



C.M.P.No.1620 of 2024

**Orders reserved on
30.07.2024**

**Orders pronounced on
14.08.2024**

C.M.P.No.1620 of 2024
in
A.S.No.434 of 2002

RMT.TEEKAA RAMAN, J.

This Petition has been filed under Order XXIII Rule 1A of CPC to transpose the Petitioner (19th Respondent in the main Appeal) as a 2nd Appellant in first Appeal AS.No.434 of 2002.

2.The chequered history behind this Appeal is as under:

One Dhanalakshmi filed a Suit in O.S.No.1555 of 1993 on the file of the Sub Court, Coimbatore seeking partition. There are two schedule in the property. 'A' schedule properties are ancestral properties and 'B' schedule properties are self acquired properties of the grandfather, late Palaniappa Mudaliar. The total extent of the two schedules is 23.56 acres. The Plaintiff sought to divide the property and to allot her 1/4th share. Defendant/P.Dhandapani filed written statement before the trial Court alleging that 'B' schedule property is not available for partition.



C.M.P.No.1620 of 2024

2(a)After trial, the learned trial Judge has observed that item 'b' in 'A' schedule properties were not yet sold and 'B' schedule properties were sold in the year 1984. S.Nos.1 to 5 in item 'a' in 'A' schedule properties were sold between 1994 and 2009. The trial Court based on Ex.B1 dated 02.09.1993 came to the conclusion that it is a self acquired property of Palaniappa Mudaliar and rejected the claim in respect of 'B' schedule property in toto.

2(c).In the written statement it is further resisted by the 1st Defendant Dhandapani that Palaniappa Mudaliar died on 27.11.1957. (Learned counsel for the 1st Defendant/Appellant in AS.434 of 2002 disputed the date of death as 07.01.1954.)

3.The said Palaniyappa Mudaliar died leaving behind Dhandapani (D1), Valliammal (D2) & Rajalakshmi, who is the wife of Udhayagiri Mudaliar (D3). Now it is represented that Valliammal, Rajalakshmi, Udhayagiri Mudaliar & Dhanalakshmi died. Since Dhanalakshmi died, Ravichandran (R20), Suganthi (R21), Kalaiselvi (R22) & Jayanthi were impleaded. Since Jayanthi died Thirugyanasamantham (R24), who is the husband of Jayanthi was impleaded as legal representative. Since, Rajalakshmi and Udhayagiri Mudalier died, their legal representatives were added as D4, D5 & D6.



C.M.P.No.1620 of 2024

4.Learned senior counsel appearing for Respondents 23 to 25 would contend that the original Suit was decreed and $1/8^{\text{th}}$ share under A schedule property and $1/4^{\text{th}}$ share in the B schedule property were ordered. Aggrieved against the same, A.S.No.434 of 2002 was filed and the same was dismissed for default for want of steps. Thereafter, amendment application to amend the preliminary decree appears to have been filed before the trial Court in I.A.No.4 of 2022. Though I.A.No.1 of 2022 was pending for passing final decree, taking note of the judicial decision of the Hon'ble Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma* reported in 2020 (9) SCC 1, the share in 'A' schedule property incurred into from $1/8$ to $1/4$. Aggrieved against the preliminary decree, one of the purchaser by name K.Shanmugam has also preferred A.S.No.819 of 2023.

5.It is also brought to my notice that pending A.S.No.434 of 2002, the very same Shanmugam filed CMP.No.1211 of 2009 on the strength of the purchase from the first defendant. The same was dismissed for default.

6.CMP.No.26 of 2012 was filed at the instance of Dhanalakshmi (Plaintiff) to implead the purchaser as a party Respondent in A.S.No.434 of 2002, which was ordered on 16.12.2019.



C.M.P.No.1620 of 2024

WEB COPY 7.CMP.No.384 of 2010 was filed to implead some of the purchasers as R8 to R13 and it is represented by the learned senior counsel for the Plaintiff that these purchasers covered under CMP.No.384 of 2010 are said to have purchased various portions of the schedule property on the strength of general power of attorney said to have been given to the first Defendant in the Suit and her husband claimed to be an advocate.

