



S.A.No.222 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 25.03.2024	Judgment Pronounced on 05.04.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.222 of 2018
and C.M.P.No.5691 of 2018

1.C.Vellingiri
2.K.Raman
3.B.Vikraman
4.P.V.Babu
5.M.Chinnathambi
6.M.Chinnakannan

.. Appellants

Vs.

1.R.Anuradha
2.G.Baskaran
3.R.Sakkarai
4.The Sub Registrar,
Pochampalli Taluk,
Krishnagiri District.
5.The District Registrar,
Krishnagiri.

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 23.10.2017 passed in A.S.No.7 of 2016 on the file of the Subordinate Judge, Uthangarai, confirming the judgment and decree dated 31.08.2015 made in O.S.No.46 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pochampalli.



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For Appellants : Mr.T.M.Hariharan
For Respondents
For RR1 & 2 : No appearance
For R3 : Mr.V.Nicholas
For RR 4 & 5 : Mr.V.Ramesh
Government Advocate

JUDGMENT

The Second Appeal has been filed against the judgment and decree dated 23.10.2017 passed in A.S.No.7 of 2016 on the file of the Subordinate Judge, Uthangarai, confirming the judgment and decree dated 31.08.2015 made in O.S.No.46 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pochampalli.

2.The plaintiffs, who suffered concurrent findings at the hands of the Trial Court as well as the First Appellate Court, are the appellants in the present Second Appeal.

3.The parties are described as per their litigating status before the Trial Court.



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4.The plaintiffs filed the suit seeking the relief of declaration of their title to the suit property; for a permanent injunction to restrain the 3rd defendant from trespassing into the suit property or from interfering with the plaintiffs possession and enjoyment and to declare the order dated 12.01.2011 passed in M.C.No.1 of 2011 by the 5th defendant as null and void.

5.The facts on which the plaintiffs filed the said suit are as follows:

According to the plaintiffs, the suit property, along with other properties, originally belonged to the 1st and 2nd defendants and under a Sale Deed dated 28.10.2010 vide Doc.No.2860/2010, the suit property and other properties were sold to the plaintiffs by the defendants 1 and 2. The plaintiffs claim to be an absolute possession and enjoyment of the suit property, ever since their purchase and patta was also issued to them and they have been paying kists. The 3rd defendant, on 20.04.2011, along with his henchmen attempted to trespass into the suit land, claiming that he had already purchased the suit property. Thereafter, the plaintiffs made enquiries and applied for certified copies and came to know that on 03.05.2010, the 3rd defendant had purchased the suit land from the 2nd defendant under a Deed of Sale which remained unregistered on that date. It appears that the 3rd defendant did not have the sale consideration amount to be paid to the 2nd defendant and therefore, the 2nd



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defendant refused to register the Sale Deed. However, the 3rd defendant has attempted to register the documents by way of compulsory registration before the 4th defendant. The 4th defendant rejected the registration of the Sale Deed on 16.08.2010. As against the rejection order passed by the 4th defendant, the 3th defendant has passed an order dated 12.01.2011 in M.C.No.01 of 2011, directing the 4th defendant to register the Sale Deed dated 03.05.2010 in favour of the 3rd defendant. The order passed by the 5th defendant was on 12.01.2011 only. The plaintiffs are not bound by the order passed by the 5th defendant on 12.01.2011 and they are not only bonafide but also legal purchasers under an earlier Sale Deed dated 28.10.2010 which was duly registered subsequent to which possession was also handed over to the plaintiffs.

6.The 1st and 2nd defendants did not file any written statement before the Trial Court even though they were served with summons and they appeared through their counsel. However, the 3rd defendant filed a written statement stating that the 2nd defendant had duly executed the Sale Deed and it was the 2nd defendant who drafted the Sale Deed, but however, he did not turn up for registration of Sale Deed. Therefore, the 3rd defendant applied for compulsory registration of the Sale Deed in his favour. Though the Sub Registrar, Pochampalli refused to register the Sale Deed, on appeal the District Registrar



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set aside the order of the Sub Registrar and directed the 4th defendant to register the Sale Deed in favour of the 3rd defendant. The 3rd defendant would deny that the plaintiffs are in possession of the suit property and would instead claim that the 3rd defendant has been in possession and enjoyment of the suit property ever since 03.05.2010. The 3rd defendant would also plead ignorance with regard to mutation of revenue records in favour of the plaintiffs. The 3rd defendant would further contend that the plaintiffs were aware of the sale transaction between the defendants 2 and 3 and therefore, they were not bonafide purchasers and their Sale Deed was not valid.

