

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.07.2021

PRONOUNCED ON: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 3279 of 2019

And

C.M.P.Nos. 21274, 21275 & 27320 of 2019

Kandayammai

... Petitioner/Petitioner/2nd Plaintiff

-Vs-

1. V.P.Sekar

2. S.Sudha

3. Sathiya

... Respondents/Respondent 1 to 3/Plaintiffs 1

4. Loganathan

5. Ramesh

6. Suresh

7. L.Selvamani

8. Tamilselvi

... Respondents/Respondents 4-8/Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order in I.A.No. 228 of 2019 in O.S.No. 231 of 2016 dated 22.08.2019 on the file of III Additional District Judge, Salem.

For Petitioner : Mr. V.K. Vijayaragavan

For RR 1 to 3 : Mr. N.L. Rajah
Senior Counsel
for Mr. C.Ramesh

For RR 4 to 8 : Mr.A.Muthukumar

ORDER

This Revision Petition has been filed under Section 115 of the Code of Civil Procedure by the second plaintiff in O.S.No. 231 of 2016 which is pending on the file of the III Additional District Court, Salem, questioning the order dated 22.08.2019 in I.A.No. 228 of 2019.

2. The revision petitioner filed I.A.No. 228 of 2019 under Order 23 Rule 3 and explanation 3 of CPC read with Section 151 CPC seeking to set aside the compromise award passed by the Lok Adalat dated 20.09.2017 and consequential final decree passed in O.S.No. 231 of 2016 on 22.09.2017.

3. The suit in O.S.No. 231 of 2016 had been filed by V.P. Sekar, the eldest son of this petitioner and the petitioner herein. It had been filed against the second son of this petitioner P.Loganathan, his two sons L.Ramesh and L.Suresh, his wife L.Selvamani and his daughter-in-law R.Tamilselvi, seeking a Judgment and Decree in the nature of partition into three equal parts and separate possession of the suit properties and for injunction restraining the defendants from alienating or encumbering the suit properties and for costs of the suit.

4. Pending the suit, the two daughters of the first plaintiff V.P.Sekar were also impleaded as plaintiffs.

5. It must also be mentioned that there was yet another suit in O.S.No. 191 of 2016 which had been instituted just prior to O.S.No. 231 of 2016. That suit was also pending on the file of the III Additional District Court, Salem. In that suit, the revision petitioner was the plaintiff. She had filed that suit against her second son P.Loganathan and his two sons L.Ramesh and L.Suresh. In that particular suit, she sought a Judgment and Decree to cancel a settlement deed dated 11.09.2006 executed in favour of

the first defendant, to cancel a settlement deed dated 04.07.2011 executed in favour of the second defendant and to cancel a settlement deed dated 04.07.2011 executed in favour of the third defendant and also for permanent injunction restraining the defendants from alienating the suit properties and for costs.

6. A written statement had been filed by the defendants in that particular suit and a reply statement was also filed by the plaintiff. Thereafter, the plaintiff/revision petitioner herein also adduced evidence as PW-1. She was also cross examined on behalf of the defendants. The first defendant P.Loganathan was also examined as DW-1. The plaintiff had also marked Exs. A-1 to A-19. A Judgment and Decree was passed on 08.09.2017. In the Judgment, it had been observed that the parties had entered into an out of Court settlement and though the three properties over which settlement deeds were sought to be cancelled stood in the name of the revision petitioner/plaintiff, it was agreed that they were joint family properties and that the revision petitioner / plaintiff had executed the settlement deeds out of her own volition, but since they were joint family properties and she had not obtained the consent of her another son

V.P.Sekar, it was agreed that the settlement deeds were not maintainable and that a decree can be passed stating that the same shall be cancelled. It was also mentioned that another suit in O.S.No. 231 of 2016 had also been filed by the revision petitioner/plaintiff along with her another son V.P.Sekar for partition and separate possession of the suit properties mentioned therein. In effect, the suit was decreed with respect to the relief sought to cancel the settlement deeds. The relief of injunction was refused since the settlement deeds were directed to be cancelled.

7. In O.S.No. 231 of 2016, on 18.08.2017 just prior to the Judgment in O.S.No. 191 of 2016, a panchayat was effected and compromise was arrived at between V.P.Sekar and P.Loganathan, the two sons of the revision petitioner herein. In the panchayat, a compromise was signed by both of them and also by their family members. The properties available were mutually divided between them. The revision petitioner was not a party to the said compromise. This compromise was thereafter brought to the notice of the III Additional District Court, Salem, where O.S.No. 231 of 2016 was pending and in view of the compromise, the parties were referred to the Lok Adalat to pass a compromise award.

