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Appeal Suit No.679 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.12.2022

Judgment Delivered on : **16.12.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.679 of 2009

Arulmigu Pathala Ponniyamman Temple,
Attached to
Arulmighu Gangadareswarar Temple,
rep.by its Executive Officer,
No.131, Gangadareswarar Koil Street,
Purasawalkam, Chennai – 84.

... Appellant

Versus

Vitta Bai

... Respondent

Prayer: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree made in O.S.No.8726 of 2006, dated 21.08.2007 passed by the VI-Additional City Civil Judge at Chennai, in so far as it relates to the dismissal of the relief of delivery of vacant possession and future damages and decree the suit as prayed for.

For Appellant : Mr.Rajendrakumar,
for M/s.Nortan and Grant.

For Respondent : Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.C.Anbarasu



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JUDGMENT

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A.The Appeal :

This Appeal Suit is filed by the partly unsuccessful plaintiff against the Judgment and Decree dated 21.08.2007, in O.S.No.872 of 2006 in and by which, the suit is filed by the plaintiff/Temple directing the defendant to quit and deliver vacant possession of the suit schedule property and for permanent and mandatory injunctions, was dismissed in respect of delivery of vacant possession and future damages, while decreeing the suit for permanent injunction and for mandatory injunction.

B.The case of the plaintiffs:

2. The plaintiff is one of the ancient Temples having several properties in and around of Purasawalkam, Chennai. The property in Survey No.3155 is owned by the plaintiff/Temple. The property bearing Door No.71, Kuttiappa Giramani, 2nd Street, Kilpauk Chennai-600 010, measuring an extent of 1 ground 1800 Sq.ft., which is in the said Survey No.3155, belongs to the plaintiff/Temple. While so, one *Arumuga Naicker and Others* were let out some of the other properties of the Temple for performing '*Bolichetty*' during festival times. However, when the said *Arumuga Naicker and Others* had stopped performing '*Bolichetty*' when



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the plaintiff/Temple sought to re-enter the suit property, then the said *Arumuga Naicker and Others* filed a suit in O.S.No.8268 of 1982, on the file of the XII-Assistant Court, City Civil Court, Chennai and by a Judgment dated 19.02.1987, while granting a decree in favour of the said *Arumuga Naicker and Others* in respect of other Survey numbers, the suit was dismissed in respect of Survey No.3155, that is, in respect of the suit property. While so the defendant is in occupation of the suit property, and she did not attorn the tenancy in favour of the plaintiff/Temple and regularise her occupation, therefore, she is neither a tenant nor a permissive occupier and is a rank Trespasser.

2.1. On 01.11.2006, when the Collection Clerk of the plaintiff/Temple visited the suit premises, he found that the defendant herein is trying to put up a new construction in the suit properties and therefore, a telegraphic notice was issued on 01.11.2006. As a matter of fact, on 01.11.2001, the Fair Rent Fixation Committee constituted by the Hindu Religious & Charitable Endowments (HR & CE) Department, fixed a fair rent at the rate of Rs.2.56 per sq.ft., for the area in which the suit premises situate and therefore, the plaintiff/Temple is entitled for a sum of Rs.10,752/- per month and the defendant was also liable to pay the said



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sum of Rs.358/- per day for the damages, use and occupation of the suit premises and hence, the suit.

C.The Case of the defendants:

3. The plaintiff/Temple has not filed any title documents to prove their title. Originally the suit property belonged to one Sivalingam's forefathers from time immemorial. It was given to them absolutely by virtue of their rendering *Bolichetty* services to *Sri Gangdhara Easwara Temple, Puraswalkam* which is attached to *Arulmigu Pathala Ponniammal Temple* and its other connected Temples. After the death of one *Narayanasamy Naicker*, who is the paternal grandfather of *Sivalingam Naicker*, the father of *Sivalingam Naicker*, namely, *Subramania Naicker* and his brother *Arumuga Naicker* enjoyed the suit property. Upon the death of the said *Subramania Naicker*, the said *Sivalingam* and his paternal uncle *Arumuga Naicker* have enjoyed the suit property with the larger extent totalling to 3 ½ grounds out of which the said *Sivalingam* is entitled to ½ share in the entire property and being 1 ¾ grounds. The said *Sivalingam* sold one ground to one *Durgabai*, vide a registered sale deed dated 27.09.1963. A rectification deed was also executed on 11.12.1963 by the said *Sivalingam*, to rectify the error in Survey No.3155, which was



wrongly mentioned as Survey No.55/1. The said *Durgabai* sold the suit property vide registered Sale Deed dated 17.10.1967 in favour of one *Rajammal*. The said *Rajammal* is the mother of the defendant. The said *Rajammal* executed a Will dated 25.02.1975, bequeathing the suit property in favour of the defendant. The defendant being the absolute owner of the property is in possession. She had also constructed a superstructure in the suit property and she is not a trespasser.

