



A.S.(MD).No.165/2009 & 43/2010 & Cros.Obj(MD)No.54 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on :18.12.2023

Delivered on: 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.(MD).Nos.165 of 2009 & 43 of 2010 and
Cross.Obj(MD)No.54 of 2009

A.S.(MD).No.165 of 2009

A.R.Krishnan (died)

2.A.R.Rajendran(died)

3.A.R.Manoharan

4.A.K.Sivanath (died) .. Appellants / Defendants 1 to 4

5.A.K.Amarnath

6.A.K.Viswanath

7.K.M.Poornima

8.A.K.R.Santhosh Priya

(1st appellant died memo recorded, A4 to A8 are brought on record
as LR's of deceased 1st appellant vide Court order dated 06.06.2017)

9.A.S.Mekala

10.A.S.Vigneshkumar

(A9 and A10 are brought on record as LR's of deceased 4th appellant,



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vide

Court order dated 15.09.2022).

11.A.R.Thiyaneswaran

12.M.R.Ashamai

13.R.S.Uma Maheswari

14.A.R.Jeyaseelan

(A11 to A14 are brought on record as LR's of deceased 2nd appellant, vide Court order dated 03.08.2023).

.. Appellants

Vs.

1. T.D.Vathsala

2.N.S.Sulochana

3.K.R.Prema

.. Respondents 1 to 3 / Plaintiffs

4.A.S.Lalitha

5.A.S.Baskar

6.A.S.Sathiyakumar

7.L.S.Kalavathy

8.S.Selvaraj

9.Leela

10.Maheswari

11.V.R.Sundararaman

.. Respondents 4 to 11/ Defendants 5 to 12

Prayer:- Appeal filed under Section 96 of the Code of Civil



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Procedure, against the judgment and decree dated 25.05.2009 passed in O.S. No.559 of 2004 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

For Appellants : Mr.R.Subramanian

For Respondents : Mr.T.R.Subramanian for R1 to R3
: R4 to R10 given up,
: No appearance for R11

Cros.Obj(MD).No.54 of 2009

1. T.D.Vathsala
2.N.S.Sulochana
3.K.R.Prema .. Cross objectors / Respondents

Vs.

1.A.R.Krishnan (died)
2.A.R.Rajendran(died)
3.A.R.Manoharan
4.V.R.Sundararaman
5.A.K.Sivanath (died) .. Appellants / Respondents 1 to 4
6.A.K.Amarnath
7.A.K.Viswanath
8.A.R.Poornima
9.A.K.R.Santhosh Priya

(1st respondent died memo recorded, R5 to R9 are brought on record



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as LR's of deceased 1st respondent vide Court order dated 15.02.2021)

10.A.S.Mekala

11.A.S.Vigneshkumar

(R10 and R11 are brought on record as LR's of deceased 5th respondent,
vide Court order dated 15.09.2022).

12.A.R.Thiyaneswaran

13.M.R.Ashamai

14.R.S.Uma Maheswari

15.A.R.Jeyaseelan

(R12 to R15 are brought on record as LR's of deceased 2nd respondent,
vide Court order dated 03.08.2023).

Prayer:- Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure, against the judgment and decree dated 25.05.2009 passed in O.S. No.559 of 2004 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

For cross objectors : Mr.T.R.Subramanian

For Respondents : Mr.R.Subramanian for R3

: R1, R2 and R5 - died

A.S.(MD).No.43 of 2010

T.D.Vathsala

.. Appellant / plaintiff

Vs.

1. A.R.Krishnan (died)

2.A.R.Rajendran (died)

3.A.R.Manoharan

4.A.S.Lalitha

5.A.S.Baskar



A.S.(MD).No.165/2009 & 43/2010 & Cros.Obj(MD)No.54 of 2009

6.A.S.Sathiyakumar (died)

7.L.S.Kalavathy

8.N.S.Sulochana

9.K.R.Prema

.. Respondents / Defendants

10.A.K.Sivanath (died)

11.A.K.Amarnath

12.A.K.Viswanath

13.K.M.Poornima

14.A.K.R.Santhosh Priya

(R10 to R14 are brought on record as LR's of deceased 1st respondent
vide Court order dated 15.02.2021)

15.A.S.Manjula

16.A.S.Vignesh

17.Minor.A.S.Balaji

(R17 Minor rep. through his mother / guardian R15)
(R15 to R17 are brought on record as LR's of deceased 6th respondent,
vide Court order dated 15.02.2021).

