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SA(MD)Nos.639 and 506 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/07/2024
Date of Pronounced	29/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

SA(MD)Nos.639 and 506 of 2021
and
CMP(MD)Nos.8559 and 6696 of 2021

(1) SA(MD)No.639 of 2021:-

C.Ramaraj : Appellant/Appellant/
Respondent

Vs.

Kalaiselvam,
The President,
Arachipatti Nadar Uravinmurai,
Srivilliputhur Town,
Virudhunagar District. : Respondent/Respondent/
Plaintiff

(Cause title amended as
per the court order, dated
14/10/2024 made in CMP(MD)
No.13858 of 2024 in SA(MD)
No.639 of 2021)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 29/03/2021 passed in AS No.66 of 2008 on the file of the Sub Court, Srivilliputhur confirming the judgment and decree dated 12/08/2008 passed in OS No.469 of 2004 on the file of the District Munsif Court, Srivilliputhur.



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For Appellant : Mr.K.Sudalaiyadi

For Respondent : Mr.M.Thirunavukarasu

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(2) SA(MD) No. 506 of 2021 :-

Araichipatti Nadar Uravinmurai,
Srivilliputtur through its
President, Kalaiselvam.

(President of the Appellant
Uravinmurai is substituted,
vide court order, dated
04/07/2022 in CMP(MD)No.3250
of 2022 in SA(MD)No.506 of 2021) : Appellant/Appellant/
Plaintiff

Vs.

C.Ramaraaj : Respondent/Appellant/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree made in AS No.66 of 2008, dated 29/03/2021 on the file of the Principal Sub Court, Srivilliputtur, reversing the judgment and decree made in OS No.469 of 2004, date 12/08/2008 on the file of the Additional District Munsif, Srivilliputhur.

For appellant : M.Thirunavukkarasu

For Respondent : Mr.K.Sudalaiyadi

COMMON JUDGMENT

These second appeals are filed by both parties against judgment and decree made in AS No.66 of 2008, dated 29/03/2021 by the Principal Sub Court, Srivilliputtur, reversing the judgment and decree made in



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OS No.469 of 2004, dated 12/08/2008 passed by the
Additional District Munsif, Srivilliputhur.

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2. Plaint averments in brief:-

The 1st item of the suit property originally was a vacant site belonged to one Chidambaram Pandaram. The plaintiff purchased the vacant site from Chidambaram Pandaram on 27/09/1982. From the date of purchase, the plaintiff was in possession and enjoyment. The defendant has no right over the property. The defendant's father was having property on the south and west of the 1st item. The defendant encroached the building in the first week of October 2000 and in the encroached property put up a construction. The encroached portion is mentioned as 2nd item in the plaint. The 2nd item is the western portion of the 1st item. When the new office-bearers of the plaintiff's Association took charge, they came to know about the encroachment. They requested the defendant to remove the same and hand over the vacant possession. At one stage, the defendant accepted and sought time till 25/03/2002. A letter was executed by the defendant to that effect on 10/03/2002. That request was accepted by the plaintiff's Association by passing a Resolution, on 10/03/2002. Against the promise made by the defendant, he failed. The defendant issued notice through Advocate on



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26/03/2002, wherein he has stated that the property belongs to his father ancestrally and he put up a construction and in possession. The above said fact mentioned in the Advocate notice is not correct. In this regard, a notice was issued by the plaintiff, on 01/07/2002. So, the suit is laid for declaration that the 2nd item absolutely belongs to the plaintiff; directing the defendant to remove the construction in the 2nd item and hand over the vacant possession, to pay Rs.5,000/- as damages for the past period and Rs.500/- per month as damages till the recovery of possession from the date of the plaint.

3. Statement was filed by the defendant with the following averments:-

Framing of the suit is not proper and the President has no right to initiate the suit on behalf of the Association or Uravinmurai. The sale deed, dated 27/09/1982 is denied. The property covered under the sale deed does not relate to the suit property. The measurement made in the document is also denied as false. The letter, dated 10/03/2002 was obtained under force and threat. On 01/06/1999, the plaintiff made enquiry with the defendant, Petchiammal, Kaliammal and Karuppaiya. As



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per the permission granted by the plaintiff, the defendant, Kaliammal and Karuppaiya made a common pathway and drainage to the 2nd item of the suit property in pursuance of the agreement dated 21/07/2000. So, the plaintiff had knowledge above the construction made by the defendant in the 2nd item even in the year 1998 itself. The defendant obtained EB service connection, paying taxes from 1999, water connection charges, etc. The defendant was in possession and enjoyment of the property for more than 250 years and using as backyard, pig shed and thatched house. In 1999, the 1st floor was built up. Later, the mother executed a settlement deed on 21/07/1999 in favour of the defendant in respect of the 2nd item. Now, the 2nd item is under the ownership of the defendant. The suit is barred by limitation, since within the time prescribed, the suit is not filed. At the time of making construction, the plaintiff did not make any objection. Regarding the title, it has been stated that Chidambaram Pandaram sold the property situated on the west of the 2nd item to the defendant's mother Mariammal, on 13/05/1982. In the sale deed, the eastern boundary is mentioned as Sidhan and others house. But on the contrary on 27/09/1982, he sold the property situated on the east of the property mentioned in the sale deed, dated 13/05/1982. In the above said document, the defendant is



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not a party. Chidambaram Pandaram had no right or enjoyment over the property. So, the sale deed itself is not valid under law. The plaintiff did not take possession and never in possession also. On 05/12/1978 also Mariammal, who is the member of the plaintiff Uravinmurai purchased the house on the south of the 2nd item, wherein the 2nd item is mentioned as poramboke land. The plaintiff cannot claim any right over that 2nd item. In the sale deed executed by the mother in favour of the defendant, there is mistake in four boundaries as if east side of the property belongs to Uravinmurai.

