

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.08.2019	Delivered on 21.08.2019
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

T.O.S. No.59 of 2016

S.Vineeth

... Plaintiff

Vs.

S.Saravanan

... Defendant

Prayer : Plaint filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration.

For Plaintiff : Mr.Ashok Kumar
for M/s.G.Vinoth Rajan

For Defendant : Mr.T.Velumani
for M/s.Swaraj Associates

J U D G M E N T

The Original Petition in OP No.153 of 2016 seeking Letters of Administration along with a copy of the Will annexed for the last Will and testament of late S.Geetha dated 14.08.2015, has been converted into a Testamentary Original Suit, upon caveat filed by the respondent, who is the husband of the testator/father of the petitioner.

2. The case of the petitioner in short is as follows:

The testator S.Geetha was possessed two residential apartments, which were settled down to her by her mother at the time of her death on 18.08.2015. She died at Apollo Hospital, Chennai, within the jurisdiction of this Court. According to the petitioner, she had executed a Will on 14.08.2015, while undergoing treatment at the Hospital, bequeathing the said two residential apartments in favour of the legatee/petitioner, who happens to be her only son. Though the said S.Geetha was literate knowing to sign she affixed her thumb impression, since she was unable to subscribe her signature to the Will. The Will was duly executed in the

presence of two attesting witnesses, namely, T.R.Srinivasan and B.Siva Kumar. The second attesting witness B.Sivakumar, happens to be a sister's husband of the testator. A certificate issued by the Doctor, who treated her was also produced along with Original Petition to show that she was unfit to travel and put her signature.

3.The claim of the plaintiff/petitioner is resisted by the defendant/respondent contending that his relationship with his in-laws was not cordial and they were always ill-advising his wife. It is further contended that the deceased was not in a good state of mind during her stay in the hospital and she was not capable of executing a Will. It is also claimed that the stamp papers used for the Will were purchased from the stamp vendor without name and the stamp papers purchased for some other purpose were used for creating the Will. The testatrix was not in a conscious state of mind, even to affix her signature, which would show that her mental abilities were not in good order so that it could be presumed that she knew the contents of the Will before its execution. It is also claimed that the person who drafted the Will and the attesting witnesses

are the close relatives of the deceased and they were indirect beneficiaries.

4. It is also claimed that the very existence of the respondent/husband is not disclosed in the Will. It is the further case of the respondent that though the Will is said to bear left thumb impression of the testator, it is actually the right thumb impression, which has been affixed in the Will. Therefore, according to the respondent, the will has been brought about under very suspicious circumstances and in the absence of any reason assigned by the testator to disinherit him the Will cannot be said to have been executed by the testator with the knowledge of the contents of the documents.

5. On the above rival contentions, the following issues were framed in the Testamentary Original Suit:

1. *Whether the will dated 14.08.2015 executed by S.Geetha, mother of the plaintiff and wife of the defendant, was executed out of her consent and in healthy mental capacity?*

2. *Whether the Will suffered any infirmity, since thumb impression was put and she had not signed the Will?*

3. *Whether non registration of Will affected the genuineness of the Will?*

4. *Whether the Will had been executed and attested in proper form?*

5. *Whether disinheritance of the defendant, namely, husband of the testatrix shows that the Will had been prepared and undue influence had been exerted?*

6. *Whether the Will is proved in accordance with law?*

7. *What reliefs are parties entitled to?*

6. At trial, the plaintiff was examined as P.W.1 and Exhibits P1 to P6 were marked. One of the attesting witnesses Mr.B.Sivakumar was examined as P.W.2. The defendant was examined as D.W.1 and Exhibits

P7 to P9 were marked during his cross-examination. The defendant has produced Exhibits D1 to D6.

7. I have heard Mr.Ashok Kumar, learned counsel appearing for Mr.G.Vinothrajan, for the plaintiff and Mr.T.Velumani, learned counsel appearing for M/s.Swaraj Associates for the defendant.

On the Issues:

8. All the issues are taken up together since all of them relate to the proof of proper execution and attestation of the Will. The Original Will has been produced as Ex.P1, it is type written and it contains 7 pages. The thumb impression of the testator is found at the end of each page. The Will has been attested by two witnesses. The first witness namely, Mr.T.R.Srinivasan has made an endorsement at the last page of the Will stating that the testator has affixed her thumb impression in the presence of the said attesting witnesses T.R.Srinivasan and Mrs.Lakshmi, who is the sister of the testator and the wife of the second attesting witness Mr.B.Sivakumar.

