



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2023**

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A(MD)Nos.673 and 674 of 1999

and

C.M.P(MD)No.7425 of 1999

1.Krishnammal(died)

2.K.Dhandapani

3.K.Duraisamy

(Appellants 2 and 3 are brought on record as Lrs of the deceased sole appellant as per order of this Court made in M.P(MD)Nos.1 to 3 of 2011 in S.ANos.673 and 674 of 1999, dated 15.11.2021)

:Appellants in both appeals

.vs.

1.V.Duraiyappan(died)

2.Pandithan Pillai(died)

3.Subramania Pillai(died)

4.K.Subramani

5.Dhandapani

6.K.Shanmugam

7.K.Iyyaoo

8.K.Arumugam

9.K.Duraisamy



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10.K.Jeevanantham

11.K.Panneer Selvam

12.Kanniammal

13.Susila

14.Shakila

15.Kumaresan

16.Mottai @ Palaniammal

17.Deivan

18.Kattathal

19.Packiyalakshmi

20.Kaliammal

21.Nagaraj

22.Murugan

23.Vijayalakshmi

24.Veeramani

25.Karuppayyee

26.Gunasekar

27.Subramani

28.Dhandapani

29.Dharmaraj

30.Mariappan



31.Saraswathi

(Respondents 16 to 19 are brought on record as Lrs of the deceased first respondent as per order of this Court made in C.M.P.No.12974 and 12796 of 1999, dated 12.8.1999)

(Minor 17th respondent is declared as major and guardianship of his mother/R14 is discharged vide order of this Court made in C.M.P(MD)Nos.11357 and 11380 of 2021 in S.A.Nos.673 and 674/1999, dated 5.1.2022)

(Respondents 20 to 24 are brought on record as Lrs of the deceased 2nd respondent as per order of this Court made in C.M.P(MD)Nos. 11351, 11352 and 11353 & 11374, 11375 and 11376 of 2021 in S.A.Nos.673 and 674 of 1999, dated 12.01.2023)

(Respondents 25 to 31 are brought on record as Lrs of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos. 11354, 11355 and 11356 of 2021 @ 11377, 11378 and 11379 of 2021 in S.A.NOs.673 and 674 of 1999, dated 12.01.2023)

:Respondents in both appeals.

COMMON PRAYER: Second Appeals filed under Section 100 of Civil Procedure Code against the common judgment and decree made in A.S.Nos.91 and 92 of 1996, dated 5.12.1997, on the file of the Subordinate Judge's Court, Palani confirming the common judgment and decree made in O.S.No.363 of 1984 and O.S.No.1087 of 1982, dated 14.3.1995, on the file of the District Munsif Court, Palani.

S.A.NO.673 of 1999

For Appellants :Mr.M.Saravanan

For Respondents :No appearance
1, 4 to 15,2,3 and
16 to 19



S.A.NO.674 of 1999

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For Appellants : Mr.M.Saravanan
For Respondents : Mr.V.M.Balamohan Thampi
4,18 and 19
For Respondents : No appearance
1,5 to 15,12,13,16
and 17

COMMON JUDGMENT

S.A.Nos.673 and 674 of 1999 are filed against the common judgment and decrees made in A.S.Nos.91 and 92 of 1996, dated 5.12.1997, on the file of the Subordinate Court, Palani confirming the common judgment and decrees made in O.S.No.363 of 1984 and O.S.No.1087 of 1982, dated 14.3.1995, on the file of the District Munsif Court, Palani.

2.The Plaintiffs filed the suit in O.S.NO.1087 of 1982, on the file of the District Munsif Court, Palani for declaration and for recovery of possession against the respondents. Pending suit, the appellants herein filed the suit in O.S.No.363 of 1984 against the original respondents herein for bare injunction. Both the suits were tried together on the file of the District Munsif Court, Palani and the



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trial Court has decreed the suit in O.S.No.1087 of 1982 and dismissed the suit in O.S.No.363 of 1984.

3. Challenging the judgment and decree passed by the trial Court, the appellants herein, in the appeal before the Subordinate Judge, Palani in A.S.NO.91 of 1996 against the judgement and decree passed in O.S.No.1087 of 1982 and also they have filed another appeal in A.S.No.92 of 1996 as against the dismissal of the judgment and decree passed in O.S.No.363 of 1984. Both the appeals were tried together before the Subordinate Court, Palani and after hearing the appeals and considering the entire materials on record and after re-appreciating the evidence, the first appellate Court dismissed both the appeals confirming the judgment and decree passed by the trial Court. Again challenging the said judgment of dismissal by the lower appellate Court, the present Second Appeals have been filed by the appellants.

