



Second Appeal No.58 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.58 of 2019
and C.M.P.No.1178 and 1179 of 2019

Nagammal (Died)

1.V.Babu
2.V.Chandran
3.V.Ramamurthy
4.V.Janakiraman

.... Appellants

-Vs-

Thiruvellore Sri Veera Ragava
Swamy Devastham Rep.by its Hon.Agent
Sri.K.Narasimman, Tiruvellore
Having office No.No.22, Mothilal Street
Tiruvallur.

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.16 of 2007 by the Subordinate Judge, Thiruvallur confirming the decree and judgment dated 17.02.2005 passed in O.S.No.809/1972 on the file of the District Munsif Court, Thiruvallur.

For Appellants : Mr.G.Veerabathiran
for Mr.R.Kamaraj

For Respondent : Mr.M.R.Khapali



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J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the learned Subordinate Judge at Tiruvallur in A.S.No.16 of 2007 dated 10.01.2014 in confirming the judgment and decree of the Court of the learned District Munsif at Tiruvallur in O.S.No.809 of 1972 dated 17.02.2005.

For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. O.S.No.809 of 1972 was a suit presented by the respondent / plaintiff seeking for the relief of declaration of title and for recovery of possession. The case of the plaintiff is that the property belongs to the plaintiff-Tiruvallur Veeraraghava Swamy Devasthanam. The defendant's husband one Govinda Reddy was doing umbrella service to the Veeraraghava Swamy deity. He had requested the Devasthanam to give him a property on lease to reside therein and to build a superstructure. Accepting the request, the Devasthanam entered into a vacant land agreement turned Muchalika between themselves and Govinda Reddy. Govinda Reddy took possession of the property pursuant to the Muchalika and was paying rents regularly. After the death of Govinda Reddy in



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the year 1955, the original defendant succeeded to the possession of the property. She made a request to continue the lease and considering the request, the lease was extended by the temple under three rental Muchalikas. Though she became a tenant under the temple, she did not pay rents properly. Therefore the temple resorted to file a petition for eviction of the original defendant. They presented R.C.O.P.No.42 of 1957 etc.,. Subsequently, the defendant paid the amounts and therefore, the RCOPs were withdrawn. The sole defendant Muniammal's son was also an employee of the temple. Therefore, the rental amounts were adjusted as against the salaries payable to him. Since the original defendant continued to default, another RCOP was filed in RCOP No.1 of 1969 and at that stage, the tenant questioned the maintainability of the plaint, pleading that she is the owner of the superstructure. Consequently, that petition too was not pressed by the Devasthanam. In order to recover possession, they presented the present suit in O.S.No.809 of 1972.

3. Prior to the presentation of the suit, notices were exchanged between the parties. On service of summons, the defendant entered appearance and filed a detailed written statement. The execution of the Muchalika dated 25.09.1957 and 10.07.1978 and 07.06.1968 were denied as false. The defendant stated that the plaintiff is not the owner of the property and therefore, there is no question



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of granting any relief of recovery of possession. Apart from the usual pleas of inadequate court fees, the defendant took the plea that the property is a "Kuttai Poramboke", which was occupied by her husband Govinda Reddy. The defendant would also plead adverse possession and would state that as the survey number of the suit property had not been given, the suit is not maintainable.

4. On the basis of these pleadings, the Court framed the following issues.

1. Whether the plaintiff has title to the suit site?
2. Whether the permissive occupation is true?
3. Whether the lease deed dated 10.07.1958 and 07.06.1968 are true and valid?
4. Whether the defendant was the tenant of the plaintiff?
5. Whether the cause of action alleged is true?
6. Whether the suit is in time?
7. Whether the Court fee paid is correct?
8. Whether the relief for vacant possession as prayed for could be granted?
9. Whether the suit site is a Kuttai Poramboke?
10. Whether the defendant and her predecessor in title perfected title by adverse possession ?
11. To what relief if the plaintiff entitled?

5. On behalf of the plaintiff, the Accountant of the temple was examined as P.W.1. He marked Exs.A1 to A12. In addition to him, two other witnesses



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were examined. On the side of the defendant, the defendant herself entered the witness box as D.W.1 and marked two documents under Exs.B1 and B2.

6. The learned District Munsif at Tiruvallur came to a conclusion that the plaintiff has not proved the title to the property and therefore dismissed the suit on 18.02.1975. Aggrieved by the same, the plaintiff preferred a regular appeal before the learned Subordinate Judge at Chengalpattu in A.S.No.218 of 1977. The said appeal was also dismissed on 17.10.1978.

