



S.A. No.1634 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :21.08.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1634 of 2008

and

Cross Objection No.35 of 2009

and

M.P.No.1 of 2008

S.A.No.1634 of 2018

- 1.Ponni
- 2.V.Raja @ Rangaraj (Died)
- 3.V.Srinivasan
- 4.V.Varalakshmi
- 5.Padma
- 6.Chandra

...appellants

Vs

- 1.K.P.Mahalingam (Died)
- 2.K.P.Asaithambi (Died)
- 3.The Deputy Commissioner, HR & CE,
Salem Now: The Joint Commissioner,
HR & CE, Salem Office at Arulmigu,
Kottai Mariamman Temple Compound,
Salem-1.
- 4.M.Ponnusamy
- 5.M.Ammasiammal
- 6.M.Sivalingam
- 7.M.Sankarlingam
- 8.M.Kannan
- 9.M.Kumar

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10.A.Yasodha

11.V.Revathi

12.A.SRinath

13.E.Nithya

[R1 died, RR 5 to 9 brought on records as LR's of the deceased R1 viz.,
K.P.Mahalingam.

R2 died, RR 10 to 13 brought on record as Lrs of the deceased Rs viz.,
K.P.Asaithambi, vide Court order dated 24.06.2021 made in
CMPs.379,381,383 and 384 of 2021 in S.A.No.1634 of 2008.]

14. R.Chitra

15. R.Vaishnavi

16. Minor R.Kalaivani

... Respondents

[A2 Died, RR14 to 16 are brought on record as Lrs of the deceased A2 vide
Court order dated 10.06.2024 made in CMP.No.13098 of 2021 in
S.A.No.1634 of 2008 (VSGJ)]

PRAYER in S.A.No.1634 of 2008: Second Appeal filed Under Section
100 of the Civil Procedure Code, against the Judgment and decree dated
08.08.2008 made in A.S.No.4 of 2008, on the file of the Principal District
Court, Salem, confirming the judgment and decree dated 10.01.2007 made
in O.S.No.271 of 1999 on the file of the Sub-Court, Sankari.

For Appellants	:	Mr.N.Manokaran
For R3	:	Mr. S.Suriya AGP
For R4 to R16	:	Mr.N.Umapathi
For R1 & R2	:	Died

Cross Objection No.35 of 2009

1.K.P.Mahalingam (Died)

2.K.P.Asaithambi (Died)

...Cross Objectors

vs.

1.Ponni



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- 2.V.Raja @ Rangaraj (Died)
- 3.V.Srinivasan
- 4.V.Varalakshmi
- 5.Padma
- 6.Chandra
- 7.The Deputy Commissioner, HR & CE,
Salem Now: The Joint Commissioner,
HR & CE, Salem Office at Arulmigu,
Kottai Mariamman Temple Compound,
Salem-1.
- 8.M.Ponnusamy

... Respondents

PRAYER in Cross Objection No.35 of 2009: Cross Objection filed Under Order 41 Rule 22 of the Civil Procedure Code, against the Judgment and decree in S.A.No.1634 of 2008 dated 08.08.2008 in A.S.No.4 of 2008, on the file of the Principal District Court, Salem, confirming the judgment and decree dated 10.01.2007 made in O.S.No.271 of 1999 on the file of the Sub-Court, Sankari and served on 12.02.2009.

<i>For Appellants</i>	:	<i>Mr.N.Manokaran</i>
<i>For R3</i>	:	<i>Mr. S.Suriya AGP</i>
<i>For R4 to R16</i>	:	<i>Mr.N.Umapathi</i>
<i>For R1 & R2</i>	:	<i>Died</i>

JUDGMENT

The appellants have preferred this Second Appeal against the Judgment and decree dated 08.08.2008 made in A.S.No.4 of 2008, on the file of the Principal District Court, Salem, confirming the judgment and decree dated 10.01.2007 made in O.S.No.271 of 1999 on the file of the Sub-



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Court, Sankari.

