

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD).No.231 of 2012

V.K.Meyyazhagan

...Petitioner

-VS-

1.Mrs.Amalorpava Rani,

2.R.Mahendran,

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, against the judgment and decree dated 30.03.2010 on the file of the learned Additional District Munsif, Poonamallee in O.S.No.402 of 1998.

For Petitioner

: Mr.T.S.Baskaran

For R1

: Mr.M.Devendran

For R2

: No appearance

ORDER

This Civil Revision Petition is directed against the judgment and decree dated 30.03.2010 passed in O.S.No.402 of 1998 on the file of the learned Additional District Munsif, Poonamallee, thereby dismissing the suit for

delivery of possession of the suit schedule property against the petitioner herein.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit under Section 6 of the Specific Relief Act for delivery of possession of the suit schedule property and also for permanent injunction.

3. The case of the petitioner is that he is the absolute owner of the property comprised in Survey No.111/2 ad-measuring 18 cents situated at Ramapuram, Chennai. The said property along with other properties were settled in his favour by his father Kistappa Naicker by a Settlement Deed dated 04.01.1961 registered vide Document No.29 of 1961 in the office of the Sub Registrar, Saidapet. While being so, the 2nd respondent herein claiming to be a Power of Attorney for three persons, who are the daughters of one Venugopal Reddiar, began to deal with the plaintiff's property. Out of 18 cents of the plaintiff's property, the 2nd respondent created a sale deed in favour of the 1st respondent in respect of the North Western portion of the plaintiff's property ad-measuring 2123 ½ sq.ft in Survey No.111/2, situated at Ramapuram, Chennai.

4. In pursuant to the said sale deed, the 1st respondent on

30.03.1998 trespassed into the suit schedule property with ulterior motives. Since the sale deed is neither valid nor binding on the petitioner, the 1st respondent trespassed into the property and put up a hut. Though the petitioner stopped the workers of the 1st respondent, but failed. Therefore, immediately the petitioner lodged a complaint before the Inspector of Police, D4-Valasaravakkam Police Station, Arcot Road, Chennai. Even after the receipt of the same, the police did not take any action as against the respondents herein. Therefore, the petitioner caused a legal notice on 11.04.1998 and filed a suit under Section 6 of the Specific Relief Act for recovery of possession from the 1st respondent in respect of the suit property.

5. Resisting the same, the respondents 1 and 2 filed written statement stating that the petitioner has never been in possession of the suit schedule property, much less within six months prior to the suit. Therefore, the suit itself is not maintainable.

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6. On 05.11.1942, one Venugopal Reddiar purchased the suit property along with other properties from his vendor Padrachala Mudaliar under a registered sale deed vide Document No.355/1942. Thereafter, he was in possession and enjoyment of the suit property and in the year 1946, he executed

a registered Will in favour of his wife and daughters and his minor son. The property comprised in Survey No.111/2 is the suit schedule property, which was allotted to the minor son as per the Will executed by the said Venugopal Reddiar, who died as a bachelor and as such, the other legal heirs of the said Venugopal Reddiar executed a Kurchit dated 29.09.1970 and accordingly allotted to one of the daughters, namely, Saroja and she executed a registered Power of Attorney dated 28.02.1997 in favour of the 2nd respondent to sell the suit property. Accordingly, the 2nd respondent executed sale deed on 12.10.1997 registered vide document No.749 of 1997 in the office of the Sub Registrar, Saidapet. Right from the date of purchase, the 1st respondent is in exclusive peaceful possession and enjoyment of the suit property and her husband also put up a compound wall in the property and running a company under the name and style of “Ponnesan Kitchen Equipments”. Thereafter, all the revenue records were mutated in her name and obtained electricity service connection and paying all the revenue dues. Therefore, prayed for dismissal of the suit.

7. On the side of the petitioner, examined PW.1 and PW.2 and marked Ex.A1 to Ex.A15. On the side of the respondents, examined DW1 and DW.2 and marked Ex.B1 to Ex.B15.

8. After considering the evidence on record, the learned trial Judge

concluded that the plaintiff failed to prove that he was dispossessed from the suit property and also failed to prove his possession of the suit property six months prior to the date of filing the suit. However, the 1st respondent proved his title and possession in respect of the suit property and dismissed the suit. Aggrieved by the same, the present Civil Revision Petition is filed under Section 115 of the C.P.C.

