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S.A.No.692 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

S.A.No. 692 of 2022

and

C.M.P.No.13706 of 2022

Panisavan Samooga Nalem Penum
Thondamandalam Veerakodi Vellalar Sangam,
Rep.by its,
i) President
ii) Secretary,
Previously having their Head Office at
No.86/1, Ramamurthy Colony,
Thiru Vi.Ka.Nagar, Chennai – 82,

Presently having their Head Office at
No.18/31, Loco Works Road,
Agaram, Chennai – 600 012.

... Appellant

Vs.

1. Veeradoss
S/o. Ramachandran

2. Santhakumari
W/o. Durai.

... Respondents



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Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 30.09.2021 passed in A.S.No.41 of 2015 on the file of the Principal Subordinate Court, Ponneri, confirming the judgment and decree dated 22.04.2015 passed in O.S.No.137 of 2011 on the file of the District Munsif Court, Thiruvottiyur.

For Appellant : Mr.Krishnasamy R.

For Respondents : Mr.S.Sridharan
for R1

J U D G M E N T

Challenging the concurrent findings of the both the Courts below, the present appeal has been filed by the defendants in the suit.

2. For the purpose of convenience, the parties are described as per their ranking in the Trial Court.

3. Originally plaintiffs filed the suit in O.S.No.137 of 2011 on the file of the District Munsif Court, Thiruvottiyur, claiming themselves that they are in possession and enjoyment of the suit property, which is classified as



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'Natham Poromboke' in the Revenue Records. According to them, the suit property situated in Door No.60/66, North Mada Street, Thiruvotriyur, Chennai, bearing Survey No.237/1 part to an extent of 4380 sq.ft., was originally in possession and enjoyment of the first plaintiff's great grandfather Krishnan for more than the statutory period. After his demise, the plaintiff's grandfather Shanmugham was in possession and enjoyment of the suit property and after his demise, the plaintiff's grandmother Vadivambal was in possession and enjoyment of the said property. After her demise, the plaintiffs 1 and 2 are residing in the suit property, without any interruption. The first plaintiff's great grandfather and grandfather allowed the pilgrims to temporarily stay in the suit property for worshipping in Arulmighu Vadivudaiyamman Temple. In the suit property, there is no electricity connection from the beginning. Now, the building which is situated in the suit property is in dilapidated condition and no pilgrims are visiting there. On 31.07.2011, the defendants tried to dispossess the plaintiffs' family, thereby, the first plaintiff lodged a complaint against the defendant-Sangam and also filed the suit for permanent injunction restraining the defendant-Sangam from interfering with their peaceful



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possession and enjoyment of the property.

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4. The case of the defendant-Sangam is that they are Sangam/Association of members of a community, and from the year 1937 onwards, they are in possession and enjoyment of the suit property. Originally, the defendant-Sangam had taken the possession of the suit property as per "Aathina Olai Pathiram" in the Tamil month of Dharana Varudam, 15th day of Vaikasi month i.e., on 28.05.1955. Subsequent to the said possession, the Sangam was maintaining the suit property and paying Taxes to the local body. It is further stated that in the suit property, a temple called Arulmighu Karpagavinayagar Temple is also situated, in which, the Sangam conducted daily Poojas and used to celebrate Annual Maghizhadi Sevai Utsavam and special Poojas and also used to do Annadanam. Apart from that, they used to celebrate marriages and family functions in a minimum cost, and that the pilgrims belonging to their community used to stay in the suit property free of cost during Utsavam period and other festivals. They had also celebrated Golden Jubilee in the year 1974, and a inscription stone also erected in suit property. The building which was situated in the suit property, is more than a century old, and that they have



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taken steps to evict the persons, who were in the occupation of the said building. Accordingly, one Babu Naidu, who is the father of the second plaintiff, and who was one of the tenants of the said building, vacated the premises and handed over the possession to the defendant-Sangam. However, for the purpose of doing regular maintenance of the building, they engaged the said Babu Naidu as a caretaker of the property. After the death of the said Babu Naidu, the Sangam permitted the second plaintiff to stay in the "Verandah" portion of the building. Subsequently, the first plaintiff, by joining the hands of the second plaintiff, had come forward to grab the property, which was resisted by the defendant-Sangam, which resulted in lodging a police complaint and also filing of the present suit.

