



CMA No.2349 of 2022
and CMP No.18252 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2349 of 2022
and CMP No.18252 of 2022

Muthulakshmmi @ Dhanalakshmi ... Appellant/2nd defendant

Vs.

1. Premraja	... 1 st respondent/plaintiff
2. Rani	... 2 nd respondent/1 st defendant
3. Ranganathan	
4. Sellappan	
5. Subramani	
6. Masilamani	
7. Valli @ Vasanthi	
8. Thangarasu	... Respondents 3 to 8/ defendants 3 to 8

Prayer : This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Code of Civil Procedure, against the judgment and decree dated 08.12.2021 made in A.S.No.09/2020 on the file of learned Principal Subordinate Judge, Puducherry.



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For Appellant : Mr.P.Dinesh Kumar
For Respondents : Ms. Anisha Gupta (for R1)
Mr.P.R.Thiruneelakanndan (For R2)
No Appearance (for R3)
R4 to R8 set exparte

J U D G M E N T

The 2nd defendant is the appellant herein.

2. Brief facts leading to the filing of the above Civil Miscellaneous Appeal are as under:

(a). The 1st respondent herein/plaintiff filed OS.No.2279 of 2013 before the Principal District Munsif Court, Puducherry, seeking the relief of declaration of sale deeds Ex.A7 and Ex.A8 in favour of Defendants 1 and 2, respectively are null and void and for permanent injunction.

(b) The plaint in O.S.No.2279 of 2013 proceeds on the basis that the suit property belonging to the mother of the plaintiff namely Mrs.Jayamarie having purchased the same under the registered sale deeds



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dated 25.03.1981 (Cad No.260/2 4 ares and 38 Centiares), 25.03.1981 (Cad No.260/1 13 ares and 22 Centiares), 31.07.1981 (Cad No.260/3 13 ares and 86 Centiares) and 20.12.1982 (Cad No.260/2 and 260/3 24 ares and 60 Centiares). The mother of the plaintiff was in possession and enjoyment of the suit properties during her life time and executed a registered WILL dated 30.01.1989 bequeathing all her properties to the plaintiff. The plaintiff's mother died on 26.06.1992 and the plaintiff inherited the suit properties and that he is in physical possession and enjoyment of the same till date. The suit property is vacant site and that possession follows title.

(c) After exchange of notice, suit was filed. Defendants 1 to 3 have filed written statement inter alia alleging that the WILL dated 30.01.1989 under which the plaintiff claims title was disputed and it was further alleged that the sale deed dated 20.12.1982 said to have been executed by Samikannu in favour of the mother of the plaintiff, is forged one and further, claimed that in view of the sale deeds in their favour, they are owners of the property and hence, prayed for dismissal of the suit.



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(d) During the trial, plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A13. On behalf of defendants, DW1 to DW3 were examined and Ex.B1 to B18 were marked. Further, copies of Station House-General Diary and Non-Cognizable offence report issued by Sub-Inspector of Police, Kalapet Police Station, Puducherry were marked as Ex.X1 and Ex.X2, respectively.

(e) By judgment dated 21.01.2020, the learned Principal District Munsif had come to the conclusion that Ex.A7 and Ex.A8, Sale Deeds dated 18.01.2001 and 26.07.2005, respectively alleged to be in favour of the 1st defendant and 2nd defendant, are forged, fraudulent and manufactured for the purpose of claiming title over the vacant land. However, has held that since the plaintiff had the knowledge, it is barred by limitation. Accordingly, chosen to dismiss the suit on the ground that since plaintiff's title was disputed by the defendants by setting up a title on their own by virtue of Sale Deeds viz., Ex.A7 and Ex.A8 and for want of proper prayer, rejected the suit.



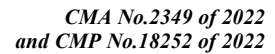
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(f) Aggrieved against the said judgment and decree dated 21.01.2020 made in O.S.No.2279 of 2013, the unsuccessful plaintiff has preferred an appeal in A.S.No.9 of 2020 before the learned Principal Sub Judge, Pondicherry. Pending trial of Appeal Suit, he also filed I.A.No.284 of 2021 to amend the plaint under Order 6 Rule 17 r/w Section 106(2) and 151 of Code of Civil Procedure.

