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S.A.Nos.507 & 508 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.Nos.507 & 508 of 2007

and

Cross Obj.No.31 of 2008

S.A.No.507 of 2007

Govindan

S/o.Panduranga Gounder

Paranoor Village

Tirukovilur Taluk

.. Appellant

Vs.

1.Pavadai Gounder (died)

S/o.Thangavel Gounder

2.Murugesu Gounder

S/o.Thangavel Gounder

3.Arumugha Gounder

S/o.Thangavel Gounder

4.Thangaraj

S/o.Ayyakannu

1 to 4 are residing at Seerpathanallur Village

Sankarapuram Taluk

Villupuram District

5.Saroja

W/o.Late Pavadai Gounder

Sripathanallur Village

Kallakurichi Taluk

(R5 B/R as legalheir of the deceased 1st Respondent

viz., Pavadai Gudner vide order dated 16.08.2021

made in CMP.No.10460 & 10461 of 2021)

.. Respondents



S.A.Nos.507 & 508 of 2007

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the Additional District Sessions Court (Fast Track) at Kallakurichi, dated 31.01.2006 in A.S.No.33 of 2003 reversing the judgment and decree of Second Additional District Munsif Court at Kallakurichi dated 23.03.1999 in O.S.No.195 of 1991.

For Appellant : Mr.P.Valliappan
Senior counsel
for Mr.G.K.M.Palaniappan

For Respondent : Mr.R.Muralidharan (for R2, R3 & R5)
R4 - No appearance
R1 - Died

S.A.No.508 of 2007

Govindan

S/o.Panduranga Gounder

Paranoor Village

Tirukovilur Taluk

Villupuram District

.. Appellant

Vs.

1.Pavadai Gounder (died)
S/o.Thangavel Gounder

2.Murugesu Gounder
S/o.Thangavel Gounder

3.Arumugha Gounder
S/o.Thangavel Gounder

4.Gopalan
S/o.Panduranga Gounder
Paranoor Village
Tirukovilur Taluk
Villupuram District



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5.Saroja
W/o.Late Pavadai Gounder
Sripathanallur Village
Kallakurichi Taluk

*(R5 B/R as legalheir of the deceased 1st Respondent
viz., Pavadai Gudner vide order dated 16.08.2021
made in CMP.No.10460 & 10461 of 2021)*

.. Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the Additional District Sessions Court (Fast Track) at Kallakurichi, dated 31.01.2006 in A.S.No.7 of 2004 confirming the judgment and decree of Principal District Munsif Court at Kallakurichi dated 13.04.1998 in O.S.No.1133 of 1992.

For Appellant : Mr.P.Valliappan
Senior counsel
for Mr.G.K.M.Palaniappan

For Respondent : Mr.R.Muralidharan (for R2, R3 & R5)
R4 - No appearance
R1 - Died

Cross Obj.No.31 of 2008

1.Pavadai Gounder
S/o.Thangavel Gounder

2.Murugesu Gounder
S/o.Thangavel Gounder

3.Arumugha Gounder
S/o.Thangavel Gounder
All are residing at



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Seerpathanallur Village
Sankarapuram Taluk
Villupuram District

.. Cross Objectors

Vs.

1.Govindan
S/o.Panduranga Gounder
Paranoor Village
Tirukovilur Taluk
Villupuram District

2.Gopalan
S/o.Panduranga Gounder

.. Respondents

PRAYER: This Cross Objection filed under Order 41 Rule 22 of Civil Proceedure Code to set aside the error committed in its operative paragraph confirming the judgment of the trial Court.

COMMON JUDGMENT

S.A.No.507 of 2007 is arising out of the judgment dated 23.03.1999 in O.S.No.195 of 1991. S.A.No.508 of 2007 is arising out of the judgment dated 13.04.1998 in O.S.No.1133 of 1992.

2.The first Appeal in A.S.No.33 of 2003 & A.S.No.7 of 2004 arising against the Suit in O.S.No.195 of 1991 and O.S.No.1133 of 1992 which has been disposed of on 31.01.2006 in two separate orders. The Suit property in O.S.No.1133 of 1992 is also a suit property in O.S.No.195 of 1991. But, in O.S.No.195 of 1991, there is yet another suit property qua S.F.No.28/12 was



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also included. The S.A.No.507 of 2007 is arising out of A.S.No.33 of 2003.

Similarly the S.A.No.508 of 2007 is arising out of A.S.No.7 of 2004. Since the facts and law involved in S.A.No.507 of 2007 and 508 of 2007 are interlinked and intertwined, this Court deems it appropriate to dispose of both the second appeal by way of a common judgment.