18.A.S.Mekala

19.A.S.Vigneshkumar

(R18 & R19 are brought on record as LR's of deceased 10th respondent,
vide Court order dated 15.09.2022)

20.A.R.Thiyaneswaran

21.A.R.Jeyaseelan

22.M.R.Ashamai

23.R.S.Uma Maheswari

(R20 to R23 are brought on record as LR's of deceased 2nd respondent,
vide Court order dated 13.10.2023).



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Prayer:- Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 25.05.2009 passed in O.S. No.123 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Madurai.

For Appellant : Mr.K.V.Ravichandran
For Respondents : Mr.T.R.Subramanian for R8 & R9
: R4 to R10 given up,
: No appearance for R11

COMMON JUDGMENT

P.B.BALAJI,J.

The defeated defendants, in a suit for partition in O.S.No.559 of 2004 before the Additional District Sessions Judge - Fast Track Court No.III, Madurai, are the appellants before us, in A.S.(MD)No.165 of 2009.

2. Cross Objection (MD)No.54 of 2009 has been filed by the respondents 1 to 3 in A.S.(MD)No.165 of 2009 in respect of disallowed claims for partition.

3. A.S.(MD)No.43 of 2010 has been filed by the first plaintiff in



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O.S.No.123 of 2006, in respect of disallowed portion for partition of movable assets, namely, jewels alone.

A.S.(MD)No.43 of 2010

4.The brief facts and admitted case of the parties are that the properties originally belonged to one A.R.Rajaram Iyer. The said A.R.Rajaram Iyer was married to one Rajammal and they were blessed with 3 daughters and 4 sons, who are the plaintiffs and the defendants 1 to 4 respectively in O.S.No. 559 of 2004. A.R.Sambamoorthy, who is one of the sons of A.V.Rajaram Iyer, died leaving behind the defendants 5 to 8.

4(b).It is the case of the plaintiffs that the defendants 1 to 4 and the deceased A.R.Sambamoorthy had fraudulently entered into a partition deed on 10.03.1966, in which, the signatures of the sisters, namely, plaintiffs were forged as if they were the attesting witnesses to the said document. The case of the plaintiffs is that they are entitled to a share in the suit properties, being the daughters of Late Rajammal and the partition deed dated 10.03.1966 was not binding on them. The defendants 9 to 16 are purchasers in respect of certain items of the property and for better



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adjudication, they have also been arrayed as parties in the partition suit.

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4(c).The mother of the parties was alive at the time of filing of the suit. She has filed a written statement denying the claims of the plaintiffs. The mother has stated that the plaintiffs 1 and 2, the elder daughters were given several jewels and “Seer (சீர்)”, at the time of their marriages and the 3rd plaintiff's marriage was performed only by her sons, as the father has passed away by then and they had given a lot of jewels and “Seer (சீர்)”, at the time of the marriage of the 3rd plaintiff. The mother has specifically stated that the daughters did not want any share in the properties and they have voluntarily attested the partition deed dated 10.03.1966, knowing fully well, the contents of the document. The mother has also stated that even after the partition in 1966, the daughters have attended the house warming ceremony performed by the 4th defendant in one of the items of the suit property and also stated that the actions of her daughters has given her mental agony.

5. The 2nd defendant has filed a written statement stating that all the daughters were given in marriage in a grand manner and with a lot of jewels and vessels. The partition deed dated 10.03.1966 is valid and



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binding on the plaintiff, who has attested the documents knowing the contents. The 2nd defendant has further stated that the brothers of the plaintiffs have been dealing with the properties to the knowledge of the plaintiffs themselves and some of the buildings have been demolished and reconstructed incurring huge cost. The 2nd defendant has further stated that the sister also chose to file a criminal complaint against the brothers on allegations of forgery. The brothers, therefore, moved this Court in Crl.O.P.No.5850 of 1999, seeking to quash the complaint and this Court in and by order dated 22.06.1999 also quashed the criminal complaint. Thereafter, the plaintiffs have chosen to issue a notice seeking partition and followed up the issue with the suit for partition. It is also contended by the 2nd defendant that admittedly, the plaintiffs are out of possession and the relief of partition was highly improper and on this ground also, the suit was liable to be dismissed.