7.The defendants 4 and 5 filed written statement stating that at the time of Sale Deed in favour of the plaintiffs on 28.10.2010, an appeal was pending before the D.R.O., Krishnagiri at the instance of the 3rd defendant. It is also stated that the Doc.No.2860/2010 in favour of the plaintiffs was not a valid document as it was created, pending the appeal before the District Registrar. It is also claimed that the documents dated 03.05.2010 in favour of the 3rd defendant alone is valid document.

8.The Trial Court dismissed the suit holding that the plaintiffs are not



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bonafide purchasers and since they were not parties to the appeal proceedings before the D.R.O., Krishnagiri, they cannot challenge the order of the 5th defendant. On appeal preferred by the plaintiffs, the First Appellate Court concurred with the findings arrived at by the Trial Court and additionally held, referring to Section 47 of the Registration Act, the Sale Deed in favour of the 3rd defendant even though registered subsequently would take effect from the date of its execution. On all these grounds, the First Appellate Court non suited the plaintiffs and dismissed the appeal. Aggrieved against the concurrent findings, the present Second Appeal has been filed.

9.The above Second Appeal was admitted by this Court on 21.03.2018, on the four substantial questions of law:

“1.Whether Section 47 of the Registration Act dealing with priority of registration can be pressed into service to divest title which has come to rest in the appellants under Ex.A1-Registered Sale Deed dated 28.10.2010 long prior to registration of Ex.A4-Sale Deed pursuant to Ex.A5-order dated 12.01.2011?

2.Can a sale which is admittedly not completed until registration of the instrument is completed, be claimed to have been completed earlier by virtue of Section 47 of the Registration Act?

3.Does Section 47 of the Registration Act dealing



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with priority of registration operate to relate back title to the date of execution of the Sale Deed when admittedly a Sale Deed relating to the property has been completed and registered in the interregnum?

4.Is not the findings of the Courts below that appellants cannot challenge Ex.A5 order which directly affects their rights, completely erroneous and contrary to law.”

10.I have heard Mr.T.M.Hariharan, learned counsel for the appellants and Mr.V.Nicholas, learned counsel for the 3rd defendant and Mr.V.Ramesh, learned Government Advocate for the respondents 4 and 5. I have also gone through the pleadings, oral and documentary evidence available on record and also the judgment and decree of the Trial Court as well as the First Appellate Court.

11.Mr.T.M.Hariharan, learned counsel for the appellants would submit that the respondents 4 and 5 had no jurisdiction to decide an issue which involved non passing of consideration and fraud and he would also make a distinction between “executing and signing”. He would further contend that the plaintiffs who were owners of the property having purchased the same under the registered Sale Deed ought to have been put on notice as they were certainly parties aggrieved. According to the learned counsel for the appellants,



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the Courts below assumed the correctness of Ex.A5, without testing the same.

The learned counsel would also state that in a suit of this nature as Ex.A5, being the order passed by the 5th defendant in M.C.No.01 of 2011, after the property was purchased by the appellants, no question of bonafide was involved. The learned counsel for the appellants would place reliance on the decision of the Hon'ble Supreme Court in ***Veena Singh (Dead) through legal representative Vs. District Registrar/Additional Collector (F/R) and Another*** reported in ***(2022) 7 SCC 1***, in support of his contentions.

12.Per contra, Mr.V.Nicholas, learned counsel for the 3rd respondent would submit that the plaintiffs could not challenge the order passed by the 5th defendant since the plaintiffs were not parties to the said order and especially, when the defendants 1 and 2 did not question the same, the plaintiffs cannot get any better right to challenge the order passed by the 5th defendant. The learned counsel for the 3rd respondent would submit that admittedly, the appeal preferred by the respondents were pending before the D.R.O., Krishnagiri and therefore, the purchase of the plaintiffs cannot be valid or bonafide. He would further state that the Courts below have arrived at correct findings best on facts and therefore, no interference is warranted under Section 100 of Code of Civil Procedure. Mr.V.Ramesh, learned Government Advocate would submit that



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the order passed by the 5th defendant was in order and the Courts below have rightly non-suited the appellants.