7. During the course of the appeal proceedings, the temple attempted to file the Survey Land Register issued by the District Collector at Tiruvallur District, the order of the Settlement Tahsildar dated 19.02.1970, 'A' Register issued by the Headquarters Deputy Tahsildar as well as the FMB Extract for Survey No.480. These applications were received as I.A.Nos.56 to 58 in A.S.No.218 of 1977. The learned II Additional Subordinate Judge at Chengalpattu, in and by way of his judgment dated 27.10.1978, dismissed the first appeal, affirming the judgment and decree passed on 18.02.1975.

8. Aggrieved by the same, a Second Appeal was preferred before this Court in S.A.No.1821 of 1983. The appeal came to be allowed by this Court on



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13.04.1998. By the said judgment and decree, this Court came to a conclusion that, since the plea of the defendant that it is a Kuttai Poramboke requires further investigation and also as the plaintiff had filed additional documents, in order to give an opportunity to both sides, the appeal was allowed and the matter was remanded in full to the learned trial Judge at Tiruvallur.

9. On remand, the learned District Munsif was pleased to appoint an advocate commissioner, who visited the suit property, not once but thrice. The warrants were re-issued on the basis of the objections that were given by the defendant saying that the property has to be identified and the survey number localised. Finally, the advocate commissioner submitted a report on 03.11.2003.

10. After receiving objections from the defendant, the matter went for trial. During the course of trial, the plaintiff on this occasion marked Exs.A1 to A16. On the side of the defendants, Exs.B1 to B14 were filed. The six reports of the advocate commissioner were received as Exs.C1 to C6. By the time the suit had been taken up for evidence, the original defendant Muniammal had passed away and therefore her daughter Nagammal came on record and deposed as D.W.1. One Natarajan was also examined as D.W.2.



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11. On the basis of the oral and documentary evidence let in by both sides, the learned District Munsif came to the conclusion that the plaintiff is the owner of the property and that since the deceased original defendant Muniammal had executed the documents under Exs.A5 to A8 namely the rental Muchalikas, it decreed the suit as prayed for.

12. Aggrieved by the same, a regular appeal was preferred before the learned Subordinate Judge, Tiruvallur. The appeal was received as A.S.No.16 of 2007. After hearing both sides, the appeal came to be dismissed on 10.01.2014. Pending the appeal, the daughter of the original defendant Nagammal also went to meet her maker and now the litigation is between the plaintiff and the grandchildren of the original occupant Govinda Reddy.

13. This Second Appeal was admitted on the following substantial questions of law:

1. *Whether the Courts below are right in deciding the issue of the suit based on the rental agreement (Ex.B) which was already decided in S.A.No.1821 of 1983?*
2. *Whether the Courts below are right in holding the title of the respondent without producing any documents of title?*



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3. *Whether the Courts below are right in granting the decree in favour of the respondent even though no survey number has been mentioned in the plaint?*
4. *Whether the Courts below are right in decreeing the suit when the property under the occupation of the appellants is classified as 'Kuttai Poramboke'?*

14. Notice was issued in this appeal and Mr.M.R.Khapali entered appearance for the respondents.

15. I heard Mr.G.Veerabathiran for Mr.R.Kamaraj and Mr.M.R.Khapali in support and opposition of the appeal.

16. Mr.G.Veerabathiran would submit that the plaint is defective as no survey numbers had been given in the schedule to the plaint. He would point out that admittedly the superstructure had been put up by Govinda Reddy and therefore the plaintiff ought to have sought for removal of the superstructure and thereafter delivery of vacant possession. Since the said prayer was not sought for, he would say that the suit itself is not maintainable. He would invite my attention to Exs.A3 to A8 and would plead that they are all a result of a rank fabrication at the instance of the temple and therefore cannot be relied upon.



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17. He would also place reliance upon the 'A' Register and a certificate issued by the Village Administrative Officer to the effect that the appellants / legal heirs of the defendant have put up a superstructure in Survey No.522/2 and not in Survey No.480. He would state that the appellants have filed an application under Order XLI Rule 27 of Civil Procedure Code (CPC) to receive the 'A' Register, FMB, Adangal Register and the certificate issued by the Village Administrative Officer, Tiruvallur. He would also urge that by virtue of the fact that the defendant has been in possession of the property for over the statutory period, the defendants have crystallized a right in themselves by virtue of adverse possession.

18. Mr.M.R.Khapali would submit that as the temple has proved the tenancy between Govinda Reddy and itself and between Muniyammal, the original defendant and itself, it is not open to the present tenant to set up a plea of either adverse possession or deny the title of the landlord at the inception of the tenancy. He would state all these aspects have been carefully gone by the trial Court and the lower appellate Court and the plea raised by Mr.G.Veerabathiran does not require any consideration as it amounts to re-appreciation of evidence, which is impermissible in terms of Section 100 of C.P.C.