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2.The respondents 1 and 2 (plaintiffs) filed a suit for a declaration and other consequential reliefs, challenging the order passed by the HR & CE / 2nd and 3rd defendants in O.A.87 of 1990 dated 06.04.1992. They sought to declare this order invalid and to declare that the plaintiffs and the 3rd defendant alone hold the office of the trusteeship, along with other consequential reliefs. All three defendants contested the suit, and it was finally partly decreed in favor of the plaintiffs by granting the first relief. Accordingly, the order passed by the 2nd defendant / HR & CE in O.A.87 of 1990 was declared invalid, but the suit was dismissed with respect to the other reliefs. Aggrieved by this, the defendants 4 to 9 preferred the first appeal. Since the 1st defendant had died, leaving behind his legal heirs, a cross-objection was also filed by the plaintiffs in A.S. No. 4 of 2008, and both were jointly tried. The First Appellate Court dismissed the appeal, confirming the findings of the trial court. Challenging these findings, the legal heirs of the 1st defendant have now preferred this second appeal.

3. The learned counsel for the appellants prayed to set aside the



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findings of the Court below as unjust and illegal, on the following grounds:

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i. *The Courts below have failed to note that the suit itself is not maintainable in law under Section 108 of the HR & CE Act. Suits relating to the administration of management of a temple and performance of poojas cannot be decided in a Civil Court.*

ii. *The Courts below have failed to note that under the Act 1959, the supervision and administration of a temple is vested in a hereditary officials. Section 5 and 108 of the Act says that the Civil Court cannot entertain a suit.*

iii. *The Courts below have failed to note that against the order dated 06.04.1992 made in O.A.87 / 1990, an appeal is maintainable under Section 69 of the Act. Since the appeal could have been filed within a period of 60 days, in order to get over the period of limitation prescribed for filing the appeal, the plaintiffs have filed the above suit.*

iv. *The Courts below have failed too note that except the evidence of P.W.1, absolutely there is no iota of legal evidence to support the claim of plaintiffs. In the absence of any other independent evidence to corroborate the evidence of PW1, the relief sought for should not have been granted.*

v. *The Courts below have failed to note that the 2nd defendant has considered the matter in detail and passed the*



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order dated 06.04.1992 (Ex.A1). Mere reading of the order dated 06.04.1992 would show that except the 1st defendant no one would have any claim over the hereditary trusteeship.

vi. The Courts below have failed to note that there are ample evidence to show that the name of Edayaraman is found in the IFR extract, thereafter his son by name Varadha Gonar was holding the post of hereditary trustee. After that the 1st defendant was declared as the hereditary trustee.”

4. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

5. The second appeal was admitted by this Court on 17.12.2008, on the following Substantial Questions of Law.

"(a) Whether the Courts below are correct in law in entertaining the suit against an order made under Section 63(b) in the absence of an appeal under Section 69 of the Act before the Commissioner particularly when there is a provision for statutory suit under Section 70 of the Act, 1959?

(b) Whether the suit filed by the plaintiffs against the order dated 06.04.1992 made in O.A.No.87/90-B1 is maintainable in law in view of the specific bar under Section 5



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and 108 of the HR & CE Act, 1959?

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(c) Whether the Courts below erred in law in decreeing the suit in the absence of any legal evidence to prove the Genealogy of the plaintiff's predecessors to claim hereditary trusteeship for two generations without a break? ”

6. The brief facts of the case are as follows: The respondents 1 and 2 are the plaintiffs in O.S. No. 271 of 1999 on the file of the Sub Court, Sankari, praying to cancel the order passed by the 2nd defendant / Deputy Commissioner of HR & CE in O.A. No. 87 of 1990 dated 06.04.1992 as invalid and to declare that the plaintiffs and the 3rd defendant alone are the hereditary trustees of the temple. They also prayed for an injunction to prevent interference by D1 and D2 in the temple affairs.

7. The plaintiffs contend that they are the senior Oor Goundar and Periyathanakarar of the village of Kalvadangam, Koneripattu Agragaram, Sangagiri Taluk, Salem District. In that village, a small Varatharaja Perumal Swamy temple has existed from time immemorial and owns minor enam lands with meager income. As per custom, the temple is managed by the plaintiffs and their predecessors as Oor Goundars. However, the 1st



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defendant, claiming to be a hereditary trustee, fraudulently obtained an invalid order from the 2nd defendant / HR & CE in O.S. No. 87 of 1990.