5. After considering the pleadings, the trial Court framed the following issues.

1. Whether the plaintiffs are entitled for permanent injunction as prayed for ? And
2. To what other reliefs?



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6. Additional issue had also been framed by the trial Court, which is as follows :

Whether the suit is liable to be dismissed for non claiming the relief of declaration ?

7. During trial, the plaintiffs examined themselves as P.W.1 and P.W.2 and marked Ex.A1 to Ex.A10. On the side of the defendant-Sangam, one Kothandan was examined as D.W.1 and Ex.B1 to Ex.B88 were marked.

8. The Trial Court, after framing issues and additional issue, and after hearing the submissions of the respective counsel, decreed the suit. Aggrieved by the same, the defendant-Sangam preferred an appeal in A.S.No.41 of 2015 on the file of the Principal Subordinate Court, Ponneri. During the appeal proceedings, the second plaintiff has engaged a separate counsel and she has agreed the case of the Sangam and even filed a counter affidavit in support of the case of the Sangam and has stated that the first plaintiff, who is the inter-mediator, who entered into the suit property illegally and claiming right over the property. Before the lower Appellate Court, an Advocate Commissioner was appointed to note down the physical



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features of the suit property based on the application filed by the Sangam and the Advocate Commissioner's report was also filed and received by the lower Appellate Court. After hearing the submissions of the respective counsel, the first appeal was dismissed stating that the defendant-Sangam had not established the case that they are in possession and enjoyment of the suit properties, and they are not entitled to right over the suit property. Challenging the same, the present second appeal has been filed by the defendant-Sangam.

9. At the time of admission, this Court, vide order dated 01.09.2022, framed the following substantial questions of law and notice was ordered to the respondents.

(i) Is not the Judgment and Decree of the trial Court as well as the First Appellate Court in not considering the various documentary evidence filed on behalf of the defendants to prove its right and title to the suit property results in perversity ?

(ii) Is not the Courts below failed in apply the principle that it is for the plaintiffs who have come to Court



to prove his case, that it is for the plaintiff to fall or stand on his own legs and not to pick up holes in the case of the defendants to get at the Decree and thereby put the entire burden of proof upon the defendants ?

(iii) Is not the Judgment and Decree of the Courts below are vitiated on the ground that the plaintiffs who were rank trespassers were allowed to get a Decree for injunction against the defendant who is a true owner of the suit property, that too without the plaintiffs admitting the title of the defendants to the suit property ?"

10. Heard the learned counsel for the appellant/defendant and learned counsel for the first respondent/first plaintiff. Though paper publication has been effected on the second respondent and her name is printed in the cause list, there is no representation on behalf of the second respondent.

11. Learned counsel for the appellant/defendant-Sangam submitted that numerous records were produced by the Sangam, more particularly the documents to show that the suit property was dealt with by them from the year 1937 onwards and they have leased out the property to various tenants.



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Those documents have been marked as exhibits, however, the same had not at all been considered by the lower Appellate Court. Without appreciating the admission of the plaintiffs regarding the manner in which they came into possession of the suit property, by choosing the pick holes of the defendant-Sangam, both the Courts have already held against the defendant-Sangam. The learned counsel further submitted that there is a Temple viz., Arulmighu Karpagavinayagar Temple situated in the suit property and the building was constructed 100 years ago, but the same has not been considered. However, the existence of the Temple has been taken into account by the lower Appellate Court. Further, the first plaintiff only relied upon the documents which came into existence from the year 2009 onwards and those documents itself, are sufficient to show that prior to filing of the suit, the first plaintiff has taken steps to prepare the documents and after obtaining various documents from the year 2008 onwards, had filed the suit in the year 2011, by joining with the second plaintiff. He further submitted that there is a clear counter title and the possession was also established in favour of the Sangam and there is also evidence to show that the defendant-Sangam had been paying tax for the suit properties, which was in the name of the Sangam



