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C.R.P.No.2067 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2067 of 2021&

C.M.P.No.15724 of 2021

H.E.Abdul Azeez

... Petitioner

Vs.

1. Bhama
2. K.Rajasekaran
3. R.Suresh Balaji
4. R.Vijayan @ Kannan
5. R.Yuvasree
6. M/s Subham Enterprises rep.
By its Managing Director
R.Ananthanarayanan
Door No.1/43/1, paul Wells Road,
St.Thomas Mount, Chennai – 600 06
7. B.Babulal Lodha
8. Basheer Ahamed Meeran (died)
9. Mubarak Begum
10. S.Zunaida Beruin
11. The Sub-Registrar,
o/o The Sub Registrar,
Pallavaram, Chennai
12. B.Yasmin
(R8 died, R-12 brought on record
as Lrs of the deceased R-8, viz.,
Basheer Ahamed Meeran, vide
court order dated 02.02.2023 made
in CMP Nos.13900, 13903 and



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13906 of 2022 & CMP No.15724

or 2021 in CRP No.2067 of 2021 by VBSJ ... Respondents

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Civil Revision Petition is filed under Article 227 of the Constitution of

India to strike the plaint in O.S.No.178 of 2021 on the file of the learned District Munsif, Alandur.

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.Ram Ganeshan for R1
Mr.V.Ayyappa raja for R2 to 5, 9 &10
Mr.M.Arvind Kumar for R7
Mr.B.Tamil Nidhi, for R11
Additional Government Pleader
Mr.N.Manokaran – R12

R6 – Served – Name Printed – No appearance

ORDER

The present Civil Revision Petition has been filed to strike the plaint in O.S.No.178 of 2021 on the file of the learned District Munsif, Alandur.

2. The brief facts of the case are as follows:-

The 1st respondent is the plaintiff and the petitioner as well as respondents 2 to 11 are defendants in O.S.No.178 of 2021. Since the 8th respondent died, legal heir of the 8th respondent are brought on record as 12th respondent. The said suit has been filed for (i) To declare that the partition deed between the defendants 1 to 4 along with deceased



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Kanniammal and deceased Rama bearing Document No.3167/1986 dated 19.09.1986 on the file of the 11th defendant herein in respect of the suit property morefully described in the Schedule A, B,& C hereunder are highly illegal, null and void and not binding the plaintiff. (ii) To declare the rectification deed dated 04.02.1987 between the defendants 1 to 4 along with deceased Kanniammal and deceased Rama bearing Document No.346/1987 on the file of the 11th defendant herein in respect of the suit property morefully described in the Schedule A,B & C hereunder are highly illegal, null and void and not binding the plaintiff; (iii) To declare the sale deed dated 21.09.2006 bearing Document No.5173/2006 executed by the defendants 1 to 5 in favour of 6th defendant hereto on the file of the 11th defendant herein in respect of the suit property morefully described in the Schedule A,B & C hereunder are highly illegal, null and void and not binding the plaintiff (iv) To declare the sale deed dated 27.01.2010 registered as Document No.637 executed by the 6th defendant herein in favour of the 7th defendant on the 11th defendant herein in respect of the suit property morefully described in the Schedule A hereunder are highly illegal, null and void and not binding the plaintiff (v)To declare the sale deed dated 27.01.2010 bearing Document No.638/2010 executed by the 6th defendant



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in favour of 8 to 10 defendants hereto on the file of the 11th defendant herein in respect of the suit property morefully described in the Schedule B & C hereunder are highly illegal, null and void and not binding the plaintiff (vi) To issue a permanent injunction restraining the defendants 1 to 10 herein from interfering with the peaceul possesion and enjoyment of the suit property by the plaintiff morefully described in the Schedule A,B & C hereunder (vii) To direct the defendants 1 to 10 to pay exemplary costs to the plaintiff for such unnecessary litigation. Pending suit, the 7th defendant has preferred the present Revision to strike the plaint in O.S.No.178 of 2021 on various grounds.

