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S.A.(MD)No.373 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.03.2021

PRONOUNCED ON : 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.373 of 2010

and

Cross.Objec. (MD)No.7 of 2011

and

M.P. (MD)No.2 of 2010 and 2 & 3 of 2011

and

C.M.P. (MD)No.12182 of 2019

1.P.Panneerselvam
2.Geethanjalai
3.M.Velmurugan
4.M.Natarajan

..Appellants/Respondents/Defendants/
Respondents in cross objection

Vs.

1.M.Govindasamy (died)
2.Ramayee Ammal
3.Amirthavalli
4.K.Janaki
5.G.Kulaekarapandian
6.Dhanalakshmi

..Respondent/Appellant/Plaintiff

..Respondents /cross objectors

(R2 to R6 impleaded as legal heirs of the deceased sole respondent vide order dated 08.02.2011)

PRAYER in S.A. (MD)No.373 of 2010: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 12.12.2008 in A.S.No.362 of 2004 on the file of the Additional Subordinate Judge, Dindigul reversing the judgment and decree dated 11.02.2002 in O.S.No.18 of 2001 on the file of the II Additional District Munsif, Dindigul.

PRAYER in CROSS OBJC. (MD)No.7 of 2011: This Cross Objection is filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree dated 12.12.2008 made in A.S.No.362 of 2004 on the file of the Additional Subordinate Judge, Dindigul.

For Appellants	: Mr.R.Vijayakumar for Mr.T.Antony Arul Raj
For R2 to R6	: Mr.A.V.Arun (in the second appeal)



For Cross Objectors : Mr.A.V.Arun
For Respondents : Mr.R.Vijayakumar
for Mr.T.Antony Arul Raj
(in the cross objection)

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JUDGMENT

Aggrieved over the reversal finding of the First Appellate Court decreeing the suit for declaration in respect of Exs.A3 to A6 and granting permanent injunction in respect of the entire suit property, the present appeal came to be filed. Cross objection is filed against the declaratory relief of the First Appellate Court in respect of Ex.A2.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The suit property originally belonged to Rama Pillai and Solai Pillai and their legal heirs. The plaintiff's father purchased a portion of the suit property under Ex.A2, 20.08.1933 and Ex.A3 dated 19.09.1934. Thereafter, the remaining areas were purchased by the plaintiff under Exs.A4 to A6. Ever since the date of purchase, the plaintiff's father and the plaintiff was in continuous possession of the property. The plaintiff has obtained electrical connection for the agriculture purpose. Patta was also changed in his name. When the matter stood thus, the defendants 1, 3 and 5, who have no right to create encumbrance over the property, had tried to create certain documents in the year 2000. Hence, the suit.

4. The first defendant filed a written statement and the same was adopted by defendants 2, 3, 5 and 6. Denying the allegation that the plaintiff's father had purchased the property under Ex.A2, it is the contention that the above document is not connected to the suit property. Sale deed, dated 19.09.1934 was registered in the name of the plaintiff's father and the plaintiff's father was not in possession of the property purchased under the said sale deed. Further, it is the contention that the suit property was not partitioned. The suit property was given to the plaintiff by the defendants on oral lease during the year 1971 on an annual lease for a sum of Rs.500/- to each co-owners, since there was no amicable settlement among the co-owners of the suit property for dividing the property. The plaintiff has been in possession of the suit property at that time and obtained service connection for agricultural purpose. It is further contended that annually the lease was increased and now the plaintiff is paying a sum of Rs.3,000/- to each co-owners. It is the further contention that the first defendant had executed a sale deed on 21.08.2000 in favour of defendants 2 and 3 in respect of his share. Similarly, the fifth



defendant executed a sale agreement in favour of sixth defendant in respect of his share.

5. Based on the above pleadings, the trial Court has framed the following issues:-

1. Whether the suit property belong to the plaintiff?
2. Whether the plaintiff is in possession of suit schedule property as lease as stated by defendant?
3. Whether the plaintiff is in possession of the suit schedule property as lease as stated by the defendant?
4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiff is entitled to the relief of declaration and injunction?
6. To what relief, plaintiff is entitled?