D. The issues & the Trial:

4. On the strength of the above pleadings, the Trial Court framed the following issues:-

“1) Whether the plaintiff is entitled to get the prayer of evict the defendant?

2) Whether the defendant is liable to deliver the possession to the plaintiff?

3) Whether the plaintiff is entitled to get the permanent injunction restraining the defendant from putting up further construction?

4) Whether the plaintiff is entitled to get the mandatory injunction against the defendant?

5) Whether the plaintiff is entitled to get the damage for use and occupation of the defendant? If so



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what rate?

6) *Whether the defendant is prescribed title as absolute owner through the various sale deed?*

7) *Whether the defendant is already put up the construction before filing the suit?*

8) *Whether the suit property absolutely belongs to the defendant as per the Will dated 25.02.1975 executed by one Rajammal?*

9) *To what other reliefs the plaintiff is entitled to?"*

4.1 On the said issues, on behalf of the plaintiff, one *Palani* was examined as P.W.1 and **Exs.A-1** to **A-6** were marked. On behalf of the defendants, the defendant herself was examined as D.W.1, and **Exs.B-1** to **B-3** were marked.

E. The Findings of the Trial Court:

5. Thereafter, the Trial Court proceeded to consider the case of the parties and by a Judgment dated 21.08.2007, found that by virtue of the Judgment in **Ex.A-1** in C.S.No.553 of 1949 and **Ex.A-2** in O.S.No.8268 of 1982, which was between the Temple and the said *Arumuga Naicker and Others* from whom the defendant claiming the title, the claim of the plaintiff/Temple has already been upheld. Further, the Patta in **Ex.A-3** also



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stands in the name of the plaintiff/Temple. The suit filed by the said *Arumuga Naicker and Others* claiming their rights over the property against the Temple had been dismissed in respect of S.No.3155 and thus, it belongs to the Temple. As a matter of fact, the defendant is claiming the title from the Will, and the Will is not probated. Therefore, the defendant is only the owner of the superstructure and does not have any right on the land of the plaintiff/Temple. However, the plaintiff/Temple did not issue any notice to evict the defendant as per Section 106 of the Transfer of Property Act. Therefore, the suit was dismissed for want of notice in respect of the relief of delivering the vacant possession, but, however, the defendant was restrained by way of permanent injunction, not to put up unauthorized construction and also to remove the unauthorized construction attempted to be put up by her. Aggrieved by the same, the plaintiff/Temple had filed the present Appeal Suit. It is pertinent to mention here that the defendant has not filed any appeal to the extent of the decree granted against her.

F.The submissions:

6. Heard, *Mr.S.Rajendrakumar*, learned Counsel for the Appellant and *Mr.A.R.L.Sundaresan*, learned Senior Counsel appearing on behalf of



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the Respondent.

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6.1 *Mr.S.Rajendrakumar*, learned Counsel for the appellant would submit that it can be seen that the claim of the '*Bolichetty Manyadhars*' in respect of the suit property has been dismissed by the Judgment under ***Ex.A-2*** and the same has become final. The properties were in nature of *Inam* for the Temple and the Patta is in the name of the Temple. There is absolutely no truth in the contentions of the defendant about the title of her mother, her vendors and her forefathers. The defendant is not a tenant under the plaintiff/Temple and therefore, no notice is required under Section 106 of the Transfer of Property Act. The learned Counsel also relied upon the Judgment of this Court, in ***S.Radhabai Vs. Bharani Abishheka Kattalai*** in **S.A.No.1224 of 2007** to contend that the status of the defendant is in the nature of trespasser and no notice under Section 106 of the Transfer of Property Act, is necessary. The learned Counsel taking this Court through the Scheme Decree framed under ***Ex.A-1***, would submit that the Executive Officer, is duly authorized to represent for the Temple and relying upon the meaning for the term '*Represent*' in P.Ramanatha Aiyar's Law Lexicon, he would contend that it would mean 'to stand in the place of or to act on behalf of the Temple. Thus, the Executive Officer,



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who has been specifically authorized by the Scheme Decree is entitled to represent the Temple. Therefore, the learned Counsel would pray for the suit to be decreed.