8. The Lok Adalat took up the matter in Lok Adalat Case No. 1297 of 2017 on 20.09.2017. All the parties to the suit were present. The terms of settlement entered into in the Lok Adalat was signed by the four plaintiffs and by the five defendants. It was specifically also signed by the revision petitioner herein, who affixed her left thumb impression. It was also signed by the two counsels for both the parties and also by the panel members. Consequent to the Award of the Lok Adalat, a memo of compromise was entered into which was also signed by all the plaintiffs including the revision petitioner and also by the defendants and this was presented before III Additional District Court, Salem and a decree was also passed on 20.09.2017.

9. A learned Single Judge of this Court taking note of the allegation made that the petitioner was not aware of the terms of the compromise and that her left thumb impression was obtained outside the Court hall, directed the petitioner to file a regular application to set aside the compromise decree and directed the Court to take on file if such application was filed and hear the same and pass orders.

10. The petitioner thereafter filed I.A.No. 228 of 2019 in O.S.No. 231 of 2016. In the affidavit filed in support of the said application, she claimed that she was not aware of the compromise effected by the panchayat. She further stated that she was entitled to 1/3rd undivided share in the properties but she had been denied any share and that all the properties have been divided by the sons between themselves. She claimed that she was not aware of the proceedings of the Lok Adalat and that she was not heard in person. She expressed complete ignorance about the terms of the settlement reached between her two sons and also complete ignorance about the nature of the proceedings which took place before the Lok Adalat and subsequently, before the Court. She stated that a fraud had been played and that the said compromise effected by the Lok Adalat should be set aside.

11. Counter affidavits were filed by both the sons. The allegations were denied by the first son the first plaintiff, V.P.Sekar. He claimed that the application had been filed on the instigation of his brother P.Loganathan and his family members and that there was no justification to set aside the Lok Adalat award. It was claimed that the petitioner knew about the

proceedings and was physically present during the Lok Adalat proceedings and therefore, she cannot claim ignorance or be innocent of the said proceedings.

12. It was stated in the counter affidavit that during deposition in O.S.No. 191 of 2016, the revision petitioner had very categorically stated that she did not want any share in the properties and that the properties can be divided into two equal shares and handed over to her two sons. It was also specifically stated that the proceedings before the Lok Adalat was conducted in open Court and the award was also read over and explained to the revision petitioner. The allegations with respect to improper procedure adopted during the Lok Adalat proceedings were denied. It was claimed that the application should be dismissed.

13. A counter affidavit was also filed by the first defendant, the other son of the revision petitioner. He blamed on his brother, the first plaintiff whom he claimed had an intention to grab the properties. He stated that his brother had given a police complaint and with the help of police officials had threatened him and his family members and by such

undue influence, they were forced to sign the panchayat compromise. He also claimed that the compromise before the panchayat was actually typed at the instigation of the police officials and he and his family members were threatened and signatures obtained by coercion. He also stated that he was not permitted to discuss the matter with his mother/petitioner when the suit was referred to the Lok Adalat for settlement. He stated that the award was the outcome of fraud played by his brother and his family members. He also stated that the award dated 20.09.2017 should be set aside.

14. The revision petitioner herein adduced oral evidence and examined herself as PW-1. She was also cross examined. On her side, she marked five documents and the respondents also marked five documents. The agreement before the panchayat dated 18.08.2017 was marked as Ex.R-4. The learned III Additional District Judge analysed the averments made in the affidavit filed in support of the application and in the counter affidavit and also the evidence adduced and the documents marked and came to the conclusion that while passing the compromise award and decree no fraud or misrepresentation or cheating had been played on the revision petitioner. It was held that there was no merit in the application and the same was therefore dismissed.

15. In the reasons, the learned Judge stated that during evidence the revision petitioner admitted that the Presiding Officer asked her whether she was prepared to settle the issue and she had stated 'yes' to the same. It was held that the compromise award and decree had been passed only after obtaining the consent of the petitioner. The sanctity of the award of the Lok Adalat had been upheld by the Hon'ble Supreme Court in **2017 3 MWN (Civil) 553 [Bhargavi Constructions Vs. Kothakapu Muthyam Reddy and others]** and also by this Court in **2019 (1) L.W. 1 [A.L.Abdul Kalam Azad Vs. A.L.Jawaharlal, represented by power agent and others]**. The learned Judge finally held that the application should be dismissed. Questioning that particular order, the revision petitioner has filed.