4. The parties are referred to as per their own ranking before the Courts below.

5. The brief facts of the case of the plaintiffs in O.S.NO.1087 of 1982 reads as follows:



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The suit property is situated in Palani Taluk, Mannur Village in D.No.5/98, which is a house property that belonged to the joint family properties of the plaintiffs therein and the house-tax was paid and electricity connection was also obtained in their name and they have got the tariff consumption charges and they have also enjoyed the properties. At that time, the first plaintiffs have borrowed a sum of Rs.5,000/- from the first defendant and second and third plaintiff also borrowed another sum of Rs.5,000/- from the first defendant. The plaintiffs had lent the suit property to the first defendant and in order to pay interest for the borrowal of Rs. 10,000/-, it has to be adjusted as rent for the suit property. For some time, they adjusted this amount and subsequently, the first defendant asked for higher rate of interest than the agreed interest. Therefore, the plaintiffs refused to pay the same and also the promissory note given in this regard is also barred by limitation and also the plaintiffs cancelled the tenancy and asked the first defendant to vacate the building. The first defendant refused to do the same. Therefore, the plaintiffs sent a legal notice and then filed the suit for eviction. Since the first defendant denied the title, the plaintiffs also filed the suit for declaration and recovery of possession.



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6.The first defendant has stated in his written statement that the second defendant is in possession of the suit property and therefore, the second defendant was impleaded in the suit and also their sons and thereafter, during the pendency of the suits, the first defendant died and other legal representatives were also impleaded and the plaintiffs sent a legal notice. The second defendant also received the same and they admitted the suit properties and only they denied that the suit property is a vacant site and it is a 'Natham Poramboke' and she constructed the building and set up a tea shop and her sons were running the tea shop and the plaintiffs are not entitled to the relief for recovery of possession.

7.The second defendant filed the written statement and she denied the tenancy agreement between landlord and tenant relationship. They deined that the suit promissory note was barred by limitation and the suit property was in the enjoyment of his wife and the suit property is only a 'Natham Poramboke' and the plaintiffs have no cause of action to file the suits and the plaint is bad for non-joinder of necessary parties.



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8.The case of the second defendant in the suit is that, as per the written statement filed, he denied the landlord and tenant relationship of the plaintiffs and first defendant and denied the borrowal of money by the plaintiffs from the first defendant and also agreed to pay the rent in lieu of payment of interest and the suit property is described as "Natham Poramboke" and she constructed the building in the suit property in S.No.859/B and also she constructed the house bearing D.No.5/93A and also she enjoyed the property by paying the house-tax and also put up a tea shop and their children is running the tea stall.

9.The second defendant filed additional written statement stating that the suit property was not correctly described and the door number was correctly given and the plaintiffs, in connivance with the first defendant, collusively filed the suit and the second defendant is not residing with the first defendant and whatever the relationship between the first defendant and plaintiffs, the same are not admitted by the second defendant, since the second defendant is in possession as the owner of the suit property and she constructed a building on her own and she had never been a tenant under the plaintiffs or the first defendant is a tenant under the



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plaintiffs and she is residing as wife of the first defendant in the suit property and she is enjoying the property on her own. Therefore, the plaintiffs are not entitled to any relief of declaration and for recovery of possession.

10.The second defendant also filed a separate suit in O.S.No. 363 of 1984 against the first defendant in the other suit, seeking for permanent injunction.

11.The brief facts of the plaint averments in O.S.No.363 of 1984 reads as follows:

The suit property is situated in Mannur Village in S.No.859/B and Door Number is 5/98A.The plaintiffs are enjoying the suit property from the year 1977 and constructed a building in the suit property and the plaintiffs paid the house tax and also other taxes and they are running the tea stall and the defendants 1 to 3 and the fourth defendant colluded with each other and filed the false suit. But however, she is in enjoyment of the property and the defendants 1 to 3 have filed the suit in O.S.No.1087 of 1982 with false allegations and since the plaintiffs are enjoying the suit



property on their own by constructing a building in the "Natham Poramboke" and paying house tax and therefore the defendants should not interfere with her peaceful possession and enjoyment of the suit property. Therefore, she prayed for the relief of permanent injunction.