3. The learned counsel for the petitioner would submit that the suit has been filed on vexatious allegations and suppressing the material facts, which is mentioned below:-

(i) The suit schedule property is the separate property of P.Kanniammal, wife of V.Punniyanathan, both of whom did not have any issues. The said Kanniammal adopted R.Rama wife of Rajasekaran (1st defendant) who is none other than 1st respondent's /plaintiff's own sister and both of them are daughters of V.Devadas. The said Devadass also



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happens to be the brother of V.Punniyanathan.

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(ii) The said Kanniammal offered the suit schedule properties to the 6th respondent / 5th defendant on 06.05.1986 and through her husband, namely, V.Punniyanathan received advance amount and handed over the original title deed dated 21.06.1978 on behalf of Kanniammal to the 6th respondent / 5th respondent.

(iii) On 08.07.1986, the said Kanniammal executed an affidavit to the 6th respondent / 5th respondent confirming that she alone is the absolute owner of land in S.No.21/13 and her husband signed in the said affidavit as a witness.

(iv) A partition deed dated 19.09.1986 in Doc.No.3167/86 was entered into by the said Kanniammal and her adopted daughter, viz., Rama and minors R.Balaji and R.Vijaya represented by their mother, Rama and in the said Deed, Schedule A was allotted to P.Kanniammal and Rama while B Schedule was allotted to minors R.Balaji and R.Vijaya. Later, under rectification deed dated 04.02.1987 bearing Doc.No.346/1987, schedule A measuring 20 ½ cents in S.No.21/13 was allotted to Kanniammal and in Schedule B, remaining 33 cents in the same survey number was allotted to Rama and minors Balaji and Vijaya represented by their mother, R.Rama.



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Further, vide proceedings dated 19.05.1987, the authorised officer under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978 held that the land comprised in S.No.21/13 measuring an extent of 33 cents held by Rama and the land comprised in S.No.21/13 measuring an extent of 20 ½ cents held by P.Kanniammal are not attracted under the said Act.

(v) Later, on 29.08.1988, P.Kanniammal, R.Rama and minors R.Balai and R.Vijaya represented by their mother R.Rama executed a general power of attorney bearing doc.no.242/1988 in Book No.IV, Vol.42 and pages 223-225 in the office of the Sub Registrar, Pallavaram appointing 6th respondent / 5th defendant as their power of attorney to sell the suit schedule properties. Further, the said power of attorney agent M/s Subham Enterprises, rep. By its managing partner, R.Ananthanarayan entered into an agreement for sale with 7th respondent / 6th defendant for sale of the suit schedule properties.

(vi) On the strength of the General power of attorney dated 29.08.1988 and in continuation of agreement for sale dated 20.01.2001, the 6th respondent / 5th defendant sold the suit schedule mentioned property to the 7th respondent / 6th defendant.



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4. The learned counsel for the petitioner also submits that the plaintiff, who claims title to the suit schedule property through a Will dated 07.05.2007 alleged to have been executed by V.Punniyanathan, who had no right, title or interest over the suit schedule property, but approaching the court with unclean hands. Moreover, the petitioner is in absolute possession of land in T.S.No.9/9B measuring 1272 Sq.Mts. In Block No.5, Ward – B, Pallavaram Town and Taluk, Chengalpattu district from the date of purchase by putting up a compound wall, gate, etc., and erecting a sign board of his school for whose use the land was purchased by the petitioner. The 7th respondent, viz., Babulal lodha and thereafter, the petitioner are in uninterrupted possession and enjoyment of the land in T.S.No.9/9B measuring 1272 sq.mts in block no.58, Ward-B, Pallavaram Town and Taluk, Chengalpattu District from the year 2006 onwards.