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from year 1982 onwards and there is also several transactions between the Municipality and the defendant-Sangam. All these facts have not been taken into account, by both the Courts below and they have brushed aside the evidence placed on record by the defendant-Sangam, thereby they have mis-guided from appreciating the real facts of the case.

12. In support of his contentions the learned counsel for the appellant/defendant relied upon the following judgments:

(i) ***Padhiyar Prahladji Chenaji (deceased) through Legal Representatives Vs. Maniben Jagmalbhai (deceased) through Legal representatives and others*** reported in (2022) 12 SCC 128;

(ii) ***Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira (dead) through Lrs.,*** reported in (2012) 5 SCC 370;

(iii) ***Mahabir Prasad Jain Vs. Ganga Singh*** reported in (1999) 8 SCC 274; and

(iv) ***Anathula Sudhakar Vs. P.Buchi Reddy (dead) by Lrs., and others*** reported in (2008) 4 SCC 594.



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13. Learned counsel for the first respondent/first plaintiff submitted

that the nature of the property in which the plaintiffs are in possession, is "Natham Poromboke". Since "Natham land" is under the nature of Poromboke, or unassessed land and no one has been given patta by the Government, the plaintiffs and their ancestors were in peaceful possession and enjoyment of the suit property for a substantial period. Considering the nature of the property defendant could not claim any title and also they cannot file the suit to declare their title of the suit property. The same has been properly appreciated by the lower appellate Court. After perusing various documents, the lower Appellate Court held that the suit property was not in possession of the defendant-Sangam and there is also categorical finding that the Sangam has no title or there is no sufficient evidence placed on record to show that they were leased out the property to various persons and those persons have also subsequently vacated. There is also no evidence to show that the said Babu Naidu was the caretaker, only in his individual capacity, he was in possession and enjoyment of the suit property. Therefore, he could not be considered as the caretaker and the same was rightly dealt with by both the Courts below. The learned counsel further



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submitted that the case of the plaintiffs is well founded and there is no misleading of the evidence adduced on the side of the defendants.

14. I have considered the submissions of both sides. I have also gone through the evidence of the plaintiffs, for better understanding the nature of the suit. P.W.1 has stated that the first plaintiff claims that his great grandfather was in possession and enjoyment of the suit property, and after his death, his legal heirs were in continuous possession of the suit property. He also stated that in his evidence that he is the relative of the second plaintiff. There is also pleading that one Krishnan was in enjoyment of the suit property for more than a statutory period. After his demise, one Shanmugam, who is the son of Krishnan, was in possession and enjoyment of the said properties and thereafter, it was possessed by the first plaintiff's grandmother. After the death of the first plaintiff's grandmother, the plaintiffs were in possession and enjoyment of the said property. However, no evidence placed on record to show that the plaintiffs were in continuous possession and enjoyment of the suit property. The first document relied on by the plaintiffs to prove their possession is /Ex.A1 came into existence in



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the year 2008. Other exhibits also came into existence after 2008, i.e., after various disputes developed between the parties. He has also stated that the first plaintiff's great grandfather and grandfather used to allow the pilgrims to stay in the property at the time of celebrating the festivals in the Arulmighu Vadivudaiyamman Temple. However, in the cross examination, the first plaintiff has admitted that there is an inscription stone placed on the suit property, which is still available there and inscription stone also contain the year, in which the Sangam was established. He has also admitted that he was not able to prove the possession and enjoyment of his grandmother Vadiammal or his ancestors. He further deposed that he was not aware about the place of living of his mother and father. He further states that, till he was studying 5th standard, he used to go and visit the suit property. Further, no such documents have been produced to show that he was born and brought up only in the said property.