13.I have carefully considered the submissions advanced by the learned counsel on either side.

14.The plaintiffs have approached the Court claiming to have purchased the suit property under a registered Sale Deed dated 28.10.2010 and it is not in dispute that the order passed by the 5th defendant in M.C.No.01 of 2011 was subsequent to the purchase of the suit property by the plaintiffs. However, in view of Section 47 of the Registration Act, even if the date of registration being subsequent, it would have the effect of relating back to the date of execution and therefore, in such view of the matter, the Sale Deed executed in favour of the 3rd defendant can be presumed to have been duly executed on 03.05.2010 with its registration being subsequently ordered by way of compulsory registration. However, this is the bone of contention in the present Second Appeal.

15.The only issue that arises for consideration is as to whether the order passed by the 5th defendant directing compulsory registration was valid in the



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eye of law and whether it would bind the plaintiffs, who had purchased the suit property in the interregnum period.

16.I have gone through the records and it is seen that after signing the Sale Deed, the 2nd defendant did not present himself for registration of the same. The 4th defendant, before whom an application was made under Section 47 of Registration Act for compulsory registration held that it was a case where the execution of the Sale Deed was denied and therefore, compulsory registration could not be ordered. This order came to be passed on 16.08.2010.

17.Aggrieved by the order of the 4th defendant, the 3rd defendant preferred an appeal before the 5th defendant. The 5th defendant has allowed the appeal, after issuing notice to the 2nd defendant. However, the 2nd defendant appeared before the 5th defendant and since he had admitted his signatures in the Sale Deed, holding that the 5th defendant or the 4th defendant cannot compel payment of sale consideration, the 5th defendant ordered compulsory registration of the Sale Deed. It is also an admitted fact that even though the order came to be passed on 12.01.2011, the plaintiffs, who had by then purchased the suit property, were never put on notice about the proceedings before the 5th defendant.



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18.The specific case of the plaintiffs is that they have been in physical possession of the suit property, pursuant to the Sale Deed dated 28.10.2010 in and by a registered Doc.No.2860/2010 and only when the 3rd defendant attempted to trespass into the suit property, the plaintiffs made enquiries and it came to light that compulsory registration of the Sale Deed dated 03.05.2010 had been ordered by the 5th defendant. The plaintiffs had categorically asserted that the said order passed by the 5th defendant would not bind the plaintiffs. Both the Trial Court as well as the First Appellate Court have not examined the validity and correctness of the order passed by the 5th defendant which is of utmost importance, since one of the reliefs sought for in the suit is for a declaration to set aside the said order. I find that both the Courts below, as rightly contended by the learned counsel for the appellant, have proceeded as if Ex.A5, namely the order passed by the 5th defendant is valid and legal. The approach of the Courts below is therefore, clearly perverse, especially when the said order was specifically under challenge in the suit.

19.In *Veena Singh's* case as stated above supra, the Larger Bench of the Hon'ble Supreme Court dealt with the denial of execution by a signatory to a document, under Section 35 and 73 of the Registration Act, 1908. The Hon'ble



Supreme Court has held as follows:

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“50. Section 35(1)(a) of the Registration Act uses the expression "admit the execution of the document", while Section 35(3)(a) uses the expression "denies its execution". Similarly, Section 72(1) has adopted the expression "denial of execution", while Section 73(1) uses the expression "denies its execution". However, the word "execution" itself is not defined by the Registration Act.

.....
56. Mulla's The Registration Act notes the following in relation to the meaning of "execution"17:

"Admission of Execution

It is submitted that the mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of the document...

Where a person had signed a document after being aware of the nature of the document, he has executed the document, and, it is submitted, the Registrar cannot go into the question whether the document has been obtained by coercion; but when a signature has been obtained by false representations and the ostensible executant did not sign with the intention of being bound by the terms of the document, such a person cannot be said to have executed the document.”

.....

73. The "execution of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.

.....

76. The Registration Act exists so that information about documents can be put into the public domain, where it can be accessed by anyone in order to prevent forgeries and fraud, and so that individuals can be aware of the status of properties. If the interpretation conflating signing with execution is adopted, it would ensure that the Sub- Registrars/Registrars will continuously end up registering documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or writ proceedings continue, the document would remain on the public records as a registered instrument, which has the potential to cause more disruption. Hence, such an interpretation should not be adopted by this Court.