5. It is represented on behalf of the petitioner that the trial court ought not to have entertained the suit on a meagre payment of court fee, which is barred under Sections 25(d) and 27 of Tamilnadu Court Fees & Suits Valuation Act, 1955. Further, in support of his contention, the learned



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counsel for the petitioner, has relied on the following Judgments:

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(a) Roshan Deen Vs. Preeti Lal reported in 2002(1) SCC 100

(b) Sameer Suresh Gupta Vs. Rahul Kumar Agarwal reported in 2013
(9) SCC 374

(c) K.K.Modi Vs. K.N.Modi reported in 1998 (3) SCC 573.

(d) Kishore Samrite Vs. State of U.P. & Ors reported in 2013 (2)
SCC 573

(d) Southern and Rajamani Transport Private Limited Vs.
R.Srinivasan & Ors., reported in 2010 (4) CTC 690.

(e) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and
others Vs. Tuticorin Educational Society and Others reported in (2019) 9
Supreme Court Cases 538.

(f) T.P.Kathiresan (died) & others Vs. R.Ramadass (died) & others
reported in C.R.P.(NPD) (MD) No.2275 of 2011.

6. Lastly, the learned counsel for the petitioner also contends that a
complaint has been lodged by the 1st respondent / plaintiff on 23.07.2011 on
the ground that petitioner and other respondents are trying to encroach the
suit mentioned property with false records and the said complaint was



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closed and a closure report was issued by the Inspector of Police on 19.03.2012, thereby pleaded to allow the present revision by rejecting the plaint.

7. Resisting the same, the learned counsel for the 1st respondent / plaintiff submitted that the petitioner and the other respondents/ defendants are land grabbers and plaintiff is only a poor lady depending upon the income of her husband, a driver by profession. The illegal actions of the revision petitioner and the other respondents using their money and muscle power in creating forged documents over the title of the 1st respondent and the failure of the legal action taken under Prevention of Land Grabbers Act forced the 1st respondent to file a suit. Further, all the points raised by the petitioner, viz., limitation, adoption, court fees etc., have to be dealt with only by a full fledged trial before the trial court under the provisions available under the CPC, thereby pleaded to dismiss the petition.

8. It is the plea of the learned counsel for the 12th respondent that the suit is hopelessly barred by limitation under Article 58 of the Limitation act, 1963. Admittedly, the period of 3 years got expired in respect of all the



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documents sought to be declared as null and void in the suit. Further, the plaintiff has approached the court of law with unclean hands and she has not even enclosed the patta in her name, therefore, the plaint is liable to be rejected as per Section 15(2) of Tamilnadu Patta Pass Book Act. In support of his claim, the learned counsel has relied on the following Judgements:-

(i) Judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 1330 [C.S.Ramaswamy Vs. V.K.Senthil and Others]

(ii) Judgment of the Hon'ble Supreme Court reported in [2020] 7 SCC 366 [Dahiben Vs. Arvinbhai Kalyani Bhanusali (Gajra) Dead through legal representatives and others]

(iii) Hon'ble Supreme Court reported in (2020) 16 Supreme Court Cases 601 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by legal representatives.

9. It is relevant to mention the principles made in the Judgments referred by the learned counsel for the petitioner as well as the respondents



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respectively:

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(a) In the Judgment Roshan Deen Vs. Preeti Lal reported in 2002(1) SCC 100, it is held that *'Time and again, this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it'*.

(b) In the Judgment Sameer Suresh Gupta Vs. Rahul Kumar Agarwal reported in 2013 (9) SCC 374 it is observed that *'Supervisory jurisdiction under Article 227 of the Constitution of India exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction'*

(c) In the Judgment K.K.Modi Vs. K.N.Modi reported in 1998 (3) SCC 573, it is stated that *'Frivolous or vexatious proceedings may also amount*



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to an abuse of the process of the court especially where the proceedings are absolutely groundless.'

