



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.7.2023

Delivered on : 04.09.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.251 of 2021
C.M.P.No.4879 of 2021

1. Mohan

2. Sendhil

.. Appellants

Vs.

1. Rasathi

2. Karuppannan

3. Mani

.. Respondents

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 18.01.2021 made in A.S.No.2 of 2019 on the file of the Subordinate Judge, Paramathy, reversing the judgment and decree dated 28.04.2018 made in O.S.No.64 of 2011 on the file of the District Munsif, Paramathy.

For Appellants : Mr.T.L.Thirumalaisamy

For Respondents : Ms.Zenath Begum

JUDGMENT

Plaintiffs 2 and 3, who succeeded before the Trial Court, but, lost their case before the Appellate Court, are the appellants herein.



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2. The second appeal came to be admitted on 18.03.2021 on the following substantial questions of law.

“(i) Whether the Lower Appellate Court is correct in law in brushing aside Exs.A2 to A6 – Revenue records standing in the name of the appellants which would prove the possession and enjoyment of the suit property by the appellants merely on the ground that the appellants have not executed the sale deed and therefore those documents are stands in their name when the respondents have not taken any steps to enforce Ex.B1 unregistered sale agreement and to get the sale deed in their name within the time as stipulated under Ex.B1 unregistered sale agreement or under the law?

(ii) Whether the Lower Appellate Court is correct in law in holding that the respondents are in possession of the suit property based on Ex.B1 unregistered sale agreement when no witness to the said document has been examined to prove the contents therein and in the absence of any revenue documents to prove their possession and enjoyment of the suit property?”



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3. For the sake of convenience, the parties are referred to as they

are arrayed in the original suit.

4. The case of the plaintiffs is as under:-

i) The suit property originally belonged to one Uruma Gounder.

After his death, the said property devolved upon the first plaintiff, son of the said Uruma Gounder, plaintiffs 2 and 3 being sons of the first plaintiff and one Subramaniam, eldest son of the first plaintiff.

ii) The said Subramaniam died 7 years prior to the suit and his wife Yasodha had executed a relinquishment deed dated 10.12.2009 with respect to the suit property and other properties. Pursuant to that, the plaintiffs had been in possession and enjoyment of the suit property including the share of the said Subramaniam. The patta in respect of the suit property stands in the name of Ganesan, the first plaintiff.

iii) In the suit property, the plaintiffs had raised sugarcane crops and the crops were at the stage of harvest. Whiles, the defendants, who are neighbouring land owners, sought to purchase the suit property for a song and being frustrated by the denial by the plaintiffs, the respondents/defendants made an attempt on 17.04.2011 to interfere with the



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possession and enjoyment of the suit property by the plaintiffs and thereupon, the plaintiffs were constrained to file the suit seeking permanent injunction. Pending suit, on 07.06.2014 the first plaintiff died and plaintiffs 2 and 3 being his legal heirs, continued with the proceedings.

5. The third defendant filed a written statement, which was adopted by defendants 1 and 2, with the following contentions:-

i) The plaintiffs agreed to sell the suit property of 75 cents of land and another property in S.No.3/55 to the extent of 7 cents totally, 82 cents of land to the husband of the third defendant and accordingly, an unregistered sale agreement was entered into on 25.12.2000. The sale consideration was fixed as Rs.1,23,000/- viz., Rs.1500/- per cent and the said amount was paid on the same day and possession was also handed over to them. Two years was fixed as the time for execution of sale deed. From the date of said sale agreement, the defendants are in possession and enjoyment of the suit property by raising sugarcane crops and hence, the sugarcane crops available in the suit property belongs to the defendants.

ii) The plaintiffs being close relatives of the husband of the third defendant, the defendants remained silent without insisting for execution of



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sale deed at once and subsequently, when the plaintiffs denied for execution of the sale deed and a dispute arose, the defendants were restrained to lodge a police complaint on 10.3.2011. Only in order to thwart the claim of the defendants, the present suit has been filed seeking permanent injunction, which is not at all maintainable.

6. The plaintiffs filed a reply statement contending as under:-

i) The document claimed to be a sale agreement is a forged and fabricated one. The plaintiffs have not received any sale consideration much less Rs.1,23,000/-.

ii) In fact, the plaintiffs borrowed a sum of Rs.5000/- from the third defendant and in lieu of that, the third defendant had obtained signatures of the plaintiffs on blank stamp papers of Rs.10/- and a few green sheets. The said loan amount was also returned by the plaintiffs to the third defendant within a few days and when demanded for return of the signed blank stamp papers and other papers, they were informed that those papers were kept somewhere and assured for return of the same on being found out.

iii) Subsequently, the defendants approached the plaintiffs to purchase the suit property for a cheap price and when the plaintiffs refused



to sell the same, the unregistered sale agreement has been fabricated with the blank stamp papers signed by the plaintiffs.

iv) Had the sale agreement been true and genuine, the defendants would have taken steps to get the sale deed executed in their favour based on the sale agreement and no suit has also been filed by them for specific performance in respect of the suit property.

