



C.R.P.No.1787 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1787 of 2024
and C.M.P.No.9436 of 2024

1.Mahindra World City Developers
[Formerly known as Mahindra Industrial
Park Limited]
No.17/18, Pattullos Road,
Chennai.

2.Mahindra World City Developers
[Formerly known as Mahindra Industrial
Park Limited]
Branch Office, Veerapuram Village,
Chengalpattu Taluk.

... Petitioners

Vs.

1.M.Natarajan
2.Gangammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.03.2024 made in I.A.No.2 of 2022 in O.S.No.100 of 2022 on the file of the Additional Subordinate Court, Chengalpattu and consequently allow the application.



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For Petitioners : Mr.Srinath Sridevan
Senior Counsel
for Ms.Aishwarya S.Nathan

For Respondents : Mr.G.Magesh Kumar

ORDER

The petitioners/defendants in O.S.No.100 of 2022 filed a petition I.A.No.2 of 2022 under Order VII Rule 11 of Code of Civil Procedure to reject the plaint in O.S.No.100 of 2022 on the file of the Additional Subordinate Court, Chengalpattu which was rejected by the Trial Court by order dated 02.03.2024. Against which, the present petition is filed.

2.The background of the case is that the respondents filed a suit in O.S.No.100 of 2022 seeking for cancellation of the Deed of Exchange dated 18.05.2007 registered as Document No.7090 of 2007 on the file of Joint-II SRO, Chengalpattu, the subsequent deed of Rectification of said Exchange Deed dated 29.06.2007 registered as Document No.9088 of 2007 on the file of SRO Joint-II, Chengalpattu and consequently permanent injunction



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restraining the petitioners, their men and agents interfering with the peaceful possession and enjoyment of the respondents over the suit properties. The petitioners approached the respondents who are the absolute and exclusive owners of the suit properties, to an extent of 0.04 cents in Survey No.97/10, an extent of 0.79 cents in Survey No.101/1, an extent of 0.01 cents in Survey No.112/1B1 and an extent of 0.08 cents in Survey No.1B2, totally to an extent of 0.92 cents of Veerapuram Village, Chengalpattu Taluk. The petitioners requested to give the suit schedule properties for consideration and they promised to give same extent of land in Paranur Village, Survey No.146/1 having an extent of 0.35 cents, Survey No.146/2 to an extent of 0.52 cents and Survey No.146/3A to an extent of 0.05 cents by way of executing an exchange deed, in order to enable the defendants to extend their business activities. As agreed by both the petitioners and the respondents, an Exchange Deed was executed on 18.05.2007, pursuant to the Exchange Deed, the respondents handed over physical possession of their properties comprised in Survey Nos.97/10, 101/1, 112/1B1 and 112/1B2 of Veerapuram Village, Chengalpattu Taluk and the petitioners handed over their properties at Paranur Village.



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Thereafter, the respondents faced intervention from some third parties which was brought to the knowledge of the petitioners and the petitioners suggested to remove Survey No.146/3A having an extent of 0.05 cents from the Exchange Deed by executing the Deed of Rectification and assured to give the same extent in another survey number. Believing their words, the respondents agreed and Deed of Rectification was executed between them on 29.06.2007. Despite several demands made by the respondents, the petitioners failed to give the said extent of 0.05 cents till date and Pattas were mutated. During the month of June 2021, the respondents measured the properties comprised in Paranur Village with the assistance of Firka Surveyor and found there is only 0.80 cents available in Survey Nos.146/1 and 146/2. When enquired, it was found that before execution of the Exchange Deed, there was some dispute between the petitioners and the inhabitants of the Village, who constructed a temple and the petitioners orally waived off the land of 0.12 cents comprised in Survey Nos.146/1, 146/2 and 146/3A of Paranur Village for village temple situated in a corner of the land. By suppressing the above facts, the petitioners entered into an Exchange Deed, thereby got the properties having good and marketable title



from the respondent and given disputed and worthless properties to them.