9. The learned counsel for the petitioner would submit that the suit property and the property which was purchased by his grand father are one and the same since by the registered sale deed dated 04.01.1961, his grand father purchased 18 cents in which 2123 ½ Sq.ft was now occupied by the 1st respondent by dispossessing the petitioner from the suit property. The 1st respondent failed to prove the prior possession of the suit property, namely, their vendor before the sale deed dated 12.10.1997. The suit itself was for recovery of possession. While it being so, the Court below concluded that Ex.C.1 and Ex.C.2 revealed about the possession of the 1st defendant in the suit property from the date of purchase and as such, the petitioner is not entitled for recovery of possession and permanent injunction. Therefore, the Court below completely erred in holding that the petitioner neither proved the title of the property nor dispossessed, ignoring the scope of trial under Section 6 of the

Specific Relief Act. Since it is a summary suit, the trial Court ought not to have questioned the title and should have examined who was in prior possession in the suit schedule property. He further submitted that on 30.03.1998, the petitioner was dispossessed from the suit property by the 1st respondent and immediately, the petitioner lodged a complaint before the Inspector of Police, D4-Valasaravakkam Police station,, Arcot Road, Chennai, which was marked as Ex.A4. Since the police did not take any action, the petitioner caused a legal notice which was marked as Ex.A.3. The petitioner also marked Exhibits, the Kist receipts, Chitta, Patta in respect of the suit property and those documents were categorically proved that the petitioner is in possession and enjoyment of the suit property prior to 30.03.1998. The revenue documents, such as, Chitta, adangal and patta are sufficient to prove the factum of title and possession. He further submitted that the suit is **summary in** nature and limited to finding out the question of possession within a period six months prior to the institution of the suit excluding the question of title. Whereas, the trial Court had gone into the title of the property and dismissed the suit. Therefore, the remedy for the petitioner lies before this Court by filing a revision under Section 115 of C.P.C.

10. In support of his contention, the learned Counsel for the petitioner relied upon the Judgments in ***Sanjay Kumar Pandey & Ors Vs.***

Gulbahar Sheikh & Ors reported in *2004 (4) SCC 664, Petchimuthu Vs. Anitha Sruthi* reported in *2009 (5) CTC 894, A.Ramasamy Mooper Vs. A.Ramamoorthy* in *SA(MD) No.648 of 2005, Petchiammal (Died) & Ors V. Karupayee Ammal* in *SA(MD) No.781 of 2005* and *Rame Gowda Vs. M.Varadappa Naidu & Anr* reported in *2004 (1) SCC 769*.

11. Per contra, the learned counsel for the 1st respondent submitted that the suit is filed under Section 6 of the Specific Relief Act. Therefore, as against the decree passed in the suit filed under Section 6 of the Act, a revision under Section 115 of the C.P.C., is available. The petitioner is bound to prove two main ingredients, namely, his possession in the suit property which is prior to dispossession and the factum of dispossession.

12. According to the petitioner, on 30.03.1998, the 1st respondent trespassed into the suit property with casuar poles and somcadjan leaves for putting up a hut and the plaintiff stopped the workers of the 1st respondent, but failed. Immediately thereafter, he lodged a complaint before the Inspector of Police, D-4 Valasaravakkam Police station, Arcot Road, Chennai. Therefore, the petitioner did not even take a plea that he was in possession and enjoyment of the suit property and he was forcibly dispossessed from the suit schedule

property. He further submitted that even in the plaint pleadings, he categorically pleaded that the 1st respondent purchased the suit property from the 2nd respondent. While being so, the petitioner ought to have challenged the sale deed executed in favour of the 1st respondent herein.

13. Admittedly, it is a summary suit under Section 6 of the Specific Relief Act and as such, the petitioner need not prove his title. But it is mandatory to prove the act of dispossession prior to six months to the suit beyond reasonable doubt. Though the petitioner lodged the complaint on 30.03.1998, he did not produce any piece of evidence to show that he lodged the complaint on 30.03.1998. Thereafter, he caused a legal notice on 11.04.1998 and on perusal of the said notice, the petitioner did not even whisper about the lodgment of police complaint on 30.03.1998. Even assuming that the petitioner lodged a complaint on 30.03.1998, on a perusal of the complaint, it is seen that he did not even state that he was in possession in Survey No.111/2 of the suit schedule property and no allegation of forcible dispossession of the petitioner from the suit schedule property. Therefore, the petitioner failed to prove the ingredients as contemplated under Section 6 of the Specific Relief Act. In support of his contention, he relied upon the judgment in ***V.Manoharan Vs. Valli & others*** reported in **2019 (3) LW 603**.