8.Learned counsel for the purchaser in A.S.No.819 of 2023 disputed the date of death of Palaniyappa Mudaliar and according to him, he died only on 07.01.1954, not on 27.11.1957.

9.From the docket entries I find that an error has been crept in showing the Appellant as dead but it is the first Respondent.

10.Learned counsel for Appellant in AS.No.484 of 2002 has reported no instruction from his client, at the time of the final hearing. Meanwhile, it is represented that another AS.No.819 of 2023 at the instance of the subsequent purchaser *pendent lite* is in the service of notice stage. Hence, both the case were ordered to be tagged along and posted before this Court.



C.M.P.No.1620 of 2024

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11. It is represented by the Bar that the first Defendant in A.S.No.434 of 2002 viz., Dhandapani has left the country and settled in United States of America, but he is alive. Most of the properties have been sold as noted supra. Hence, the High Court Legal Services Authority was directed to appoint a learned Senior Panel Advocate, who is well versed in civil law and accordingly, Mr.Anirudh Krishnan, learned counsel was appointed for appearing on behalf of the 1st Respondent/Appellant.

12. Heard Mr.Anirudh Krishnan, learned legal aid counsel for the first Respondent/Appellant in A.S.No.434 of 2002 and one of the Respondents in AS.No.819 of 2023.

13(a). Mr.Anirudh Krishnan, learned legal aid counsel for the first Respondent would contend that Ex.B2 is the parent document for Ex.B1 dated 24.06.1932, whereby Palaniappa Mudaliar has sold the property ('B' schedule property in the Suit) to the very same Valliammal, wherein he described the property as ancestral property and thus draw my attention to para 60 of the judgment of the Hon'ble Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma and others* reported in 2020 (9) SCC 1 and the case of