16. Heard arguments advanced by Mr.V.K.Vijayaragavan, learned Counsel for the revision petitioner, Mr. N.L.Rajah, learned Senior Counsel for the first, second and third respondents and Mr.A.Muthukumar, learned counsel for the respondent Nos. 4 to 8.

17. It is the contention of Mr. V.K.Vijayaragavan that the petitioner has been a victim of circumstances. She is aged. She does not

know how to read or write. She only affixed her thumb impression. He claimed that the revision petitioner had been misled into signing various papers shown to her during the Lok Adalat proceedings. She was under the bona fide impression that she would be allotted a share in the properties, but unfortunately all the properties had been divided between her two sons. He also stated that she was also not paid any maintenance in her living. The learned counsel painted a picture of an aged lady deserted by her sons. The learned counsel stated that the compromise deed was not read over and explained. He also stated that she did not understand the nature of the judicial proceedings and therefore, the learned counsel claimed that the award and the decree passed consequent to the award should be set aside.

18. These contentions were very strongly disputed by Mr. N.L.Rajah, learned Senior Counsel on behalf of the respondent Nos. 1 to 3, namely V.P.Sekar, the elder and his two daughters. The learned Senior Counsel pointed out that a compromise memo had been entered into only after ensuring that the revision petitioner understood the contents of the compromise memo. The learned Senior Counsel further pointed out that during the revision proceedings, the first respondent had redeemed a

particular property by paying the mortgagee a sum of Rs.1/- crore and cleared the title and handed over the property to the revision petitioner, but unfortunately, the revision petitioner immediately thereafter in April 2021 sold away the said property for more than adequate consideration.

19. The learned Senior Counsel also stated that the revision petitioner is continuing to stay in the family house and there is no threat of dispossession. He also stated that the first respondent was ready to pay a monthly maintenance amount of Rs.25,000/- to the revision petitioner. The learned Senior counsel stated that the family was one of the richest family, owing extensive properties in Salem and pointed out to the schedule annexed to the plaint which run to nearly about 40 pages. Learned Senior Counsel also stated that the family had suffered loss owing to business commitments and there were also mortgages over several of the properties. He stated that therefore, to relieve the revision petitioner from liabilities from any of the mortgagees or money lenders, it was thought that she need not own any property but was given full right to reside in any of the properties. The learned Senior counsel stated that there was no malafide intention on behalf of the first respondent as against the revision petitioner.

It was also been pointed out by the learned Senior Counsel that the compromise decree had actually been read over and a covenant to the same was also found in the award. It was therefore insisted that the revision petition should be dismissed.

20. The learned Senior Counsel found fault with the fourth respondent, namely, the other son for having instigating the petitioner to file the interlocutory application and the revision petition. The learned Senior Counsel stated that I.A.No. 228 of 2019 had been correctly dismissed by the learned III Additional District Judge, Salem.

21. During pendency of the revision petition though notice was served on the 4th to 8th respondents since there was no appearance, this Court had directed fresh notice on the said respondents.

22. Mr.A.Muthukumar, learned counsel entered appearance for the respondents Nos. 4 to 8. The learned counsel stated that originally the revision petitioner herein had filed O.S.No. 191 of 2016 to cancel three settlement deeds executed by her in favour of the 4th, 5th and 6th respondents

and they were also cancelled by a decree of the Court. The learned counsel stated that the revision petitioner was staying in the house of the fourth respondent, who was taking care of her. The learned counsel stated that it was only appropriate that the parties go to trial over the issues raised in O.S.No. 231 of 2016 and that the settlement was to the disadvantage of the revision petitioner.

23. I have given my careful consideration to the arguments advanced.

24. The efforts to bring about a settlement among the parties failed. During the course of hearing, it was made clear that the petitioner may be given a residence of her own. Accordingly, the first respondent redeemed a particular property in Salem by discharging a mortgage to the extent of Rs.1/- crore and possession was handed over to the revision petitioner herein. Immediately thereafter, the revision petitioner sold the said property by a sale deed dated 29.04.2021.