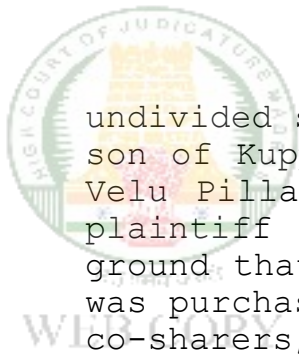
6. Before the trial Court, on the side of the plaintiffs. P.W.1 to P.W.3 were examined and Exs.A1 to A40 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 was marked.

7. The trial Court, after analyzing the documents, dismissed the suit on the ground that the extent of land purchased under Exs.A3 to A6 has not been properly established and the revenue records alone are not sufficient to prove possession. Admitting the sale of the property in favour of the plaintiff and his father under Exs.A3 to A6, the First Appellate Court granted declaration in respect of Exs.A3 to A6. Further, taking note of the fact that the plaintiff is in possession of the suit property, the First Appellate Court granted permanent injunction, as against which the present second appeal is filed.

8. While admitting the second appeal, this Cort has framed the following issues:-

- 1. Whether the findings of the Lower Appellate Court are right in law when the plaintiff's claim is based on Exs.A3 to A6, which did not cover the entire suit property?**
- 2. Whether the judgment of the Lower Appellate Court is right in law since the appellants/defendants purchased the suit property from the other co-owners, they cannot claim title beyond their share?**

9. The learned counsel appearing for the appellants submitted that the details of the suit property have not been given and no boundaries have been given in the plaint. The suit properties and other vast suit properties originally belonged to one Maruthanayagam Pillai. He had four sons namely, Solai Pillai, Kuppa Pillai, Velu Pillai and Rama Pillai. This has been established on record. The plaintiff has purchased an undivided share from two brothers namely, Solai Pillai and Rama Pillai. The sale deeds executed under Exs.A2 to A6 make it very clear that the properties purchased are only an

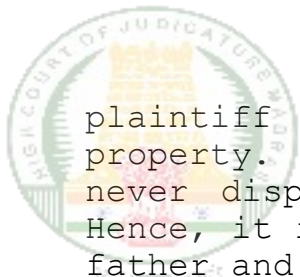


undivided shares though with boundaries. The first defendant is the son of Kuppa Pillai. Another son of Maruthanayagam Pillai, namely, Velu Pillai has sold his share to the sixth defendant. Hence, the plaintiff cannot seek the relief of declaration, merely on the ground that he has purchased the property under Exs.A2 to A6. What was purchased under these documents are only undivided shares of the co-sharers, namely from two sons of Maruthanayagam Pillai. Whereas, the other two sons of Maruthanayagam Pillai have dealt the property to the second and sixth defendants. Hence, it is submitted that declaration cannot be granted in respect of the undivided properties and there is no pleading whatsoever made in the plaint as to the partition among the co-sharers. Therefore, merely on the basis of the possession, the plaintiff is not entitled for declaration.

10. The decree of the First Appellate Court is also not workable and the same is bereft of details. There is no detail as to the description of the property. In Exs.A3 to A6, particulars of the properties were not found in detail. Hence, it is the contention that such defence is not maintainable and admittedly, the appellants have purchased the undivided shares from the other co-owners. Therefore, the suit for declaration is not maintainable and at the most the suit for partition is only maintainable. Ex.A2 does not relate to the suit property. Before the First Appellate Court Ex.A2 was not canvassed. Therefore, it is the contention of the appellants/defendants that when there was no challenge as against Ex.A2 before the First Appellate Court, the cross objection is not maintainable. Hence, prayed for allowing this appeal and dismissing the cross objection.