(g) Before the lower appellate Court, it is specifically contended by the defendant that the suit was not properly valued; the jurisdiction of the Munsif Court cannot be entertained and exceeds pecuniary jurisdiction of the Court; and amended relief is out of time and barred by limitation.

(h) Both Interlocutory Application and Appeal Suit were disposed of by a common order on 08.12.2021, holding that the trial Court has committed an error in the sense that after holding that the alleged sale deeds viz., Ex.A7 in favour of the 1st defendant alleged to have been executed by the legal heirs of the Samikannu and Ex.A8, alleged to have been executed



(i) Hence, the amendment of the pleadings with regard to the declaration of title in the prayer column and consequential recovery of possession is also found to be within the limitation period as contemplated under Article 58 of the Limitation Act and consequently, held that the plaintiff is entitled for the benefit under Section 27 of the Limitation Act, since, he has filed the petition from the date of denial of the title of the plaintiff and the amendment cannot be said to be time barred as Article 65 will come to rescue and on factual note, the amendment having filed within 12 years of the knowledge, he is entitled for consequential relief of recovery of possession and hence, allowed the Interlocutory Application for amendment of plaint in respect of relief column of declaration of title and consequential relief of recovery of possession and for the said purpose, additional issues are to be framed and in connection with the additional



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issues, additional evidence are to be let in by both the parties and since both the parties has set up the title by themselves, pursuant upon Ex.A7 and Ex.A8, no prejudice will be caused and accordingly, allowed the suit and exercised the power under Order 41 Rule 23 (A) and remanded the matter for fresh trial after allowing the Interlocutory Application for amendment of the prayer and consequential prayer and hence, the Civil Miscellaneous Appeal.

3. Heard Mr.P.Dinesh Kumar, learned counsel for the Appellant and he would contend that the Appeal is preferred against the order made by the lower Appellate Court in A.S.No.9 of 2020, setting aside the Decree and Judgment granted in O.S.No.2279 of 2013 and remanding the matter to the trial Court for fresh evidence. The lower Appellate Court also allowed the IA.No.284 of 2021 for amendment in prayer. Against the said IA, he has preferred Civil Revision Petition in CRP.No.2289 of 2022 and the same was closed with liberty to agitate all the points therein.



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4. According to the learned counsel for the appellant, the order of remand does not require. He would further contend that in view of the order passed in CRP.No.2289 of 2022, he will advance arguments on, whether the new relief sought for is within the limitation period or time barred. He would further draw my attention to the counter filed in the above IA.

5. Heard the learned counsel for the respondents 1 and 2.

6. Though names of Respondents 4, 5, 6, 7 & 8 are printed in the cause list, none appears for them. Hence, the Respondents 4, 5, 6, 7 & 8 are set exparte.

7. At the risk of repetition, however for the sake of continuity and clarity, it is observed that

(a) The original plaintiff filed O.S.No.2279 of 2013 before the Principal District Munsif Court, Puducherry, for relief of declaration of sale deed executed in favour of the 1st Defendant as null and void and injunction



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restraining the defendants from interfering with peaceful possession and enjoyment of the suit property. After trial, the trial Court has held that the sale deeds executed in favour of the defendants are fraudulent in nature. However, since a cloud over the title has been created in the absence of relief of declaration of title, refused to grant the relief of permanent injunction thereby. On the above lines, the suit was disposed of. Aggrieved against the said Judgment and Decree passed in O.S.No.2279 of 2013, A.S.No.9 of 2020 has been preferred by the Plaintiff, before the learned Principal Sub Judge, Puducherry. Pending Appeal Suit, the Plaintiff filed I.A.No.284 of 2021, for amendment of the prayer and additional relief of declaration of the title and alternative relief of possession.

8. Based upon the finding given by the trial Court that the sale deed in favour of the defendants is fraudulent in nature and also for recovery, the lower appellate Court, on consideration has allowed I.A.No.284 of 2021. Since I.A.No.284 of 2021 was allowed, the lower appellate Court appears to have allowed the Appeal Suit and passed an order of re-trial of O.S.No.2279



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of 2013 by way of remanding it to the lower Court. Against the order of remand, the 2nd defendant has preferred this Appeal.

9. The 1st respondent/plaintiff claimed title based upon Ex.A1-Sale deed dated 20.12.1982 executed by Samikannu in favour of the plaintiff's mother Jayamarie.