7. The third defendant has filed the additional written statement contending as under:-

The averment made by the plaintiffs in the reply statement to the effect that the third defendants had obtained signature of the plaintiffs on blank stamp papers in lieu of a loan of Rs.5000/- availed by them from the third defendant and such papers have been used for fabrication of the sale agreement is an afterthought of the plaintiffs to defeat the claim of the defendants. The plaintiffs have not specifically denied the signatures and thumb impressions found in the sale agreement.

8. The third plaintiff filed an additional reply statement contending that the suit property is in their possession and the sugarcane crops found in



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the suit property belong to them. By producing adangal and encumbrance certificate in respect of the suit property, the third plaintiff claimed that the suit property is in their possession and enjoyment alone and they have been doing agriculture in the said land and they have also mortgaged the suit property to one Paappayammal and redeemed the same later. The third plaintiff further contended that the defendants, being relatives of the plaintiffs and neighbouring land owners, are making false claims in respect of the suit property with ill motive.

9. The third defendant filed the second additional written statement contending that the mortgage pleaded by the plaintiffs in respect of the suit property appears to have taken place on 2.6.1986 and redemption of the same on 7.12.1999 whereas, the suit sale agreement dated 25.12.2000 is much later and as such it has no relevance with the contention of the case of the plaintiffs and the adangal produced by the plaintiffs also will not affect the case of the defendants as it is quite nature that the said document could contain the name of the patta holder alone and hence, those documents are produced by the plaintiffs only to create confusion and thus sought for dismissal of the suit.



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10. During the course of trial, the 3rd plaintiff, who is the second appellant herein, has deposed as P.W.1 and one Mani and Nainamalai were examined as P.W.2 and P.W.3 and seven Exhibits were marked Exs. A1 to A7. On the side of the defendants, the 3rd defendant was examined as D.W.1 and one Subramaniam was examined as D.W.2 and three documents were marked as Exs.B1 to B3. Advocate Commissioner's Report and Plan were marked as Exs.C1 and C2. Ex.A1 is the Relinquishment Deed dated 10.12.2009 executed by the wife of plaintiffs brother. Ex.A2 is the patta standing in the name of the plaintiffs father. Exs.A3 to A5 are the kist receipts and A6 is the Adangal issued by the Tahsildar, Paramathivelur. Ex.A7 is the original encumbrance certificate. Ex.B1 is the unregistered Sale agreement. Ex.B2 is the receipt issued by the Vellore Police Station and Ex.B3 is the death certificate of Rajendran.

11. The Trial Court, on considering the oral and documentary evidence available on record, held that though the defendants claimed possession based on Ex.B1, unregistered sale agreement, they have not filed any documents to prove their possession and enjoyment of the suit property



and further held that when the execution of Ex.B1 was denied by the plaintiffs, the defendants had not taken any steps to examine any witnesses to prove the same nor taken steps to enforce the same and hence, decreed the suit holding that the plaintiffs proved their possession.

12. Aggrieved by the judgment of the Trial Court, the defendants filed an appeal in A.S.No.2 of 2019 on the file of Subordinate Judge, Paramathy.

13. The first Appellate Court, having observed that PW1 himself had admitted the execution of the unregistered sale agreement by admitting the signatures found therein, held that there is no necessity on the part of the defendants to prove the execution of Ex.B1, especially, when the plaintiffs have failed to prove their case that they had borrowed Rs.5000/- from the third defendant and in lieu of that their signatures were obtained by the third defendant on blank stamp papers and the same were utilised to fabricate the document viz., Ex.B1, as they have not come forward to produce any proof for availing the loan amount nor repayment of the same. On such observation, the first appellate court came to a conclusion that on the basis



of Ex.B1, the defendant alone are in possession and enjoyment of the suit property and hence, the plaintiffs are not entitled to the relief of permanent injunction against the defendants.

14. Challenging the judgment and decree made by the first Appellate Court in A.S.No.2 of 2019, the present second appeal has been filed.