11. The learned counsel appearing for the respondents/plaintiff/Cross Objectors submitted that the entire suit properties have been purchased under Exs.A2 to Ex.A6. Though the first defendant is the son of Kuppa Pillai and grandson of one Maruthanayagam Pillai, the suit property was originally allotted to Solai Pillai and Rama Pillai. The other sons, Kuppa Pillai and Velu Pillai were allotted other properties. Therefore, under Ex.A2, half share in the suit property was purchased by the plaintiff's father with specific boundaries. Similarly, under Ex.A3, the plaintiff has purchased the remaining 1/8 share from Solai Pillai in the year 1934. The legal heirs of Solai Pillai have also sold the property under Exs.A4 to A6 in the year 1971 to the plaintiff. Hence, it is the contention that the entire suit property was purchased under Exs.A2 to A6. Patta also stands in the name of the plaintiff's father and the property has been sub-divided even in the year 1955.

12. Ex.A14, jameen patta shows that only the plaintiff's father was in possession of the property from the year 1955. Possession by the plaintiff is also not disputed by the defendants. The only contention of the defendants is that the plaintiff was in possession as lessee. There was no evidence whatsoever available on the same. The revenue records filed by the



plaintiff clearly show that he is in settled possession of the property. The evidence of D.W.1 also clearly shows that he has never disputed the purchase of the property under Exs.A2 to A6. Hence, it is the contention that from the year 1933, the plaintiff's father and the plaintiff is in continuous and exclusive possession of the property and the identification of the property is not disputed. Therefore, taking advantage of the omission of survey number in Ex.A2, the documents have been created in the year 2000 as if the first and fifth defendants have a share in the suit property.

13. Exs.A10, 11 and 12 also show that the first defendant's mother had in fact sold her shares in the properties and other sons of Marathanayagam Pillai had also dealt the property. These facts clearly show that the suit property were allotted exclusively to two sons of Marathanayagam Pillai. These facts further clearly fortified by the conduct of the parties. The plaintiff is in possession of the property for more than 50 years. It is not objected by any one. The contention of the defendants that the plaintiff was inducted into the property as a lessee by all the co-owners has not been established. Such stand in the written statement is also found to be false in view of his oral evidence. Hence, submitted that the First Appellate Court had omitted to consider Ex.A2, wherein the extent of the suit property is shown as 5.46 acres. The First Appellate Court has granted declaration only in respect of 2.76 acres covered under Exs.A3 to A6. Hence, submitted that the judgment of the First Appellate Court requires to be modified and the cross objection has to be allowed and the appeal filed by the defendants has to be dismissed.

14. In support of his submission, he has relied upon the following judgments:-

(1) *Rame Gowda (dead) by lrs. vs. M.Varadappa Naidu (dead) by lrs.* [(2004) 1 SCC 769]

(2) *Ravinder Kaur Grewal and others vs. Manjit Kaur and others* [(2019) 8 SCC 729]

15. Though the plaintiff has stated in his evidence to that effect that the suit property was originally owned by one Marathanayagam Pillai and he had five sons, it is the specific case of the defendants that Marathanayagam Pillai had only four sons, namely Solai Pillai, Kuppa Pillai, Velu Pillai and Rama Pillai. The parties went on trial only on the basis of the defence that Marathanayagam Pillai had four sons. Admittedly, the plaintiff has purchased undivided shares with specific boundaries under Exs.A2 to A6. The plaintiff's father has purchased the property under Exs.A2 and A3 and the plaintiff has purchased the property under Exs.A4 to A6, from the legal heirs of Solai Pillai and Rama Pillai. The first defendant is the son of Kuppa Pillai. The fifth defendant is the legal heir of Velu Pillai. This fact is not disputed by both sides. It is the case of the plaintiff that the entire property was



purchased under Exs.A2 to A6 right from the year 1933 and 1934, 1937, subsequently. From the submission and evidence adduced by both sides, it evidences that the appellant is concerned only about Ex.A2, sale deed, not with regard to other sale deeds, namely Exs.A3 to A6.