9. The Medical Certificate issued by consultant of the Apollo Specialty Hospital dated 17.08.2015 has been filed and marked as Ex.P2. A perusal of the same shows that the testator was not in a position to travel or put her signature as on 17.08.2015. The Death Certificate and the Legal Heirship Certificate of the testator have been produced as Exs.P3 and P4. The second attesting witness B.Sivakumar has been examined as P.W.2. In the evidence of P.W.1, the plaintiff has spoken about the fact that the testator was taking treatment in Apollo Hospital during the relevant period. He also deposed that his mother was taking treatment from the income of the property and his father was not taking care of their needs. He has further deposed that his mother was working as a teacher. It is his further evidence that his maternal uncle M.Rajan informed him that his mother has left behind a Will dated 14.08.2015 bequeathing her properties absolutely in his favour. Though the property situate outside the jurisdiction of this Court, since the Will has been executed at the Apollo Hospital within the jurisdiction of this Court, the plaintiff has come forward with the Original Petition for grant of Letters of Administration which was converted into the

Testamentary Original Suit.

10. In his Cross-examination he had stated that there were frequent quarrel between his mother and his father. In fact a suggestion has been made to him which reads as follows:

“All these three places your father and mother were living with you, where they living without any quarrel?”

The answer to the above suggestion is as follows:

“We were living together but there were frequent quarrel with my father and mother.”

He further stated that he did not know the topic for the quarrel. He has also stated that once his mother was diagnosed with cancer, he along with his mother moved to his grandmother's house at Ashok Nagar, Chennai. For a suggestion regarding payment of college fee, P.W.1 has stated that his father paid the college fees for the first year and thereafter, he was managing the same with the rental income from the properties settled on his mother by her mother.

11. To a suggestion that his mother was unable to understand things happening around her on 12.08.2015, the witness has answered in negative and said that she can understand and she can speak. Naturally P.W.1 had deposed that he was not aware of the details of the execution of the Will personally. In order to prove the execution of the Will, the plaintiff has examined P.W.2 one of the attesting witnesses. As already pointed out P.W.2 is the sister's husband of the testatrix. He has filed a proof affidavit stating that he was present at Apollo Hospital on 14.08.2015 when the Will came to be executed. He has stated that when he went to the hospital, the testator was dictating the contents of the Will to the document writer, who was present, the document writer, in turn typed the contents in his laptop, thereafter, he went out and took a print out of the Will. After the document writer prepared the Will, as desired by the testator, the same has been given to the testator and she went through the contents and affixed her thumb impression in the Will. He also stated that himself and one T.R.Srinivasan had signed as attesting witnesses in the presence of the testator and the testator affixed her thumb impression in the Will in their

presence.

12. In cross-examination P.W.2 has deposed that since the testator was not physically fit and she had intravenous injections she could not sign and therefore, she affixed her thumb impression. A suggestion is put to him to the effect that he was not available at the time the Will was executed by the testator which he has denied. His evidence is as follows

“Who were all present at the time of executing the Will?”

Answer: Myself, Mr.Srinivasan, my wife Lakshmi and document writer”

13. The combined effect of the evidence of P.W.2 is that he had seen the testator dictating the contents of the Will to the document writer, he had it transcribed in his laptop and later took the print out of the same. He had also seen the testator affixing her thumb impression to the Will and he and the other attesting witness T.R.Srinivasan attested the same. To a suggestion made in cross-examination relying upon the endorsement made by the first attesting witness T.R.Srinivasan to the effect that the testator

affixed her thumb impression in the presence of himself and Mrs.Lakshmi (wife of P.W.2), P.W.2 has denied the suggestion and stated that he was also present when the testator affixed her thumb impression in the Will.

14. The defendant has deposed as D.W.1. He has in his evidence admitted that the relationship between him and his in-laws was strained. He had stated that the relationship between himself and his in-laws was strained because of his self-respect. He also stated that he had no difference of opinion between his co-brother B.Sivakumar (P.W.2). He admitted the contents of the written statement. He had also admitted in cross-examination that in the written statement he had stated that the Will dated 14.08.2015 contains thumb impression of his wife and not the signature. To a specific question as to who paid the college fees of his son for the 2nd , 3rd and 4th year, he has said that he had not paid. It is also seen from the evidence that the defendant had filed a suit in OS No.266 of 2016 on the file of the District Munsif Court, Sriperumputhur, for a permanent injunction restraining his mother-in-law from evicting him without following due process of law. The certified copy of his evidence in

OS No.266 of 2016 was produced to contradict his statements made in the present proceedings.

