC 54.

14. It is an admitted fact that the plaintiff's father Subramaniam @ Subbana Gounder @ Subbu married one Lakshmi and through her he got one daughter (second defendant) and a son (third defendant). It is also an admitted fact that the said Lakshmi died on 09.03.1994 and thereafter he married the first defendant on 13.07.1994 and through her, the plaintiff was born on 24.02.1996. It is also an admitted fact that the second defendant got married on 22.01.1994. It is also an admitted fact that the plaintiff's father got item 1 of the suit properties under Ex.A5 registered partition deed in the partition which took place between himself and his father and as such the said property is the ancestral property.

15. In so far as item 2 and 3 of the suit properties are concerned, according to the plaintiff, the said properties originally belonged to the mother of plaintiff's father Marayal, by virtue of the two registered sale deeds dated 18.06.1969 and 15.04.1971. It is her further case that the said Marayal gifted the aforesaid properties to her son Subramaniam @ Subbana Gounder @ Subbu under two registered settlement deeds dated 20.08.1973 and 01.06.1977 respectively and hence the items

2 and 3 are separate properties. The third defendant also had not denied the aforesaid facts in his written statement.

16.It is also not disputed that on 15.07.2004, the first defendant for herself and also on behalf of her minor daughter (plaintiff) executed Ex.A10 release deed along with the second defendant in favour of the third defendant in respect of the suit properties.

17.The only question which arises for consideration is whether the minor plaintiff's mother (first defendant) is entitled to execute Ex.A10-release deed representing as she is the guardian for the minor plaintiff. Section 6 of the Hindu Minority and Guardianship Act 1956, inter alia provides that the natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are (-) in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; Section 8 of the said Act inter alia provides that the natural guardian of Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant. Furthermore, the natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority. Any disposal of immovable property by a natural guardian, in contravention of sub-section 1 or sub-section 2, is voidable at the instance of the minor or by any person claiming on behalf of the minor. Section 12 of the said Act provides that where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest; provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

18.In the decision in Sri Narayan Bal and Others Vs. Sridhar Sutar and Others, (cited supra), the Hon'ble Supreme Court after dealing with the provisions of Sections 6,8,12 of the Hindu Minority and Guardianship Act 1956, held that Section 8 in view of the express terms of Sections 6 and 12 of the Act, would not be applicable where a joint Hindu family property is sold/disposed of by the Kartha or by any adult member of the

family involving an undivided interest of the minor in the said joint Hindu family property. The relevant paragraph is extracted as under:

"5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need to be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the joint Hindu family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the Court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the Court under Section 8 for disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus Section 8 in view of the express terms of Sections 6 and 12, would not be applicable where a joint Hindu Family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.

19. In view of the aforesaid decision of the Hon'ble Supreme Court that under Section 8 of the Act, a natural

guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the Court. But, since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the Court under Section 8 for disposing of the undivided interest of the minor in the joint family property is not required. Further, it is clear that as per Section 12 of the Act, the adult member of the family in the management of the joint Hindu family property may be a male or a female, not necessarily the Kartha.

20. In this case, admittedly, item 1 of the suit properties is the joint Hindu family property. In view of the aforesaid decision of the Hon'ble Supreme Court, for disposing of undivided interest of the minor plaintiff in the said property, Section 8 of the Act will not apply. Therefore, in view of Section 6 and 12 of the Act, the first defendant being an adult member of the family and after the death of Subramaniam @ Subbana Gounder @ Subbu, naturally the entire properties would have been in the management of her and as such, she is entitled to dispose of the undivided interest of the minor in the said joint Hindu family property.

21. In so far as items 2 and 3 of the suit properties are concerned, admittedly, the said properties are separate properties of the plaintiff's father Subramaniam @ Subbana Gounder @ Subbu. After his death, as per Section 8 of the Act, the plaintiff being one of the class 1 heirs, she is entitled to inherit her 1/4th share in the said properties. Therefore, the said share cannot be termed as undivided interest in the joint Hindu family property. Therefore, the first defendant ought to have obtained permission from the Court as contemplated under Section 8 of the Hindu Minority and Guardianship Act 1956. But, she did not get any such permission and hence, Ex.A10 will not bind upon the minor plaintiff in respect of items 2 and 3 of the suit properties.