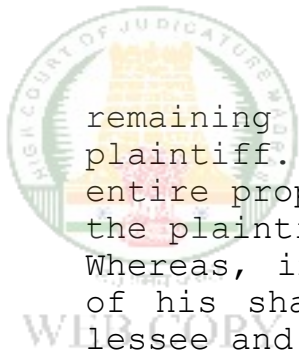
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16. The main contention of the defendants is that Ex.A2 is no way connected with the suit property. Therefore, the property purchased under Ex.A2 cannot be declared in favour of the plaintiff. The first and fifth defendants have sold the property in respect of their shares to the defendants 2, 3 and 6 in the year 2003 and 2006. Therefore, their contention is that without establishing the total extent of land owned by Maruthanayagam Pillai, having purchased only an undivided share under Exs.A2 to A6, the plaintiff cannot claim declaration in respect of the entire suit property.

17. It is the contention of the plaintiff that the entire extent of suit property is 5.46 acres. It is not disputed by the first defendant, who is stated to be one of the sons of Maruthanayagam Pillai. Admission of D.W.1 in his evidence with regard to the identity of the property, when carefully seen, it shows that there is no dispute with regard to the identity of the property also. D.W.1 in his evidence admitted the boundaries of the suit properties. He has also admitted the boundaries of 5 1/2 acres of the suit property, namely, Pond in northern side, pathway in southern side, Garden of Natarajan in western side and pathway in eastern side. The three boundaries stated above except Garden of Natarajan in western side, in fact tally with Exs.A2 to A4.

18. It is to be noted that the first defendant claims to be legal heir of one Maruthanayagam Pillai. The first defendant is the legal of Maruthanayagam Pillai, then he is the best person to show the total extent of property of his father/Kuppa Pillai. Whereas, he has not whispered about total extent of the property owned by his father. The plaintiff contended that the suit property of 5.46 acres was given to two sons of Maruthanayagam Pillai, namely Soali Pillai and Rama Pillai and the other sons, namely Kuppa Pillai, father of the first defendant and Velu Pillai, father of the fifth defendant were given other properties. Since the entire property was in possession of two sons, the plaintiff's father purchased a portion of the property in the year 1933 and 1934 and thereafter, the plaintiff had purchased the remaining extent of land in the year 1937. In this regard evidence of D.W.1, when carefully seen, he has admitted that the present suit survey number of the property is Survey No.727 and he has also admitted that the suit property is originally jameen property.

19. Under Ex.A2, Rama Pillai's legal heirs have executed the sale deed in favour of the plaintiff's father. Similarly, Ex.A3 also executed in favour of the plaintiff's father by one Muthu Pillai. Thereafter, Muthu Pillai sold the



remaining extent under Exs.A4 to A6 on 08.02.1971 in favour of the plaintiff. After such sale, the plaintiff was in possession of the entire properties. It is the contention of the first defendant that the plaintiff was enjoying the property as lessee of all co-sharers. Whereas, in the evidence he has taken a stand that only in respect of his share, the plaintiff was in possession of the property as lessee and not in respect of the other sharers.

20. Exs.A9 and A10, when carefully seen, it is clear that the parents of the first defendant had dealt certain properties in the suit survey field. Ex.A10 is the mortgage executed by the first defendant's mother Palaniammal not only on behalf of her but also on behalf of the first defendant in respect of their share. The description of boundaries shown in the above property indicate that the property has been mortgaged with specific boundaries. These boundaries in fact tally with Ex.A2 documents. All these facts clearly show that other than the suit property, remaining shares were dealt by them. In fact under Ex.A11, the first defendant and his mother sold the property covered under Ex.A10 to the father of the plaintiff, Muthusamy Gounder with specific boundaries. Recitals in that documents clearly show that they have sold the property in their enjoyment in favour of Muthusamy Gounder and Narasimma Nayakkar. Thereafter, the said Narasimma Nayakkar had sold the property in favour of Muthusamy Gounder under Ex.A12 with specific boundaries. Ex.A13 is the mortgage deed executed by Velu Pillai, one of the sons of Maruthanayagam Pillai in respect of Survey No.507 in the same survey field in favour of one Nalla Naikcer. This also indicates that this property is also a part of the same survey field.

21. The above documents clearly show that all the legal heirs have dealt the property in respect of their shares, in which they are in possession. These facts probabilise the case of the plaintiff to the effect that the suit property, namely an extent of 5.46 acres fell only with the share of two sons of Maruthanayagam Pillai, namely, Solai Pillai and Rama Pillai and their legal heirs, who have dealt the same under Exs.A2 to A6 and the same is fortified by the revenue records.