15. Though the learned counsel for the defendant had objected to the marking of the said document on the ground that under Section 33 of the Evidence Act, evidence given by a living person in another proceeding can be used to contradict him in a subsequent proceeding. The said evidence is filed into Court in these proceedings only for the purpose of contradicting his present version. Be that as it may, I do not think that the said evidences or the contradictions therein are very material and have any effect on the issues that are raised in the present proceedings. The question that has to be considered in the present proceeding is as to the validity and the genuineness of the Will dated 14.08.2015 said to have been executed by the testator S.Geetha bequeathing her property to her only son.

16. Mr.Ashok Kumar, learned counsel appearing for the plaintiff would contend that the fact that the testator was an inpatient in the Hospital

on the date the Will came to be executed is admitted. The Doctor's Certificate which has been marked as Ex.P2 would show that though she was unable to travel and put her signature. She was in a good frame of mind and sound disposing state of mind when the Will came to be executed. Referring to the proof affidavit of P.W.2, wherein, it is specifically stated that the testator gave instructions to the document writer and the Will was typed to her dictation by the document writer on his laptop in the hospital would, in the absence of any cross-examination establish that the Will was executed when the testator was in sound disposing state of mind and she was aware of the contents of the Will.

17. Mr.Ashok kumar, would also submit that the suspicious circumstances that are sought to be projected by the defendant are all non-existent. Drawing my attention to the evidence of P.W.1, wherein he had stated that there were frequent quarrels between his father and mother and the evidence of D.W.1 itself, wherein, he has stated that the relationship between him and in-laws was strained, Mr.Ashok kumar, would submit that the said evidence would justify the action of the testator who bequeathed

the property to her son, to the exclusion of her husband. Mr.Ashok Kumar, would further submit that the evidence available on record namely, the evidence of P.Ws.1 and 2 and the documentary evidence would show that the execution of the Will is not shrouded in mystery and that there is no suspicion regarding the same.

18. Mr.Ashok Kumar would also rely upon the judgments of the Hon'ble Supreme Court in ***Gopal Swaroop v. Krishna Murari Mangal and others, reported in 2010 (14) SCC 266, Madhukar D.Shende v. Tarabai Aba Shedage, reported in 2002 (2) SCC 85, Gurdev Kaur and others v. Kaki and others, reported in 2007 (1) SCC 546, Durga v. Anil Kumar, reported in 2005 (11) SCC 189***, in support of his submissions.

19. Contending contra Mr.T.Velumani, learned counsel appearing for the defendant would vehemently argue that the fact that the testator was hospitalised and she was terminally ill, coupled with the fact that she died within four days of the execution of the Will, would by itself show that she was not in sound disposing state of mind. Mr.T.Velumani, would also

contend that the testator had affixed her right thumb impression in the Will and not her left thumb impression and the stamp papers on which the Will has been typed were purchased from the stamp vendor at Choolaimedu. Relying upon Ex.D6 letter written by the District Registrar, along with the details of the sale of stamps maintained by the stamp vendor, which show that the stamp papers Sl. Nos.17730 to 17779, were shown to have been sold to a person whose name is not recorded in the Register. Mr.T.Velumani, would contend that the stamp papers which had been purchased in bulk by some person has been utilised in preparation of the Will. It is also the further contention of Mr.T.Velumani, that the fact that the existence of the husband has not been disclosed in the Will, coupled with the above circumstances, would show that the will is not genuine or at least it is shrouded in mystery.

20. According to him, the prepounder, namely, the plaintiff has not dispelled the suspicious circumstances surrounding the execution of the Will. He would further submit that though the relationship between the defendant and his wife was strained, there was no reason for the testatrix

to disinherit the defendant totally and bequeath the property to the son. Placing heavy reliance on the fact that the testator has put her right thumb impression in the Will and the fact that the beneath the thumb impression is written as "LTI of S.Geetha", Mr.T.Velumani, would contend that the entire Will has been prepared by his in-laws with the active aid of his co-brother and persons known to him. He would also rely upon the judgments of the Division Bench of this Court in **N.Govindarajan v. N.Leelavathy & Others**, reported in **CDJ 2011 MHC 3615**, **K.P.Uthirasamy & Another v. V.Janaki & Others**, reported in **CDJ 2011 MHC 1382**.