6.2 Per contra, *Mr.A.R.L.Sundaresan*, learned Senior Counsel appearing for the respondent/defendant would submit that as a matter of fact, as against the findings regarding the title, the defendant ought to have filed the Cross Appeal. But, even in the absence of the same, this Court in the exercise of its power under Order 41 Rule 22 CPC, is entitled to go into the title of the plaintiff and that the plaintiff/Temple has not produced any title document to prove its title and it is only relying upon the dismissal of the suit filed by the said *Arumuga Naicker and Others*. On the contrary, the defendant has produced ***Exs.B-1 & B-2***/Sale Deeds, to prove the title in respect of the properties. Therefore, ***Exs.B-1 & B-2***, would categorically prove the title of the vendors of the *Rajammal*. Once the title vest in *Rajammal*, even though the Will executed by the *Rajammal* is not probated, still the defendant being the daughter, the property will vest in her and therefore, the defendant has proved the title to the property and as a matter of fact, the suit in its entirety should have been dismissed. The learned Senior Counsel would submit that in this case, the suit is filed by



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the Executive Officer, without authorization of the Commissioner and therefore, by virtue of the dictum of the Division Bench of this Court, in ***Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy, Vs. T.M.Muthuswamy Padayachi, etc., & Others¹***, more specifically, relying upon Paragraphs Nos.19, 20 and 21, to contend the suit filed by the Executive Officer is not maintainable. For the very same proposition, the learned Counsel relied upon the Judgment in S.A.No.1224 of 2007, dated 13.08.2021, in the case of ***S.Radhabai Vs. Bharani Abishheka Kattalai²***, and the Judgment of ***V.Kuppusamy Vs. A/M. Prasanna Vinayagar Thirukoil, represented by its Executive Officer, Pudupet, Chennai-14³***, and in the Judgment of ***E.V.Mohan Vs. Arulmigu Sengaluneer Vinayakar and Koluraman Thirukoil by its Executive Officer/Manager,⁴*** to contend that the suit filed by the Executive Officer is not maintainable.

6.3 The learned Senior Counsel would submit that the entire findings of the title against the defendant are only based on the decision in the earlier suit. To hold the earlier suit barred by *Res Judicata*, the

1 2003 1 L.W. 386

2 Second Appeal No.1224 of 2007, dated 13.08.2021

3 C.R.P.(NPD).No.2112 of 2014, dated 01.11.2017

4 C.R.P.(NPD).No.2966 of 2007, dated 23.04.2018



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plaintiff/Temple did not produce the plaint, written statement and the issues framed in the earlier suit, so as to prove that the matter is directly and substantially in issue in the earlier suit and present suit is one and the same. In support of his proposition, he would rely upon the Judgment of the Hon'ble Supreme Court of India, in *V.Rajeswari (Smt) vs. T.C.Saravanabava*⁵. Therefore, the learned Senior Counsel would submit that the Appeal Suit is liable to be dismissed and as a matter of fact, the other part of the decree should also be set aside, upholding title in favour of the defendant.

G.Points for consideration:

7. Upon considering the rival submissions and perusal of the material records of this case, the following questions arise for consideration in the instant case:-

"i) Whether the suit filed by the Executive Officer is maintainable?

ii) Whether the plaintiff is the absolute owner of the suit property?

iii) Whether the plaintiff is entitled for relief of

⁵ (2004) 1 SCC 551



recovery of possession?"

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H.Question No.(i):

7.1 The Scheme Decree is marked as **Ex.A-1**, in which, Clause No.9, clearly reads as follows:-

"9. The Executive Officer shall represent the Temple in all legal proceedings"

The Scheme framed under the repealed Act is also saved under Section 118 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959.

7.2. The phrase '*represent*' is defined in P.Ramanatha Aiyar's Law Lexicon as follows:-

" Represent. To represent a person is to stand in his place, to act his part, to exercise his right, or to take his share.