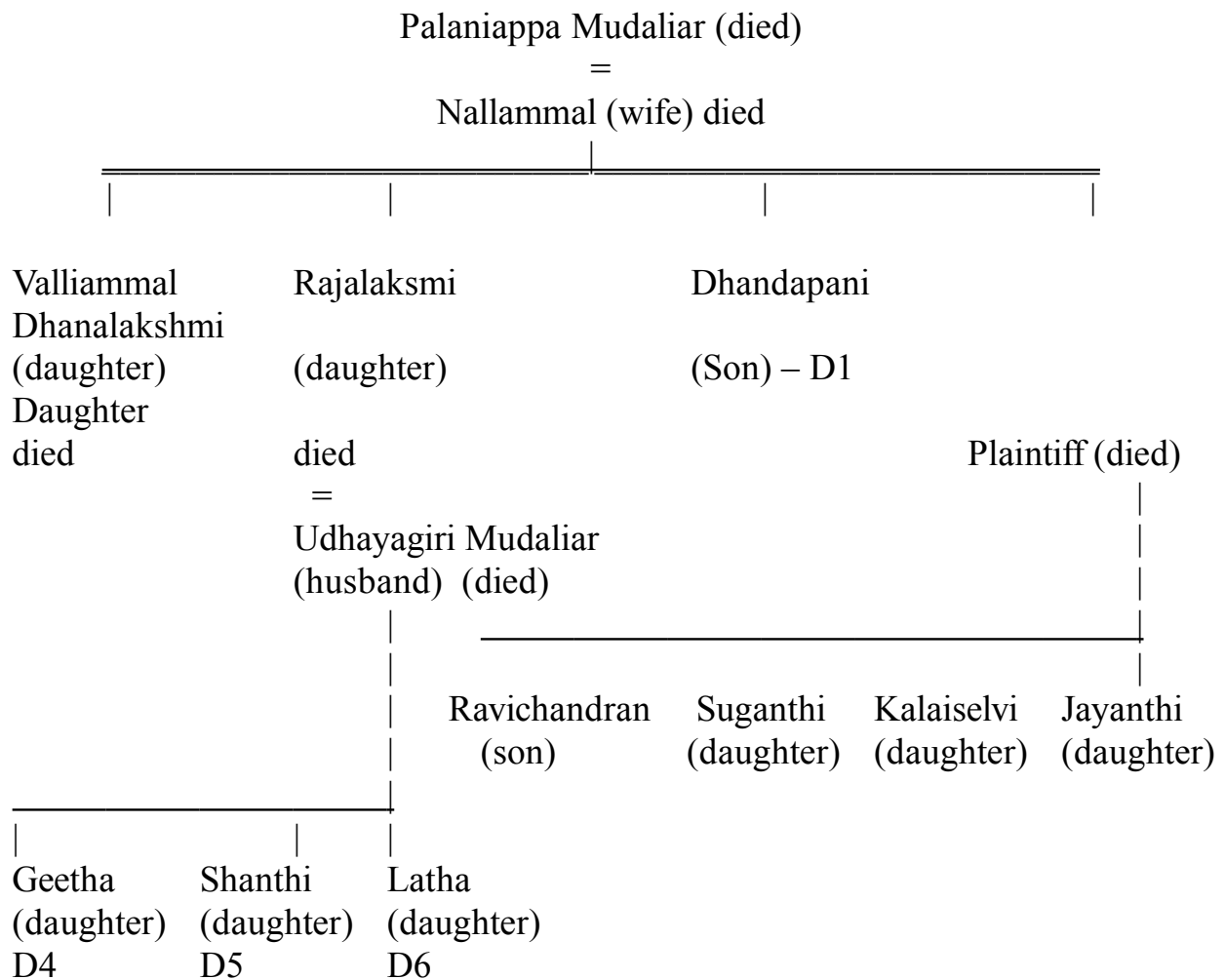


C.M.P.No.1620 of 2024

Arunachala Gounder (dead) by legal representatives Vs. Ponnusamy and others reported in 2022 (11) SCC 520. After impleadment of the parties, the cause title in A.S.No.434 of 2002 was amended.

(b) The Suit appears to have been dismissed as abated for not taking steps for the first Respondent, subsequently it was set aside and the matter was restored to file. Several CMPs are filed by the subsequent purchaser.

After amendment the genealogy in AS.No.434 of 2002 is as under:





C.M.P.No.1620 of 2024

WEB COPY

14.The present Petition (CMP.No.1620 of 2024) is to transpose the 19th Respondent, who is one of the subsequent purchasers *pendent lite* as the second Appellant on the ground that the Appellant/first Defendant in AS.434 of 2002 has suppressed the material facts as to the pendency of the Suit and sold the property to R19 and settled in America and therefore, Appellant/first Defendant deemed to have abandoned the Appeal and to protect his interest, he has to be transposed as second Appellant.

15.Mr.T.Murugamanickam, learned senior counsel for the Petitioner, relied upon various dates and events. Admittedly, the sale is in favour of the present Petitioner (19th Respondent in A.S.,) and he had purchased the same on 13.5.1994 and 03.06.1994 by way of two register sale deeds. The total extent of the suit property is 23.56 acres. Property covered under these two sale deeds in favour of the present Petitioner (R19) is 13.56 acres.

16.The learned senior counsel appearing for the legalheirs of the first Respondent/Plaintiff would contend that the present Petitioner is not a stranger, he is very much aware of the pendency of the Suit, since the Petitioner being son



C.M.P.No.1620 of 2024

in law of one Avinaaki Mudaliar/7th Defendant in the Suit and hence, he cannot claim bonafide purchaser of the suit property.

