



S.A.Nos.516, 517 and 518 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.(MD)Nos.516, 517 and 518 of 2008

and

M.P.(MD)Nos.1,1,1 of 2008

S.A(MD)No.516 of 2008:

Singaravelu

... Appellant/ Appellant/2nd defendant

Vs.

Sri Kasi Viswanathaswamy,
Kalasanthi Kattalai,
Kumbakonam,
by its Fit Person/the Executive Officer,
Sri Kasi Viswanathaswamy Temple,
Kumbakonam Town and Taluk.

... Respondent/Respondents/Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed in A.S.No. 181 of 2005 on the file of the Principal Subordinate Judge, Kumbakonam, dated 28.09.2007 modifying the decree and judgment passed in O.S.No.203 of 1999 on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam, dated 25.07.2001.



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S.A.Nos.516, 517 and 518 of 2008

For Appellant : Mr.V.K.Vijaya Raghavan

For Respondent : Mr.V.Chandrasekaran

S.A(MD).No.517 of 2008:

Singaravelu ... Appellant/ Appellant/2nd defendant

Vs.

1.Sri Kasi Viswanathaswamy,
Kalasanthi Kattalai,
Kumbakonam,
by its Fit Person/the Executive Officer,
Sri Kasi Viswanathaswamy Temple,
Kumbakonam Town and Taluk.

... 1st Respondent/1st Respondent/Plaintiff

2.The Kumbakonam Municipality,
by its Commissioner,
Patel Buildings,
Dr.Moorthy Road,
Kumbakonam Town.

... 2nd Respondent/2nd Respondent/1st
defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed in A.S.No. 185 of 2005 on the file of the Principal Subordinate Court, Kumbakonam, dated 28.09.2007 confirming the decree and judgment passed in O.S.No.102 of 1999 on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam, dated 25.07.2001.



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For Appellant : Mr.V.K.Vijaya Raghavan
For 1st Respondent : Mr.V.Chandrasekaran
For 2nd Respondent : Mr.K.Rajkumar

S.A(MD).No.518 of 2008:

Singaravelu ... Appellant/ Appellant/3rd defendant

Vs.

1.Sri Kasi Viswanathaswamy,
Kalasanthi Kattalai,
Kumbakonam,
by its Fit Person/the Executive Officer,
Sri Kasi Viswanathaswamy Temple,
Kumbakonam Town and Taluk.

... 1st Respondent/1st Respondent/Plaintiff

2.Junior Engineer,
O&M, Tamil Nadu Electricity Board,
Rajanthottam,
Kumbakonam Town.

3.Executive Engineer,
O&M, Tamil Nadu Electricity Board,
Thiruvudaimarudur Road,
Kumbakonam Town.

... Respondents 2 and 3/Respondents 2 and 3/
Defendants 1 & 2

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed in A.S.No. 182 of 2005 on the file of the Principal Subordinate Court, Kumbakonam, dated 28.09.2007 modifying the decree and judgment



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passed in O.S.No.103 of 1999 on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam, dated 25.07.2001.

For Appellant : Mr.V.K.Vijaya Raghavan

For 1st Respondent : Mr.V.Chandrasekaran

For R2 and R3 : No Appearance

JUDGMENT

The second defendant in the original suit is the appellant in S.A(MD).Nos.516 and 517 of 2008. The 3rd defendant in the original suit is the appellant in S.A(MD).No.518 of 2008. The plaintiff in the original suit is arrayed as the sole respondent in S.A(MD).No.516 of 2008 and first respondent in S.A(MD).Nos.517 and 518 of 2008. The Kumbakonam Municipality is arrayed as second respondent in S.A.No. 517 of 2008. The Junior Engineer and Executive Engineer of Tamil Nadu Electricity Board were arrayed as respondents 2 and 3 in S.A.(MD)No. 518 of 2008.

2. For the sake of convenience, the rank of the parties in the trial Court is adopted for describing them in second appeal. The sole respondent in S.A.(MD)No.516 of 2008 and first respondent in S.A(MD).Nos.517 and 518 are referred to as plaintiff, the appellant is



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described as second defendant in all the cases though he was arrayed as 3rd defendant in the original suit out of which second appeal No.518 of 2008 arises. The second respondent in S.A.No.517 of 2008 is referred to as Municipality, the respondents 2 and 3 in S.A.No.518 of 2008 are referred to as officials of Tamil Nadu Electricity Board.