3.The parties to the both Appeals will be referred to, according to their litigative status in O.S.No.195 of 1991.

4.The Defendant in O.S.No.195 of 1991 and Plaintiff in O.S.No.1133 of 1992 are the Appellants in S.A.No.507 of 2007 and S.A.No.508 of 2007, respectively. Similarly, the Plaintiff in O.S.No.195 of 1991 and Defendant in O.S.No.1133 of 1992 are the Respondents in S.A.No.507 of 2007 and S.A.No.508 of 2007, respectively.

5.Pleadings in O.S.No.195 of 1991:

The brief pleadings of O.S.No.195 of 1991 is that, the Plaintiff has filed suit for the relief of declaration and injunction in respect of the suit property which consists of six items of property. According to the Plaintiff, the title of the Plaintiff was declared in an Appeal in A.S.No.166 of 1978 arising out of the



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former suit in O.S.No.629 of 1974 between the same parties. According to the Plaintiff, the Defendants have no manner of title or possession over the suit property. Since the Defendants have once again interfered with Plaintiff's possession, the Plaintiff was constrained to file a suit for the relief of declaration and injunction.

6.The said suit was resisted by the Defendants by contending that the suit properties are absolutely belong to them, and that during 1970, the Defendants 1 to 3's Father viz., Thangavel has executed a settlement deed in favour of the District Educational Officer of South Arcot District, gifting the property of an extent of one acre fifty cents in S.F.No. 28/12. The above S.F.No.28/12 is the second item of the suit property. Therefore, this Defendants submits that taking over of possession of property in the execution proceedings consequent to the decree in former suit in O.S.No.629 of 1974 is sham and nominal. Therefore, prays to dismiss the Suit.

7.Pleadings in O.S.No.1133 of 1992:

The Plaintiffs in O.S.No.1133 of 1992 are the Defendants in the Suit in O.S.No. 195 of 1991. They filed Suit for declaration in respect of three items of property. According to this Plaintiff's, suit property is their ancestral property,



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and that they have been enjoying the same for time memorial. Hence, they prayed for the relief of declaration and for an injunction.

8.The said Suit was resisted by the Defendant (The Plaintiff in O.S.No. 195 of 1991) by contending that the suit is hit by the principles of *resjudicata*, in view of the Decree passed in A.S.No.166 of 1978 arising out of former suit in O.S.No.629 of 1974. The Defendants further submits that in pursuance of the Decree they took possession of the suit property and yet another property in S.F.No.28/12. Therefore, the Defendant submits that the Suit is abuse of process of law. Hence, prayed for dismissal of the Suit.

9.Evidence and findings of the trial Court as well as the first Appellate Court in O.S.No.195 of 1991:

In O.S.No.195 of 1991, the Plaintiff has marked three documents as Ex.A1 to A3 and Plaintiff himself was examined as PW1. On behalf of the Defendants, no document was marked. However, two witnesses viz., first Defendant and the Village Administrative Officer were examined as PW1 and PW2. The trial Court has believed the case of the Plaintiff, on the basis of the decree in O.S.No.629 of 1974. More particularly, suit register extract (Ex.A1 of O.S.629 of 1974) and possession receipt dated 19.02.1981 (Ex.A2), and



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decreed the suit as prayed for. Aggrieved with the same, the Defendants preferred an appeal in A.S.No.33 of 2003. However, the first Appellate Court disbelieved the case of the Plaintiff on the premise that item 2 of the suit property has already been handed over to the District Educational Officer by the 4th Defendant through a settlement deed. Therefore, the first Appellate Court has arrived at a conclusion that the possession receipt Ex.A2, and the Decree in the previous suit Ex.A1, are sham and nominal and thus dismissed the suit. It was also the finding of the first Appellate Court that Plaintiff did not prove the title by producing the title deeds. Thus, the first Appeal was allowed, thereby dismissing the Suit.

10. Aggrieved with the same, now the Plaintiff in O.S.No.195 of 1991 is before this Court as the Appellant in S.A.No.507 of 2007.

11. Evidence and findings of the trial Court as well as the first Appellate Court in O.S.No.1133 of 1992:

In O.S.No.1133 of 1992, the Plaintiffs (Defendants in O.S.No.195 of 1991) has marked 18 documents viz., Ex.A1 to Ex.A18, and examined two witnesses as P.W.1 & P.W.2. On behalf of the Defendants, three documents



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were marked and first Defendant was examined as DW1. The trial Court has disbelieved the case of the Plaintiffs and granted decree to other properties, excluding the property mentioned in another connected suit O.S.No.195 of 1991. Aggrieved with the same, the Plaintiff preferred an appeal, wherein the first Appellate Court has confirmed the Decree of the trial Court and dismissed the Appeal.