After gaining knowledge during June 2021, for about eight months the respondents approached the petitioners to compensate for the disputed extent of 0.12 cents. Thereafter, the respondents issued legal notice to the petitioners on 21.06.2021 followed by another legal notice dated 01.03.2022 which was replied by the petitioners on 11.03.2022. Since the reply was false and baseless, suit was filed. On filing the suit, the petitioners filed a petition to reject the plaint. In the meanwhile, the respondents took possession of the schedule mentioned properties of Veerapuram Village on 07.03.2022, since the petitioners not taken over the properties.

3.The contention of the learned senior counsel appearing for the petitioners is that the Trial Court failed to note that the suit was filed with an unexplained delay of 15 years, plaint filed by the respondent is for cancellation of Exchange Deed dated 18.05.2007 vide Document No.7090 of 2007 and the Deed of Rectification dated 29.06.2007 vide Document No.9088 of 2007 and the suit was filed in the year 2021 seeking to set aside the documents of the year 2007. The only explanation given by the



respondents is that the respondents engaged a Firka Surveyor during June 2021 and then they came to know encroached, 0.07 cents not available. He would submit that the respondents admit that they were put in possession of the property way back in the year 2007. The Trial Court failed to note the scope and application of Article 59 of the Limitation Act. It is well settled that registration of an instrument tantamount, as notice to public at large. Section 3 of the Transfer of Property Act provides that where a transaction relating to immovable property is required by law to be effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument, from the date of registration of the instrument. The respondents/plaintiffs are party to the said instrument. In view of the above admitted position, the registered instrument cannot be challenged belatedly. Further, the respondents by clever drafting of concocted facts attempting to make an illusory cause of action and bringing the suit within the period of limitation cannot be sustained in view of the legal bar and prohibition. Hence, the suit is a gross abuse of process of law, liable to be rejected on the point of limitation. On a demurrer if the plaint is admitted to be true,



then to the suit is barred for a claim under Section 119 of the Transfer of Property Act. The plaintiffs had the knowledge of alleged deprivation on the day of the Exchange again entered into Deed of rectification now casually claiming that they did not survey the land and only in the year 2021 after employing the Firka Surveyor, they came to know of the shortfall of the land on the face of it barred under law. Further in paragraph No.4 of the plaint, it is claimed that the petitioners promised to allot 0.05 acres of land as compensation for the removal of error in Survey No.146/3A. Except for the vague statement, the respondents not filed any iota of documentary evidence to confirm the same. Even in the Deed of Rectification dated 29.06.2007 there is no mention of any such arrangement between the petitioners and now the respondents makes such pleadings to file the suit.

4.The learned senior counsel further submitted that in paragraph No.5 of the plaint, the respondents submitted that the lands comprised in Survey Nos.146/1 and 146/2 of Paranur Village was measured by Firka Surveyor and was found only 0.80 cents instead of 0.87 cents There is no cause of action on this ground also. The respondents with distorted facts attempting



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to create an illusory of cause of action and the suit filed is abuse of process

of law. In this case, on a plain reading of the plaint except for a reference to Firka Surveyor measuring the property in Survey Nos.146/1 and 146/2 in the month of June 2021, there is no further details. Further, from the list of documents filed under Order VII Rule 14(1) of CPC, there is no Firka Surveyor report or any other document for the contention, whether at all Firka Surveyor was employed and surveyed the property during June 2021. As per the Exchange Deed, possession was from the date of Deed. The petitioners taking possession developed the property, laid industrial and residential plots and some plots sold, now the respondents claim that on 07.03.2022 the respondents took possession of the schedule mentioned properties, is again without any sustainable materials. He further submitted that the respondents under valued the plaint when the settled position of law is that the value of the suit as on the date of filing of the suit alone is relevant and not on the date of the document. The guideline value of the suit property as on the date of the suit for Survey Nos.146/1 and 146/2 is Rs.1,01,56,449.6/- and the Court fee liable to be paid by the respondents is Rs.3,04,698/- instead the respondents paid Rs.16,560/- as Court fee. From



the plaint, there is nothing to sustain the averments, except making illusory claim and invented cause of action. Hence, on these grounds the Trial Court ought to have rejected the plaint as prayed by the petitioners. But rejecting the same though accepting the contention of petitioner, for the reason they are triable issues is not proper.