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19. I have carefully considered the arguments on either side and gone through the original records.

20. This is an unfortunate case which has been pending before the Courts for the past five decades. The temple came forward with the suit in the year 1972 and it is still pending consideration. Records reveal that even before the suit came to be presented, the parties had been litigating before the Rent Controller for the purpose of either taking possession or resisting the demand. The facts pleaded in the plaint would show that the husband of the original defendant Muniyammal, on whose identity there is no dispute, was one Govinda Reddy. The said Govinda Reddy was performing umbrella service to the deity Sri Veeraraghava Swamy and therefore he made a request to the Devasthanam to give him a piece of land so that he can continue his occupation and service to the temple. On the basis of this request, the temple had entered into a vacant land agreement (காலி மனை அக்ரிமெண்ட்) with the said Govinda Reddy on 08.06.1948. This has been accepted before the trial Court as Ex.A.3. It has been produced from the records of the temple. The schedule of property found therein is as follows:



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சொத்து விவரம்

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செங்கல்பட்டு டிஸ்ட்ரிக்டு திருவள்ளூர் சபடிஸ்ட்ரிக்டு கஸ்பா திருவள்ளூர் தேவஸ்தானத்திற்கு சொந்தமான பங்களா தோப்பு என்னும் தோட்டத்துக்கு கன்ஸர்வேன்ஸி லேனுக்கும் வழிக்கும் தெற்கு ரயில்வே ஸ்டேஷனுக்கு போகும் ரோட்டுக்கு மேற்கு கூடி தோட்டத்திற்கும் காலிமனைக்கும் கிழக்கு புஜ்கரிணிக்கு தண்ணீர் வரும் குட்டைக்கு வடக்கு இதன் மத்தியில் உள்ள காலிமனை வடக்கு தெற்கு ஜாரி அடி 17½ கிழக்கு மேற்கு ஜாரி அடி 33½ உள்ள காலி மனை.

21. Pursuant to this document, as the lease rentals seemed to be on higher side, Govinda Reddy made a request for reduction of the rental amounts. This request has been made under Ex.A4 and it had been considered by the temple and the rentals were also reduced. I am sure if the then Manager of the temple had been aware that Govinda Reddy's legal heirs would set up a title in the land in favour of the Government and deny the title of the temple, may be the request would not have been considered. This observation is made only for the purpose of showing that Govinda Reddy had entered possession as a tenant and had also made a request for reduction of the lease amount.

22. The subsequent documents under Exs.A5 to A8 would show that, on the death of Govinda Reddy, Muniyammal the original defendant approached the



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temple and sought for reduction of the lease rents payable. This was considered and extension was granted by way of Ex.A6. Ex.A6 is a printed rental agreement, in which the schedule of property reads as follows:

சொத்து விவரம்

செங்கல்பட்டு டிஸ்ட்ரிக்டு திருவள்ளூர் சபடிஸ்ட்ரிக்டு கஸ்பா திருவள்ளூர் ரயில்வே ஸ்டேஷன் ரோட்டுக்கு மேற்கு பங்களா தோட்டம் போகும் கன்ஸர்வேன்ஸி லேனுக்கு தெற்கு தேவஸ்தான குட்டைக்கு வடக்கு தேவஸ்தான காலி இடத்துக்கு கிழக்கு இதன் மத்தியில் இருக்கும் கிழக்கு மேற்கு ஜாரி அடி 20 வடக்கு தெற்கு ஜாரி அடி 15 உள்ள காலி இடம்.

23. This rental agreement was entered into on 15.06.1957. Yet again, this rental agreement was extended by a further period of 11 months with rentals payable at a paltry sum of Rs.2/- on 10.06.1958. The rental agreement dated 07.06.1968 in Ex.A7 is also a subsequent rental agreement, whereby the deceased Muniyammal's tenancy was further extended.

The tenant is estopped from denying the title of the landlord

24. Now turning to the plea of Mr.G.Veerabathiran that the temple had not proved the title to the property, I have to refer to Section 116 of the Indian Evidence Act. The Section incorporates the rule of estoppel that, a tenant cannot



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deny the title of the landlord at the beginning of the tenancy or during the continuance of the tenancy. This Rule under Section 116 has been held not to be exhaustive but is indicative that a party who takes possession of the property as a tenant cannot be permitted to turn around and thereafter plead that the person who put him or her in possession of the property was not the original landlord. **(See J.J.Lal Pvt Ltd., -vs- M.R.Murali and another [2002] 3 SCC 98).**

25. Applying the principles of Section 116 to the facts of the present case, Exs.A3 to A8 very clinchingly show that the landlord was the plaintiff temple and the tenant was, at different points of time, Govinda Reddy and on his death his wife Muniyammal, the original defendant.