15. In the background of the above evidence, now, I considered the evidence placed on the side of the defendant-Sangam including various lease deeds from the year 1937. Those deeds show that the defendant-Sangam had exercised their right and leased out the suit property to various persons.



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Their first exhibit - Ex.B1 dated 12.07.1937, is a registered rental agreement wherein lease of property by the defendant is recorded. In Ex.B1, the existence of Arulmighu Karpagavinayagar Temple also recorded. One of the condition for the tenant is that he has to do daily Poojas in the Temple, and tenant agreed to perform the same. During Magizhadi Sevai Urchavam, the tenant had to vacate the entire property and hand over the same to the Sangam. On the 7th day of Urthavam, the property has to be handed over to the Sangam and on the 10th day, it will be returned back to the tenant. These facts also show that the suit properties is nothing but a "Choultry" and it is used for various religious activities. Further, the defendants have also marked lease deed/Ex.B2 dated 01.11.1939 and various building Tax receipts from the year 1937 onwards. All these documents supports the case of the defendants. The suit property is nothing but a "Choultry" and in the surrounding area, Arulmighu Karpagavinayagar Temple is also situated. The defendant-Sangam has also marked Ex.B.3 'Notice' issued to the Commissioner, Thiruvottiyur Municipality, indicating communications between the Sangam and Municipality. All these documents have not been properly appreciated by both the Courts below, more particularly, the right



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exercised by the Sangam and their right to lease out the property. Both the Courts below have accepted the case of the plaintiffs based on certain documents i.e., the Bank statements, Ration Card and residential proof documents etc.

16. It is true that a person, who is in possession of the property, is entitled to protect his possession, if his possession is not disturbed, whereas, in this case, the defendant-Sangam are in possession of the property prior to 1937 onwards. As per Ex.B1 they claim that they leased out the property to various persons. Both the Courts below have not considered these documents while recording their finding, on the possession of the plaintiff. Defendant claims that the second plaintiff was only in permissible occupation and the first plaintiff colluded with the second plaintiff. Both the Courts failed to consider the issue as to whether the possession of the plaintiff is a permissible possession or they are in possession and enjoying the property on their independent rights. The Hon'ble Apex Court in ***Padhiyar Prahladi Chenaji (Deceased) through Legal representatives and Others Vs. Maniben Jagmalbhai (Deceased) Through Legal [(2022)***



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12 SCC 128 / in the paragraphs Nos.22, 23, 28 and 29 has observed as

follows : -

"22. In A. Subramanian Vs. R. Pannerselvam, it is observed by this Court that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. Therefore, the plaintiff is not entitled to any injunction and/or protect his possession against the rightful owner, more particularly, when he fails to get the declaratory relief and the dispute with respect to the title comes to an end.

23. Now, so far as the reliance placed upon the decision of this Court in Anathula Sudhakar by the learned advocate appearing on behalf of the original plaintiff in support of his submission that in a suit for permanent injunction to restrain the defendant to interfere with the plaintiff's possession, the only thing the plaintiff will have to establish is that as on the date of the suit, he was in lawful possession of the suit property and the defendant has tried to interfere or disturb his possession is concerned, what is observed by this Court in paragraph 15 is the "lawful possession" of the plaintiff. In the present case the plaintiff,



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who has failed to get any declaratory relief and the Defendant 1 is held to be a true and absolute owner on the basis of the registered sale deed on payment of full sale consideration thereafter the plaintiff's possession cannot be said to be "lawful possession". Therefore, the plaintiff is not entitled to any permanent injunction against the true owner in the instant case.

28. In the said decision in *Maria Margarida*, this Court has approved the following findings of the High Court of Delhi in *Thomas Cook (India) Ltd. Vs. Hotel Imperial* :
(Hotel Imperial Case, SCC Online Del Para 28)

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing — ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.