77. However, while adopting the current interpretation that the admission of one's signature on a document is not equivalent to admission of its execution it is important to consider the power of the Sub-Registrar/Registrar and their procedures under the Registration Act.

.....

82. The process which is conducted by the Registrar for the purpose of an enquiry under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry under Section 74. Where the Registrar refuses to register a document under Sections 72 or 76, no appeal lies against such an order, Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may Institute a suit before the civil court within the stipulated time for a decree directing that the document shall be registered. It is thus clear that the Registrar, when he conducts an enquiry under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is not conclusive and is amenable to judicial review.

83. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a) of the Registration Act. Subsequently, if an application is filed under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature under Section 74. If the Registrar passes an order refusing registration under Section 76, the party presenting the document for registration has the remedy of filing a civil suit under Section 77 of the Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively.

.....

91. The appellant in the course of her objections specifically pleaded fraud, submitting that:

91.1. The area which was reflected in the sale deed which was presented for registration was at variance that what had actually been agreed between the parties.

91.2. The boundaries as reflected in the sale deed did not correspond with the land agreed to be sold.

91.3. The sale consideration was seriously undervalued.

91.4. The purported sale deed was resulting not only in the transfer of excessive land but also the residential house which was in occupation of the appellant after the death of her husband.

91.5. The full consideration payable under the terms of the transaction had not been received by the appellant.



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92. *The plea of the appellant, that the purported sale deed though signed by her was procured by fraud and undue influence, was a matter which raised a serious substantive dispute. In support of her contentions, the appellant has also adduced before us the inspection report by the Sub-Registrar and the Naib Tahsildar. However, we are Inclined to hold that we cannot decide on the merits of the dispute at this stage, since the Registrar clearly exceeded his jurisdiction by adjudicating on the issue of fraud and undue influence.*

93. *The Registrar purported to exercise the powers conferred under Section 74 and arrived at a finding that the sale deed had been duly signed by the appellant and was therefore liable to be registered. However, the objections of the appellant raised serious issues of a triable nature which could only have been addressed before and adjudicated upon by a court of competent civil jurisdiction. As a matter of fact, during the course of the hearing, this Court has been apprised of the fact that in respect of the remaining area of 1000 sq m in the front portion of the land, a suit for specific performance has been instituted by the second respondent, resulting in a decree for specific performance dated 16-11-2018. As regards the subject-matter of the sale deed, the second respondent has instituted a suit for possession before the Civil Judge, Senior Division, Fast Track Court, where certain proceedings are pending. In this view of the matter, we are clearly of the opinion that the Registrar in the present case acted contrary to law by directing the sale deed to be registered.*

94. *In the impugned judgment, the Single Judge of the Allahabad High Court has observed that registration does not depend upon the consent of the executant but on the Registrar's finding that the executant had actually signed the document. The High Court held that having found in the course of the enquiry that the sale deed was duly prepared by a scribe, that the attesting witness had stated that the sale deed was signed by the appellant and she also placed her fingerprints in their presence, it was open to the Registrar to direct registration in spite of a denial of its execution by the appellant. In doing so, the Single Judge of the High Court has, with respect, conflated the mere signing of the sale deed with its execution. For the reasons mentioned earlier in this judgment, such an approach is completely erroneous and cannot be upheld."*

From the above, it is clear that the Hon'ble Supreme Court has made a clear distinction between "signing" a document and "execution" of a document.



20. Applying the ratio laid down by the Hon'ble Supreme Court in the above decision to the facts of the present case, it is clear that the 2nd defendant has only signed but not executed the Sale Deed. Therefore, the order of compulsory registration as directed by the 5th defendant is bad in the eye of law. Consequently, the Sale Deed in favour of the 3rd defendant also goes and the Sale Deed in favour of the plaintiffs stands. The 5th defendant unfortunately has proceeded to order compulsory registration of the Sale Deed on a wrong premise that the 2nd defendant had admitted to the “execution” of the documents. What all the 2nd defendant admitted in the enquiry was only admission of the signatures in the Sale Deed. His specific case has been that the sale consideration was not paid by the 3rd defendant and therefore, he did not move forward for the registration of the Sale Deed, though signed earlier.