5.In support of his contentions, the learned senior counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others*** reported in ***(2020) 7 SCC 366***, wherein the Apex Court referred to various judgments and held that the remedy under Order 7 Rule 11 of CPC is an independent and special remedy wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in the provision. The underling object of Order 7 Rule 11(a) of CPC is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court



would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. The Apex Court further referring to the judgment in the case of *Azhar Hussain vs. Rajiv Gandhi* reported in *1986 Supp. SCC 315* held that the sword of Damocles need not be kept hanging over the head unnecessarily without point or purpose. The test to be seen that whether if the averments made in the plaint are to be taken in their entirety, a decree would be passed. Further, it is the substance and not merely the form which has to be looked into. It had also held that it is on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious without any merit and does not disclose a right to sue, the Court would be justified in exercising the power under Order 7 Rule 11. What is required in the plaint is that whether plaint disclose a real cause of action or something illusory. Further, the learned senior counsel referring to paragraph 26 of the judgment submitted that Articles 58 and 59 of the Schedule to 1963 Act prescribes the period of limitation for filing the suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, is three years. In this case, the suit filed after 15



years. He further submitted that the plaint is nothing but a clever drafting of attempting to make out an illusory cause of action and bring the suit within the period of limitation.

6.In *Dilboo (Smt)(Dead) BY LRS and others vs. Dhanraji (Smt) (Dead) and others* reported in (2000) 7 SCC 702, the learned senior counsel referred to paragraph 20 of the judgment and submitted that even in the case of mortgage, the period of twelve years has to run from the date of knowledge of plaintiff of such transfer. It is always for the party who files the suit to show that the suit is within time. Thus, in cases where the suit is filed beyond the period of twelve years, the plaintiff would have to aver and then prove that the suit is within 12 years of his/her knowledge. In the absence of any averment or proof to show that the suit within time, it is the plaintiff who would fail. The point is that whenever a document is registered the date of registration becomes the date of deemed knowledge.

7.In the case of *T.Arivandandam vs. T.V.Satyapal and another* reported in (1977) 4 SCC 467, wherein the Apex Court reminded the duties



of the Trial Court. The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 of CPC taking care to see that the ground mentioned therein is fulfilled and if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X CPC. An activist Judge is the answer to irresponsible law suits. The Trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.

8.The learned senior counsel relied upon the judgment in the case of ***Basavaraj vs. Indira and others*** reported in ***(2024) 3 SCC 705***, wherein Article 59 in Part IV of the Schedule attached to the Limitation Act was referred and rejected and application for amendment of the plaint which was filed with a delay of 5 years and 3 months after passing of a compromise decree. Further, it was held that what cannot be done directly cannot be allowed to be done indirectly. Thus, he prayed to set aside the impugned



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order and to reject the plaint as abuse of process of Court which is bereft of any merit.

9.The learned counsel for the respondents submitted that the suit in O.S.No.100 of 2022 was instituted seeking substantial prayer of cancelling the Deed of Exchange dated 18.05.2007 registered as Document No.7090/2007 and the subsequent Deed of Rectification dated 29.06.2007 registered as Document No.9088/2007 and to pass a permanent injunction against the petitioners. The respondents and the petitioners exchanged their respective properties to an extent of 92 cents and entered into an Exchange Deed. Later it was found that 5 cents of land has been encroached by the local villagers and it was informed to the petitioners who agreed and 5 cents alone was left out by way of a Rectification Deed. Admittedly, the respondents had given 92 cents and in exchange got only 87 cents. Though the petitioners agreed to compensate for the 5 cents they have not done so. This being the case, during June 2021 Firka Surveyor was employed by the respondents to survey the land in Survey Nos.146/1 and 146/2, at that time a shortage of land to an extent of 7 cents was found, totally there was shortage



of 12 cents of land and no payment or consideration made. He would submit that though earlier 5 cents was taken out by Deed of Rectification in the year 2007, the respondents lost the limitation to challenge the same but the shortage of 7 cents of land in Survey Nos.146/1 and 146/2 in Veerapuram Village had come to the knowledge of the petitioner only during June 2021 and the suit was filed well within the period of limitation. Only on the oral assurance of the petitioners for 5 cents, the Deed of Rectification executed for which the respondents to seek through specific performance suit.