10. Per contra, 1st defendant could contend that he claims title based upon Ex.A7-Sale deed dated 18.01.2001, said to have been executed by the legal heirs of Samikannu in his favour and the 8th defendant could claim title to the very same suit property under Ex.A8-sale deed dated 26.07.2005, executed based upon Ex.A7. Admittedly, the sale deed Ex.A1-dated 20.12.1982 was executed by Samikannu. After his death, it is alleged that the legal heirs of the said Samikannu said to have executed sale deed under Ex.A7 to 1st defendant.



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11. The counsel for the 1st defendant in this Court has submitted that he disputes the sale deed–Ex.A8 executed in favour of the 2nd defendant. Learned counsel for the appellant/2nd defendant could contend that having filed the written statement before the trial Court in support of the 2nd defendant, it is not open to him to take a different stand. According to the counsel for the 2nd respondent/1st defendant Rani, who is the wife of Ranganathan/3rd defendant, the sale deeds produced before the Court under Ex.A7 and A8, are forged.

12. Rival submissions and relevant documents were perused.

13. From the written statement filed before the trial Court, I find that the defendants 1 to 3 claimed title over the suit property having purchased the said land under Ex.A7 from the legal heirs of Samikannu. This Court is unable to uphold the said contention for the simple reason that the said Samikannu during his life time have sold the property under Ex.A1.



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When the father of the vendors of Ex.A7 having sold the property to the plaintiff's mother under Ex.A1, this Court finds no reason as to how the legal heirs could execute the sale deed in favour of 1st defendant viz., daughter-in-law through the legal heirs under Ex.A7. The trial Court has rendered a very similar finding.

14. In the written statement before the trial Court it is also noticed that the 1st defendant is the wife of the 3rd defendant viz., one of the legal heir of the Samikannu and the 2nd respondent is the Muthulakshmmi @ Dhanalakshmi viz., 2nd defendant, who claims title under Ex.A8, alleged to have been executed by 1st defendant.

15. When the alleged vendor under Ex.A7 himself has no title, since his father Samikannu has already sold the property under Ex.A1, he cannot convey title for the property, which is sold by his father during the life time. In short, the legal heirs of said Samikannu has no right to sell the



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very same property, which is already sold by Samikannu to Jayamarie (mother of the plaintiff under Ex.A1)

16. This fact has been clearly noticed by the lower appellate Court. In fact the trial court also rendered a finding that Ex.A7 and Ex.A8, relied upon by the defendants 1 and 2 (appellant herein is the 2nd defendant) cannot be conveyed since they do not possess any title to convey. Accordingly, held that Ex.A7 and Ex.A8 are forged, fabricated and fraudulent documents.

17. On the point of limitation and on the question of non couching of proper relief for title, the suit appears to have been dismissed.

18. With regard to the operative portion of the judgment of the trial Court, the lower appellate Court has categorically rendered a finding that it is unsustainable in law for the reasons stated in the elaborate order.



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19. In the written statement filed before the trial Court, the appellant had the audacity to challenge the WILL executed by the Jayamarie (mother of the plaintiff) purchaser under Ex.A1 to her son (plaintiff/1st respondent)

20. This Court finds it relevant to refer the judgment in ***Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others***, reported in (2008) 4 SCC 300, wherein our Hon'ble Supreme Court has held as follows;

(i) 'a caveatable interest' is an interest in the deceased testator's estate which may be affected by grant of probate, and would depend upon the fact situation in each case and a person who would have succeeded to the testator's estate in case of intestate succession would ordinarily have a caveatable interest and any other person must ordinarily show a special interest in the testator's estate; the same would not mean that even if the estate of the deceased is being represented by the legal heirs intestate, caveat can be entertained at the instance of a person who has no real interest but would merely have a contingent interest.

(ii) Furthermore, the interest claimed as 'caveatable interest' must not be one which would have the effect of destroying the testator's estate.

(iii) Any person claiming any interest adverse to the testator or his estate cannot maintain any application adverse to the testator or his



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estate cannot maintain any application before the Probate Court and his remedy would be elsewhere.