26. In order to show that the property belongs to the temple, the temple has produced the Survey Land Register as well as the order of the Settlement Tahsildar V, who then had his office in Chengalpattu. As per the order of the Settlement Tahsildar, it is clear that the lands specified in the schedule to the order viz., in Survey No.480 was a minor inam granted to the plaintiff temple, Sri Veeraraghava Swamy Temple under title deed TD 681. The land was subsequently transferred to the Government by virtue of the Inam Abolition



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proceedings and vested with it from 15.02.1965 in terms of Section 3 of the Minor Inams Abolition Act (Act 30 of 1963). When the issue of grant of patta came up before the Settlement Tahsildar, he found that there was a building in existence over the said property and the temple was in occupation of the same and therefore, granted a patta in its favour by virtue of his order dated 19.10.1970. This would show that, prior to the abolition of Inams by the Minor Inams Abolition Act, the owner of the property was the temple for which a title deed also existed. On account of the abolition of the Inam tenure, the property vested with the Government and thereafter the Government parted with a settlement patta in favour of the temple. This would prove that the title of the temple had pre-existed the claim of the defendant by at least a 100 years.

27. Here is a case where the defendant does not set up a title in herself but she would claim that the property belongs to the Government as it is a Kuttai Poramboke. Therefore, the argument of Mr.G.Veerabathiran that the temple had not proved title to the property necessarily would have to fail.

Non-specification of survey number is not prejudicial to the plaintiff when identity of the property remains undisputed

28. Insofar as his next argument that the survey number had not been



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mentioned in the suit schedule and therefore the plaintiff cannot succeed is concerned, it does not appeal to me. This is for the simple reason that the identity of the property was never in dispute before the Courts on the previous occasion or after remand by this Court when the present proceedings were initiated in the year 1998. The plaintiff gives the survey number of the property in order to identify the same so as to enable the Court to grant a decree in his / her favour. When there is no dispute in identity and when the four boundaries have been specifically found, whatever exists within the four boundaries belongs to the temple. Apart from that, the lease deeds referred to under Exs.A3 to A8 corresponds to the schedule of property in the present case. As there is no dispute in the written statement or in the grounds of appeal raised by the present appellants regarding the identity of the property, I am not in a position to countenance the argument of Mr.G.Veerabathiran that the survey number of the property ought to have been mentioned.

An appellant is barred from taking new plea in the Second Appeal

29. Turning to the next plea that the lease deeds have been fabricated by the temple, not once the matter went for trial. On two occasions, once while Muniyammal was alive and after her death when the proceedings were carried on by her daughter Nagammal. There were enough and more opportunity available



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to the defendants to take out an application for appointment of an advocate commissioner to take the original documents for comparison of the thumb prints by a finger print expert. The documents had been filed along with the plaint as early as in the year 1975 and were exhibited before the Court after remand. A ground not taken from 1972 till 2014, cannot be permitted to be raised for the first time in Second Appeal. In fact, I would take adverse inference against Muniyammal for not taking out an application for comparison of the finger print of herself as against the finger print found in the lease deeds projected by the plaintiff. That plea not having been raised, I am not in a position to permit Mr.G.Veerabathiran to place reliance upon the same.

Prerequisites for adverse possession are not established

30. The next point that is pleaded by Mr.G.Veerabathiran is that the original defendant, by virtue of Exs.B1 and B2 produced before the Court has crystallized a right in herself by adverse possession. A defendant is no doubt entitled to take contradictory pleas. But, at the time of trial, the defendant would have to elect one of the pleas which are so contradictory. He or she cannot be permitted to ride two horses at the same time. If such an attempt is made, the only result will be that the defendant will have to sink which is the conclusion arrived at in the present case.



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31. Having taken the plea of adverse possession, the defendant tacitly admits to the title of the plaintiff. This apart, estoppel that glares against the defendant in terms of Section 116 of the Indian Evidence Act. Having admitted to the title of the plaintiff by taking the plea of adverse possession, the burden lies on the defendant to show that the possession of the defendant was open, hostile and continuous. Apart from filing house tax receipts which are but mere revenue records granted in the name of the person who is in occupation, no document worth its name has been produced before the Court to substantiate that the defendant has been in open, hostile and continuous possession. The fundamentals to prove the plea of adverse possession not having been done in the present case, I have to reject that argument too.