(d) In the Judgment Kishore Samrite Vs. State of U.P. & Ors reported in 2013 (2) SCC 573, it is observed that *'The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court.'*

(d) In the Judgment of Southern and Rajamani Transport Private Limited Vs. R.Srinivasan & Ors., reported in 2010 (4) CTC 690 wherein it is held that *'From the close reading of Article 227 of the Constitution of India, it is easily discernible that every High Court is having power of superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. Further, it is made lear that the same can be invoked in a cae if it is shown that a grave injustice has been done to a party'.*



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(e) In the Judgment of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and Others reported in (2019) 9 Supreme Court Cases 538, wherein it is contended as follows:-

“13. Therefore, wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

(f) T.P.Kathiresan (died) & others Vs. R.Ramadass (died) & others reported in C.R.P.(NPD) (MD) No.2275 of 2011.

“15. The law relating to availability of alternative remedy as a bar invoke consitutional remedy is too well settled. The availability of the alternative remedy is not an absolute bar to invoke constitutional remedy. It is only as a matter of judicial discipline that the High Courts refrain from invoking constitutional power when effective alternative remedy is



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available under another law including Civil Procedure Code. At the same time, the respondent cannot be allowed to take advantage of the self imposed restrictions practiced by the High Court while exercising constitutional power of supervisory jurisdiction under Article 227 of the Constitution of India in order to defeat just claims and to sustain a wholly obnoxious abuse of process of law.”

Moreover, the above said Judgment, viz., Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and Others reported in (2019) 9 Supreme Court Cases 538, was also referred by the 1st respondent, wherein in the written submission, he has averred that 'If these judgments are scrupulously adhered, this petition ought not to have been entertained by this Court.

Judgments referred by the 12th respondent:

(i) In the Judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 1330 [C.S.Ramaswamy Vs. V.K.Senthil and Others], wherein it is observed as follows:-

“Thus, from the averments in the plaint and the bundle of facts



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stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T.Arivandandam (Supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC”

(ii) In the Judgment of the Hon'ble Supreme Court reported in [2020] 7 SCC 366 [Dahiben Vs. Arvinbhai Kalyani Bhanusali (Gajra) Dead through legal representatives and others], it is held as follows:-

“In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.”

(iii) In the Judgment of Hon'ble Supreme Court reported in (2020) 16 Supreme Court Cases 601 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by legal representatives, it is stated that “Considering the



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averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of power under Order 7 Rule 11(d) CPC”

10. Heard the learned counsels for the petitioner as well as the learned counsels for the respondents and perused the Citations and Documents placed on record.

11. The Hon'ble Supreme Court in Gurdev Singh vs Harvinder Singh reported in 2022 LiveLaw (SC) 963 observed that a plaint cannot be rejected under Order VII Rule 11 CPC merely on the ground that 'the plaintiff is not entitled to any relief in the suit'

“The application preferred by the petitioner to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed by the Trial Court which has been confirmed by the High Court. It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order 7, Rule 11 of the CPC. The learned Trial court has rightly rejected the application



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under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court. We are in complete agreement with the view taken by the High Court”.

Further, in the case of R. Arumugam vs. P.R. Palanisamy and Ors. (08.01.2013 - MADHC) :reported in MANU/TN/0011/2013, among other things, it is observed as follows:-

“10.Citation of a false cause of action, fraud, misrepresentation or the filing of the suit being an abuse of process of court, can, at the best, be projected as a preliminary issue. All questions, which can be decided as preliminary issues, cannot be made as grounds for rejection of the plaint unless the ground is brought within the purview of Order VII Rule 11 CPC. The distinction between the rejection of a plaint under Order VII Rule 11 CPC and the dismissal of the suit on a preliminary issue should be kept in mind. In case of rejection of plaint, the same will not bar a fresh suit”

12. When the suit is barred by statutory provision, the Revision Petitioner will have the recourse under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint. Moreover, abuse of process of court, does not