(iv) Caveatable interest is not synonymous with "contention" and hence I find that appellant has no caveatable interest in the suit property and he cannot be allowed and he should not be allowed to muddle with the title and possession of the plaintiff/appellant in the manner so long he was doing and hence I find that he has no caveatable interest to challenge the will since he has got no right to the property at all."

21. I had an occasion to deal with the very same issue of caveatable interest by a stranger to the property in respect of the WILL, which has been dealt with by him in S.A. No.1885 of 2002 and hence, when the father (Samikannu) has sold the property under Ex.A1, this Court wonders how the legal heirs can sell the property under Ex.A7 to D1 (who is none other than daughter-in-law of the deceased). The legal heirs appears to have executed the sale deed in favour of the 1st defendant (who is the wife of the 1st son of Samikannu). That itself shows the fraudulent nature and it appears that there is further sale deed Ex.A8 in favour of 2nd defendant.



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22. After the finding by the trial Court that these Sale Deeds Ex.A7 and Ex.A8 are forged, fabricated and manufactured for claiming title over the property, now 1st defendant turns around and says that she never executed Ex.A8, in favour of 2nd defendant, which is only an afterthought to avoid criminal prosecution of land grabbing for executing the sale deed without having any title to the property. ***It is open to the parties to take appropriate action.***

23. On the rival contentions made by the respective counsel for the respective parties, the lower appellate Court has rightly framed the additional issue as to whether the suit is barred by limitation and also considered IA.No.284 of 2021. Since it was a common order, the learned Judge of this Court in the Civil Revision Petition i.e. CRP No.2289 of 2022 has dismissed the revision on 26.07.2022, however, permitted to agitate the point in the Civil Miscellaneous Appeal.



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24. Arguments of the learned counsel for the appellant regarding his challenge to the order passed in I.A.No.284 of 2021, is heard.

25. After perusing the reasons assigned by the learned Appellate Judge on the point whether the proposed amendment is barred by limitation and the learned appellate Judge has considered the judgment, in ***J.Balaji Singh Vs. Diwakar Cole***, reported in **AIR 2017 SC 2402**, wherein, our Hon'ble Supreme Court has considered the scope of Order 41 Rule 23(A) CPC in the following lines:

“17) There are three provisions in the Code which deal with the power of the Appellate Court to remand the case to the Trial Court. These provisions are Order 41 Rules 23, 23-A, and 25.

18) So far as Order 41 Rule 23 is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that the Trial Court has disposed of the suit upon a preliminary point. The Appellate Court in such cases is empowered to direct the Trial Court to decide all the issues on evidence on record.

19) So far as Rule 23-A is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that though the



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Trial Court has disposed of the suit on all the issues but on reversal of the decree in appeal, a re-trial is considered necessary by the Appellate Court.

20) So far as Rule 25 is concerned, it enables the Appellate Court to frame or try the issue if it finds that it is essential to the right decision of the suit and was not framed by the Trial Court. The Appellate Court in such case may, accordingly, frame the issues and refer the same to the Trial Court to take the evidence and record the findings on such issues and return to the Appellate Court for deciding the appeal. In such cases, the Appellate Court retains the appeal to itself.

21) Now coming to the facts of the case, we are of the considered opinion that once the first Appellate Court allowed the application under Order 41 Rule 27 of Code and took on record the additional evidence, it rightly set aside the judgment/decreed of the Trial Court giving liberty to the parties to lead additional evidence in support of their case which, in turn, enabled the Trial Court to decide the civil suit afresh on merits in the light of entire evidence. The first Appellate Court was, therefore, justified in taking recourse to powers conferred on the Appellate Court under Order 41 Rule 23-A for remanding the case to the Trial Court. We find no fault in exercise of such power by the first Appellate Court.”

26. Further, in ***Corporation of Madras and another Vs. M.Parthasarahty and others***, reported in (2018) 8 MLJ 208 (SC), the Hon'ble Supreme Court has held that in a fit case, where the parties are



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required to be given an opportunity to lead further evidence, the Court can invoke the power under Order 41 Rule 23(A) CPC to remand the case to the trial Court for re-trial.

27. Under Order 41 Rule 23(A) CPC, the appellate Court has ample power to remit the matter for de-nova trial. It is, of-course, true that the Court can remand the matter for de-nova trial only when the appellate Court found that the re-trial is necessary. In the present case, the appellate Court has recorded reasons as to why the re-trial is necessary. The lower appellate Court is right in remitting the matter for re-trial, so as to enable the parties to adduce oral evidence.