To act the part of, in place of or for (another) [S.182, Indian Contract Act (9 of 1872)]; to be accredited deputy or substitute for (a number of persons) in a legislative or deliberative assembly; to place a fact clearly before another with a view to influencing action or conduct [S. 28(1) Indian Partnership Act (9 of 1932); to make a formal statement of facts, reasons or arguments with a view to affecting some action etc....."



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(emphasis supplied)

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7.3. It can be seen that to '*represent*' not only means to stand in the place of the Temple but also to act on the part of the Temple. Thus, in the instant case, the Executive Officer has been given express power to file a suit on behalf of the Temple and the ratio in the Judgments cited by the learned Senior Counsel in *Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy, Vs. T.M.Muthuswamy Padayachi, etc., & Others*⁶, and etc., cited supra are not applicable to this case.

7.4. This apart, this Court after considering the march of law on the point had an occasion to consider the said question in detail, in *Durgai Lakshmi Kalayan Mandapam & Anr -Vs- Idols of Arulmigu Siddhi Ganesar Nataraja Perumal Durgaiamman group of Temples & anr (A.S. No. 397 of 2010)*, and it is held that the suit filed by the Executive Officer is maintainable, even in the absence of express permission/authorization by the Commissioner, and accordingly, I answer the first question.

⁶ 2003 1 L.W. 386 cited supra 1.



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I.Question No.(ii):

7.5 In this case, the plaintiff/Temple has filed the suit, claiming ownership of the suit property, in support thereof, the plaintiff/Temple has produced the Patta in the form of an extract of the Town Survey Land Register, in **Ex.A-3**. It is the contention of the plaintiff/Temple that these lands were *Inam* lands, therefore, except the Patta, there is no other title document in respect of the suit property. This apart, the plaintiff/Temple has produced the Judgment under **Ex.A-2**, passed by the XIII-Additional City Civil Court, Chennai. In the suit filed by the said *Arumuga Naicker and Others*, against the plaintiff/Temple, in which, the title in respect of Survey No.3155 has been gone into. It is the claim of the said plaintiff's that along with two other survey numbers, the Survey No.3155 was also given to them by way of '*Bolichetty Manyam*', even though the *Bolichetty* has not been performed since the properties have been given absolutely to them they are entitled for the said properties. While considering the document marked in **Ex.A-11** in the suit in O.S.No.8268 of 1982, on the file of the City Civil Court at Chennai, which is an agreement dated 02.02.1920, between one *Krishna Sharma*, one *Ponnappa Naicker*, and *Manicakka Naicker*, the Court found that as far as the Survey No.3155 is



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concerned, the same is not given by way of '*Bolichetty Manyam*', but, on a rental basis, therefore, dismissed the suit as far as the Survey No.3155 is concerned. The defendant is claiming the same property to be '*Bolichetty Manyam*' to her predecessors in title and the same claim is made in the recitals of sale deeds in ***Exs.B-1 & B-2***.

7.6 Thus, it can be seen that the plaintiff/Temple has established the title in the earlier suit and even ***Exs.B-1 & B-2***, speak about the said *Arumuga Naicker* and *Sivalingam*, being entitled to half share each in the Survey No.3155. As a matter of fact, the un-propabated ***Ex.B-3***/Will through which the defendant claims title, also mentions that the land in respect of the suit schedule property belongs to the plaintiff/Temple. Therefore, it can be seen that inspite of ***Exs.B-1 & B-2*** sale deeds, the plaintiff/Temple had asserted its title. When the basis of the claim of the title as to the award of the land by way of *Bolichetty Maniyam* to the predecessors in title of the defendant is undone by ***Ex.A-2***, the plaintiff/Temple has proved better title in respect of the suit property. As far as the submissions of the Learned Senior Counsel that the plea of *res judicata* must be proved by producing the pleadings of the parties and also issue framed is concerned, even in the Judgment relied upon in this regard,



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in **V. Rajeswari Case** (cited supra), it is held as follows :-

"13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata. and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in Syed Mohd. Salie Labbai v. Mohd. Hanifa [(1976) 4 SCC 780] the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in Gurbux Singh v. Bhooralal [AIR 1964 SC 1810 : (1964) 7 SCR 831] placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is



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necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in Kali Krishna Tagore v. Secy. of State for India in Council [(1887-88) 15 IA 186 : ILR 16 Cal 173] pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit."