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Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the ‘bare minimum’ requirement of ‘due process’ or ‘due course’ of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the ‘recourse to law’ stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two



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rooms would have been brought about without recourse to law.”

29. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and once the rights of the parties are adjudicated and Defendant 1 is held to be the true owner on the basis of the registered sale deed and on payment of full sale consideration, it can be said that due process of law has been followed and thereafter the plaintiff is not entitled to any permanent injunction against the true owner."

17. In *Mahabir Prasad Jain Vs. Ganga Singh [(1999) 8 SCC 274]*, the Hon'ble Apex Court has held in paragraph Nos.12 and 22 that,

" 12.

Possession of a servant or agent is that of his master or principal as the case may be for all purposes and the former cannot maintain a suit against the latter on the basis of such possession (vide *Southern Roadways Ltd., Vs. S.M.Krishnan*). It is very unfortunate that the High Court has entirely overlooked this aspect of the matter."

" 22. The way in which the respondent has been instituting different proceedings in different fora within a short time making inconsistent allegations shows that the respondent



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has been abusing the process of court and not come to court with clean hands. He is not entitled to get any equitable relief under the Specific Relief Act."

18. In this case major defence of the defendant is that, the second plaintiff father was care taker and after his death the second plaintiff was permitted to continue possession. The defendant further claims that they are the owner of properties and they claim title over the suit property. Both Courts below have not considered the nature of possession of plaintiff and also maintainability of suit for injunction simpliciter, when the question of title is under challenge.

19. In the absence of any evidence to show how the plaintiffs entered into possession, they are not entitled to claim injunction against the persons, from whom they got the possession. Both the Courts had not appreciated the evidence adduced on the side of the defendant in proper perspective and they have misguided and picked the holes in the case of the defendant-Sangam, more particularly, the oral evidence of D.W.1. Answers given by D.W.1 shows, his ignorance to the facts due to passing of time, since most



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of the documents are almost very old documents. D.W.1 has categorically stated that he started to manage the affairs of the Sangam only recently and he could not have knowledge about the old documents. The exhibits marked to prove the manner in which the suit property was managed and they speaks for itself and both the Courts below, ought to have considered and rendered the findings based on the plaintiffs' evidence and not by weakness of the defendants' case.

20. The Hon'ble Apex Court in ***Hero Vinoth Vs. Seshammal (AIR 2006 SCC 2234 : 2006 (5) SCC 545)*** has consider the scope of Section 100 C.P.C and also the role of the High Court in exercising power thereunder, has held as follows in paragraph No.24, which are extracted hereunder :

" 24. The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a



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document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to



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'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

21. As discussed in the earlier paragraphs both the Courts have failed to consider the material evidence placed on record by the defendant-Sangam. Further, they considered the case of plaintiffs based on certain loopholes in the evidence of defendant by misreading some evidence.

22. I am of the view that since the lower Appellate Court is the last Court to appreciate the evidence, it ought to have appreciated the entire evidence as a whole, and it has failed to exercise its appellate power.

23. I am of the view that the appeal suit is required to be heard again by the lower Appellate Court and findings must be rendered after considering the numerous exhibits, particularly registered rental documents and various official documents issued by the Municipality, in the



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background of the subsequent stand of the second plaintiff in appeal suit who has come forward to give up her case in this regard.

24. Accordingly, this Second appeal is allowed by setting aside the judgment and decree dated 30.09.2021 passed in A.S.No.41 of 2015 on the file of the Principal Subordinate Court, Ponneri and the matter is remanded back to the lower Appellate Court for proper consideration of the appeal, more particularly to consider all the evidence rendered by the defendant-Sangam and to decide and dispose of the same, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.10.2024

Index: Yes/ No
Speaking Order : Yes / No
Neutral Case Citation : Yes / No
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To

- 1.The Principal Subordinate Judge,
Ponneri.
2. The District Munsif,
Thiruvottiyur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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