10.The learned counsel further submit that the petition filed by the petitioners is false, vexatious, unsustainable in law and on facts. The respondents are in possession and enjoyment of the suit property without any interruption even after the Exchange Deed dated 18.05.2007 and Deed of Rectification dated 29.06.2007, hence, the suit is well within the period of limitation. He further submitted that Online Patta dated 31.03.2022 of the schedule mentioned property confirming the property still stands in the name of the respondents and they were in continuous possession. He would



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submit that one Eswaran who negotiated, and signing authority of the petitioners had given assurance and now the same is being denied conveniently by the petitioners. The value of the property for the purpose of the Court fee has been computed on the subject matter of the suit as found in the Exchange Deed dated 18.05.2007 and the value of the suit is Rs.5,52,000- in the Exchange Deed and hence, the Court fee of Rs.16,560/- was paid. The Court raised no objection to the same and in such circumstances, the petitioner making a ground on it is not sustainable. The specific case of the respondents/plaintiffs is that only during June 2021 when the Firka Surveyor was employed and the property was sureyed and measured, it was found that there is shortage of 7 cents of land and hence, the suit is well within the limitation period which is clearly averred in the plaint. Legal notice was issued to the petitioners which was followed by another notice, the petitioners sent a reply with false allegation on 11.03.2022. These notices are all part of the suit documents. The points raised by the petitioner would not be sufficient to reject the plaint, at the threshold throttling the process of justice to be deprecated. The petitioners can very well make all their defence and claim in the suit only during the



trial and not at the initial stage. Hence, he prayed for dismissal of the petition.

11.In support of his contention, the learned counsel for the respondent relied upon the judgment of the Apex Court in the case of ***C.Natrajan vs. Ashim Bai and another*** reported in ***CDJ 2007 SC 1131***, wherein the Apex Court held that when the possession is disputed, the issue requires to be framed and required to be gone into, in such circumstances, limitation cannot be claimed. He also relied upon the decision in the case of ***P.V.Guru Raj Reddy rep. By GPA Laxmi Narayan Reddy and antoehr vs. P.Neeradha Reddy and others*** reported in ***CDJ 2015 SC 116***, wherein the Apex Court held that the claim of respondent with regard to the knowledge of respondent is an essential fact giving rise to cause of action as pleaded will have to be accepted as correct at the stage of application under Order VII Rule 11 CPC. The learned counsel further relied upon the decision of the Apex Court in the case of ***Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others*** reported in ***CDJ 2006 SC 216*** for the point that when the respondent/plaintiff proved that they are in possession of the



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suit property as on the date of the suit and established that they are entitled to injunction prayed for is a relief consequential to the relief of specific performance whether denial of one would automatically lead to denial of other or whether it is independent relief in itself even if the respondent/plaintiff is not entitled to a decree for specific performance, they would still be entitled for decree of injunction, a relief of grant which is of course is the discretion of the Court and the suit for injunction would be governed by the residuary article, Article 113 of the Limitation Act.

12.Considering the submissions made and on perusal of the materials, it is seen that the suit in O.S.No.100 of 2022 filed by the respondents/plaintiffs to cancel the Exchange Deed dated 18.05.2007 registered as Document No.7090 of 2007, the subsequent Deed of Rectification dated 29.06.2007 registered as Document No.9088 of 2007, both registered on the file of SRO Joint-II, Chengalpattu and seeking permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the respondents over the suit properties. Admittedly, the plaint is signed by the respondents/plaintiffs on