17.It remains to be stated that during the pendency of A.S.No.434 of 2002, taking note of the judgment of Hon'ble Apex Court in the case of *Vineeta Sharma Vs. Rakesh Sharma and others* reported in 2020 (5) CTC 302, I.A.No.1 of 2022 has been filed to recognise the daughter as co-parcener, thereby trial Court's decree was amended. IA.No.4 of 2022 in IA.No.1 of 2022 in O.S.No.1555 of 1993 seeking to amend the final decree by modifying the share into 1/4th instead of 1/8 as granted in preliminary decree and sought for passing of supplemental preliminary decree, dividing the A schedule and B schedule properties, into 4 equal shares and allot 1/4th share to the Plaintiff. By an order dated 10.07.2023 in I.A.No.4 of 2022 in I.A.No.1 of 2022 in O.S.No.1555 of 1993 was allowed. Accordingly, supplemental preliminary decree was passed.

18.Aggrieved against the said supplemental preliminary decree, whereby the preliminary decree that was the subject matter of AS.No.434 of 2002 stands modified, the Petitioner herein filed another Appeal Suit in AS.No.819 of 2023, in which in CMP.No.29032 of 2023 passing of final decree alone was stayed.



C.M.P.No.1620 of 2024

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19.The Petitioner herein as noted previously having purchased the major extent of share of 13.56 acres from and out of 23.56 acres by sale deed dated 13.05.1994 and 03.06.1994 is a vendee *pendent lite*.

20.Learned senior counsel appearing for the Petitioner relied upon the judgment of the Hon'ble Apex Court in the case of *R.Dhanasundari alias R.Rajeswari Vs. A.N.Umakanth and others* reported in (2020) 14 Supreme Court Cases 1, wherein at paragraph No.9 it was held as under:

“9.On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order 23 of Code of Civil Proceedure As per Rule 1 thereof, a plaintiff may seek permission for withdrawal of suit or abandonment of a part of claim. Rule 1-A thereof deals with an eventuality where the Plaintiff withdraws his suit or abandons his claim but a proforma defendant has a substantial question to be decided against the co-defendant. Thus Rule 1-A of Order 23 CPC reads as under:

“23.(1-A) When transportation of defendants as plaintiffs may be permitted. - Where a suit is withdrawn or abandoned by a plaintiff under Rule 1 and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court, shall,



WEB COPY



C.M.P.No.1620 of 2024

in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants””

The Petitioner is admittedly the vendee *pendent lite*.

21.Learned counsel for the 20th Respondent relied upon the judgment of the Hon'ble Apex Court in the case of Shivashankara & Anr. Vs. H.P.Vedavyasa Char reported in 2023 Live Law (SC) 261, wherein it is held that it is a well settled position that wherever TP Act is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like Court sale etc. Transfer of possession *pendente lite* will also be transfer of property within the meaning of Section 52 and therefore, the import of Section 52 of the TP Act is that if there is any transfer of right in immovable property during the pendency of a suit such transfer will be non est in the eye of law if it will adversely affect the interest of the other party to the suit in the property concerned. We may hasten to add that the effect of Section 52 is that the right of the successful party in the litigation in regard to that property would not be affected by the alienation, but it does not mean that as against the transferor the transaction is invalid.

22.In the judgment of the Hon'ble Apex Court in the case of *G.T.Girish*



C.M.P.No.1620 of 2024

Vs. Y.Subba Raju (dead) by legal representatives and another reported in

(2022), 12 Supreme Court Cases 321, wherein it is it is held that sine qua non

for the Doctrine of Lis Pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to litigation.

Person/party, who finally succeeds in litigation, can ask Court to ignore any transfer or other disposition of property by any party to proceedings. This is subject to condition that transfer or other disposition is made during pendency

of lis. It is further held as follows:

“The doctrine of lis pendens is based on the maxim “pendente lite nihil innovetur”. This means that pending litigation, nothing new should be introduced. Section 52 of the Transfer of Property Act, 1882 (for short “the TP Act”), which incorporates the doctrine of lis pendens, is based on equity and public policy.

...

The rule is, therefore, based not on the doctrine of notice, but on expediency i.e., the necessity for fine adjudication. It is immaterial whether the alienee pendente lite had, or had not, notice of the pending proceeding.”