12. Aggrieved with the same, the Defendant in O.S.No.1133 of 1992 is before this Court as the Appellant.

Substantial questions of law:

13. On 05.06.2007, the Second S.A.No.507 of 2007 was admitted on the following substantial questions of law:

“1. Whether the lower appellate court is correct in law in holding that there was only paper delivery under Ex.A1 and A2, suit register and delivery receipt in the earlier proceedings, in the absence of any evidence to the contrary?

2. Whether the lower Appellate Court is correct in law in permitting the respondents to produce documentary evidence at the appellate stage, without following the procedure enumerated under Order 41 Rule 27 of the Code of Civil Procedure?



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3. When it is incumbent upon the first Appellate Court to frame points for determination as required under Order 41 Rule 31 of the Code of Civil Procedure and decide the appeal in accordance with Section 96 of the Code of Civil procedure, whether the judgment of the lower Appellate Court without adhering to the above imperative provisions, is sustainable in law?

4. Whether the lower Appellate Court is correct in law in discarding Ex.A1 to A3, material documents, which would prove the title of the appellant”

14. At the time of admission on 05.06.2007, the Second S.A.No.508 of 2007 was admitted on the following substantial questions of law:

“1. Is the first Appellate Court justified in rendering findings against the appellant, while concurring with the judgment rendered by the trial Court in favour of the appellant?

2. Whether the lower Appellate Court is correct in law in holding that there was only paper delivery under Exs.B1 & B2, suit register and delivery receipt in the earlier proceedings, in the absence of any evidence to the contrary?

3. When it is incumbent upon the first Appellate Court to frame points for determination as required under Order 41 Rule 31 of the Code of Civil Procedure and decide the appeal in accordance with Section 96 of the Code of Civil Procedure, whether the judgment of the lower Appellate Court without adhering to the above imperative provisions, is sustainable in law?



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4. Whether the lower Appellate Court is correct in law in discarding Exs.B1 to B3, material documents, which would prove the title of the appellant?"

Submission of the counsels:

15.Heard Mr.P.Valliappan, learned Senior counsel for Mr.G.K.M.Palaniappan, learned counsel for the Appellant/Plaintiff, and Mr.R.Muralidharan, learned counsel appearing on behalf of the second, third and fifth Respondents.

16(i).The learned senior counsel appearing on behalf of the Plaintiff would vehemently submit that the suit properties were originally belong to the Plaintiff, and his brother by virtue of settlement deed executed by one Kanniammal. He would further contend that present proceedings are second round of litigation and that in the past, when the Defendants have disturbed and interfered with the possession of the Plaintiffs, they were constrained to file a suit through their mother Sampoorammal in O.S.No.629 of 1974, and that against the dismissal of OS No.629/74, they preferred an appeal in A.S.No.166 of 1978, in the Appeal, their title over the suit property was declared. The learned Senior counsel would further contend that in pursuance of decree, they were put in possession of the suit property. Therefore, it is the submission of



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the learned Senior Counsel that by virtue of Ex.A.1 and Ex.A2, they are the absolute owner of the suit property, and the defence put forth by the Defendants in the suit filed in O.S.1133 of 1992 are abuse of process of law and hit by the principles of *resjudicata*.

16(ii).The learned Senior Counsel would further contend that, the trial Court without going into the effect and binding nature of the decree, has swayed by the non submission of the settlement deed executed in favour of the Plaintiff, totally oblivious to the fact that the settlement deed has been considered in the decree of the former suit in O.S.No.629 of 1974. Therefore, contended that the findings recorded by the first Appellate Court in dismissing the suit in O.S.No.195 of 1991 is perverse and liable to be interfered with. Hence, prayed to allow both the Appeals.

17.Per contra, the learned counsel appearing on behalf of the Defendant would submit that the decree in O.S.No.629 of 1974, and the possession receipt *qua* Ex.A.1 & Ex.A2 are sham and nominal, and that such nature can be exemplified through the settlement deed executed by the Defendants in Ex.A.18 (O.S.No.1133 of 1992) even in 1970. Therefore, the learned counsel appearing on behalf of the Respondents would submit that, when the second item of the



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suit property in O.S.No.195 of 1991 was gifted to the District Educational Officer during 1970, the reference of taking possession of the very same property through Ex.A2 possession receipt at the later point of time would only project the falsity and fallacy over the Ex.A2, possession receipt. Hence, prayed to dismiss the Appeal.