15. The crux of the submissions made by the learned counsel appearing for the appellants is as under:-

i) The plaintiffs/appellants have proved their title to the suit property, having been devolved upon them ancestrally by producing the revenue records, Exs.A2 to A6 and when their peaceful possession and enjoyment of the suit property was attempted to be interfered by the defendants, they sought for permanent injunction.

ii) The Trial Court, having analysed the entire materials in proper perspective, has granted the relief, whereas, the first appellate court has set aside the same without properly considering the documents produced by the plaintiffs and by relying the unregistered sale agreement, Ex.B1 produced



by the defendants, merely on the admission of the signatures found therein by the plaintiffs ignoring the stand taken by the plaintiffs with regard to the said signatures having been obtained by the third defendant in lieu of a loan transaction.

iii) The first appellate court has erred in granting the benefit of Section 53A of Transfer of Property Act based on Ex.B1 when the same has not been registered as stipulated under Section 17(b) of the Registration Act.

iv) The first appellate court has erred in relying upon Ex.B1 an unregistered document, when none of the witnesses to the same has been examined to prove its execution as contemplated under Section 68 of the Indian Evidence Act.

16. In support of his contentions, the learned counsel for the appellants relied on the decision of a Division Bench of this court in ***A.Raja and others vs. Kamalasekaran and another*** (2017 SCC OnLine Mad. 31377) and ***N.Ethirajulu Naidu vs. K.R. Chinnikrishnan Chettiar*** (1975) 88 LW 265 (Mad).



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17. Learned counsel appearing for the respondents would submit that the plaintiffs, after having received the entire sale consideration of Rs.1,23,000/- had executed the sale agreement, Ex.B1 on 25.12.2000 and possession of the suit property was also handed over by the plaintiffs to the defendants and from that date, the defendants had been in possession and enjoyment of the same by raising crops in the suit property and considering the relationship between them and the plaintiffs, they had not insisted much for registration of the sale deed at once, however, when the defendants demanded for execution of sale deed, the plaintiffs have come out with a cooked up story of borrowal of some amount by them from the third defendants and demand of affixture of their signatures on blank stamp papers in lieu of the loan transaction and fabrication of the same for creating the sale agreement. She would further submit that PW1 himself had admitted the signatures found in Ex.B1 and thereby the first appellate court has rightly protected the rights of the defendants by setting aside the judgment and decree of the Trial Court. By relying on the decision of the Apex Court in ***Ghanshyam vs. Yogendra Rathi*** (2023) SCC OnLine SC 725, the learned counsel for the respondents would submit that the defendants, having been handed over possession of the suit property on



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their payment of the entire sale consideration while entering into the sale agreement, though it being an unregistered one, have become the prospective purchaser under the said document and thus their possessory rights cannot be invaded by the transferor or any person claiming under him.

18. Heard the learned counsel appearing for the parties and perused the materials available on record in the light of the decisions relied on by them.

19. The undisputed fact is that the suit property devolved upon the plaintiffs ancestrally and they had been in possession and enjoyment of the same for a long period. The plaintiffs have produced Exs.A1 to A7 to establish their title, possession and enjoyment of the suit property. They come up with the suit praying for permanent injunction contending that the defendants are attempting to interfere with their peaceful possession and enjoyment of the same. By way of defence, the defendants contend that an unregistered agreement of sale, Ex.B1 came to be entered between the third defendant and the plaintiffs and the parties being closely related and



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because of death of the husband of the third defendant, the defendants did not insist for immediate registration of the sale deed. They contend that when a dispute arose between the parties, a police complaint was lodged by the defendants as evidenced by Ex.B2. Their case is that the crops available in the suit property were raised only by them and they have been in possession and enjoyment of the suit property, from the date of entering into the unregistered agreement of sale, Ex.B1 viz., 25.12.2000 and thereby, the plaintiffs are not entitled to the relief of permanent injunction.

20. The Trial Court, by relying on the revenue records produced by the plaintiffs and disbelieving the unregistered sale agreement, Ex.B1, granted the decree for permanent injunction in favour of the plaintiff. On the contrary, the first appellate court, placing much reliance on the unregistered agreement of sale produced by the defendants, set aside the judgment and decree of the Trial Court, which constrained the plaintiffs to knock the doors of this court.

21. Therefore, this court is of the view that it is suffice if it is



decided as to whether the first appellate court is right in setting aside the judgment and decree of the Trial Court granting permanent injunction in favour of the plaintiffs.

22. While considering the scope of granting the relief of permanent injunction in respect of immovable property, two aspects need to be taken into consideration, one being **"title"** and the other being **"possession"**. In order to claim permanent injunction, the plaintiffs have proved their **"title"** to the suit property as having been devolved upon them ancestrally and **"possession"** of the same, by producing the revenue records. Merely by producing an unregistered agreement of sale, Ex.B1 without any substantiating materials, the defendants have pleaded that they were handed over possession of the suit property and thereupon, they had been in possession and enjoyment of the same. To say in other words, they claim **"Possessory Title"** to the suit property.