21. In fact, in the above decision of the Hon'ble Supreme Court, reliance is also placed on a Division Bench judgment of this Court in ***Sayyapparaju Surayya Vs. Koduri Kondamma***, reported in ***1949 SCC Online Mad 227***, where the Division Bench of this Court held that the admission of execution would not amount to an admission that the person admitting entered into an obligation under the instrument, in other words, that he had executed the document, signed it as a sale deed, mortgage deed, or a lease deed, as the case



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may be.

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22.It is the specific case of the 2nd defendant before the 5th defendant that he had not received the sale consideration and therefore, he did not register the Sale Deed, despite signing the same. Applying the distinction made out by the Hon'ble Supreme Court between “signing” and “executing”, in the present case, the fact that the 2nd defendant had affixed his signatures in the Sale Deed on Stamp Papers would not amount to admitting execution of the Sale Deeds, since according to the 2nd defendant, he had not received the sale consideration which was agreed upon and to be paid by the 3rd defendant.

23.Unfortunately, the 5th defendant has presumed that the 2nd defendant has executed the Sale Deed and therefore, he was well within his powers to order compulsory registration of the Sale Deed in favour of the 3rd defendant. In fact, the 5th defendant had also recorded the version of the 2nd defendant that a signed Sale Deed was required by the 3rd defendant only to raise monies to enable the 3rd defendant to pay the sale consideration to the 2nd defendant. However, fraudulently, the 3rd defendant has taken undue advantage of the factum of the Sale Deed having been signed by the 2nd defendant and proceeded to take an order of compulsory registration in his favour. The



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registration authorities are not Civil Courts and when such an issue of a seller alleging that he has not received the sale consideration or that fraud has been played upon the seller are brought up, the registering authorities should lay their hands off and relegate the parties to a competent Civil Court, instead of deciding these crucial and substantive issues in a summary manner. Unfortunately, the Courts below also have fallen prey by relying on the order passed by the 5th defendant, which was in fact challenged by the plaintiffs in the suit.

24.In fact, under Section 74 of the Registration Act, 1908, the nature of enquiry contemplated by the statute requires a registrar to enquire and find out whether the document has been “executed” and whether the requirements of law have been complied with on the part of the person presenting the documents for registration, so as to entitle the documents to registration.

25.Under Section 75 of the Registration Act, if the Registrar finds that the document has been “executed” and requirements have been complied with, he shall order the document to be registered. However, in the present case, the District Registrar, namely, the 5th defendant has not rendered a finding as to whether the document has been “executed” as required under the law and he



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has also not rendered a finding with regard to whether the requirements have been complied with. Unfortunately, the 5th defendant has been swayed by the fact that the signatures in the Sale Deed were admitted by the 2nd defendant and on that footing, proceeded to order compulsory registration, without noticing the thin but significant line of difference between “signing” and “executing”.

26.The further submission of the learned counsel for the appellants is that when the plaintiffs had admittedly purchased the property and their Sale Deed had also been registered prior to the impugned order came to be passed by the 5th defendant, certainly, the plaintiffs were “parties aggrieved” and they should have also been heard before any order came to be passed. Even on this ground, the order of the 5th defendant deserves to be set aside.

27.In so far as possession is concerned, the plaintiffs have filed patta issued in their names pursuant to the registration of the Sale Deed in their favour and also the proof of payment of kists by them, to the revenue. Thus, the plaintiffs have shown to be in lawful physical possession on the suit property. On the side of the 3rd defendant, not a single document has been produced to establish the defence plea that the 3rd defendant was in possession of the suit property right from 03.05.2010 onwards. The Courts below have unfortunately proceeded to dismiss the suit on an erroneous application of legal position and also total disregard of the documentary evidence adduced by the



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plaintiffs, thus warranting interference under Section 100 of Code of Civil Procedure, for rendering perverse findings. In fine, the substantial questions of law are answered in favour of the appellants herein.

28.In the result, the Second Appeal is allowed and the judgment and decree dated 23.10.2017 passed in A.S.No.7 of 2016 on the file of the Subordinate Judge, Uthangarai, and the judgment and decree 31.08.2015 made in O.S.No.46 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pochampalli, are set aside and the suit is decreed as prayed for. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI., J.

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To

- 1.The Subordinate Judge, Uthangarai.
- 2.The District Munsif cum Judicial Magistrate, Pochampalli.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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Pre-delivery judgment made in
S.A.No.222 of 2018
and C.M.P.No.5691 of 2018

05.04.2024