3. S.A.No.516 of 2008 is arising out of suit filed by the plaintiff temple seeking recovery of possession of 'A' schedule property, permanent injunction restraining the 2nd defendant from demolishing the existing building in 'B' schedule property and for mandatory injunction directing the 2nd defendant to restore the demolished structure in the 'C' schedule property.

4. S.A.No.517 of 2008 is arising out of suit filed by the plaintiff temple seeking declaration that transfer of property tax assessment by Municipality from the name of plaintiff temple to the name of second defendant was invalid and for consequential mandatory injunction directing Municipality to include the name of plaintiff temple as owner of the properties.



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5. S.A.No.518 of 2008 is arising out of the suit for injunction restraining the officials of Tamil Nadu Electricity Board from giving fresh electricity service connection in the name of the appellant/3rd defendant therein in respect of new construction in the suit property. The plaintiff temple also sought for mandatory injunction directing the officials to disconnect the new service connection already given in the name of the appellant/3rd defendant therein to one out of four unauthorized constructions.

6. All the suits were tried together before the Trial Court and evidence was recorded in O.S.No.203 of 1999 out of which, the second appeal No.516 of 2008 arises. The Trial Court decreed all the suits as prayed for and aggrieved by the same, the appellant/second defendant filed three separate first appeals. The First Appellate Court partly allowed the appeals in recovery of possession suit filed by the temple. The relief prayed in respect of 'A ' and 'B' schedule properties were confirmed by the First Appellate Court. As far as, 'C' schedule is concerned, the Appellate Court directed the plaintiff temple to assess the cost of construction found in 'C' schedule and pay the same to the appellant/second defendant. It was also clarified that in case



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appellant/second defendant refused to accept the cost of construction offered by the plaintiff, it was entitled to relief of mandatory injunction.

The decree in respect of the future profits and damages were set aside by the First Appellate Court.

7. As far as the suit filed by the temple against the Municipality is concerned, the appeal filed by the appellant/second defendant was dismissed and the Trial Court judgment was confirmed. As far as the appeal filed in respect of suit against Tamil Nadu Electricity Board is concerned, the appeal was partly allowed. The permanent injunction restraining the Tamil Nadu Electricity Board officials from giving fresh electricity service connection was confirmed. The decree for mandatory injunction granted by the trial Court directing the officials of Tamil Nadu Electricity Board to disconnect the existing electric service connection was set aside and the suit was dismissed as far as the relief of mandatory injunction is concerned. Aggrieved by the decree passed in First Appeals, the appellant has come by way of these second appeals.

8. It is the case of the plaintiff that suit property together



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with superstructure and site belong to it and the same was managed by Hereditary Trustee Thaiyyanayaki Achi. On 21.09.1937 original sole defendant in O.S.No.789 of 1987, Rajagopal Chettiar entered into lease agreement with plaintiff in respect of the suit property for a period of three years. After expiry of three years the lease was renewed on 04.10.1940 for another period of three years. Thereafter, Raja Gopal Chettiar executed last lease deed dated 05.11.1943 for a period of three years undertaking to pay the rent at Rs.4 and 10 annas (4.62 p). The defendant also agreed to pay part of the Municipal Tax over and above Rs.13/- per year. The tenancy arrangement was entered into on monthly basis and the rent had to be paid on or before 5th of every succeeding calendar month. It was also averred by the plaintiff that after expiry of the lease period the original defendant continued to be in possession and enjoyment of the suit property by holding over. Since the rent agreed between the parties in the year 1943 was very low, it was sought to be increased by the plaintiff temple in the year 1973. As per the directions issued by the Assistant Commissioner of HR and CE Department, when notice was issued to the original sole defendant calling upon him to pay enhanced rent with arrears, the defendant falsely claimed that superstructure in the suit property belonged to him and willfully denied



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the title of the plaintiff over the superstructure. Therefore, the plaintiff issued a notice on 17.06.1986 terminating the defendant's tenancy and called upon him to hand over possession of the suit property and the defendant replied by claiming right over the superstructure. Since there was a typographical error in the notice of plaintiff issued on 17.06.1986 another notice was issued by the plaintiff on 12.02.1987 terminating the tenancy and calling upon the original defendant to hand over possession. It was claimed by the plaintiff that denial of plaintiff's title over the superstructure by the defendant was not bonafide. In these circumstances, the original defendant high handedly demolished the front portion of the superstructure let out to him and had put up a new construction. Therefore, the plaintiff was constrained to file the present suit seeking delivery of possession of the entire suit property described as 'A' schedule.