12. The first defendant filed the written statement stating that the fourth defendant is the husband of the plaintiff and both the fourth defendant and the plaintiff were residing under the same roof. The plaintiff and fourth defendant colluded with each other and in order to grab the suit property of the defendants 1 to 3 and the fourth defendant had set up the plaintiff, the wife to file the suit and the first plaintiff is a tenant who entered into the possession and enjoyment of the suit property. The plaintiff and the fourth defendant are enjoying the suit property. The plaintiffs borrowed a sum of Rs.10,000/- from the fourth defendant and for the interest amount, the plaintiffs and fourth defendant were allowed to reside in that house and since all of a sudden the interest was raised, they did not pay the rent also and they adjusted the borrowed money and the suit promissory note is barred by limitation and therefore, the plaintiffs and the fourth defendant were asked to vacate the



premises and they failed to do so and the suit in O.S.NO.1087 of 1982 was filed thereafter.

13.As a counter-blast, without any valid reason, the fourth defendant had set up the plaintiffs to file the present suit for injunction and therefore, the suit is to be dismissed.

14.After trial, the trial Court decreed the suit in O.S.No.1087 of 1982 and dismissed the suit in O.S.No.363 of 1984. Challenging the judgment and decree passed by the trial Court, the appellants herein filed appeal before the Subordinate Judge, Palani in A.S.NO. 91 of 1996 against the judgment and decree passed in O.S.No.1087 of 1982 and also they have filed another appeal in A.S.No.92 of 1996 as against the dismissal of O.S.No.363 of 1984. Both the appeals were tried together by the Subordinate Judge, Palani and after hearing the appeals and considering the entire materials on record and after reappreciating the evidence,dismissed both the appeals, confirming the judgment and decree passed by the trial Court. Again challenging the said judgment of dismissal by the lower appellate Court, the present Second Appeals have been filed by the appellants.



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15. The learned counsel for the appellants submitted that the trial Court has no jurisdiction to try the suit in O.S.No.1087 of 1982. The respondents/plaintiffs had not valued the suit and paid the necessary Court fees. They initially filed the suit for recovery of possession and the appellants denied the title and hence they filed the suit for declaration. After making amendment, the respondents/plaintiffs have not valued the suit properly and paid the correct Court fees and after amendment of the plaint for declaration, the trial Court has no jurisdiction to proceed with the trial on the ground of pecuniary jurisdiction and he further submitted that the suit property is a "Natham Poramboke" and the appellant had only constructed the building and also had put up a tea shop and their children were running the tea shop. The respondents/plaintiffs have not proved their case. Though the respondents have stated that it is an ancestral property, they have not proved the same by producing any document. However, the suit properties are "Natham Poramboke" and also the appellants do not know about relationship of the plaintiff and her husband and the respondents have also not proved the landlord and tenant relationship and they have not produced any document to show the



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genuineness of their claim and the trial Court had failed to appreciate the oral and documentary evidence and simply dismissed the suit. When the appellants denied the title, the respondents have to prove the title but they have failed to prove the title and the trial Court failed to give opportunity to let in evidence. The suit filed by the respondents/plaintiffs against the appellants for ejectment is not maintainable and the appellants denied the landlord and tenant relationship. Even before filing of the suits, the appellants sent notice setting up their title. The Courts below failed to consider the same and also that the suit property is not correctly valued and correct Court fee was not paid. The Courts below, exceeding their jurisdiction, gone into the question of title in a suit for ejectment. Therefore they raised the following substantial questions of law.

16. In S.A.No.673 of 1999, the appellants raised the following substantial questions of law in the appeal memorandum, which reads as follows:

1. Whether in law have not the Courts below failed to see that once the appellant denied the relationship of landlord and tenant even prior to the filing of the suit, is a suit for ejectment maintainable?



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2. Whether in law are not the Courts below wrong in overlooking that the plaintiff in O.S.No.1087 of 1982 should have valued the property under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and if it is done so, then the value would exceed Rs.15,000/- and the Munsif's Court would ceased to have jurisdiction?

3. Whether in law is not the decree in O.S.No. 1087 of 1982 as confirmed in A.S.No.91 of 1996 is without jurisdiction and consequently nullity?

4. Whether in law have not the Courts below exceeded their jurisdiction in going into the question of title in an ejectment suit?

17. In S.A.No.674 of 1999, the learned counsel for the appellants raised the following substantial questions of law in the appeal memorandum, which reads as follows:

1. Whether in law have not the Courts below failed to see that once the appellant denied the relationship of landlord and tenant even prior to the filing of the suit, is a suit for ejectment maintainable?



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2. Whether in law are not the Courts below wrong in overlooking that the plaintiff in O.S.No.1087 of 1982 should have valued the property under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and if it is done, so then the value would exceed Rs.15,000/- and the Munsif's Court would cease to have jurisdiction?

3. Whether in law is not the decree in O.S.No. 1087/1982 as confirmed in A.S.No.91 of 1996 is without jurisdiction and consequently nullity?