25. The first respondent filed an affidavit and an additional affidavit before this Court. In the first affidavit, he undertook to redeem the mortgage and he stated that the compromise was entered into with the bona fide intention to help the revision petitioner. As pointed out, the mortgage was redeemed and the property was handed over to the revision petitioner, who immediately sold it.

26. During the course of hearing, a report was also called for from the Lok Adalat to satisfy whether the compromise was read over to the parties. Accordingly, a report was received from the Chairman/District Judge, Permanent Lok Adalat, Salem, dated 27.02.2020 in D.No. 45/2020. The entire report is extracted below:-

“I humbly submit that, in obedience to the letter received from Hon'ble High Court of Madras, I humbly submit the report as called for in the reference cited above.

I humbly submit that, I have received the bundle on 27.02.2020 at 11.15 a.m., hours. I am working as Chairman/District Judge, Permanent Lok Adalat, Salem.

I humbly submit that the case bundle was referred by Additional District Judge III, Salem for settlement before Lok Adalat. On 20.09.2017 the case bundle O.S.No. 231 of 2016, III Additional District Judge, Salem. The case was taken by myself and Mr.V.Ravichandran, Secretary/Sub Judge, District Legal Services Authority, Salem and one member namely Thiru. R.Subramani, Social Worker. The Lok Adalat passed the award after received the compromise memo duly signed by the both parties and the both parties present with their counsels before Lok Adalat conducted on 20.09.2017.

I further humbly submit that, the compromise memo had been read out to the parties and explained by Lok Adalat members to the parties and all the points were explained to all of them and then only they have signed in the compromise memo as well as the award. The 2nd plaintiff namely, Mrs. Kandhayammal W/o. (late) Palaniyappa Gounder, aged about 75 years was specially explained about all the points mentioned in the compromise memo. After acceptance by all the parties, the Lok Adalat obtained signature from all the parties and from 2nd plaintiff Kandhayammal.

I humbly submit that, in each and every cases the Lok Adalat will receive the signature as well as in the compromise memo and in the award after explaining each and every points to the parties.

This is for your honors kind information.

Yours faithfully

(N.Gunavathi)

*Chairman/District Judge,
Permanent Lok Adalat,
Salem. ”*

27. In this connection, a reference can be made to Section 114 (e) of the Indian Evidence Act. Section 114 (e) of the Indian Evidence Act is as follows:-

“114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume –

(a).....

(b).....

(c)....

(d)....

(e) that judicial and official acts have been regularly performed; ”

28. A reasonable presumption can be drawn by the Court with respect to any judicial or official act, that such judicial or official act had been regularly performed.

29. In the instant case, a reading of the Lok Adalat, award also shows that it had been read over to the parties before they signed it.

30. Mr.V.K.Vijayaragavan, pointed out the terms of settlement which was presented before the Lok Adalat. They are reproduced below:-

“

TERMS OF SETTLEMENT

1. After discussion in the Lok Adalat, the dispute between the parties is settled before the Lok Adalat and therefore the shares may be allotted in view of the compromise memo filed by the parties today.

2. The compromise memo may be read over and explained to the parties to the suit.

3. The award shall be passed in terms of the compromise and final decree shall be passed calling for NJS and directing the parties to the suit to bear their own cost.

4. One month time for filing NJS may be granted.

5. The compromise memo shall form part of this award.

6. For the necessary follow up action if any, both the parties to the suit shall be entitled to file applications before the Court where the suit is pending today and get suitable orders.

We have arrived at settlement terms willingly before the Lok Adalat held on at . No coercion or force is applied to arrive at settlement. This case may be disposed of, as settled accordingly.

Dated this day of ----- 200

Place:

Signature of the plaintiffs.

Signature of the defendants.

Signature of the Advocate for the plaintiffs.

Signature of the Defendants for the defendants.

Name: D.Rajasekaran

Name: S.N.D. Kulasekaran”

31. The learned counsel placed stress on the second clause, namely that the compromise memo “may” be read over and explained to the parties to the suit and therefore, stated that it was only provided that it should be read over to, and there was no evidence to show that it was actually read over.

32. However, a complete reading of the same Lok Adalat award shows that in the award, it had been very specifically stated that the compromise memo had been read over and explained to the parties to the suit and that they had understood and accepted the terms of the compromise. This portion had been signed by all the members of the panel. This is extracted below:-

Sd/- *Sd/-* *Sd/-*

Head of the panel *First Panal Member* *Second panal Member''*

Seal of the Authority

all the parties including the revision petitioner and

34. As a matter of fact, the revision petitioner has also been very honest during her evidence. She stated during her cross examination is follows:-

“ப சாயத்தில் பிரிந்த சொத்தில்
லோகநாதன் ஒரு பாகத்தையும் சேகர் ஒரு
பாகத்தையும் அனுபவித்து வருகிறார்கள்
என்றால் சரிதான்.”