14. Heard Mr.T.S.Baskaran, Learned Counsel for the Petitioner and Mr.M.Devendran, Learned Counsel for the 1st respondent.

15. The petitioner is the plaintiff and filed a suit as against the respondents herein under Section 6 of the Specific Relief Act, for delivery of possession and injunction in respect of suit schedule property. According to the petitioner, his father settled the property on 04.01.1961 by the registered deed vide document No.29/1961 comprised in Survey No.111/2 ad measuring 18 cents situated at Ramapuram, Chennai, which is marked as Ex.A1. Further, the case of the petitioner is that the said property was purchased by his grand father one Veerapathira Naicker by a registered sale deed which is marked as Ex.A7. Thereafter, the said property was mortgaged by the petitioner's father by mortgage deed dated 29.12.1965 which is marked as Ex.A8 in favour of one Sammandhamoorthy. Subsequently, it was redeemed by the petitioner. Whereas, according to the 1st respondent, a copy of sale deed dated 05.11.1942 in favour of the Venugopal Reddiar which is marked as Ex.B2 conveys six cents of land in Survey No.111/2. He executed the Will in favour of his wife and children which is marked as Ex.B3. One of his daughters executed General Power of Attorney in favour of the 2nd respondent on 28.12.1996. The Power of

Attorney executed a sale deed in favour of the 1st respondent herein, which is marked as Ex.B5 and conveyed title of land ad measuring 2123 ½ Sq.ft in Survey No.111/2.

16. In pursuant to the sale deed, the 1st respondent mortgaged the said property by a mortgage deed dated 14.11.1999, George Town Co-operative Bank, thereafter he also obtained patta, kist for the suit schedule property, which is marked as Ex.B9 and water tax receipts are marked as Ex.B10. E.B. white card obtained by the 1st respondent in the suit schedule property is marked as Ex.B11.

17. Now the question is whether the revenue records are sufficient to prove the factum of possession to maintain the suit under Section 6 of the Specific Relief Act.

18. In this regard, the learned counsel for the petitioner relied upon the judgments in S.A.(MD).No.648 of 2005 **A.Ramasamy Mooper Vs. A.Ramamoorthy:-**

“15. As regards the third substantial question of law, it is no doubt true that Revenue Records will not prove title. But, at the same time when the plaintiff is not

able to prove his title over the property and the defendants are able to prove that they are in possession of the properties by producing Revenue Records, the Court cannot accept the case of the plaintiff regarding declaration of title to that property. In this case except the sale deed Ex.A.15 the plaintiff has not filed any document to prove his possession subsequent to Ex.A.15 in respect of item Nos.9 and 10.”

Petchiammal (Died) & Ors Vs. Karupayee Ammal in
S.A.(MD).No.781 of 2005.

“14. Taking note of the facts that the plaintiff was in possession, the learned trial Judge had stated that execution of Ex.A.1 has been proved. He also took into consideration Ex.A.2 to Ex.A.5 which are the Kist receipts in the name of the plaintiff. Further Ex.A.11 is the Patta pass book in the name of the plaintiff. These documents were examined and it was held that the plaintiff had established her possession of the properties. With respect to title, both Wills have to be proved in manner known to law. In so far as the proof is concerned, the witness in Ex.A.1 had been examined as P.W.3. On the other hand, the witness in Ex.B.1 had not been examined. On the basis of the evidence, the suit had been decreed. The first Appellate Court, on the other hand stated that since Ex.B.1 is the subsequent Will,

Ex.A.1 is deemed to have been revoked. However, Ex.B.1 has not been proved in manner known to law. In a suit for injunction, the primary aspect to examine as possession. In this case, the plaintiff had proved, through revenue documents that she is possession. The plaintiff has established that she is in possession. The substantial question of law which had been raised at the time of on admission also concerns the issue of possession and the validity or genuineness of Ex.B.1.”