23. **"Title"** encompasses capacity of an individual to exercise absolute right over a property and to exclude others. **"Possessory Title"** comes into play where there is no title in either party. **"Possession"** is a



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good title of right against any one who cannot show a better. While the plaintiffs have proved their title having been devolved upon them ancestrally, the defendants have produced Ex.B1 unregistered agreement of sale alone to claim that they had been handed over possession of the suit property.

24. Coming to the oral evidence, of course, it appears that there is an admission on the part of the plaintiffs with regard to the signatures found in the said unregistered agreement of sale, Ex.B1, however, they have taken a stand as if, such signatures were obtained by the third defendant in lieu of a borrowal by the plaintiffs. Such being the stand of the plaintiffs, it is relevant to note that the defendants have not taken any steps to register the sale deed on the basis of the unregistered agreement of sale, Ex.B1 and DW1 has also admitted the same in her cross examination.

25. On analysing the oral and documentary evidence, the Trial Court has rightly found that the defendants have not proved their possession of the suit property and that the possession of the suit property rests with the plaintiffs alone and thereby granted the decree of permanent injunction,



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whereas, peculiarly, the first appellate court has misconstrued the admission of the plaintiffs with regard to the signatures found in the said unregistered agreement of sale as that of admission of execution of the said document and expected the plaintiffs to prove their version of loan transaction, when, especially, it is the case of the plaintiffs that they could not get back the blank stamp papers, wherein, the third defendant had obtained their signatures. The first appellate court has also found fault on the part of the plaintiffs in not mentioning about the loan transaction in their plaint, which is highly improbable and it is quite natural that the plaintiffs could take a stand with regard to their signatures only after they were confronted with an agreement of sale alleged to have been entered, in the written statement.

26. A perusal of the judgment of the first appellate court reveals that the admission of signatures by the plaintiffs in Ex.B1 itself has been construed by the first appellate court as admission of execution of the document, to waive the necessity on the part of the defendants to examine any witness to prove the execution of the unregistered document, especially, when there is no supporting materials to believe the execution of the said unregistered document.



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27. The first appellate court has erred in disbelieving the version of the plaintiffs that their signatures were obtained by the third defendant on blank stamp papers in lieu of a loan transaction and placed the burden upon them to prove the said transaction and repayment of the loan amount when it is their specific case that the defendants had sought for some time to return the blank stamp papers with the signatures of the plaintiffs obtained by the third defendant as they were misplaced.

28. The amount said to have been borrowed by the plaintiffs is a petty amount viz., Rs.5000/- when compared to the sale consideration pleaded by the defendants viz., Rs.1,23,000/- and the agreement of sale outweighs the loan transaction pleaded by the plaintiffs. When the defendants have pleaded payment of entire sale consideration of Rs.1,23,000/- on the date of executing the document viz., on 25.12.2000, but, they were reluctant to insist for immediate registration of the sale deed or even within two years period as stipulated in the said document or within the time stipulated under the law, it may not prudent to believe the said document especially in the absence of the defendants' proving the same independently in the manner known to law.



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29. It is also highly unbelievable that when the defendants possess a document in their favour handing over possession of the suit property and a dispute arose between them with regard to possession and enjoyment of the suit property in harvesting the crops raised in the suit property, they had not approached the court first in point of time seeking a relief on the basis of such a document and has not even taken any step to proceed with the said course of action even after the plaintiffs approached the court seeking permanent injunction against them and only as a feeble defence, they had produced the said document. In fact, a month prior to filing of the suit, the defendants had chosen to lodge a police complaint alone as evidenced by Ex.B2.

30. In such circumstances, the inference of the first appellate court that the admission of the signatures found in the unregistered agreement of sale by the plaintiffs as that of admission of execution of the said document itself and the consequent assumption of possession of the suit property by the defendants are not sustainable. Mere admission of a signature in a document is not sufficient to prove the execution of the same. In this



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regard, it is relevant to quote the decision of a Division Bench of this court

in ***A.Raja and others vs. Kamalasekaran and another*** (2017 SCC OnLine

Mad. 31377) as under:-

"... The consistent case of the 1st defendant is, that there was a loan transaction between the plaintiff and the 1st defendant, he did not execute any sale agreement and also he never intended to execute sale deed in favour of the plaintiff. When the 1st defendant stoutly denied Ex. A.1 the agreement of sale, the plaintiff has not examined the witnesses of the said document. Though the plaintiff has stated that he knew the persons who have signed in Ex. A1 as witnesses. But he has not examined those witnesses and also not examined the scribe.