18.However, defendant has also filed a Cross Objection in Cross Obj.No.31 of 2008, wherein it was contended that the first Appellate Court while agreeing the points raised by the Defendants in para 13 of the judgment, has wrongly dismissed the Appeal. Hence prayed to reverse the said portion of the order.

19.I have given the anxious consideration on either side submissions.

Analysis of the submissions:-

20.Though pleadings of either parties runs several pages, the issue involves in this case is very simple and it revolves around the true effect, validity and of binding nature of the decree in A.S.No.166 of 1978 in O.S.No.629 of 1974 (Ex.A.1), and subsequent possession taken in the execution proceedings by the Plaintiff under Ex.A2. The main objection on behalf of the Defendants is that the said decree and possession receipt are sham and nominal. But



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pertinently, except the pleadings in respect of sham and nominal, no prayer sought for by the defendant for declaration to declare Ex.A.1/Decree and Ex.A.2/possession receipt as sham and nominal. But it is the contention of the defendants that in Ex.A8 settlement deed, one of the property situate in S.F.No.28/2012, was gifted in favour of the District Educational Officer in the year 1970, therefore there could not have been any possibility for the Plaintiff to take possession of S.F.No.28/12, where admittedly the school is now running.

21.This Court has perused Ex.A1/decree and possession receipt Ex.A.2. The property referred in Ex.A1 & Ex.A2 and the suit property in O.S.No.195 of 1991 are one and the same.

22.It is further admitted by either sides that the Decree in A.S.166 of 1978 in O.S.No.629 of 1974 has reached finality, whereby a declaration had been granted in favour of the Plaintiff herein declaring that the property referred in O.S.No.629 of 1974 is their absolute property. In the said decree, the defendants were directed to hand over the possession to the Plaintiff. Admittedly, the Defendants in O.S.No.195 of 1991 were parties to the said former suit in O.S.No.629 of 1974. But the learned counsel for the Defendants would vociferously contend that, when the Plaintiff derive the title by virtue of



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the alleged settlement deed, which is said to have been executed by one Kanniammal, the non production of the such settlement deed would suffice to hold that the Plaintiff is not entitled for relief of declaration. But this Court is having serious apprehension in respect of this arguments advanced by the learned counsel for the Defendants.

23.At this juncture, the learned Senior Counsel appearing on behalf of the Plaintiff would invite attention of this Court in respect of Section 11 of CPC, and would submit that the relief sought for in O.S.No.1133 of 1992, by the Plaintiff, who are Defendant in O.S.No.195 of 1991 is hit by the principles of the *resjudicata*.

24.The learned Senior Counsel appearing on behalf of the Plaintiff would further submit that, when there is a decree of declaration in the former suit in favour of the Plaintiff in O.S.No.195 of 1991, for the very same property the Defendants in O.S.No.195 of 1991 cannot file a separate suit for declaration, and that the same would amount to abuse of process of law.

25.In this connection, the learned Senior Counsel would rely upon the judgment of the single Judge of this Court in the case of ***Saraswathy Ammal***



and others Vs. Govindan and others reported in **2020 (5) CTC 781**. Wherein

the single Judge of this Court held that when the title and possession of the suit property decided in favour of one party and became final, and that in pursuance of the Decree when a delivery was effected, it cannot be contended by the other party that the delivery was only mere paper delivery. The relevant portion of the judgment in paragraph 15 and 16 are extracted as follows:

“15.As regards the claim that the delivery that was effected pursuant to the decree in OS No.1421 of 1981 is only a paper delivery and the first plaintiff herein, who was the judgment debtor in that suit continued in possession of the property despite possession having been taken through the Executing Court. I am afraid that the first plaintiff is precluded from taking such a plea. After all an act of the Court effecting delivery is an official act and the presumption attached to it under [section 114](#) of the Evidence Act would apply.

16. In C.Ramasami. v. Kuruva Boyan and others, reported in 1991 (1) LW 244, this Court has held that a person who suffered an order for delivery and when the records reflect that delivery has been effected through Court, cannot be heard to contend that it was only a paper delivery, in doing so, this Court had observed as follows:

“2. It is not possible for a court to ignore the evidence afforded by the court officials to the effect that delivery has been effected, on the mere allegation that there was no actual delivery. In



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*order to reject the official records such as the, bailiffs endorsements, there must be a definite and specific plea of fraud. In the absence of a plea of fraud with full particulars as are necessary to support the same, the court shall not direct an enquiry as to whether there is actual delivery. In every case the judgment debtor is interested in stating that there is no physical delivery in order that he may obtain an order of stay in the appellate Court. **A bare allegation that the delivery is a paper delivery and the appellant continues in possession is hardly sufficient to direct an enquiry whether there is physical delivery. The presumption under Section 114 of the Evidence Act that official acts are performed regularly will undoubtedly apply**".*

In view of the aforesaid categorical pronouncement of this Court, the first respondent, who was a party to the earlier litigation and had suffered an order for delivery cannot be heard to contend that he continues to be in possession of the property despite delivery having been effected through the process of Court of Competent jurisdiction.