19. This Court held that the revenue records will not prove the title, at the same time, when the party is not able to prove his title over the property, he can able to prove his possession by producing revenue records. No doubt, it is true that the petitioner herein can very well prove his possession through the chitta, adangal and patta in respect of the suit schedule property. Whereas, in the suit filed under Section 6 of the Specific Relief Act as stated supra, the petitioner is bound to prove two main ingredients, namely, his possession in the suit property which is six months prior of the suit and the factum of dispossession. The petitioner failed to prove that he was forcibly dispossessed from the suit property, his complaint on 30.03.1998, did not whisper that he was forcibly dispossessed from the suit property. That apart, there is no iota of evidence to show that he has lodged complaint on 30.03.1998 before the

Inspector of Police, D-4 Valasaravakkam Police Station, Chennai. Thereafter, he also issued legal notice to the respondents 1 and 2 on 11.04.1998.

20. A perusal of the legal notice reveals that the petitioner did not even mention about the police complaint lodged against the 1st respondent herein. Therefore, the petitioner enclosed the complaint only for the cause of action to file the suit and he failed to prove that he was forcibly dispossessed from the suit schedule property. Therefore, the judgment cited above are not helpful to the case in hand.

21. The learned counsel for the petitioner also relied upon the judgments in **Sanjay Kumar Pandey & Ors Vs. Gulbahar Sheikh & Ors** reported in **2004 (4) SCC 664:-**

A. Specific Relief Act, 1963 – S. 6 – Nature and scope of proceedings under – Held, are summary in nature, limited to finding out question of possession within period of six months of institution of suit, ignoring question of title.

“The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover

possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

“5. A perusal of the order of the High Court shows that the High Court has for the purpose of reversing the decree of the trial court relied on the oral statements of Natai Sheikh, PW 3 and Ram Sevak Ram, PW 5. One sentence each from the two depositions has been extracted and set out by the High Court in its order for the purpose of forming an opinion that it was not the plaintiffs but the defendants who were in possession of the suit property before six months from the date of the institution of the suit. The High Court has not looked into all the material available on record and has also not indicated clearly the availability of any of the grounds within the parameters of Section 115 of the Code so as to exercise revisional jurisdiction calling for reversal of the decision of the trial court under Section 6 of the Act. The revision filed before the High Court cannot be said to

have been satisfactorily disposed of.”

Petchimuthu @ Mani Vs. Anitha Sruthi reported in **2009 (5) CTC**

894:-

“12. The proceeding contemplated under Section 6 of the Specific Relief Act (hereinafter referred to as “the Act”) is summary in nature. The Court was concerned only with the factum of dispossession otherwise than in due process of law. The question of title is immaterial in such proceedings. In case the Court was of the view that the materials produced by the plaintiff clearly shows that he was dispossessed within six months of the institution of the suit, the Court was obliged to permit him to recover possession. This provision was intended to enforce the rule of law as otherwise there would be attempt to recover possession without approaching the Court of law and through the means forbidden by law. The unsuccessful defendant in such a summary suit was not without remedy. It would enable him to establish his title by way of a comprehensive suit and to recover possession.

13. The remedy under Section 6 of the Act being one intended to take care of an emergent situation on account of forcible dispossession, the parties so dispossessed should be given immediate relief. Though

Section 6(4) of the Act permits the title holder to institute a suit to establish his title and to recover possession, execution of a decree under Section 6 of the Act cannot be postponed, as otherwise there would be attempt on the part of the title holder to retain his possession under the guise of pendency of the suit on title as permitted by Section 6(4) of the Act. It is evident from the very proviso itself as it gives liberty to the title holder to recover possession. The concern of the law makers to put the persons, who have been dispossessed, without re-course through the process known to law, is also evident by the fact that no appeal is provided against a decree passed in a suit under Section 6 of the Act and not even a review is permitted. Therefore the Court deciding the suit under Section 6 of the Act was obliged to execute the decree with all its seriousness, as otherwise the very purpose in enacting such a provision would be defeated.

25. The question of filing a suit under Section 6 of the Act arises only when a party was dispossessed unceremoniously and without taking recourse of law. Therefore Section 6 of the Act as well as Order 21 Rule 99 of the Code of Civil Procedure operates in two separate spheres. The cause of action for filing a suit under Section 6 of the Act is an act of dispossession otherwise than in due process of law. However all cases of dispossession cannot be challenged by taking

recourse to this provision. It was only those acts of recent dispossession made within six months, can be challenged by way of a suit under Section 6 of the Act. However such a condition was not found mentioned in Rule 99 of Order 21 of the Code of Civil Procedure. Section 6 of the Act contemplates forcible dispossession. However Rule 99 of Order 21 of the Code of Civil Procedure does not prescribe any such condition. It would enable a party, who was dispossessed by the holder of a decree or possession or his assignee to represent before the Court complaining of such dispossession. Dispossession contemplated by Order 21 Rule 99 of the Code of Civil Procedure was related to a decree, for possession obtained by the decree-holder. It also arises in a situation where he was dispossessed by the subsequent purchaser, who purchased the property in execution of decree. Therefore Order 21 Rule 99 of the Code of Civil Procedure has nothing to do with forcible dispossession or dispossession otherwise than in due process of law.”