A tenant is permitted to remove the superstructure constructed by him before delivering possession

32. Turning to the last point on removal of superstructure, the position of law that has been settled is that, where a decree for possession is granted in favour of the plaintiff, it is always open to the defendant to remove the superstructure and hand over vacant possession of the property to the plaintiff.

33. If an authority is required for this proposition, one can refer to the



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Division Bench judgment of this Court in **Narasaram Naraindas -vs- Venkataswami Naidu and Others (1963) 76 LW 7**, wherein this Court while interpreting the general duty of a tenant under Section 108(h) of the Transfer of Property Act held as follows:

" Where a land is let out to a tenant and there is no (express or implied) prohibition against his putting up (either expressly or by implication) a superstructure thereon, the tenant can enjoy the land in all lawful ways, he can put up a building as he will be in lawful occupation of the land, so long as the lease subsists. Such an act on his part would not amount to trespass. When, however, the lease is terminated, the tenant will have a right to remove the superstructure (see S.108(h) of the Transfer of Property Act). He will have an obligation to give back possession of the land in the condition in which it was given to him. The land lord will not be obliged either to pay compensation to the tenant for the building or take the same for himself unless he chooses to do so."

34. A similar position was followed by the Supreme Court in the case of **Bharat Petroleum Corporation Limited and Another -vs- N.R.Vairamani and Another, (2004) 8 SCC 579.**

35. I have found in this case that the plaintiff is the owner of the property and in case the defendant was desirous, in the light of the aforesaid authorities, it was always open to the defendant to remove the superstructure. On this



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ground, I am not willing to set aside the judgments of the Courts below.

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The remand granted in S.A.No.1891 of 1983 was not a restricted remand

36. The argument that the question of law on the issue of rental agreement had been decided by the Court in S.A.No.1891 of 1983 also does not appeal to me for the simple reason that the learned Judge who dealt with the Second Appeal on 13.04.1998 came to the conclusion that as the lower appellate Court has not given sufficient opportunity to the plaintiff to let in evidence, he set aside and remanded the matter in full. It was not a case of restricted remand, giving finding on certain documents and attaching finality to such documents. The learned Judge having remanded the appeal in full, it is always open to the parties to rely upon any document that they so desire. In fact, taking advantage of the order of remand, the defendant had also let in additional evidence before the trial Court.

Decision in C.M.P.No.1179 of 2019

37. Finally turning to the C.M.P.No.1179 of 2019 filed under Order XLI Rule 27 of CPC, these are all revenue records. In fact, the field measurement with respect to Survey No.480 as well as 'A' Register had been produced by the plaintiff in the present case. Therefore, the question of admitting these



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documents as additional documents does not arise. Further, I am not able to see the provision of law under which the Village Administrative Officer of Tiruvallur is entitled to dole out certificates stating as to who is in possession of the property. The Village Administrative Officer is appointed primarily for the purpose of collection of revenue and for maintenance of records. Neither the Standing Orders of the Board of Revenue nor the Village Administrative Officer's Manual empower him to grant certificates of possession. My limited knowledge makes me presume that the power to declare as to who is in possession of the property continues to be with the Civil Court. Fortunately, that has not been transferred to the Government authorities. Apart from that, a mere scanning of the affidavit shows that this does not fall under Order XLI Rule 27(aa). The defendant has nowhere pleaded that despite due diligence, she was not in a position to get those documents. They are all revenue documents of 2001 and 2002 and they could have been produced before the Trial Court when the matter was remanded, had the defendant made an effort. Order XLI Rule 27 is not an enabling provision for me to permit a party to file documents, which she could have filed pending the litigation, had she exercised due diligence.

Decision in Second Appeal

38. In the light of the above discussion, I am left with no other option



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than to confirm the judgment and decree of the learned Subordinate Judge, Tiruvallur dated 10.01.2014 in A.S.No.16 of 2007 confirming the judgment and decree passed by the District Munsif Court, Thiruvallur dated 17.02.2005 in O.S.No.809/1972.

39. The appeal fails and it is dismissed. The defendant / appellants herein are granted three months time to vacate the property and hand over vacant possession to the plaintiff temple within a period of three months from the date of receipt of a copy of this order.

40. In fine, the Second Appeal stands dismissed. Costs throughout. For the reasons stated above in paragraph No.33, C.M.P.No.1179 of 2019 filed to receive additional documents is dismissed. Consequently, connected CMP No.1178 of 2019 is also dismissed.

05.07.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

1.The District Munsif, Thiruvallur.



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2.The Subordinate Judge, Thiruvallur.

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