“In other words, the transferee or the beneficiary of the property, which is disposed of by a party, cannot set up the case that he acted bonafide or in good faith. This enables the court and the parties in a suit or a proceeding, which otherwise is in



conformity with requirements of Section 52, to proceed in the matter on the basis that the adjudication by the Court, will not, in any way, be subverted or delayed, when the day of final reckoning arrives.”

“In fact, the Special Bench of the Madras High Court in Majeshwara Krishnaya v. Vasudeva Mallya, puts the doctrine of lis pendens as an extension of a doctrine of res judicata. Thus, the sine qua non for the doctrine of lis pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to the litigation. The doctrine of lis pendens, only subject, however, the transfer or other disposition of property to the final decision that is rendered. The person/party, who finally succeeds in the litigation, can ask the court to ignore any transfer or other disposition of property by any party to the proceeding. This is subject to the condition that transfer or other disposition is made during the pendency of the lis.

23. In the judgment of the Hon'ble Apex Court in the case of *Chander Bhan (D) through LR, Sher Singh* reported in 2024 (3) CTC 543, wherein it is held that Object of Doctrine of Lis pendens is to maintain *status quo* and prevent multiplicity of proceedings. Principle is based on equity and good conscience. Provisions of Act not applicable in Punjab, Delhi and Bombay by virtue of Section 1 of Act and held, Doctrine being based on justice, equity and



C.M.P.No.1620 of 2024

good conscience would be applicable even if Section 52 of Act is not strictly applicable.

24.Learned senior advocate for the legalheir of the first Respondent would contend that the present Petitioner is only a subsequent purchaser viz vendee *pendent lite*, his rights and scope is confined to Section 54 of the Transfer of Property Act and the first Defendant is the coparcener and other original Plaintiff and Defendants are coparceners. This is the Suit for partition and as against the coparcenars, the purchaser from one of the coparcenars *pendente lite* cannot transfer from Defendant to Plaintiff *vis-a-vis* from Respondent to Appellant.

25.Per contra, the learned senior Advocate for the Petitioner would contend that Rule 1-A thereof deals with eventuality where the Plaintiff withdraw the suit and abandons his claim but a proforma defendant has a substantial question to be decided against the co-defendant, he can be transposed as Appellant under Order 23 Rule 1-A of CPC.

26.As observed earlier Mr.Anirudh Krishnan appears as learned legal aid appointed counsel has highlighted the legal position enumerated in the case of



C.M.P.No.1620 of 2024

Vineeta Sharma Vs. Rakesh Sharma and others reported in 2020 (9) SCC 1

and in the case of Arunachala Gounder (dead) by legal representatives Vs.

Ponnusamy and others reported in 2022 (11) SCC 520, he draw my attention to Ex.B1 and Ex.B2 to show that 'B' schedule property is an ancestral property which was sold under Ex.B2 and subsequently, purchased under Ex.B1 and therefore, the finding rendered by the trial Court with regard to nature and character of the property needs modification.

27.Mr.T.Murugamanickam, learned senior Advocate on behalf of Ma.Pa.Thangavel, learned counsel for the Petitioner would contend that there is a factual dispute as to the date of death of Palaniappa Mudaliar, while the first defendant projected it as 27.11.1957 and disputed the date of death as 07.01.1954. The crucial date of the Hindu Succession Act passed between the above said period. My attention was drawn to the additional document proposed to be filed under Order 41 Rule 27 that in the Land Acquisition proceedings, two different dates have been given as date of death of Palaniappa Mudaliar.

28. The Andhra Pradesh High Court in Appeal No.821 of 1998 dated 04.12.2000 [Madaka Anjaneyulu Vs.Madaka Balaiah and Ors] has held that:-



C.M.P.No.1620 of 2024

“.....itself cannot be a reason for transposing a appellant who is none other than co-defendant whose interest in subject-matter of suit is not akin to the interest of plaintiff. The appellant herein being the third defendant, if the application of the first defendant is allowed, it would work adverse to the interest of the appellant who admittedly got a share in the property,.....”