4. Whether in law have not the Courts below exceeded their jurisdiction in going into the question of title in an ejectment suit?

18. Further, the learned counsel would submit that the plaintiffs have to prove their case on their own strength and they cannot take advantage of the case of the defendants. In a suit for declaration and recovery of possession, it is the duty of the plaintiff to prove his title and also cause of action for recovery of possession. When the appellants stoutly deined the title, they have to prove title and right to be in possession and both the Courts below ought to have dismissed the suit filed by the respondents and decreed the suit filed by the appellants.



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19.As the plaintiffs failed to prove the suit and also failed to prove the title and failed to prove the landlord and tenant relationship and moreover when they admitted that the appellants were in possession of the property and they filed the suit for recovery of possession, it is for them to prove the landlord and tenant relationship and also the trial Court had failed to give opportunity to the appellants to let in evidence and though prior to the amendment, the appellant's counsel closed the case as no evidence, further after the amendment, the appellants were not given opportunity to file additional written statement, if any, on the amended plaint and also opportunity to let in evidence and produce documents. Therefore, the failure to give opportunity would lead to miscarriage of justice. Therefore, both the Courts below have not properly appreciated and re-appreciated the evidence and legal position and therefore, both the appeals have to be allowed and the judgment and decrees passed by the trial Court are to be set aside.

20.The learned counsel for the respondents submitted that the respondents, as plaintiffs in O.S.No.1087 of 1982, have clearly



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pleaded that, originally the suit properties belonged to their family as ancestral properties and they have constructed a building long ago and the same was assessed with house-tax and also electricity connection was obtained and they are enjoying the property. In fact, they also mortgaged the property to a third party and enjoying the same. In the year 1977, they entered into a oral tenancy with the family of the husband of the deceased first appellant, namely, the first defendant in the said suit and also in lieu of payment of rent, they also borrowed a sum of Rs.10,000/- and adjusted the interest for the rent and also enjoyed the property. Since she subsequently increased the interest, they cancelled the tenancy and sought for recovery of possession. Since the husband of one of the appellants created problem, they filed the suit for ejectment. Since the husband of the first defendant denied the relationship and also they had stated that the appellants were in possession of the property as their own property, they amended the plaint for declaration and also they proved their title by adducing the oral and documentary evidence and also the house-tax was also paid by the respondents and therefore, they proved their title. Initially, they filed the suit for recovery of possession and since the title is denied, they amended the suit as one for declaration also. Pending suit, an Advocate



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Commissioner was appointed to note down the physical features of the suit properties. The Advocate Commissioner inspected the suit properties and gave his report. The report also shows that both the tea stall and building are constructed in one and the same time. The building is also very old and assessment stands in the name of the respondents and electricity connection was also obtained. The appellants are able to manage the Revenue people and got their Patta while they were in possession as a tenant. Subsequently, they created documents and denied the title. Therefore, the respondents filed the suit initially for recovery of possession and thereafter amended the plaint as one for declaration also. They proved their case. The trial Court also gave opportunity to the appellants to put-forth their evidence and despite giving sufficient opportunity, the appellants failed to utilize the opportunity given by the trial Court. Therefore, the trial Court after giving sufficient opportunity and considering the pleadings and oral and documentary evidence putforth by them, decreed the suit filed by the respondents and dismissed the suit filed by the appellants. There are no merits in the appeals and all the grounds raised by the appellants are purely question of facts and the trial Court had also properly appreciated the evidence. The appellate Court had also



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properly re-appreciated the evidence and has given a finding of facts. As such, no substantial questions of law is involved in both the appeals and hence, they are liable to be dismissed.

21. Heard the submissions made by the learned counsel appearing on either side and perused the records.

22. Admittedly, the appellants herein filed the suit in O.S.No. 363 of 1984. The respondents filed a suit in O.S.No.187 of 1982 as against the appellant and her husband initially for recovery of possession and subsequently, since the appellants denied the title of the respondents, they amended the plaint for declaration of title. The specific case of the respondents is that the suit properties are ancestral properties and their ancestors constructed the building way-back in the year 1934 and they enjoyed the suit properties as their own property and even during that time also, they mortgaged the properties to a third party. The husband of the deceased first appellant lent money to the respondents and for payment of interest, they enjoyed the property as a tenant. In lieu of rent, they also adjusted the interest to the borrowed amount. Therefore, they initially filed the suit for recovery of possession and since the



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appellants denied the title, the respondents amended the prayer for declaration of title. The main contention of the appellants is that the trial Court has lost the pecuniary jurisdiction and suit was not properly valued.