Hence, they filed the present suit. Originally, there was no idol; only a stone 1 foot high with a Namam was kept. In 1975, the plaintiffs' father constructed an Ardha Mandapam in the suit temple, thereafter performed Kumbabishegam, and the temple's enam lands were leased at 15%, with the lease amount utilized for temple festivals. The 3rd defendant is a Junior Oor Goundar, apart from the plaintiffs and D3, no outside members managed the temple affairs, and they are the hereditary authorities of the temple. The 1st defendant, a Poojari of the suit temple, interfered with the temple affairs, and his son works as an assistant under the Executive Officer of HR & CE. The 1st defendant fraudulently obtained the order behind their back in O.S. No. 87 of 1990, in which the Deputy Commissioner of HR & CE / 2nd defendant declared the 1st defendant as the hereditary trustee of the temple. This order is invalid; hence, they seek to cancel the order and other consequential reliefs to declare them as the hereditary trustees of the temple.

8. According to the 1st defendant, he is the hereditary trustee of the Arulmigu Varatharaja Temple, a small village temple. Subsequently,



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improvements were made by him, including installing a stone idol. He contends that originally, one Yedaramer, who is the grandfather of the 1st defendant, managed the suit temple and performed poojas during the period of the Hindu Rajas. The maniam lands were granted to maintain the suit temple. After the British rule, these lands were inspected by the District Collector, and the enam lands were registered in the name of his grandfather Yedaramer, who was a Poojari. Subsequently, his son and grandson managed the temple affairs as hereditary trustees, with all expenses met by them, without collecting any amount from the public.

9. Further, the 1st defendant submits that as Poojari, he performed pooja daily. All the enam lands belonging to the suit temple are in possession of 15 lessees. However, the lessees have not paid the rent properly, leading the present defendants to initiate proceedings for the recovery of land from the lessees. Some of the lessees are close relatives of the plaintiffs, and with collusion, they caused interference. Hence, they approached the Deputy Commissioner of HR & CE by filing an application to declare them as hereditary trustees. Accordingly, the hereditary trustee order was granted through the Deputy Commissioner of HR & CE in O.A.



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No. 87 of 1990. If at all the plaintiffs disagreed with the order, they should have sought remedy before the Commissioner of HR & CE as per Section 69 of the TNHR & CE Act 1959, and not before the Civil Court. Therefore, disputing the jurisdiction of the Civil Court, they prayed to dismiss the suit.

10. During the pendency of the proceedings, the 1st defendant died, leaving his legal heirs. Before the trial court, the 3rd defendant remained ex-parte, and the defendants 1 and 2 contested the suit.

11. The 2nd defendant contested the suit, stating that the Executive Officer was appointed to manage the temple, but this fact was suppressed by the plaintiffs. Additionally, an order was already passed declaring the 1st defendant as a hereditary trustee on 06.04.1992, after conducting a proper inquiry.

12. Considering both sides' submissions, the trial court framed four issues. The foremost issue is: "Whether the suit property is maintainable before the Civil Court." According to the plaintiff's contention, they are Oor



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Goundars and, as such, they alone managed the temple affairs as hereditary trustees. On the other hand, the 1st defendant claimed that he is a hereditary trustee from their great-grandfather's ancestors, and this claim is also confirmed by the HR & CE by passing an order. Since there are rival claims regarding hereditary trusteeship of the suit temple, the learned trial judge found that if there is a dispute over the office of trusteeship, the Deputy Commissioner has no jurisdiction to decide the matter; only the Civil Court has the jurisdiction to decide this issue. The trial judge relied on the ratio laid down in ***“1971 (I) MLJ 358, Rangayya Goundar Vs. Karuppa Naicker”*** and ***“1981 (I) MLJ 392, Aiyur Mariamman Temple Vs. Sundaramoorthi Pillai.”***

13. Considering this, the learned trial judge concluded that in the present case, both the plaintiffs and the 1st defendant are making rival claims about the trusteeship. The Civil Court is empowered to decide this issue, not the Deputy Commissioner under Section 63(b). Regarding other issues, the trial court observed that for the period from 1981 to 1984, the 2nd plaintiff, Asaithambi, was appointed as a trustee by the HR & CE. After that period, there is no evidence to show that he continued in the trusteeship. The



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trial court also observed that the 1st defendant did not produce any material documents to show that they managed the temple as hereditary trustees; they were only poojaris of the temple. Therefore, both parties failed to produce evidence proving their ancestral management of the temple and declaration as hereditary trustees. Consequently, other reliefs were declined.