22. In Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Nagpur Vs. Seth Govindram Sugar Mills, (cited supra), the Hon'ble Supreme Court has held that under Hindu law widow cannot become a Kartha of the family.

23. In L.Sundaram and another Vs. Lakshmanan (Died) and others, (cited supra), 5 brothers formed a coparcenary. 3 coparceners executed a release deed in favour of one coparcener. This Court has held that it must be deemed that the release is in favour of the remaining members of the coparceners. In this case, the facts are totally different. Hence, the aforesaid decision will not help the plaintiff.

24. In *Brammagiri Vs. Minor Sivasubramaniam and another*, (cited supra), this Court has held that the plaintiff is entitled to 1/6th share in the ancestral property. But, no permission obtained as per Section 8 of the Hindu Minority and Guardianship Act 1956, from the Court while dealing with the said property and hence, the release deed executed by the second defendant will not bind upon the minor plaintiff. In view of the decision of the Hon'ble Supreme Court in *Sri Narayan Bal and Others Vs. Sridhar Sutar and Others*, (cited supra) to dispose of an undivided interest of the minor in the joint Hindu family property by an adult member, Section 8 of the Act will not apply and therefore, the aforesaid decision will not have any binding effect.

25. In *Koothayyan Vs. Minor Ayyappan*, rep by next friend/father *Umapathi*, (cited supra), the mother without obtaining permission from the Court had sold the minor's property. Further, there was no evidence as to whether the property was sold for the benefit of the minor. Taking into consideration of the said facts, this Court has held that the said sale will not bind upon the minor plaintiff. But, in this case, in *Ex.A10* it is clearly stated that a sum of Rs.30,000/- has been paid to meet out the educational expenses and to maintain the minor plaintiff. The evidence of *D.W.2* would show that the first defendant alone admitted the plaintiff in the school and she only paying the fees and it shows that *Ex.A10* was executed for the benefit of minor plaintiff. Therefore, the aforesaid decision will not apply to the facts of this case.

26. In *Ammaniammal Vs. M.Palanisamy and 14 others*, (cited supra), this Court has held that the alienation by mother of minor's interest in undivided joint family property is void. It was further held that after the death of father, the eldest male member deemed to be a *Kartha* of the Hindu joint family property. The said decision also will not have any binding force, in view of the decision of the Hon'ble Supreme Court in *Sri Narayan Bal and Others Vs. Sridhar Sutar and Others*, (cited supra).

27. In *Saroj Vs. Sunder Singh & Ors.* (cited supra), after the death of the father, the property has been shared amongst each member of the family and recorded in the mutation register having 1/4th share each. Under the said circumstances, the Hon'ble Supreme Court has held that since the share of the daughters became definite, the question of family property retaining the character of joint Hindu family property does not exist and hence, the provision of Section 8 of the Hindu Minority and Guardianship Act 1956, shall attract as the mother sold the property of the minor daughters without previous

permission of the Court and the said sale deeds shall become voidable at the instance of the minors. In this case, in so far as the item 1 is concerned, no division taken place among the members of the joint family and hence, the aforesaid decision will not apply to the facts of this case.