22. Admittedly, the survey number of the suit property is Survey No.727 as per the evidence of the defendant. He has admitted that originally the property is jameen property. Ex.A4, jameen patta issued in the year 1955 indicates that Survey Nos.727/2B, 727/4B and 727/5B for an extent of 2.58 acres stood in the name of Muthusamy Gounder, father of the plaintiff. Ex.A17, Chitta and patta in the name of Govindasamy shows that the suit property stands in the name of his vendor from the year 1988 (fasili year 1397 - 1409) and patta number is also given as No.225 in the year 1985 itself. Adangal also stands in the name of the plaintiff from the very inception. The plaintiff has also availed crop loans from



plaintiff's father was in possession of the property from the year 1933. Thereafter, the plaintiff took over the entire property after his purchase under Exs.A4 to A6 in the year 1971.

23. The first defendant himself admitted that the entire suit property is in possession of the plaintiff. This in fact probalilise the contention of the plaintiff that the suit properties have been allotted to two sons of Maruthanayagam Pillai and the remaining two sons were given separate properties. In fact, Exs.A9 to A12 as discussed above clearly proves the above fact. Neither the first defendant nor the fifth defendant is in possession of the property at any point of time and no scrap of paper has been filed to show that they are in enjoyment of the property at any point of time as co-sharers. Only for the first time in the year 2000, they tried to create some documents. The fifth defendant also said to have created an agreement of sale in favour of the sixth defendant and it is marked as Ex.B1. Except that agreement, no other scrap of paper is available on record to show that the first defendant or fifth defendant, who are claiming to be legal heirs through other sons of Maruthanayagam Pillai, exercised any control over the suit property. The trouble has started when D.W.1 came to the village. His evidence clearly indicates that he was residing in some other village. He even does not know that for how many items, the plaintiff is claiming right and he does not even know, how the sub-division had taken place in the suit property. Except admitting the boundaries in his cross-examination, he is not even aware of the suit properties.

24. D.W.1 has clearly admitted in his evidence that he was aware of Ex.A2, executed by Rama Pillai, Ex.A3, sale deed executed by Solai Pillai's son Muthu Pillai in the year 1971 in favour of the plaintiff. He has also admitted that he does not have any objection with regard to Ex.A2. It appears that since the survey number in Ex.A2 is shown as 523/2, bimas No.131, subsequent document came to be created by the first defendant as if Ex.A2 did not relate to the suit property. It is to be noted that though survey No.523/2 is mentioned in Ex.A2, its specific boundaries given in Exs.A2 to A6 and Exs.A9 and A10 clearly show that the suit properties are in the same survey field. Now the present survey filed is in Survey No.721, which is also admitted by the first defendant. The first defendant also admits the electricity connection obtained in the name of the plaintiff.

25. From the above documents, this Court is of the view that though the boundaries are not given in the plaint, since the identity of the property is not disputed and it is not the case of the first defendant that other properties are not situated in the same survey field and as Exs.A2 to A6 have been clearly established, the plaintiff cannot be non-suited, merely on the technical ground that description is not properly established. The trial Court has



been purchased under sale deeds, whereas the relief is sought for larger extent. The same indicates that the trial Court has not even gone into the documents. The First Appellate Court having accepted the sale under Exs.A3 to A6, had never discussed about Ex.A2.

26. It is the contention of the learned counsel for the appellants that there was no challenge with regard to Ex.A2 before the First Appellate Court. Such contention has no legs to stand. The appeal itself is filed challenging the entire decree and judgment of the trial Court. It is also to be noted that if really the defendants are having any share in the property, their names should have been atleast found in anyone of the revenue records. The evidence of D.W.1 proves the fact that the father of the plaintiff is in possession of the property right from the year 1933. The plaintiff is continuing the possession after 1971 and he was in full control of the entire property. All the revenue records right from the year 1955 prove the fact that the plaintiff is in enjoyment of the property and he is in settled possession of the same.