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fall under Order 7 Rule 11 by way of judicial legislation. The court has now recognised that Article 227 of Constitution of India can be invoked in such situations invoking the superintendence power over the subordinate courts for striking of plaint filed in abuse of Process of Court, provided the abuse of process of Court should be established and if there is any reason for a triable issue, this Court should not exercise the superintendence jurisdiction under 227 of the Constitution of India in striking off the plaint at threshold, in such situation, it would be justifiable to leave it to the trial court to decide the issues on merits. There may be exceptional cases in which the abuse of process of Court, the court will also not hesitate to invoke the superintendence power under Article 227 of the Constitution of India to strike off a plaint. If such abuse of process of court is apparent on the face of record, this Court shall be justified in exercising the power to strike off the plaint under Article 227 Constitution of India and at the same time, strict distinction should be drawn while exercising the power under Article 227 of Constitution of India where the parties shall exercise the right under Order 7 Rule 11 of CPC wherein the code stipulates that the defendant to approach the trial court within the frame work of Order 7 Rule 11 CPC. Once a specific provision is provided under the Code where a statutory remedy is



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available, invoking extraordinary jurisdiction of High Court under Article 227 Constitution of India should be restrained.

13. As far as the present case on hand is concerned, it is evidently clear on reading of the plaint that the 1st respondent / plaintiff who have approached the trial court had sought to declare Partition Deed dated 19.09.1986; Rectification Deed dated 04.02.1987; Sale Deeds dated 21.09.2006 & 27.01.2010 as null and void after a period of almost 35 & 13 years respectively, is a question to be decided. However, the circumstances under which the plaintiff has approached the trial court seeking a declaratory relief should be inferred from the averments made from the plaint, which in the considered opinion of this Court is a triable issue, as the question of limitation is the mixed question of law and fact. It may not be appropriate for this Court to curtail the plaintiff at the very initial stage. It would be appropriate for the trial court to decide the issues on merits after affording sufficient opportunities to other parties. There are ample opportunities for the petitioner / 7th defendant and the respondents 2 to 11 to resist the suit on basis of ordinary provisions of law.



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14. On a plain reading of the plaint as well as the pleadings in the

Revision petition, it is seen that the 1st respondent / plaintiff, who is the sister's daughter of Kanniammal contends that the petitioner as well as other respondents have encroached property by creating false documents , as if the owner of the property, viz., Kanniammal executed sale deeds, partition deeds, by hiding the exact facts and circumstances and hence the said partition deed and sale deeds executed with regard to Kanniammal's property is not sustainable and on the other hand, the petitioner as well as the respondents 2 to 11 contends that when the property to the extent of 53.5 cents in the name of Kanniammal was partitioned, the said Kanniammal's husband has right only to an extent of 20.5 cents, while that being the case, it is not known how the said Punniyanathan, husband of the said Kanniammal had given a registered Will in respect of 53.5 cents to the 1st respondent / plaintiff, all these issues have to be decided only by the competent civil court, by examining the signature, veracity of the documents and letting in appropriate evidence, therefore, this Court is of the view that the rejection of suit at threshold, which is under challenge under Article 227 Constitution of India, where an extraordinary jurisdiction has to be exercised very cautiously and to be exercised when there are no other alternative and

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efficacious remedy available for the petitioner. As such, Court should impose itself a self restrain in exercising jurisdiction under Article 227 Constitution of India, unless a prima facie has been made out and the suit is an abuse of process of law. The petitioner has remedy under Civil Procedure Code and cannot invoke the extraordinary jurisdiction of Article 227 of Constitution of India to reject the plaint in O.S.No.178 of 2021.

15. It is important to note that as held by the Hon'ble Supreme Court in **P.V. Guru Raj Reddy & Anr Vs. P. Neeradha Reddy & Ors** on **13 February, 2015 in Civil Appeal No.5254 of 2006**, *“the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.”*

16. Under these circumstances and by referring the principles laid down by the Hon'ble Supreme Court as well as this Court mentioned supra,



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the present Civil Revision Petition is dismissed. However, the petitioner is at liberty to raise all the points / questions / reliefs sought for in the present Revision by way of written statement before the trial court and shall conduct the case without seeking unnecessary adjournment. As soon as the written statement is filed, the trial court shall frame the issues and decide the same in accordance with law, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order

To
The District Munsif,
Alandur.

22/23



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V.BHAVANI SUBBAROYAN, J.,

ssd

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