21. I have considered the rival submissions.

22. The relationship between the parties is not in dispute. The fact that the properties that had been dealt with under the Will were settled on the testatrix by her mother is also not in dispute. Admittedly the relationship between the defendant and his in-laws was not very cordial. The learned counsel for the defendant during cross-examination of D.W.1 has even gone to the extent of suggesting that the spouses, namely, the

testatrix and the defendant, though, were living together had constant fights. This would show that all was not well with the testatrix and the defendant even when she was alive. It is also seen from the records that the defendant had filed a suit against his mother-in-law seeking an injunction restraining her from evicting him from a property which belonged to her.

23. In the written statement filed in the Testamentary Original Suit the defendant has not specifically denied the execution of the Will. He had in fact admitted that the Will contains the thumb impression of the testator. All that he would contend is that the testator was not in a sound disposing state of mind and she did not understand the contents of the Will, while she affix her thumb impression in the Will. The contentions of the learned counsel are more on the suspicious circumstances than on the execution of the Will as such.

24. Mr.T.Velumani, learned counsel would also point out that the endorsement made by the first attesting witness in the Will shows that

himself, the testator and her sister Lakshmi were present at the time of execution of the Will and would invite the Court to infer that the second attesting witness B. Sivakumar was not present at the time of execution of the Will. He would also draw my attention to the death summary marked as Ex.D2. Relying upon the contents of the said document which shows that the testatrix was admitted in Apollo Specialty Hospital on 12.08.2015, with complaints of irrelevant talk, slurring speech, pain in the abdomen, Mr.T.Velumani, would contend that the testator was not in a sound disposing state of mind on 14.08.2015, when she is said to have executed the Will. Admittedly, the defendant was not present at the time the Will came to be executed. P.W.2, who had nothing against the defendant had cogently and consistently deposed regarding the events that took place at the time of execution of the Will. In fact in the proof affidavit, he has stated that the testatrix gave instructions to the document writer to prepare the Will and the document writer had transcribed it in his laptop in the Hospital.

25. I find that there is no cross-examination of the said witness on the above statements made by him. The witness has also clearly and

categorically denied the suggestion that he was not in the hospital when the Will came to be executed. The fact that the testatrix has affixed her right thumb impression in the Will is projected as a circumstance to show that she was not in a sound disposing state of mind at the time of execution. The requirements of Section 63 of the Indian Succession Act, relating to execution of a Will are as follows:

63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or **shall affix his mark to the will**, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a

will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

26. Section 63 does not require that the testator should put her left thumb impression alone in the Will, even mark of the testator is sufficient. Of course when a literate person who knows to sign affixes his/her thumb impression to the Will, the Court will normally expect some more evidence

to establish that the testator was not in a position to put his/her signature in the Will, such evidence is available in this case in the form Ex.P2, which is a Medical Certificate issued by the Doctor who treated the testator. Therefore, I find that the essential requirement of Section 63, namely, the testator should sign or affix his/her mark in the Will has been satisfied be it the Left thumb Impression or the Right thumb Impression. The Will is attested by two attesting witnesses one of whom has deposed before Court. The evidence of P.W.2 is, in my considered opinion, satisfied the two requirements, namely, attestation of the will by two witnesses and the testatrix having affixed her mark in the presence of the two witnesses and the witnesses having signed in the presence of the testatrix. A perusal of the Will would show that the mark of the testatrix, the right thumb impression in this case, had been affixed at the end of each page and it satisfies the requirement that it is so placed that it appears that it was intended to give effect to the writing as a Will.

27. In **Gopal Swaroop v. Krishna Murari Mangal and others**, the Hon'ble Supreme Court had held that the Court should not expect proof

with mathematical certainty in the matter of proof of documents. The test of satisfaction of a prudent mind in such matters is very important. Applying the said test suggested by the Hon'ble Supreme Court to the case on hand, I have no manner of doubt regarding the execution of the Will by the testatrix and her mental status at the time of the execution of the Will.

28. In ***Madhukar D.Shende v. Tarabai Aba Shedge***, the Hon'ble Supreme Court has pointed out that the fact that the testator died immediately after execution of the Will cannot be a sole ground to disbelieve the Will. In the case on hand, it is the admitted case of the parties that the testatrix was diagnosed with terminal cancer and she was admitted in the hospital, but there is no evidence to show that she was mentally disabled. The physical disability alone could not be a ground to disbelieve the execution of the Will, more so, when evidence is available to prove the execution.