9. The plaintiff also sought for permanent injunction restraining the original defendant from demolishing the existing old superstructure described as 'B' schedule. The plaintiff also sought for mandatory injunction directing the defendant to restore the old



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demolished structure in 'C' schedule. Pending suit, original defendant Raja Gopal Chettiar died and his son present appellant Sinagaravelu was arrayed as second defendant.

10. When the above suit for recovery of possession was pending, the assessment of the superstructure was changed to the name of the second defendant by the Municipality and hence the plaintiff was constrained to file a suit in O.S.No.102 of 1999 seeking declaration that the transfer of property tax assessment in the name of second defendant was null and void and for consequential mandatory injunction directing the Municipality to correct its demand register incorporating the name of the plaintiff as owner of the superstructure.

11. Since the 2nd defendant obtained service connection in respect of portion of the building, pending suit for recovery of possession and made attempts to get service connection in respect of the remaining portion, the plaintiff was constrained to file a suit in O.S.No.103 of 1999 seeking injunction restraining the Tamil Nadu Electricity Board officials from giving fresh electricity service connection in favour of second defendant (3rd defendant therein). The plaintiff also sought for



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mandatory injunction directing the officials to disconnect the new service connection given in the name of second defendant (3rd defendant therein), in respect of a portion of unauthorized constructions.

12. In all these three suits, the contesting appellant/second defendant filed a written statement and resisted the suit by claiming ownership over the superstructure in the suit property. It was the case of the second defendant that the original superstructure let out to Raja Gopal Chettiar got damaged in a cyclone in the year 1961 and Raja Gopal Chettiar had put up a new structure. It was also pleaded by the second defendant that in the year 1969, there was misunderstanding between the plaintiff and Raja Gopal Chettiar and hence a compromise was entered between the plaintiff's Trustee Thiyalnayaki Achi and Raja Gopal Chettiar, whereunder the plaintiff admitted title of Raja Gopal Chettiar over the superstructure. Thus by claiming title over the superstructure that stands in the suit property, the defendant sought for dismissal of the suit.

13. As per the joint memo filed by the parties on 04.12.2000, all the three suits were tried together and common evidence



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was recorded in suit for recovery of possession namely O.S.No.203 of 1999. On behalf of the plaintiff the clerk of the plaintiff temple was examined as PW.1. The son of Trustee of the temple was examined as PW.2. On behalf of the plaintiff 72 documents were marked as Exs.A1 to A72. The appellant/second defendant was examined as DW.1 and on his behalf five documents were marked as Exs.B1 to B5. The Junior Engineer of Tamil Nadu Electricity Board was examined as PW.2 on behalf of the defendants 1 and 2 in O.S.No.109 of 1999. The clerk of municipality was examined as PW.3 on behalf of Municipality which was arrayed as first defendant in O.S.No.102 of 1999. The Advocate Commissioner's report and plans were marked as Exs.C1 to C4.

14. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff temple was the owner of the superstructure as well as site and consequently decreed the suits as prayed for. Aggrieved by the same, the second defendant viz., Singara Velu filed three separate appeals. The first Appellate Court partly allowed the appeals as mentioned earlier. Aggrieved by the portion of the first Appellate Court decree insofar as it is against him, the second defendant Sinagara Velu has come by of these



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second appeals.

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15. At the time of admission, this Court formulated the following substantial questions of law by an order, dated 12.09.2023:

"(i). In view of Ex.B2 having been declared valid whether the suit for recovery of possession of suit property filed against the appellant by the plaintiff maintainable?;

(ii) When the religious institution being a specific endowment and when charges alone are collected or became payable for the performance of specific endowment, whether the suit filed for recovery of suit property by the fit person of Kattalai tenable in law?;

(iii) When the Executive Officer was not appointed for the Kattalai and not empowered to file a suit for and on behalf of Kattalai whether the suit filed by the Executive Officer fit person appointed for recovery of possession and other reliefs maintainable?.