24. *It is the duty of the plaintiff to prove that the 1st defendant has executed Ex. A.1 sale agreement with intend to sell the property. But he has not chosen to examine either the witnesses or the scribe and he has admitted during the cross examination that there*



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was a loan transaction between them. Therefore, considering the oral and documentary evidence and the conduct of the parties, this court finds that the 1st defendant has not executed the sale agreement, it has been fabricated by the plaintiff taking advantage of the possession of the signed blank stamp papers and other singed green blank papers with him and filed the suit. Therefore, one of the contention raised by the counsel for the plaintiff that once the 1st defendant admitted the signatures found in the sale agreement he cannot deny the execution of the agreement is not sustainable. So we come to the conclusion that 1st defendant did not execute Ex. A.1 the agreement of sale with an intention to sell the suit property to the plaintiff."

31. It is relevant to note that in ***N.Ethirajulu Naidu vs. K.R. Chinnikrishnan Chettiar*** (1975) 88 LW 265 (Mad), a Division Bench of this court has held as under:-

"... The lower court has overlooked the fact that the



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execution of a document implies intelligent and conscious appreciation of the contents thereof and the facts connected therewith; and where the defendant admitted only that he had put his signature in a blank piece of paper, which, he alleged, had possibly been utilised for fabricating Ex. A-1, it cannot be regarded as his having admitted the execution of Ex. A.1. The onus of proving that a particular paper, which is the basis of a suit was duly executed by the defendant, must therefore, have been thrown upon the shoulders of the plaintiff."

32. In the case on hand, the suit came to be filed in the year 2011, where, the plaintiffs have discharged their burden of proving their title and possession of the suit property by producing relevant revenue records and obtained permanent injunction against the defendants, whereas, the defendants, by merely producing an unregistered document dated 25.12.2000, styled as agreement of sale alleged to have been executed by the plaintiffs, sought to defend the case of the plaintiffs, which had rightly been disbelieved by the Trial Court, whereas, the first appellate court, by



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wrongly relying upon the same on the basis of admission of the signatures alone by the plaintiffs, had set aside the judgment and decree of the Trial Court, which is not sustainable in the light of the decisions cited supra.

33. Coming to the decision relied on by the learned counsel for the respondents viz., ***Ghanshyam vs. Yogendra Rathi*** (2023) SCC OnLine SC 725, it is seen that it is a case where a prospective buyer viz., the plaintiff therein was put in possession of the property by the defendant-appellant on the basis of an agreement of sale, power of attorney, a memo of possession and a receipt of payment of sale consideration as well as a "Will" of the defendant-appellant bequeathing the property, however, the defendant-appellant was allowed to occupy a portion of the suit property for a limited period as a licensee and on expiry of the limited period, the defendant-appellant failed to vacate the premises and thereupon, the plaintiff-respondent had initiated eviction proceedings and the defendant-appellant, having lost his case before all the three courts below, had filed a Civil Appeal wherein, the Apex Court has held as under:-

"15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the



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proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him."

34. The above decision will not be useful to the defendants as the case on hand stands on a different footing. In the case on hand, it is only the plaintiffs, who came up with a suit for permanent injunction in the year 2011 whereas the defendants, who claim to have been in possession of an unregistered agreement of sale of the year 2000 and paid the entire sale consideration of Rs.1,23,000/-, had not proved that they had performed their part of the contract by seeking registration of the sale deed either immediately or within two years period fixed in the said document or even before expiry of three years, which is the time limit for enforcing the unregistered agreement of sale. Even a month prior to filing of the suit by



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the plaintiffs, the defendants have chosen to lodge a police complaint alone as evidenced by Ex.B2 without taking any steps for claiming their alleged right over the suit property, which appears to be a make belief affair. The defendants have also not proved their possessory right by producing any valid documents, except the unregistered agreement of sale. In such circumstances, it will not be appropriate to sustain the case of the defendants and set aside the judgment and decree of permanent injunction granted by the Trial Court. Therefore, both the substantial questions of law are answered in favour of the plaintiffs.

In the result, the Second Appeal stands allowed, setting aside the judgment and decree of the first appellate court and restoring the judgment and decree of the Trial Court. No costs. The connected Miscellaneous Petition is closed.

04.09.2023

raa/ssk.

To

1.The Subordinate Judge,
Paramathy.



2. The District Munsif,
Paramathy.

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3. The Section Officer,
V.R. Section, High Court, Madras.



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A.D.JAGADISH CHANDIRA,J.

raa/ssk.

P.D. JUDGMENT IN
S.A.No.251 of 2021

Delivered on
04.09.2023