28.As already pointed out that item 1 of the suit properties admittedly ancestral property and as such, in view of the decision of the Hon'ble Supreme Court Sri Narayan Bal and Others Vs. Sridhar Sutar and Others, (cited supra), to dispose of the undivided interest of the minor plaintiff in the said joint Hindu family property, the permission of the Court is not necessary. In view of Sections 6 and 12 of the Act, the first defendant being a senior adult member, she is entitled to execute Ex.A10 release deed. Further, in the said release deed itself, it is clearly stated that a sum of Rs.30,000/- has been paid to the first defendant towards education expenses and to maintain the minor plaintiff. Further, the evidence of D.W.2 would show that the first defendant alone admitted the plaintiff in school and she alone paying the school fees and therefore, it is clear that the said document was executed for the benefit of the plaintiff. Under the said circumstances, Ex.A10 release deed would bind upon the plaintiff in respect of item 1 of the suit properties. In so far as items 2 and 3 are concerned, admittedly, they are separate properties of plaintiff's father and the plaintiff's share devolved under Section 8 of the Hindu Succession Act and as such the undivided interest in the said property is her separate property and for alienating the same, the first defendant should have obtained permission from the Court, but she has not obtained any permission and hence, the said release deed will not bind upon the plaintiff in respect of the said items. Accordingly, the substantial questions of law are answered.

29.In the result, the Second Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. The judgment and decree passed by the Courts below are modified as follows:

1.that the Ex.A10 release deed dated 15.07.2004 will not bind upon the plaintiff in respect of items 2 and 3 of the suit properties and consequently, a preliminary decree is passed to divide the items 2 and 3 into four equal shares and allot one such share to the plaintiff;

2.that Ex.A10 release deed dated 15.07.2004 will bind upon the plaintiff in respect of item 1 of the suit properties and consequently, the suit is dismissed in respect of item 1 of the suit properties; and

3.that considering facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

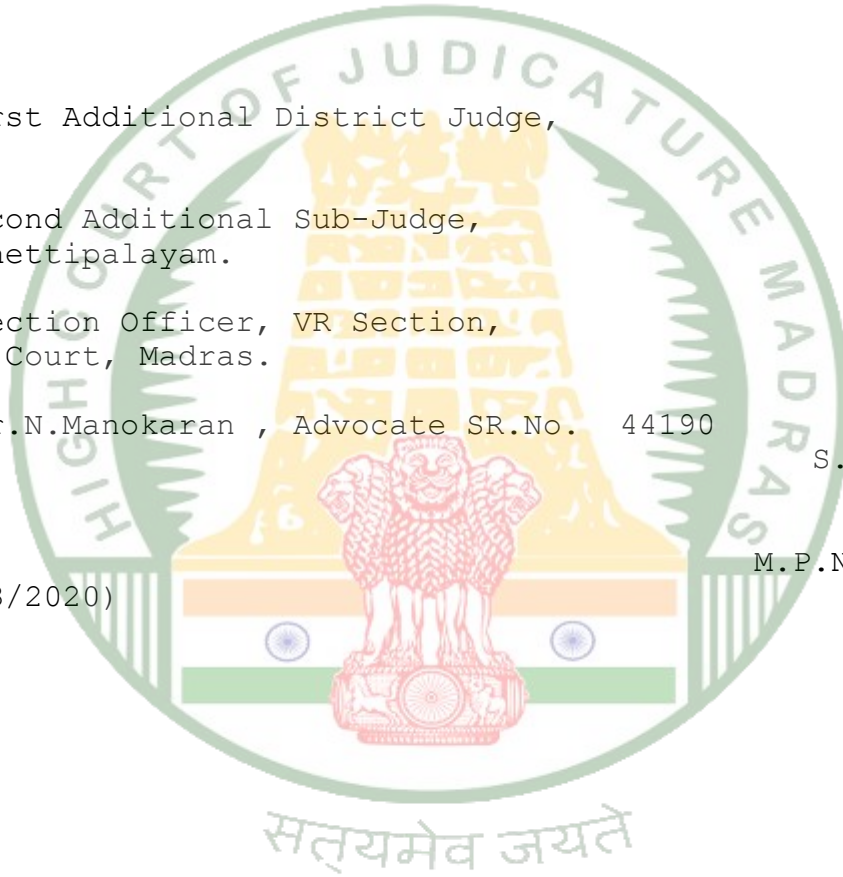
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To

1. The First Additional District Judge,
Erode,
2. The Second Additional Sub-Judge,
Gobichettipalayam.
3. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.N.Manokaran , Advocate SR.No. 44190

S.A.No.131 of
2013
and
M.P.No.1 of 2013

A.SK(24/03/2020)



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