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16. The learned Counsel appearing for the appellant vehemently contended that Ex.B2 compromise memo between Trustee of the plaintiff and father of the 2nd defendant viz., Raja Gopal Chettiar would establish that the 2nd defendant proved his ownership over the superstructure and hence the Courts below ought not to have decreed the suit by arriving at erroneous finding, as if the plaintiff was owner of the superstructure. The learned counsel further submitted that the plaintiff is a specific endowment and hence only entitled to charge over the suit property and as a consequence not entitled to maintain a suit for recovery of possession. The learned counsel further submitted that the suit filed for recovery of possession by the plaintiff as Executive Officer of the temple is not maintainable.

17. The learned counsel appearing for the respondent by taking this Court to the findings rendered by the Courts below submitted that the evidence available on record clearly establish that the plaintiff temple proved its ownership over the superstructure as well as the site and therefore, the Courts below were justified granting a decree in favour of the plaintiff temple and sought for dismissal of the second appeal.



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18. The core defense raised by the contesting defendant in the suit is denial of plaintiff's title over the superstructure. The defence of the contesting defendant is of two fold. Firstly, he contends that in the year 1961, the original superstructure let out by the plaintiff was damaged by cyclone and new superstructure was constructed by the lessee himself in the suit property. Secondly, it was contended by the defendant that in the year 1969, there was compromise between plaintiff's Trustee Thiyalnayaki Achi and lessee Raja Gopal Chettiar under Ex.B2 and as per the terms of said compromise, Rajagopal Chettiar, father of the contesting 2nd defendant became entitled to ownership of the superstructure stands in the suit property.

19. Exs.A1, A2 and A3 are lease arrangements between plaintiff and original lessee under which the appellant herein claims right. A perusal of the same would establish superstructure as well as site were let out to the father of the appellant by the Trustee of the plaintiff. Exs.A1 to A3 were clearly admitted by DW.1 in his evidence. Therefore, evidence available on record clearly established that originally the superstructure as well as site were let out to appellant's



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father Raja Gopal Chettiar. Though as a first line of defence contesting defendant claimed that superstructure let out by the temple got damaged in cyclone in the year 1961. There is no acceptable evidence available on record to prove the said fact except the interested testimony of PW.1. The defendant has not examined any other independent witnesses or produced any documentary evidence to prove damage to the original structure and new construction by Raja Gopal Chettiar. Therefore, the Courts below came to a factual conclusion that the contesting defendant failed to prove that he had put up construction in the suit property. The said factual conclusion is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity.

20. The second line of defence raised by the contesting defendant is based on Ex.B2 compromise. According to him, as per the said compromise between the Trustee Thiyalnayaki Achi and Raja Gopal Chettiar, his father said Raja Gopal Chettiar acquired right over the superstructure. The Trial Court compared the signatures of Raja Gopal Chettiar and Thiyalnayaki Achi and Raja Gopal Chettiar's Advocate Raghavachari found in Ex.B2 along with the admitted signatures



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available in other documents and came to the conclusion that signatures of Thiyalnayaki Achi, Raja Gopal Chettiar and his Advocate Raghavachari were not tallying with admitted signature. Therefore, the trial Court gave a finding that Ex.B2 was not a genuine document. However, the First Appellate Court on comparison of the signatures found in Ex.B2 and the signature of the parties found in other documents came to the conclusion that the signatures found in Ex.B2 were tallying with admitted signature. Though, under Ex.B2, there is a clause giving ownership to Raja Gopal Chettiar, the fact remains that he continued to be tenant of superstructure as well as site as seen from the rental receipts issued to him after Ex.B2. Exs.A53 and 54 dated 14.07.1982 and 05.01.1985 were rental receipts issued to Raja Gopal Chettiar by the plaintiff. A perusal of the same would suggest he paid rent for site as well as superstructure. DW.1 also clearly admits signature found in Ex.A54 is that of his father Rajagopal Chettiar and he paid rent for suit building. If under Ex.B2 Rajagopal Chettiar acquired right over building there was no chance for him to pay rent for building also in the year 1982. Therefore, notwithstanding execution of Ex.B2 Raja Gopal Chettiar paid rent for superstructure as well as site admitting the title of the plaintiff over superstructure as well as the site. Therefore, the first



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Appellate Court affirmed the findings of the trial Court that the plaintiff temple proved its right over the superstructure as well as site.