35. In effect, this would indicate that her sons are in possession of the respective properties as divided during the compromise effected by the panchayat. This is the compromise which had been settled and recognized during the Lok Adalat award. This is the compromise which had been recognized in the decree passed in the suit. The plaintiff affirms that the compromise had been put into effect. She further stated that

“இந்த நீதிமன்றத்தில் ஏற்கனவே
நீதிபதியாக இருந்த அம்மா ராசியாக
போகிறீர்களா என்று கேட்டுதான் வழக்கை
முடித்தார்களா என்றால் ஆமாம்.”

36. In effect, this would also indicate that the Presiding Officer

enquired her, obtained her consent whether she was agreeable to settle the issues and thereafter closed the case.

37. These are statements given under oath in solemn proceedings. The Court will certainly have to recognise the same. They cannot be rejected. It is not picking up a stray line in a cross examination. It is the crux of the truth of the matter. The petitioner knows that a compromise was effected in the panchayat. The petitioner is aware that the compromise had been put into effect. The petitioner had agreed for such compromise to be put into effect. I would therefore hesitate before interfering with the award passed.

38. Mr.V.K.Vijayaragavan, learned Senior Counsel for the petitioner however proclaimed that the petitioner is a woman, who had been exploited by her sons. That is an aspect which I would not venture to express any opinion but in her own words, though she stated that she was an illiterate lady, it can be safely presumed that she was wordlywise. She was a partner along with her husband in a Firm called M/s. Sathya Traders. She also owns shares in V.P.S. Silk Fabrics Private Limited. She had also

claimed that her husband was a person of substantial means. They had extensive properties. The fact that she is adept in wordly matters is reflected by her very act of disposing of a property which had been allotted to her after the mortgage had been discharged by the first respondent during the pendency of the revision petition. Entering into a transaction of that nature would not be possible by any ordinary person.

39. It is on record that the family to which the petitioner and the respondents belong were at one point, very affluent. There have been losses in the business and mortgages have been created over the immovable properties. I fervently hope that the litigants are not involved in shadow boxing to fend off creditors.

40. The learned counsel for the petitioner relied on a series of Judgements which touched upon circumstances when a compromise decree can be interfered with by Court. I would regard fitting in law to the facts of a case of this nature with much caution. Any case where a compromise decree is sought to be assailed stands on its own footing. If precedents were to be cited, then it would indicate that subconsciously or even consciously,

the facts have been woven to suit the precedents and the truthful facts have been given a goby.

41. The learned counsel for the petitioner relied on **(2010) 3 SCC 251 (Santosh Vs. Jagat Ram and Another)**. That was a case where the Hon'ble Supreme Court examined the evidence of an issueless, illiterate widow, who put her thumb impression in a decree for partition where it was shown that she had relinquished her right. The Hon'ble Supreme Court found as a fact that the advocates of the plaintiff and defendants were partners in the profession and had a common clerk. The Judgment and Decree was made on the same day when the plaint was filed, when the summon was issued, when the written statement was filed and when the evidence of both the parties were recorded.

42. In this case, the facts are different. There was first a compromise by a panchayat, later affirmed by the award of Lok Adalat and later affirmed by a decree and finally she was explained about the terms of the award. I must stated that the Judgment relied on is not directly applicable to the facts of this case.

43. The learned counsel for the petitioner then relied on **1994-1-**

L.W. 296 [M.Vaithilingam Pillai (died) and another Vs. Minor Maruganandham] for the proposition that a party must put forward his case and avail the opportunity to cross examination. This Judgment was cited because when the matter was remitted back to the trial Court granting opportunity to the revision petitioner to file an application to rescind the compromise and permission was granted to lead evidence, none of the sons grazed the witness box.

44. It must be pointed out that it was the petitioner and the petitioner's case alone that she did not know about the terms of the compromise. That is not the case of her sons. Nodoubt the fourth defendant has an independent axe to grind against the first defendant. But that could not negate a compromise lawfully entered into. The facts of this case are again different.