27. The contention of the defendants that the plaintiff was in possession of the property only as a lessee is also not substantiated by any material and no other co-owners have been examined. The conduct of the first defendant in creating documents indicates that he never exercised any right over the property. Even assuming that the first defendant had a share in the property, the same is lost by operation of law having excluded from the property long back from the year 1933. In fact, Ex.A11 makes it very clear that the share of the first defendant is also dealt and sold. All these facts show that the first defendant has no right over the property and the plaintiff is in settled possession from the very inception.

28. In the case of *Rame Gowda (dead) by lrs. vs. M.Varadappa Naidy (dead) by lrs. and another* [(2004) 1 SCC 769], the Hon'ble Supreme Court has held that in the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title and law presumes the possession to go with the title unless rebutted. In this case from the year 1955 as per Ex.A14, father of the plaintiff was in possession of the property and Exs.A16 and A17, chitta Ex.A18, Adangal clearly shows that the plaintiff was in possession from the very inception.

29. Further, execution of Exs.A2 to A6 was not disputed by the first defendant. Though the first defendant claims share in the property, he has not shown his exact share. Further, Exs.A10 and A11 indicate that his share has already been dealt and sold, not only by him but also by his mother. Similarly, other sharers, namely father of the fifth defendant has also dealt his share in Ex.A1. All these facts show that the defendants have no right in the property and the plaintiff is in possession of the suit



property and the names of the defendants are also not found in any of the revenue records from the very inception. As indicated above, merely because the survey number is wrongly mentioned under Ex.A2, advantage is taken by the defendants and documents have been created. Hence, this Court do not find any substance in the submission of the learned counsel for the appellants and the First Appellate Court ought to have granted declaration for the entire extent, when the identity of the property is not disputed.

30. In the case of *Ravinder Kaur Grewal and others vs. Manjit Kaur and others* [(2019) 8 SCC 729], the Hon'ble Supreme Court has held that once 12 years period of adverse possession is over, the owner's right to eject the person in adverse possession is lost and the possessory owner acquires the right, title and interest possessed by the outgoing person and the adverse possessory owner can not only seek to protect his title as defendant in a suit but can also file the suit for declaration of his title and for permanent injunction.

31. Having regard to the above judgments and perusal of the documents, this Court is of the view that the Courts below have not appreciated the oral and documentary evidence. The judgments of the Courts below in fact is perverse. When the Courts below have not appreciated the evidence and simply recorded finding, this Court can go into the documents and decide the issue. Accordingly, this Court holds that the findings of the First Appellate Court ignoring Ex.A2 is not on proper appreciation of evidence and law and it is perverse.

32. The appellants have also filed an application seeking to receive additional documents, namely sale deeds of the year 2000, 2003 and 2006 in their favour in respect of the suit. One of the documents sought to be filed as an additional document is of the year 2000, which is prior to the suit and other two documents are after the suit was dismissed, that is subsequent to the suit. The documents of the year 2000 could have even very well produced during trial. There were no circumstances, which prevented the first defendant in producing those documents. Whereas this has not been done and other two documents have been executed after the dismissal of the suit. As already held, this Court is of the view that these documents have been created only to unsettle the settled position and right of the plaintiff by taking advantage of some error crept in Ex.A2 with regard to survey number. Such view of the matter, this Court is of the view that none of these documents now sought to be filed by the subsequent purchaser, who like to take chance in the litigation, are relevant to decide the right of the parties. Accordingly, the application filed to receive additional documents is dismissed.

33. In the result, this second appeal is dismissed and the <https://hcservices.ecourt.gov.in/hcservices/> Cross Objection is allowed and the suit is decreed for declaration



and injunction as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

To

1.The Additional Subordinate Judge, Dindigul.

2.The II Additional District Munsif, Dindigul

3.The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-15209 & 15210[F] dated 01/04/2021)

+2 CC to M/s.A.V.ARUN, Advocate (SR-15197[F] dated 01/04/2021)

S.A.(MD)No.373 of 2010

and

Cross.Objec.(MD)No.7 of 2011

01.04.2021

KMK(CO)

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