22. It is settled law that the proceedings contemplated under Section 6 of the Specific Relief Act is summary in nature. The Court is concerned only with the factum of dispossession, otherwise than due process of law. The remedy for a person who is unsuccessful under Section 6 of the Specific Relief Act is to file a regular suit establishing his title to the suit

property and in the event of succeeding, he will be entitled to recover possession of the property notwithstanding the adverse decision Section 6 of the Act. The remedy of filing a revision is available, but that is only by way of exception and the High Court would not interfere the decree under Section 6 of the Act except on a case for interference being made out. Therefore, it is evident that as against the decree passed in the suit filed under Section 6 of the Specific Relief Act, revision under Section 115 of C.P.C., is available for the unsuccessful party and this Court exercising revision jurisdiction is only concerned with the legality/proprietary of the exercise of jurisdiction and not re-appreciate the evidence.

23. In this regard, the learned counsel for the respondents relied upon a judgment reported in **2019 (3) LW 603** in **V.Manoharan Vs. Valli & others:-**

*“Therefore, from a reading of **Section 6(3)** of the Act, it is clear that no appeal or review would lie not only from a decree but also from any order passed in a **Section 6** suit. In the Judgment relied on by the counsel for the respondent, viz., **Sanjay Kumar Pandey and others v. Gulbahar Sheikh and others [(2004) 4 Supreme Court Cases 664]**, the Apex Court has held as follows:*

"A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-Section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this Section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the

Act except on a case for interference being made out within the well settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code."

24.This Judgment has also been referred to in another Judgment of the Supreme Court in *ITC Limited v. Adarsh Co-operative Housing Society Limited* [(2013) 10 Supreme Cases 169].

25.In another Judgment of the Supreme Court reported in 2014(2) RCR (Rent) 508 = MANU/SC/1239/2014 {*Aarti v. Aruna Gautam*}, the Supreme Court which was called upon to reconsider the order of the High Court of Madhya Pradesh passed in a Revision challenging the decree in a suit filed under Section 6 of the Act, the Hon'ble Supreme Court upheld the exercise of the revisional jurisdiction of the High Court but set aside the order of the High Court on the ground that the High Court had exceeded its revisional jurisdiction.

26.Therefore, from a reading of the above Judgements, it is evident that as against a decree passed in a suit filed under Section 6 of the Act, a revision under Section 115 of the Code of Civil Procedure is available to the unsuccessful party and the High Court exercising

its revisional jurisdiction is only concerned with the legality/propriety of the exercise of jurisdiction and not re-appreciate the evidence.

24. As stated supra, the petitioner failed to establish the fact that he was forcibly dispossessed from the suit property on 30.03.1998, to satisfy the provision under Section 6 of the Specific Relief Act. He has also failed to prove his possession in the suit property six months prior to the date of the suit. As such, the petitioner is not entitled for the relief of recovery of possession and permanent injunction. The Court below rightly dismissed the suit and nothing warrants for this Court to interfere with the findings of the Court below.