(emphasis supplied by this Court)

Here also the defendants have already suffered a Decree in Ex.A1, and that subsequent to the same, possession was also taken by the Plaintiff. In spite of the same, the defendants contended that the Decree and the possession receipt are sham and nominal, which defence is nothing but abuse of process of law. Therefore, as long as the decree is in force, the same would bind the parties and the parties are barred to re-agitate the same issues.



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26. The learned counsel appearing on behalf of the Defendants has also relied upon the judgment of this Court in the case of ***K.R.Andu Gowder & others vs. Saroja & others*** reported in **2023 (5) LW 111**. The relevant portion is paragraph No. 32 and 37.

“32. It is here that I would usefully recollect the judgment of the Supreme Court in the case of K.K.Modi vs K.N.Modi (1998) 3 SCC 573. The Supreme Court was pleased to hold as follows:-

“ Abuse of process of the Court connotes that the process of the court must be used bonafide and properly and should not be abused. The Court will prevent improper use of its machinery and will in a proper case summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.”.....

One of the examples cited as an abuse of the process of the court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated , it also amounts to an abuse of process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceeding may also amount to abuse of the process of court especially where the proceedings are absolutely groundless. The court



then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.....The court should also be satisfied that there is no chance of the suit succeeding.”

...

“37.This Court has held in the case of Ranipet Municipality vs M.Shamsheerkhan 1998 (1) CTC 66 that the following are the instances of abuse of process of Court:-

“ 9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.*
- (2) Contempt of the authority of the Court by a party or stranger.*
- (3) Fraud or collusion in Court proceedings as between parties.*
- (4) Retention of a benefit wrongly received.*
- (5) Resorting to and encouraging multiplicity of proceedings.*
- (6) Circumventing of the law by indirect means.*
- (7) Presence of witness during examination of previous witness.*
- (8) Institution vexatious, obstructive or dilatory actions.*
- (9) Introduction of Scandalous or objectionable matter in proceedings.*



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(10) Executing a decree manifestly at variance with its purpose and intent.

(11) Institution of a suit by a puppet plaintiff.

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court. ”

Though the learned counsel appearing on behalf of the Defendants relied the above precedent, this Court is not in a position to understand as to how the above precedent supports the Defendants. The cursory reading of the above precedent would only in support of the Plaintiff as it deals about re-agitation on the same issue.

27. Therefore, this Court is of the firm view that the findings arrived by the first Appellate Court that the Plaintiff did not prove the title in view of non production of the settlement deed executed by Kanniammal viz., great grandmother of the Plaintiff, is perverse, as the former decree was granted on adjudication of the settlement deed. Further, the findings of the first appellate Court are liable to be interfered with as the said findings are contrary to principles enunciated in Section 11 of CPC and oblivious to the former decree and possession receipt in favour of the plaintiff. Therefore, this Court holds



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that the defence put forth by the Defendants and the suit filed by them in

O.S.No.1133 of 1992 is liable to be dismissed on the ground of *resjudicata*.

Thus, all the substantial questions of law are answered in favour of the Appellant and the Second Appeal is liable to be allowed.

28.At this juncture, this Court cannot loss sight of the admission made by the Plaintiff that item 2 of the suit property *qua* S.F.No.28/12 at Sripathanallur village is in the possession and occupation of the Government School. Therefore, while allowing the second Appeals, this Court deems it appropriate to modify the decree to the extent of S.F.No.28/12.

29.In the result,

(a) S.A.No.507 of 2007 is partly allowed, thereby the decree granted in O.S.No.195 of 1991 is modified, and the suit is partly decreed only in respect of items 1, 3 to 6. The relief in respect of item 2 of the suit property is dismissed.

(b) S.A.No.508 of 2007 is allowed, thereby the suit in O.S.No.1133/1992 is dismissed,

(c) Further in view of the above detailed discussion the Cross Objection is dismissed. There is no order as to costs.



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Speaking order/Non-speaking order



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C.KUMARAPPAN, J.

sai

To

1.The Additional District Sessions Judge
Additional District Sessions Court (Fast Track)
Kallakurichi

2.The Second Additional District Munsif
Second Additional District Munsif Court
Kallakurichi

3.The Principal District Munsif
Principal District Munsif Court
Kallakurichi

S.A.Nos.507 & 508 of 2007
and
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