29. In ***Gurdev Kaur and others v. Kaki and others***, the Hon'ble Supreme Court had held that the Court particularly the Probate Court

should not sit in an Appeal over the correctness of the decision of the testator on the bequests made under the Will. The role of the Court is limited to examining whether the same was executed by the testator and whether it was a product of free and sound disposing state of mind. The entire evidence available in the case on hand would point out that the relationship between the spouses, namely, the testator and her husband, the defendant herein was not very cordial. In fact the learned counsel for the defendant had even in cross-examination of P.W.1 put a suggestion in such a way that P.W.1 had responded with an answer that there were frequent quarrels between his parents. D.W.1 in his evidence had accepted that his relationship with the in-laws was not alright. After all the property dealt with under the Will were settled on the testatrix by her mother therefore there were nothing wrong or nothing improbable in the testatrix bequeathing the properties to her son instead of her husband. I therefore, find no reason to disbelieve the Will on the ground that the defendant who is the husband of the testatrix has been disinherited.

30. In answer to the contention of Mr.T.Velumani, learned counsel

that there are several contradictions in the testimony of P.W.2 regarding his presence at the time of the execution of the Will, Mr.Ashok Kumar, learned counsel would draw my attention to the judgment of the Hon'ble Supreme Court in **Durga v. Anil Kumar**, reported in **2005 (11) SCC 189**, wherein, the Hon'ble Supreme Court has said that minor contradictions in the evidence of the witnesses would not have the effect of rendering the entire_evidence unbelievable.

31. Of course Mr.T.Velumani, would draw my attention to the judgment of the Division Bench of this Court in **N.Govindarajan v. N.Leelavathy & Others**, to contend that the burden of proving the Will is of the prepounder and the prepounder is required to prove the testator has signed the Will and that he had put his signature out of his own free volition, having a sound disposing state of mind. The preposition of law as broadly stated by the Division Bench cannot be disputed. The burden of proving a Will is always on the prepounder. Once the Will is proved it is for the person, who opposes a grant to show that the said evidence is either unreliable or insufficient for the Court to conclude that the Will has been

executed in a manner required under law. Such evidence in my considered opinion is wholly absent in the case on hand.

32. The main ground projected as a suspicious circumstance by Mr.T.Velumani is disinheritance or the non reference to the very existence of the husband. The evidence on record would show that there is nothing unnatural about the disinheritance or non mentioning of the existence of the husband in the Will. Certain admissions made by D.W.1 in his evidence would by themselves show that the relationship between him and the testatrix was not very cordial. It is nothing surprising in a wife bequeathing her property to her son in preference to her quarreling husband.

33. I therefore, conclude that the plaintiff has proved the execution and attestation of the Will in a manner known to law and the so called suspicious circumstances raised by the defendant have also been dispelled by the evidence that is available on record. The reasons for the testatrix affixing the thumb impression instead of putting her signature have also

been proved to the satisfaction of the Court. I find that the non-registration of the Will, will not have any effect on its genuineness as the Will is not a compulsorily registerable document and evidence on record shows that the Will was executed at the Hospital in Chennai and the properties are situate outside the jurisdiction of this Court.

34. In the light of the above findings all the issues raised in the Testamentary Original Suit are answered in favour of the plaintiff and the Testamentary Original Suit is decreed granting Letters of Administration with a copy of the Will annexed to the plaintiff. The plaintiff shall execute a bond for Rs.10,000/-. I direct the parties to bear their own costs.

21.08.2019

jv

Index: No
Internet: Yes
Speaking order

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List of the Witnesses examined on the side of the Plaintiff :

- | | |
|----------|-----------|
| 1. P.W.1 | S.Veenth |
| 2. P.W.2 | Sivakumar |

List of Exhibits marked on the side of the Plaintiff :

Sl.No.	Exhibits	Description of documents
1	Ex.P1	The original Will dated 14.08.2015 executed by the Testament of S.Geetha
2	Ex.P2	The Original certificate issued by Apollo Hospital Dr.S.G.Ramanan dated 17.08.2015
3	Ex.P3	The original Death Certificate of S.Geetha issued by the Corporation of Chennai dated 06.11.2015
4	Ex.P4	The Original legal heir certificate of S.Geetha dated 04.11.2015
5	Ex.P5	The original property tax receipts 2 nos. dated 21.03.2015
6	Ex.P6	The original petitioners' birth certificate dated 30.09.2015
7	Ex.P7	Q63: This is the certified copy of your evidence in O.S.No.266 of 2016 (This question and marking of the document is objected by counsel for defendant) A: Yes. The said document is Marked as Ex.P7 only.
8	Ex.P8	Q76: You have received a sum of Rs.1,26,442/- from LIC due to the death of your wife as per the letter