45. The learned counsel for the petitioner then relied on **1971 (II) Mad 451 [Fathima Bi Ammal Vs. A.A. Mahomed Mohideen and Others]** for the proposition that when a release deed had been executed in English, the burden lies upon the releases to prove that the document was explained

and interpreted to the releasor and was executed with knowledge of its contents.

46. In the instant case, a specific declaration has been given that the compromise was read over and explained to all parties including the petitioner. Therefore, the stipulation that the document must be explained has been complied.

47. The learned counsel for the petitioner then relied on ***AIR 1999 SC 1441 [Vidhyadhar Vs. Mankikrao and another]*** for the proposition that under Section 114 of the Evidence Act, when a party does not enter the witness box then an adverse inference can be drawn against him.

48. In this case, both the first and fourth defendants did not enter the witness box. However, the petitioner appears to have a soft corner for the fourth defendant. There was no necessity for the said defendants to enter into the witness box since it is claimed by the petitioner alone that she did not know about the compromise when actually the terms of the compromise had been read over and explained to her. Again the instant facts are

different.

49. The learned counsel for the petitioner then relied on **2006 (1) TNMAC 244 (SC) [State of Punjab and Another Vs. Jalour Singh and Others]** with respect to procedure in a Lok Adalat.

50. As a matter of fact, the Lok Adalat in the instant case acted in accordance with the procedure as stated by the Hon'ble Supreme Court. They did not put forward the terms of settlement. They only recorded the terms of settlement as presented to them. They discharged their duty to read over the settlement and explain the same to the petitioner. Therefore, the Judgment does not affect the case of the respondents. As a matter of fact, it had been held by the Hon'ble Supreme Court as follows:-

“12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes

executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. ”

51. The present Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure and the scope is much more narrow and more limited which position is obviously to the knowledge of the learned counsel for the petitioner.

52. The Civil Revision Petition is therefore dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

30.07.2021

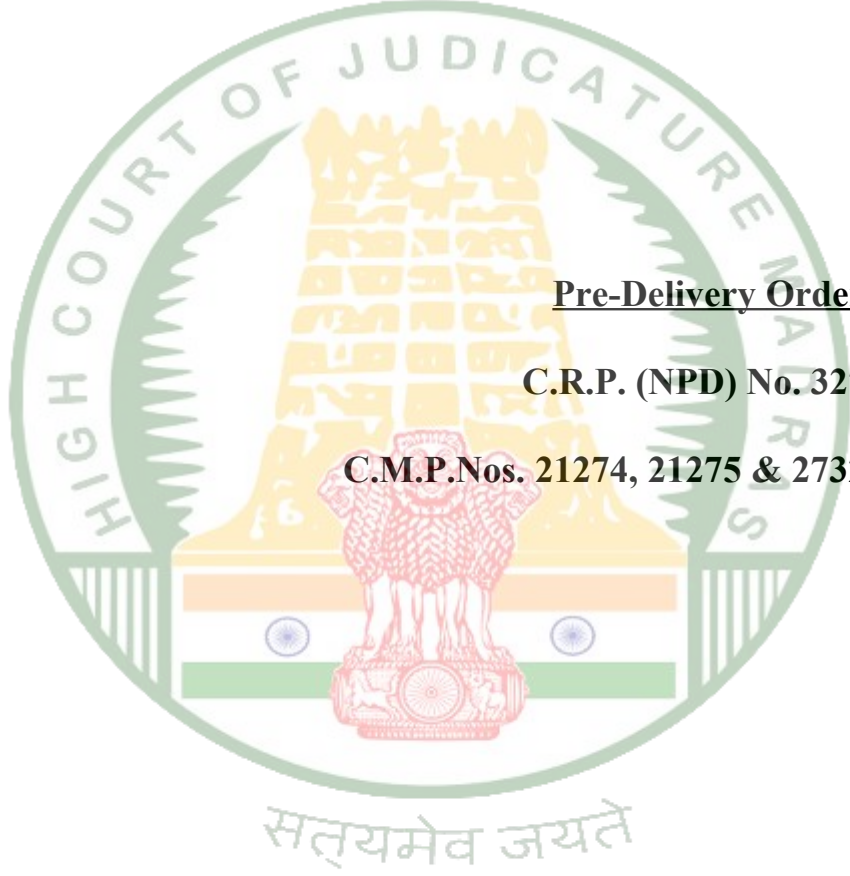
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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.



Pre-Delivery Order made in

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And

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