25. In the result, this ***Civil Revision Petition is dismissed.***

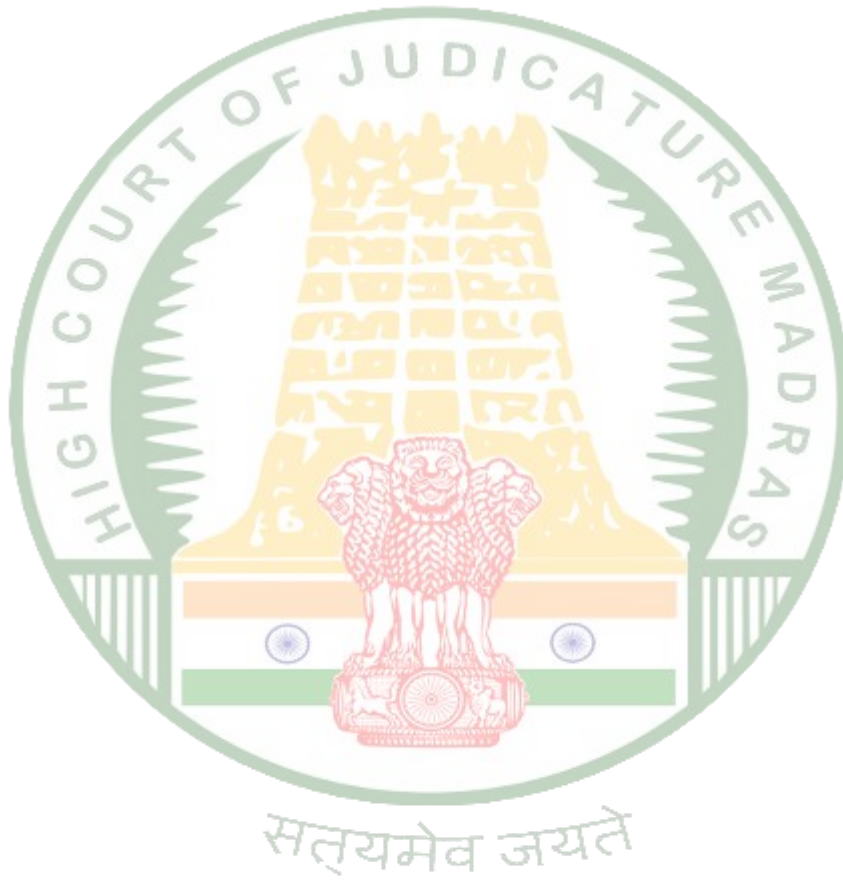
However, the petitioner is at liberty to file a suit for recovery of possession in the manner known to law, if he is so advised. No costs.

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Index : Yes/No.
Speaking/Non Speaking order
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To,
The Additional District Munsif, Poonamallee.

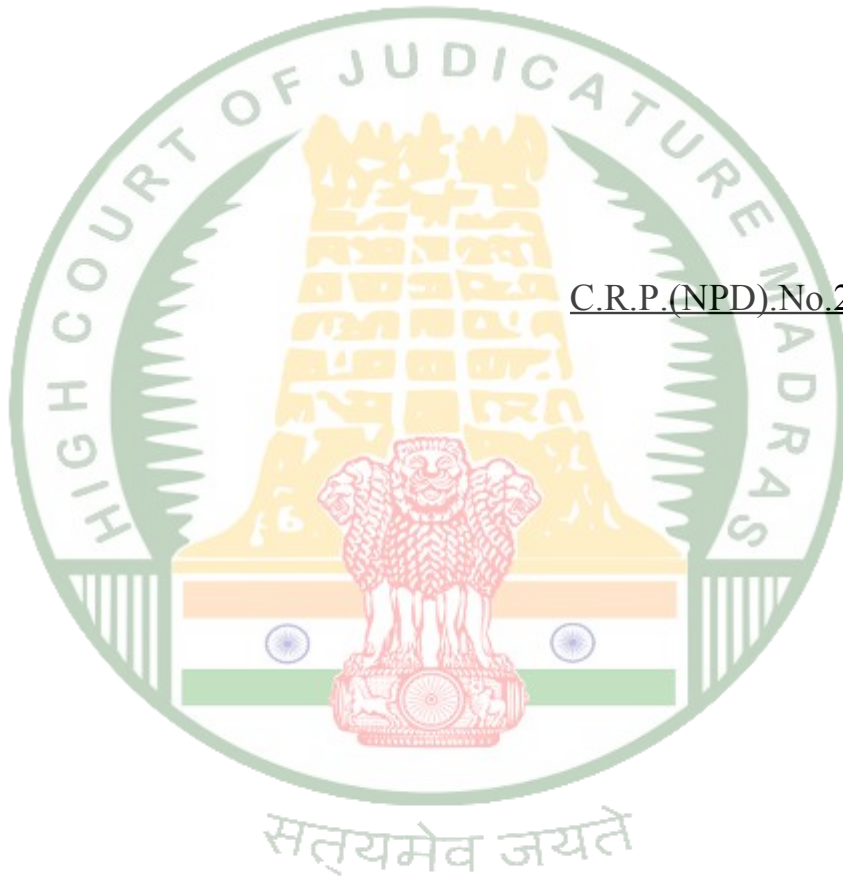


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