31.03.2022 and it is clear that the suit is filed nearly 15 years after the Deeds executed and registered. It is noted that prior to filing of the suit, legal notices dated 21.06.2021 and 01.03.2022 issued by the plaintiffs, but at no point of time earlier to the notice plaintiffs raised any grievance or objections whatsoever. The plaintiffs projects their case as though during the month of June 2021 the properties in Survey Nos.146/1 and 146/2 at Paranur Village was surveyed with the assistance of Firka Surveyor and found only 0.80 cents are enjoyed and possessed. The plaintiffs were under the impression that the land available was 0.87 cents as per the Exchange Deed and later, came to know that before the execution of Exchange Deed, there was some dispute between the defendants and the local Villagers regarding the land where the temple is situated and encroached upon. It was also found that the defendants orally waived off the land in favour of the Villagers where the temple is situated to an extent of 0.12 cents comprised in Survey Nos.146/1, 146/2 and 146/3A at Paranur Village. This allegations is made for the first time after 15 years from the date of execution of Exchange Deed dated 18.05.2007 and Deed of Rectification dated 29.06.2007. Hence, the contention of the learned senior counsel for the



respondents that the claim made by the plaintiffs is barred by law under Order VII Rule 11(d) CPC gains credence.

13.It is not the case that 0.12 cents of land not available in Survey Nos.146/1, 146/2 and 146/3A in Paranur Village. It is contended that it has been waived off orally in favour of the Villagers by the defendants. Neither there is any averment nor there is any material or document produced in the plaint annexing the Firka Surveyor report or for that matter any material to show the fee paid for Firka Surveyor and whether at all there was any survey. Further, there is nothing on record to show that there was any objection or claim for 0.12 cents made by the Villagers during survey. There is nothing to show that the land is not available in the said survey numbers. Under Order VII Rule 11(a) CPC, when a document referred to in the plaint form the basis of the plaint, it should be treated as a part of the plaint. The test is, whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. The remedy under Order VII Rule 11 CPC is an independent special remedy, when the Court on the basis of evidence adduced if it is satisfied that the action should be



terminated on any of the grounds contained in Proviso to Order VII Rule 11 and the underlining object is that if in a suit no course of action is disclosed or the suit is barred by limitation, it would be necessary to put an end to the sham litigation so that further time is not wasted.

14.In the case of ***Hardesh Ores (P) Ltd., vs. Hede & Co.*** reported in ***(2007) 5 SCC 614***, the Apex Court held that it is not permissible to cull out a sentence or a passage and to read it in isolation. It is the substance and not merely the form which has to be looked into. In the case of ***T.Arivandandam vs. T.V.Satyapal and another***, the Apex Court held that while considering the application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action and something illusory and observed as follows:

“5.We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving



plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”

15.As regards the Limitation Act, the Apex Court in the case of ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others***, observed as follows:



25.The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

26.Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
58. To obtain any other declaration	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.



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16. Thus, on the averments in the plaint read with documents relied upon, it is clear that the plaintiffs admitted the execution of Exchange Deed dated 18.05.2007 and the Deed of Rectification dated 29.06.2007. Both are registered documents. The case made out in the plaint is that even though the Deeds were executed in the year 2007, till the year 2021 i.e., for 15 years no grievance or objections raised whatsoever till issuance of legal notice dated 21.06.2021 and 01.03.2022. The cause of action invoked is from June 2021 i.e. During the period when the suit property is said to have been measured with the assistance of the Firka Surveyor. Except for the stray wordings, there is no details in the plaint and no documents annexed to the plaint to substantiate the claim and it is only an illusory. The admitted position of the plaintiffs is that a temple situated in the Village encroaching the land and the defendants waived an extent of 0.12 cents of land to the local inhabitants of the village. It is not the case that 87 cents or 92 cents of land are not available in Survey Nos.146/1, 146/2 and 146/3A. The plaintiffs have expressly and unequally have acknowledged, handing over physical and vacant possession. Correspondingly handing over vacant land of the petitioner. Thus, from the above factual position and the law laid



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down by the Apex Court in ***Dahiben's*** case, the plea taken in the plaint for suppression of fact is wholly misconceived and would not constitute a cause of action for filing the suit. The period of fifteen years after the alleged cause of action in the year 2007 prove the suit is clearly barred by limitation as per Article 59 of the Limitation Act, 1963. Accordingly, the order passed by the Trial Court in I.A.No.2 of 2022 dated 02.03.2024 is set aside and the plaint in O.S.No.100 of 2022 is rejected.

17.In the result, the the civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

The Additional Subordinate Judge,
Chengalpattu.



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M.NIRMAL KUMAR, J.

cse

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