6. The trial Court, after considering the pleadings, framed issues. Originally, the trial Court framed 12 issues and 2 additional issues and at the time of arguments, the issues in O.S.No.559 of 2004 were recast as hereunder:



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1. *Whether the plaintiffs are entitled to the preliminary decree for partition of the suit properties? If so, what is the quantum of their shares?*

2. *Whether the alleged attestation of the partition deed dated 10.03.1966 by the plaintiffs is true, valid and binding on them?*

3. *Whether the alleged attestation of the partition deed dated 10.03.1966 by the plaintiffs would tantamount to relinquishment of their rights in the suit properties?*

4. *Whether the plaintiffs are ousted from the suit properties and the suit is barred by limitation?*

5. *Whether the plaintiffs are entitled to claim in the suit 9th item of the property?*

6. *Whether the 9th defendant is a bonafide purchaser for valuable consideration of the suit 6th item of the property?*

7. *Whether the 12th defendant is a*



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bonafide purchaser for valuable consideration of the suit 7th item of the property?

8. Whether the plaintiffs are entitled to mesne profits?

9. To what other reliefs?

7. Similarly, the trial Court initially framed 5 issues and at the time of arguments, the issues in O.S.No.123 of 2006 were recast as hereunder:

1. Whether the plaintiff is entitled to a preliminary decree for partition of 1/3rd share in the suit A schedule and 1/7th share in the B schedule properties?

2. To what relief?

8. Before the trial Court, in both the suits in O.S.No.559 of 2004 and 123 of 2006, on the side of the plaintiffs, 6 witnesses were examined and 10 documents were marked as Ex.A1 to Ex.A10. On the side of the defendants, 3 witnesses were examined as D.W.1 to D.W.3 and 33 documents were examined as Ex.B1 to Ex.B33.



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9. The trial Court, after analysing the oral and documentary evidence, disbelieved the allegation of the plaintiffs that in the partition deed dated 10.03.1966 their signature were forged. However, the trial Court held that merely because the plaintiffs had attested the said document, it would not amount to relinquishment of the right in the suit property and decreed the suit in O.S.No.559 of 2004 as prayed for them.

10. A.S.(MD)No.43 of 2010 arises out of O.S.No.123 of 2006, where the trial Court held that the jewels were not available and therefore, no relief could be granted and dismissed the suit.

11. The defendants 2 to 4 have challenged the judgment and decree in O.S.No.559 of 2004 and filed the Appeal in A.S.(MD)No.165 of 2009, on the grounds that the trial Court failed to see that admittedly, the plaintiffs' father died in the year 1963 and that the suit filed in 1999 is barred by limitation; the trial Court having accepted the case of the appellants that the plaintiffs had indeed attested the partition deed dated 10.03.1966 ought to have held that they were having full knowledge of the contents of the document and being silent spectators for several decades,



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have chosen to lodge a police complaint, which too was quashed; the trial Court failed to see that the plaintiffs attended the house warming function of one of the defendants and they were fully aware of the absolute and separate enjoyment of the suit properties by the appellants; the trial Court failed to see that the 9th item was of the business under the name and style “Sri Ramakrishna Iron Works”; the trial Court has failed to see the contrary stand taken by the appellants / plaintiffs; the trial Court failed to see that the suit is barred by limitation under Article 110 of the Limitation Act and prayed for Appeal Suit being allowed.

12. We have heard Mr.R.Subramanian, learned counsel for the appellants, Mr.T.R.Subramanian, learned counsel for the respondents 1 to 3 in A.S.(MD)No.165 of 2009 and Mr.K.V.Ravichandran, learned counsel for the appellants, Mr.T.R.Subramanian, learned counsel for the respondents 8 and 9 in A.S.(MD)No.43 of 2010. We have perused the records, including the judgments of the trial Court in O.S.No.559 of 2004 as well as O.S.No.123 of 2006.

13. As against the dismissal order in O.S.No.123 of 2006, the



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first plaintiff has filed A.S.(MD)No.43 of 2010. Insofar as A.S.(MD)No.43 of 2010, we have seen that even though the suit has been laid for partition of the jewels of the mother. However, it is the specific case of the appellants in A.S.(MD)No.165 of 2009, that after the death of the mother, the plaintiffs took away all the jewels and the trial Court also found from oral and documentary evidence available on record that the jewels are not available in the first place for the plaintiffs to seek partition and consequently, dismissed the said suit. We do not find the findings of the trial Court to be illegal or perverse and on the contrary the findings are arrived at after proper assessment of the oral and documentary evidence and in line with judicial pronouncements. Thus, we do not find any merit in A.S.(MD)No.43 of 2010. Hence, A.S.(MD)No.43 of 2010 is dismissed.

14. Coming to A.S.(MD)No.165 of 2009 and Cross Objection (MD)No.54 of 2009, points that requires our determination are as follows:-

I. Whether the plaintiffs have attested the partition deed dated 10.03.1966 and whether such attestation disentitled them from seeking partition of the properties.?