(emphasis supplied)

7.7 In the instant case, upon a perusal of the judgment itself, it is clear that the pleadings of the predecessors in title of the defendant was that the property was given as *Bolichetty Manyam* absolutely. The pleading of the plaintiff/Temple is that the title vested it in it. The Trial Court had found that irrespective of the nature of the award of *Bolichetty Manyam*, the instant Survey No.3155 was never a part of the grant regarding the *Manyam* but was taken on rent simplicitor. When all these facts are clearly and categorically demonstrated in the Judgment **Ex.A-2**



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itself, there was no necessity for the production of the pleadings and issues.

7.8 This apart, even though in the best interest of the parties, this Court undertook the exercise of determining the title in this Appeal Suit by going through the relevant title documents produced by both sides, it is pertinent to mention here that as against the finding of the title and decreeing of the suit in part, the defendant has not filed any appeal suit or cross objections. The findings about the title are not mere findings but followed by decreeing of the suit in part. Therefore, when the defendant had not filed any Appeal Suit or Cross objections, the finding of the Trial Court, that the plaintiff/Temple is the owner of the suit property has also attained finality. Accordingly, this point is answered.

J.Question No.(iii):

7.9 Having held that the plaintiff/Temple is the owner of the property, and the possession of the defendant is pursuant to a claim of rival title, she is not a tenant or a lessee and therefore, the finding of the Trial Court that notice under Section 106 of the Transfer of Property Act is necessary, is erroneous. As rightly contended by the learned Counsel for



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the appellant, once the plaintiff/Temple is the lawful owner of the property it is entitled to reclaim its properties from the defendant, and by virtue of Section 109 of the Tamil Nadu Religious and Charitable Endowments Act, 1959, the provisions of the Limitation Act, 1963 are not applicable in respect of the suit for possession of immovable property belonging to the Temple and therefore, the plaintiff will also be entitled to the relief of directing the defendant to quit and deliver the vacant possession and I answer the question accordingly.

7.10 It can be seen that the defendant is the owner of the superstructure alone. It would be open for her to approach the plaintiff/Temple and if the Temple Authorities deem it fit to recognise her as a tenant in respect of the Temple Land for the rent to be mutually agreed between them, the such course will be open and it is not necessary to evict the defendant if such a course is being adopted.

K. Answers to the issues:

8. In view thereof, in respect of issues No.1 & 2 that it is held that the plaintiff/Temple is entitled for the relief of eviction and the defendant is liable to quit and deliver the vacant possession to the plaintiff/Temple.



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The findings in respect of issues No.3 & 4, regarding the permanent injunction and mandatory injunction are confirmed. As regards issue of damage and use of the occupation are concerned, since the case involves a dispute as to the title, and since the Trial Court has also not awarded the same, it would be unfair to the defendant to award the same at this distant point of time. However, from the date of the communication of this Judgment and decree, if the defendant is willing and if the plaintiff/Temple considers that it would be the best interest of the Temple, it can fix the land rent afresh in accordance to the market value and the same can be collected from the defendant, from the date of this decree. As far as issue No.6 is concerned, it is answered that there is no prescription of title by the defendant and in respect of issue Nos.7&8, are concerned, the defendant will be the owner of the superstructure and she will not be entitled to put up any construction without the permission of the Temple.

L.In the result:

10. The Appeal Suit in A.S.No.679 of 2009 is partly allowed;

i) The Judgment and Decree dated 21.08.2007 in O.S.No.8726 of 2006, on the file of the VI-Additional City Civil Court, Chennai, is set aside, inasmuch as it did not grant the relief of recovery of possession and



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it is decreed that the defendant shall quit and deliver the vacant possession of the suit schedule premises to the plaintiff/Temple.

ii) The defendant is granted six months time from the date of receipt of the copy of this Judgment and Decree to quit and deliver vacant possession;

iii) In the meanwhile it will be open for the defendant to approach the plaintiff/Temple to seek for tenancy under the Temple and the same shall be considered by the plaintiff authorities on merits in accordance with law;

ii) There will be no order as to costs in the Appeal Suit.

16.12.2022

Index : yes
Speaking order

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To

- 1.The VI-Additional City Civil Judge at Chennai.
- 2.The Section Officer, V.R. Section, High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Judgment in

A.S.No.679 of 2009

16.12.2022