23.A perusal of the entire materials on record shows that the suit was initially filed for recovery of possession and thereafter the plaint was amended as one for declaration also. They valued the suit for Rs.13,500/- and paid the Court fees. The pecuniary jurisdiction limit of the Munsif Court at that point of time is Rs.15,000/-.When the appellants stated that the property is not properly valued, the appellants ought to have produced any document to show that the properties exceed the limits of the pecuniary jurisdiction of the trial Court. He has not done the same and the contention raised by the learned counsel for the appellants is not acceptable. Both the Courts below dealt with the said issue and have rendered specific findings and there is no perversity in the appreciation of evidence. It is purely based on factual aspects. In that suit, the plaintiffs valued the suit property and paid the correct Court fees. It is for the defendants to satisfy the jurisdiction to prove that the suit properties were over and above value as fixed by the plaintiffs. But



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the defendants in the suit, have not proved the same and further contention regarding jurisdiction is not acceptable. It is purely based on factual aspects and the trial Court as well as the appellate Court appreciated and re-appreciated the same.

24.As far as the opportunity not having been given to the appellants to let in evidence, is concerned, both the Courts below correctly narrated the facts and also given the findings. A reading of the entire materials on record also shows that every opportunity was given to the appellants. Though initially the husband of the deceased first appellant was shown as the first defendant, subsequently on the written statement filed by her husband, she was impleaded as the second defendant in the suit. Both of them denied the title and also denied the landlord and tenant relationship. Therefore, the respondents amended the plaint and also subsequently, there was opportunity given to the plaintiffs, and the witnesses were examined and documents were produced and the deceased first appellant filed suit in O.S.No.363 of 1984 and in that suit, she is the plaintiff and she has not let in any evidence in her suit and she has not established her case. Though the respondents admitted the possession of the appellants, the respondents



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admitted that the deceased first appellant and her husband were in possession as tenant but whereas, the appellants denied the title.

However, the respondents amended the plaint and established that the suit properties and the buildings are in the name of the respondents and they have also paid the house tax and also the electricity connection was obtained and the other documents are also filed to prove their title and also their entitlement to get recovery of possession. The learned counsel for the appellants vehemently contended that the documents filed by the respondents are self-serving documents. A reading of entire materials on record shows that as plaintiffs, the respondents have to plead and prove their case by letting in oral and documentary evidence. The deceased first appellant, who is also the plaintiff in one of the suits, as the respondent, denied her title and also the right to be in possession of the suit properties. She has not amended the plaint for declaration and permanent injunction and she valued the suit for permanent injunction. Once the defendants denied title in the suit, the appellants ought to have amended their plaint for declaration and proved her title and she has not done the same. Though the learned counsel for the appellants vehemently contended that the respondents, as plaintiffs, have to prove their case on their own



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strength and they cannot take advantage of the loopholes left by the defendants in their case, the very same proposition also is applicable to the appellants also. The deceased first appellant filed the suit for bare injunction and after denial of title, she has not chosen to amend the plaint as one for declaration. As plaintiff, she has to prove her case and her right to be in possession and then only she is entitled to get the relief of permanent injunction. Her suit was dismissed by both the Courts below. Both the Courts below rightly appreciated the oral and documentary evidence. The facts in the suit filed by the respondents in O.S.No.1087 of 1982 were proved and the Courts below decreed the suit for declaration. The appellants in the suit in OS.No.363 of 1984 had not proved the title and right to be in possession and hence, the Courts below dismissed the suit.

25.The Second Appeal is not automatic, unless the Court comes to the conclusion that substantial question of law exists and the second appeal cannot be admitted.

26. A perusal of the notes paper shows that the appeals are in "notice of motion" stage and substantial question of law has not



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been formulated. This Court, after hearing the learned counsel appearing on either side and on a perusal of entire pleadings, both oral and documentary and the judgments of both the Courts below, of the view that all the issues involved in these two appeals are only based on factual aspects and no substantial question of law is involved. The Courts below have rightly appreciated and re-appreciated the oral and documentary evidence and have given a finding, in which, this Court does not find any perversity of the appreciation or re-appreciation of both oral and documentary and there is no merit in these appeals warranting interference by this Court and as such, the appeals are liable to be dismissed.

27. In fine, both the Second Appeals stand dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

04.07.2023

Index:Yes/No
Internet:Yes/No
NCS :Yes/No
vsn/skn

To

1. The Subordinate Judge,
Palani.



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2.The District Munsif,
Palani.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN.,J.

vsn/skn

COMMON JUDGMENT MADE IN
S.A(MD)Nos.673 and 674 of 1999
and
C.M.P(MD)No.7425 of 1999

04.07.2023