29. This Court in C.M.P.No.13306 of 1979 dated 22.02.1980 [Govinda. Iyer Vs.Kumar and Ors] His Lordship Justice Mr.G.Ramanujam while dealing with the similar situation has held that provisions that are applicable to suits can also be applied to appeals or second appeals as far as it is practicable. Therefore, proceeded on the basis that the Court has power to transpose a respondent as appellant when the appellants seeks to withdraw or abundant appeal in suitable cases. However also further held that if the scope of the appeal will be widened by transposing some of the respondent as a appellant then the Court will be reluctant to transpose a respondent as a appellant in a such cases where there is likelihood of scope of the appeal being widened. It is also necessary to look into the fact that by such a transposition is likely to get due grounds not common to the appellant already on record may have to be determined for disposing of the appeal.



C.M.P.No.1620 of 2024

30. The Hon'ble Supreme Court in Civil Appeal No.7292 of 2009, dated

06.03.2019 [R.Dhanasundari Vs.A.N.Umakanth and Ors] has held that:

In the case of Anil Kumar Singh v. Shivnath Mishra:

MANU/SC/0652/1995:(1995) 3 SCC 147 in the following:

7.....The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

10.....The basic requirement for exercise of powers under Rule 1-A *ibid*, would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant., In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.

31. In the instant case, the point namely whether the original plaintiff is a co-parcener or not is based upon the factual position on the date of the death of



C.M.P.No.1620 of 2024

the Palaniappa Mudaliyar whether it is 27.11.1957 or 07.01.1954.

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32. The learned Senior Advocate Mr.T.Murugamanickam for Mr.Ma.P.Thangavel, learned counsel for the petitioner stating that they have already filed a petition under Order 41 Rule 27 of C.P.C to receive certain documents filed before the Land Acquisition Officer indicating the date of death of Palaniappa Mudaliyar in a different manner is only a question of fact and it is not a question of law.

33. Admittedly, the original plaintiff is a co-parcener as per Vineeta Sharma's case, if the date of death of Palaniyappa Mudaliar is 27.11.1957 namely after coming into the force of the Hindu Succession Act, If not, she cannot fall on the line of the co-parcener.

34. The another point is that the first defendant is the appellant herein who is admittedly a male heir is a co-parcener whereas the petitioner is a vendee *pendent lite* and whether the rights and protection given to such a petitioner namely vendee pendent lite as defined under Section 52 of the Transfer of Property Act. He cannot be substituted for a co-parcener since his rights are getting widened if he was transposed to a such position of the first defendant



C.M.P.No.1620 of 2024

who is admittedly co-parcener hence, I find that petitioner being a purchaser pending trial and he being vendee pendente lite cannot be substituted in the place of a co-parcener who is admittedly D1 the appellant herein. As the scope of the appeal will get widened since he enjoys the right only under Section 52 of the Transfer of Property Act. Besides, there is "no substantial question of law" to be adjudicated against other defendants since the matter has been settled in the above said two decisions of the citations referred above and what remains is only a question of fact namely date of the death of the Palaniappa Mudaliyar viz whether the date of death of Palaniappa Mudaliar is before the commencement of Hindu Succession Act 1954 or thereafter, Will decide the issued hence, it is only for the said factual finding, the appeal is pending.

35. In such circumstances, I find that the present petitioner being vendee *pendent lite* cannot be transposed in the place of a co-parcener as it likely to to widen his right under the colour of the appellant.

36. In such circumstance, this Court has held in Govinda Iyer's case cited *supra*, the same is impermissible in law. In short, a vendee *pendent lite* cannot be substituted as a appellant in the place of the co-parcener, which is impermissible, when there being no substantial question, needs to be



C.M.P.No.1620 of 2024

adjudicated upon.

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37. In this view of the matter, I find that there is no merits in this case and this Civil Miscellaneous Petition is dismissed.

14.08.2024

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C.M.P.No.1620 of 2024

RMT.TEEKAA RAMAN, J.

sai/nvi

Order in

C.M.P.No.1620 of 2024

in

A.S.No.434 of 2002

Dated: 14.08.2024