14. Aggrieved, an appeal was preferred in A.S. No. 4 of 2008 by the 1st defendant's legal heirs, and a cross-objection was also filed by HR & CE. The First Appellate Judge framed two issues: (i) Whether the order of the 2nd defendant passed in O.A. No. 87 of 1990, dated 06.04.1992, is liable to be set aside, and (ii) Whether the suit is barred under Section 108 of the HR & CE Act. In discussing the validity of the order passed by the 2nd defendant, the learned First Appellate Judge considered the rival claims made by the plaintiffs and the 1st defendant by relying on the ratio laid down in ***“1981 (I) MLJ 392, Aviyur Mariamman Temple Vs. Sundaramoorthi Pillai”*** and the Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), Section 63(b). The Deputy Commissioner has no jurisdiction to decide as between rival claimants to a



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hereditary trusteeship.

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15. *In “1971 (I) MLJ 358, Rangayya Goundar Vs. Karuppa Naicker,”* it was decided that Section 63 of the HR & CE Act enables the Deputy Commissioner to inquire into and decide whether a trustee holds or held office as a hereditary trustee. It is well settled that the jurisdiction of the Deputy Commissioner under Section 63(b) of the HR & CE Act, 1951, corresponding to Section 3(c) of the Tamil Nadu Act 22/59, is confined to deciding whether a trustee holds or held office as a hereditary trustee. This decision should be in relation to the status of the office of trusteeship, namely whether it is hereditary or not. It is not within the Deputy Commissioner’s competency to determine further questions such as who among the competing claimants is the hereditary trustee, as this matter is not covered by the above provision. The question of who, among the rival claimants, is the hereditary trustee cannot be decided by the Deputy Commissioner under Section 63(b) of the Tamil Nadu Act 22/59. Such a decision, if rendered by him, cannot bind the Civil Court.

16. In the above said two decisions it has been decided that Section 63



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of the HR & CE Act, enables the Deputy Commissioner to enquire into and decide as to “ Whether a trustee holds or held office as a hereditary trustee”.

It is now well settled that jurisdiction of the Deputy Commissioner under Section 57(b) of the HR & CE Act, 1951, corresponding to Section 3(c) of the Tamil Nadu Act 22/59 is confined to a decision whether a trustee holds and held office as a hereditary trustee, i.e., that decision should be in relation to status of the office of the trusteeship namely whether it is hereditary or not , and it is not competent for the Deputy Commissioner to go into further question as to who among the competing claimants is a hereditary trustee as the matter is not covered by the above provision and it has been decided that the question as to who as between the rival claimants is the hereditary trustee cannot be decided by the Deputy Commissioner under Section 63(b) of the Tamil Nadu Act 22/59, as if such a decision is rendered by him and the same cannot bind the Civil Court.

17. The appellants contend that the order passed by the Deputy Commissioner should be challenged by the plaintiff by filing an appeal under Section 69 of the HR & CE Act within 60 days from the date of the order. Without filing the appeal, the suit is not maintainable under Section



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108 of the Act. This contention was not accepted by the learned First Appellate Judge, who concluded that disputes regarding claims to hereditary trusteeship should be decided by the Civil Court, as the Deputy Commissioner lacks jurisdiction to decide such issues. The First Appellate Judge, therefore, confirmed the findings of the trial court.

18. Regarding other issues, the learned First Appellate Judge found that the suit temple's lands, totaling approximately 30 to 40 acres, are listed to various persons. The Executive Officer of HR & CE is administering and managing the temple. For a period in 1981, the Executive Officer was appointed as a trustee. The 1st defendant and his forefathers were merely poojaries, and his wife, who performed poojas, was paid wages. Therefore, neither the 1st defendant nor his forefathers were hereditary trustees. There is no proof that the successive trustees of the suit temple were hereditary trustees, nor was the temple given to a private or family entity. The Deputy Commissioner observed that the suit temple is a public temple with a hundial, and contributions are collected from the public to celebrate the temple festival. There is no documentation proving that the plaintiff's or the



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3rd defendant's ancestors managed or administered the temple as hereditary trustees. Consequently, neither the plaintiff nor the 3rd defendant, nor the 1st defendant, can claim to be hereditary trustees of the suit temple. The issues were answered accordingly.

19. Finally, the court held that the Deputy Commissioner lacks jurisdiction to decide on hereditary trusteeship in the presence of a rival claim, and thus the suit is maintainable. The appeal was dismissed, confirming the findings of the learned trial judge, and the cross-objection was also dismissed.

20. After reviewing the submissions and facts, it is evident that the plaintiffs and the 3rd defendant claim to be hereditary trustees of the suit temple, while the 1st defendant also claims to be a hereditary trustee. There is an admitted rival claim in this case.