Sl.No.	Exhibits	Description of documents
		dated 19.01.2016 from LIC to you (DW1) A: Yes. The above said letter is marked as Ex.P8
9	Ex.P9	Q81: Is it correct to state that you have withdrawn a sum of Rs.2,27,374/- from the account on 04.03.2016? A: Yes. I have received the said amount as the nominee. The xerox copy of the savings bank passbook shown to me is marked as Ex.P9

List of the Witnesses examined on the side of the Defendants:

1 D.W.1 S.Saravanan

List of Exhibits marked on the side of the Defendant:

Sl.No.	Exhibits	Description of documents
1	Ex.D1	Q: Who paid this fees? A: My father paid the fees. Before that my mother has paid Rs.2 lakhs donation. This is the payment for 1 st year paid by my father and the same is marked as Ex.D1 series. (4 challans)
2	Ex.D2	Q: Is the death summary issued by Apollo hospital to your mother? A: Yes and the same is marked as Ex.D2
3	Ex.D3	Q: Is this the discharge summary of your mother issued by Apollo Hospital on 30.06.2015?

Sl.No.	Exhibits	Description of documents
		A: Yes and the same is marked as Ex.D3
4	Ex.D4	Q: Is this the bill issued by Dr.Rai Memorial Medical Center signed by your father? A: Yes and the same is marked as Ex.D4
5	Ex.D5	Q: You have given a complaint against your father on 26.06.2017 to the Commissioner of Police, Chennai? A: Yes and the copy of complaint is marked as Ex.D5
6	Ex.D6	21Q: The letter issued by the Registration Department to show that the stamp paper in Ex.A1 was sold by S.V.Sunderrajan Stamp vendor? A: Yes as per document. The said document marked as Ex.D6

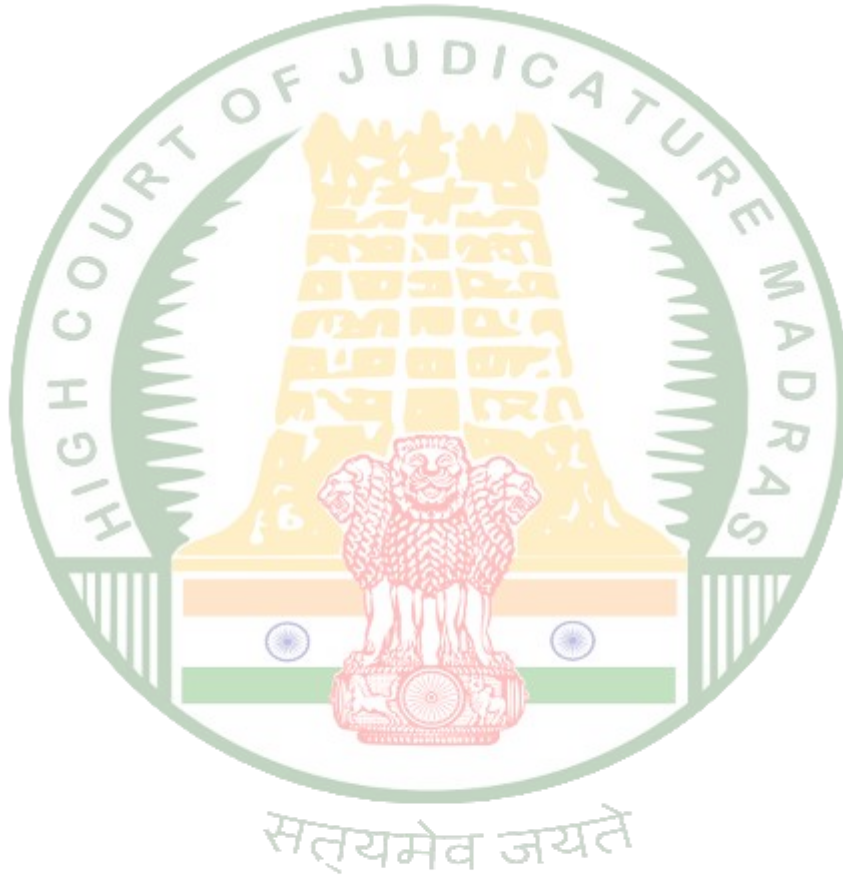
jv

21.08.2019

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

29/31



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R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment

T.O.S. No.59 of 2016

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21.08.2019