21. The said factual findings by the First Appellate Court are based on appreciation of evidence available on record and this Court finds no perversity in the said factual findings. Once this Court comes to the conclusion the plaintiff temple proved its right over the superstructure as well as site of the suit property, the plaintiff is entitled to possession of the suit property as prayed for. The other consequential relief regarding injunction against demolition and the other relief sought for by the plaintiff in connected suits are consequential in nature. Therefore, the Courts below are justified in granting those reliefs. As far as the relief of mandatory injunction to restore the old building that stood in the suit property is concerned, the trial Court granted the relief and first Appellate Court modified the same by directing the plaintiff to pay the cost of the new structure to the defendant and then get possession. The First Appellate Court also observed that in case the defendant was not willing to pay the cost of the superstructure that stands in the 'C' schedule property. The plaintiff was entitled to mandatory injunction to demolish the same. There is no material available on record to show that



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the portion of the building in 'C' schedule property was put up by contesting defendant after getting necessary permission from the owner of the property/plaintiff. Therefore, by balancing equity the First Appellate Court held that the plaintiff can take possession of 'C' schedule property on payment of cost of construction in 'C' schedule.

22. The First Appellate Court also observed that if the 3rd defendant is not willing to receive the cost of construction, the plaintiff is entitled to take possession of the site after demolishing the structure in 'C' schedule property, which was put up by the defendant without getting any permission from the lessor namely plaintiff. The plaintiff has not questioned that portion of the decree by filing any appeal. Hence, the same is confirmed.

23. Section 6 (19) of HR and CE defines specific endowment as follows:

(19)"specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation 1 to clause (17).

Explanation 1. - Two or more endowments of the nature



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specified in this clause, the administration of which is vested in a common trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act shall be construed as a single specific endowment for the purposes of this Act.

Explanation 2. - Where a specific endowment attached to a math or temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the specific endowment situated within the State.

24. Endowment of the property for performing any specific service or charity in a temple would amount to dedication of the property for Trust and the same cannot be equated with creation of mere charge over the property. Therefore, the submission made by the learned counsel for the appellant that plaintiff being a specific endowment is only entitled to charge over the property is not acceptable by this Court. Further the appellant's predecessor Raja Gopal Chettiar entered into lease agreement with Trustee of the plaintiff by admitting the plaintiff's title over the suit property including the superstructure. He continued to pay rent for superstructure as well as site as seen from Exs.A53 and A54, even after Ex.B2 compromise. Therefore, the appellant/contesting defendant is not entitled to raise a new plea as if property was not endowed in favour of the plaintiff and it is only having charge over the subject matter.



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25. The present suit has been filed by the fit person cum Executive Officer of the plaintiff temple. Therefore, the contention raised by the appellant that the suit filed by the plaintiff represented by Executive Officer is not correct. It is settled law that the Trustees of the temple are entitled to maintain a suit for recovery of possession on behalf of the temple and in the absence of Trustees, fit person is entitled to maintain such a suit.

26. Therefore, there is no infirmity in the present suit filed by the fit person of the plaintiff temple. Even assuming the suit is filed by the Executive Officer. **This Court in *S.M.Devi Vs. The Idol of Sri Jambukeswarar Akilandeswari Devasthanam* reported in 2023 I L.W825 : Manu/TN/2053/2023** held that the Executive Officer is entitled to file the suit on behalf of the temple and any decree passed in such suit will enure to the benefit of the temple represented by trustee. Therefore, the contention raised by the counsel for the appellant that the suit filed by the Executive Officer was not maintainable is not acceptable to this Court.



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27. In view of the discussion made earlier all the substantial questions of law raised at the time of admission are answered against the appellant and the second appeals stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

31.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Principal Subordinate Judge, Kumbakonam.

2. Principal District Munsif Court, Valangaiman at Kumbakonam.

3. Sri Kasi Viswanathaswamy,
Kalasanthi Kattalai,
Kumbakonam,
by its Fit Person/the Executive Officer,
Sri Kasi Viswanathaswamy Temple,
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4 .The Kumbakonam Municipality,
by its Commissioner,
Patel Buildings,
Dr.Moorthy Road,



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Kumbakonam Town.

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5. Junior Engineer,
O&M, Tamil Nadu Electricity Board,
Rajanthottam,
Kumbakonam Town.

6. Executive Engineer,
O&M, Tamil Nadu Electricity Board,
Thiruvudaimarudur Road,
Kumbakonam Town.

7. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court, Madurai.

S.SOUNTHAR, J.

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