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II. Whether the suit for partition is barred by limitation?

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Point Nos.I & II:

15. The relationship between the parties is admitted. It is the specific case of the plaintiffs that their brothers entered into a partition deed on 10.03.1966 and in the said partition deed, the signatures of all the plaintiffs have been forged. According to the plaintiffs, they never attested the said document and since the daughters have been excluded and not a party to the partition deed, they are entitled to seek for partition. It is also seen that the plaintiffs sent a legal notice in Ex.B1 dated 27.07.1996. The appellants sent a reply in Ex.B2 dated 30.08.1996, clearly stating that the plaintiffs were not entitled to any share in view of the partition deed, which is marked as Ex.A10 dated 10.03.1966. It is also seen from the pleadings and evidence that the plaintiffs gave a complaint to the Inspector of Police, City Crime Branch, Madurai and an F.I.R was also registered against the brothers. Subsequently, they moved the criminal side of this Court and successfully quashed the complaint in CrI.O.P.NoNo.5850 of 1999 dated 22.06.1999. Thereafter alone, the plaintiffs have chosen to file the suit for partition.



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16. Insofar as the issue of the plaintiffs attesting the said partition deed, we are able to see that the plaintiffs have taken two stands viz: In the pre-suit notice in Ex.B1, the plaintiffs have mentioned that their brothers obtained their signatures by misrepresentation. However, in the complaint before the police authorities and in the plaint, the plaintiffs have chosen to allege that the brothers forged their signatures in the said partition deed. These are mutually destructive pleas that have been taken. One another circumstances, which is high lighted by the respondents is that one of the plaintiffs (3rd plaintiff) was a minor in the year 1966 and therefore, she could not have been legally valid witnessed the document and therefore it would only go to show that the brothers' played fraud and mischief and deprived the sisters of their lawful entitlement of the suit property.

17. We have seen that Ex.A10 is a partition deed. Admittedly, all the plaintiffs have signed as witnesses. Names of the husband of the plaintiffs are also mentioned below their signatures. Thus, it is clear that all the plaintiffs were married, even at the time of partition, namely in



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1966. Even though the 3rd plaintiff is stated to be a minor, we find that she was married at that point of time. Keeping aside the fact for a moment, whether the attestation was valid or not, what emerges is that all the daughters were married and they are living separately with their respective husbands. Therefore, it cannot be simply stated that the plaintiffs were misled into attesting the partition deed. However, even assuming that the signature had been obtained by misrepresenting the fact that the plaintiffs had knowledge of the said partition deed executed on 10.03.1996 stands confirmed. The plaintiffs had done nothing to establish their claim or alleged right over the suit properties. Two of the plaintiffs were admittedly majors and married and they allowed the appellants to enjoy the property, which is subject matter of the partition suit as well as the partition deed, individually and absolutely in terms of the partition amongst the brothers. It has also come out in evidence that the plaintiffs have attended the house warming ceremony of one of their brothers and in one of the suit items of the property, the old building was demolished and new building has been constructed at the cost of the brother. Therefore, the plaintiffs have acquittance themselves of the partition that was effected between the brothers on 10.03.1966. We find, from the oral and documentary evidence



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that the plaintiffs have also attended functions in the family of the defendants and the relationship has been smooth till 1999, when for the first time the sisters chose to give a criminal complaint questioning the attestation made by them in the partition deed dated 10.03.1966. The said criminal complaint was also quashed by this Court in Crl.O.P.No.5850 of 1999 and after being unsuccessful in the steps taken by them on the criminal side alone, the present suit for partition has been filed by the sisters. Further, even insofar as the 3rd plaintiff, even assuming she was a minor on 10.03.1966, she has not chosen to question the document or her attestation after she attained majority. As already discussed hereinabove, they did not take any steps to claim their share in the suit property.

18. One another relevant and important circumstances is the statement of the mother. The mother was admittedly not a beneficiary under the partition deed - Ex.A10 dated 10.03.1966. In such view of the matter, her stand before the Court assumes great significance. The mother has categorically stated that her daughters were married off well by her husband and last of them by her sons and all of them had been given lot of jewels and “Sreethana”. The mother has also stated that her daughters,



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namely plaintiffs were fully aware that they are not entitled to any share in the property and that was the purpose to sign the document, namely, partition deed as attesting witnesses. In fact, she has expressed anguish over the fact that her daughters have driven the mother and brothers to Court and caused lot of mental harassment for the mother. This stand of the mother cannot be ignored or brushed aside. Be it son or daughter, a mother has equal love and affection for all her children, a mother never differentiates amongst her children. While so, her statement that the daughters were given jewels and “Seer (ஈர)“ and were married of in a grand manner and that the daughters did not want to take any share in the property has to be believed in the absence of any concrete evidence to the rebut her written statement. There is absolutely no evidence on the side of the plaintiffs, to get over the said statement of the mother by way of a separate written statement nor, plaintiffs have chosen to file reply statement assumes significance.