21. By relying on Section 63(b), the learned counsel for the appellants



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argues that the Deputy Commissioner is empowered to decide on the hereditary trusteeship of the temple. The 1st defendant's application was considered, and after conducting a proper enquiry, the Deputy Commissioner declared the 1st defendant as the hereditary trustee. If anyone is aggrieved by this decision, they must file an appeal within 60 days from the date of the order, as per Section 69 of the HR & CE Act.

22. Section 69 of HR & CE Act, speaks as follows:

“69. Appeal to the Commissioner: (1) Any person aggrieved by any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the



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records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under Sub-Section(1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section or in which no suit has been instituted in the Court within the time specified in Sub-Section (1) of Section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in Section 66.”

23. As per the provision, any person aggrieved by the order can file an appeal, pointing out the issues. The learned counsel for the appellant submits that if the plaintiffs are aggrieved by the order of the Deputy Commissioner, they should have preferred an appeal. Instead, they filed the present suit, which is not maintainable under Section 108 of the HR & CE Act, as it bars



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suits related to the administration and management of religious institutions.

The Court below categorically held that if there is a rival claimant, the Deputy Commissioner has no authority to decide the issue, only a Civil Suit is maintainable.

24. Considering that Section 63(B) pertains to disputes among trustees and not between rival claimants, and since the dispute in the case at hand is between two private parties, the Civil Court alone has jurisdiction to try the suit, as held in 1990 (1 MLJ 140). Therefore, the jurisdiction of the Deputy Commissioner under Section 63(B) is limited to deciding whether the trustee holds or held the office of the hereditary trustee. The Deputy Commissioner is not competent to determine who among the claimants is the hereditary trustee. This question must be decided independently by the Civil Court, based on the evidence presented by both parties.

25. Upon reviewing the order passed by the 2nd defendant, the application filed by the 1st defendant in O.S. No. 87 of 1990, and the petition filed before the Deputy Commissioner of HR & CE under Section



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63(B) of the HR & CE Act (marked as Ex.A1), it is evident that the 1st defendant (Venkatachala Goundar) was involved. The records reveal that the present defendant (D1) was examined as P.W.1, Meenakshi Sundaram, the Executive Officer, was examined as R.W.1, and the Inspector of HR & CE was examined as C.W.1. Reports marked as Ex.C1 and Ex.A1 to A10 were also included. The Deputy Commissioner, relying on the payment of Kista and EB receipts, concluded that the great-grandfather of the 1st defendant was the hereditary trustee of the temple. However, it is admitted that the great-grandfather of the 1st defendant, Yedaraman, was a poojari of the temple, not the hereditary trustee. The HR & CE had appointed an Executive Officer, and there were allegations of undue interference. The 1st defendant's grandson was working under Executive Officer Meenakshi Sundaram, which led to concerns about potential collusion and the order obtained.

26. Additionally, about 30 to 40 acres of land allocated to the temple were listed to other parties, and the lease amounts were not collected by the Executive Officer due to the pendency of the suit. The plaintiffs and the 3rd defendant did not produce concrete evidence to establish that they are the

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rightful trustees of the temple from time immemorial. The great-grandfather of the 1st defendant was merely a poojari and had no role in managing the temple's affairs. The temple lands should be maintained by the Executive Officer of the HR & CE, who is responsible for collecting lease amounts and ensuring transparency in lease agreements.

27. Therefore, the concurrent findings rendered by the Court belows need no interference. Since it involves rival claims, the Civil Court has jurisdiction. The questions of law (a), (b) and (c) are answered accordingly. The appeal is dismissed as it lacks merit.

28. The findings of the trial Courts are confirmed. Accordingly, suit is partly decreed. The order passed by the 2nd defendant on 06.04.1992 in O.A.No.87 of 1990, is declared as invalid. In respect of prayer relating declaration claimed by the plaintiffs, the same is dismissed. No costs.

29. Therefore, the Second Appeal is dismissed as devoid of merits. There shall be no order as to costs. The Cross-objection filed by respondents 1 & 2 / plaintiffs is not maintainable, and the same is also dismissed.



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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The Principal District Judge, Salem.
2. The Sub-Court, Sankari.
3. The Deputy Commissioner, HR & CE,
Salem Now: The Joint Commissioner,
HR & CE, Salem Office at Arulmigu,
Kottai Mariamman Temple Compound,
Salem-1.
4. The Section Officer, VR Section, High Court of Madras.

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