28. (a) On the factual finding that as per Section 7(2)(a) of the Pondicherry Court Fees and Suit Valuation Act, it is well within the pecuniary jurisdiction of the District Munsif Court and also held that the declaration of title of the plaintiff and when alternative prayer for recovery of possession, as per Article 65 of the Limitation Act, is 12 years and as



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such the suit for declaration of title and recovery of possession, based on cause of action dated 15.11.2011, is still maintainable.

(b). It is also held that the Interlocutory Application for amendment having filed within 12 years from 15.11.2013 (cause of action arose as per the original plaint) falls within the scope of Article 65 of the Limitation Act and further taking note of the fact that the plaintiff has pleaded that, on 15.11.2013, the defendants had attempted to encroach the property .

(c). The written statement of the defendants was filed on 07.03.2014 wherein they denied the plaintiff's title and as per Article 65 of the Limitation Act, the period of limitation of 12 years for the recovery of possession shall commence from 15.11.2013, when the defendants attempted to trespass the suit property.

29. In ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another***, reported in 2022 SCC OnLine SC 1128, our



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Hon'ble Supreme Court has held as follows:

“29.....

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

30. Following the above decisions cited supra, I find that on the factual matrix of the dates and events as extracted supra, coupled with the law laid down by the Hon'ble Apex Court, I find that the amended prayer is well within the limitation and besides well within the pecuniary jurisdiction



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of the District Munsif Court and accordingly, the lower appellate Court has rightly allowed the Interlocutory Application.

31. Hence, I find that the order passed by the lower appellate Court in Interlocutory Application No.284 of 2021 is held to be sustainable in law as the same does not suffer from any illegality or irregularity warranting interference at this appellate stage.

32. Further, the trial Court as well as the lower appellate Court has categorically given an independent finding to hold that the two sale deeds, i.e. Ex.A7 and Ex.A8, under which Defendants 1 and 2 claim title are forged, fraudulent and fabricated and has further held that they are null and void, since the legal heirs have no right to convey the title to the property held by their father, which was already sold by their father during his life time and consequentially, after the sale by their father, they have no right to convey the same.



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33. It remains to be stated that in the written statement filed by the Defendants 1 and 2 before the trial Court, they also challenged the alleged WILL executed by the mother of the plaintiff in his favor, cannot be stand to be sustained, since they are stranger to the property, by virtue of Ex.A1, and hence as such, they are not having any 'caveatable interest' to question the said WILL executed by Jayamarie in favour of her son (the plaintiff) as held by the Hon'ble Supreme Court in the above said decision ***[Krishna Kumar Birla's case]***.

34. Therefore, the order of remand passed by the Lower Appellate Court for framing the additional issues in respect of declaration of title, needs to be granted and evidence is to be let in, opportunity has to be given to both the parties.

35. On the point of proposed amendment, in ***Sampath Kumar Vs. Ayyakannu and Ors***, reported in MANU/SC/0812/2002, our Hon'ble Supreme Court has held as follows:



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“7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.”

36. Further, in *Mst. Rukhmabai v. Lala Laxminarayan and Ors.*, reported in **AIR (1960) 335**, our Hon'ble Supreme Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

37. After perusing the proposed amendment, I find that the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed by the nature of relief is sought for by the plaintiff.



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The plaintiff has sought for appropriate relief, which is well within the period of limitation and also within the pecuniary jurisdiction of the trial Court.

38. Therefore, I find that the order of remand passed by the lower appellate Court is found to be in consonance with Order 41 Rule 23(a), stands **justified and held to be sustainable in law.**

39. Accordingly, Civil Miscellaneous Appeal is devoid of merits and **dismissed**. The trial Court is hereby directed to frame additional issues as directed by the lower appellate Court and after giving an opportunity to the parties to let in additional evidence, if any and dispose of the suit within a period of four months from the date of receipt of a copy of this order. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

08.03.2023

Index : Yes/No
Neutral Citation : Yes/No.
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To

1. The Principal Subordinate Judge,
Puducherry.

2. The Principal District Munsif,
Puducherry.



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RMT.TEEKAA RAMAN,J.,

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**Pre-delivery Judgment in
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