19(a). Insofar as the attestation is concerned, law is well settled that mere attestation would not amount to knowledge of contents of the document. However, from the facts of the case and the evidence adduced



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by the parties, we are unable to hold that the plaintiffs were unaware of the contents of the said document as they claim. In fact, they have taken mutually contradicting stands.

19(b). In the criminal case, they have stated that their signatures have been forged. However, in the pre-suit notice for partition, they have stated that their signatures were obtained by misrepresentation. As already found the plaintiffs were not illiterate or ignorant of their rights and they also had the backing advice of their husbands. In spite of attesting the partition deed way back in 1966 and thereafter, participating in the function conducted by one brother in the suit property, after demolition of entire building and putting up new construction, the plaintiffs have merely chosen to stay silent and on the contrary, they have happily participated and involved themselves in the family function. However, for reasons best known to them, after lapse of more than 33 years, they have chosen to question the attestation and claimed that the signatures are forged. They have been unsuccessful in launching criminal prosecution as well. Even otherwise, the fact that the plaintiffs, who have been totally mute spectators for over 30 years, cannot be allowed to turn around and plead a case that their attestation was forged and also taking contrary and



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destructive stands. Thus, the changing colors of plaintiffs stand exposed.

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19(c).As contended by the learned counsel for the appellants, Article 110 of the Limitation Act would also apply to the facts of the present case. Where a person is excluded from a joint family property, to enforce a right to a share in the said joint family property the limit is 12 years from the date of acknowledgment of exclusion. In the instant case, it is not nobody's case including the plaintiffs that the plaintiffs were not aware of the partition that came about in 10.03.1966. The plaintiffs are, in fact, attesting witnesses in the said document. Though the plaintiffs took a plea that their signatures are forged, the trial Court rightly found from the assessment of the oral and documentary evidence that the attestors are only the plaintiffs and the signatures were not forged. The plea of misrepresentation consequently falls to the ground. Thus, the plaintiffs had full knowledge of the partition deed dated 10.03.1966 and applying the mandate under Article 110 of the Limitation Act, the suit ought to have been filed on or before 09.03.1978.

20. The learned counsel for the appellants would place reliance on the decision of this Court in ***Puniyavathi V. Pachaiaammal*** reported in



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2020-4-CTC-590, where the learned Single Judge of this Court held that the suit seeking partition filed after 31 years after opening of succession and 18 years after the division of properties among brothers was fatal and held that it was not believable to impute lack of knowledge on the part of the daughter / plaintiff about the partition deed. The learned Single Judge applied Section 27 of the Limitation Act and held that the rights of the plaintiffs, even if, any exist got extinguished.

21. The learned counsel for the appellant would place reliance on the decision of the Hon'ble Supreme Court in ***Ramisetty Venkatanna V. Nasyam Jamal Saheb*** reported in **2023-5-CTC-60**, for the proposition that the suit having been instituted after lapse of 61 years would be hopelessly barred by limitation and reliefs cannot be granted on a vexatious and meritless plaint, creating illusion of a cause of action by clever drafting.

22. In A.S.(MD)No.43 of 2010, the trial Court found that the suit properties mentioned in Wills Ex.A4 and Ex.A5, were neither in existence nor in the custody of the defendants.



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23. For all the above reasons, we hold that the findings of the trial Court are required to be interfered with and the plaintiffs are not entitled to a decree for partition as prayed for. A.S.(MD)No.165 of 2009 is allowed and Cross Objection (MD)No.54 of 2009 is dismissed and A.S. (MD)No.43 of 2010 is dismissed. There shall be no order as to costs.

(T.K.R.J.) & (P.B.B.J)
23.02.2024

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
LS
To

1.The Additional District and Sessions Judge

(Fast Track Court No.III), Madurai.

2.The Section Officer,

VR Section, Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

LS/kpr

Pre-delivery judgments in
A.S.(MD).Nos.165 of 2009 & 43 of 2010 and
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23.02.2024