4. On the basis of the pleadings, the trial court formulated the following issues:-

(1) Whether it has to be declared that the plaint 2nd item belongs to the plaintiff?

(2) Whether possession is to be ordered in respect of plaint 2nd item property?

(3) Whether the plaintiff is entitled to future damages?

(4) Whether the defendant is liable to pay Rs.500/- per month as damages to



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the plaintiff till possession is given to him?

(5)Whether the mandatory injunction is to be granted to remove the construction in the plaint 2nd item?

(6)Whether the plaint 2nd item property is settled in favour of the defendant by his mother under the settlement deed dated 21.07.1999?

(7)Whether the suit is barred by limitation?

(8)Whether the Court fee paid is not correct?

(9)What other reliefs and costs, the plaintiff is entitled to?

5.Additional Issues:-

(1)Whether the suit is bad for obtaining permission to file the suit in a representative capacity?

(2)Whether the relief of declaration and mandatory injunction are hit by the principle of estoppel?



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6.Before the trial court, on the side of the plaintiff 2 witnesses were examined and 9 documents marked. On the side of the defendant, 4 witnesses were examined and 19 documents were marked. Through the witness, Ex.X1 and X2 were marked.

7.At the conclusion of the trial, the trial court partly decreed the suit.

8.Against which, appeal was preferred by the defendant before the Sub Court, Srivilliputtur in AS No. 66 of 2008. The first appellate court allowed the appeal, by setting aside the decree and judgment of the trial court. Simultaneously, it allowed IA No.174 of 2008 filed by the defendant under Order 41 Rule 27 CPC and marked Exs.B20 to B23.

9.Against that, the plaintiff filed SA(MD)No.425 of 2011 before this court questioning the legality of the first appellate court order in dismissing the suit, allowing the appeal without granting opportunity to the parties regarding the additional evidence let in. That was accepted by this court, remanded the matter back to the first appellate court to cure the defects and decide the appeal on its own merit. The above said order was



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passed on 02/01/2020. In pursuance of the above said remand order, the appeal was restored to file by the Principal Sub Judge, Srivilliputhur. At that time, IA No.3 of 2021 was filed by the plaintiff under Order 1 Rule 8 CPC seeking permission of this court to institute the suit in a representative capacity. It dismissed IA No.3 of 2021 by order, dated 29/03/2021. Simultaneously, the appeal was also decided. It has set aside the decree and judgment of the trial court passed in the original suit, but dismissing the suit. But by mistake, it is stated that the appeal was also dismissed.

10.Against which, separate appeals were preferred by both sides. SA(MD)No.560 of 2021 was filed by the plaintiff, whereas SA(MD)No.639 of 2021 is filed by the defendant.

11.At the time of admission, the following substantial questions of law were framed:-

(1)Whether the judgment and decree passed by the First Appellate Court is correct while dismissing suit filed by the respondent/plaintiff for non-compliance of Order 1 Rule 8 of CPC and



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simultaneously dismissed the appeal also filed by the appellant/defendant in a same judgment and decree without any reason?

(2)Whether the findings of the Courts below are correct to speak about the title of the suit schedule property in favour of the respondent/plaintiff, even though he did not prove his predecessor's clear title over the suit property through Ex.A2 namely the sale deed?

(3)Whether the judgment and decree passed by the Courts below are correct on the findings that the suit filed by the respondent/plaintiff is not hit by limitation?

(4)Whether the findings of the First Appellate Court is correct that the appellant/defendant is not entitled to get any relief on the Principles of



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**Doctrine of acquiescence because of the
appellant/defendant pleaded that he is
the owner of the property?**

12.Heard both sides.

13.Before we enter into the merits of the matter, pending CMP(MD)No.5912 of 2022 in SA(MD)No.506 of 2021 filed under Order 1 Rule 8 CPC by the plaintiff, who is appellant in SA(MD)No.560 of 2021 seeking permission of the court to represent the suit as a President of the Araichipatti Nadar Uravinmurai. That Civil Miscellaneous Petition was allowed on 11/08/2022.

14.Now the defects pointed out by the trial court after amendment now has been rectified. Now the suit deemed to have been filed on behalf of Uravinmurai in a representative capacity by its President.

15.With this preliminary point in mind, let us go further.

16.The 2nd item of the property is the disputed property between the parties. Both of them claim rival title over the property as mentioned in the preamble portion.



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17.It is the case of the plaintiff that the property originally belonged to one Chidambaram Pandaram. The plaintiff Uravinmurai purchased the property on 27/09/1982 under Ex.A2. This is tracing of the title in respect of the 2nd item, which is comprised in the 1st item of the plaint.

18.Now the defendant says that they are in enjoyment of the property for more than 250 years as a backyard. Later, they put up a construction. Apart from that, it is contended by the defendant that the sale deed, which is exhibited by the plaintiff to show the purchase is not the relevant document and Chidambaram Pandaram has no right to sell the property to the plaintiff Uravinmurai. So, in view of the rival title over the 2nd item of the property, it is the duty of the plaintiff to establish his title regardless of the lack, failure or absence of the prior title document in favour of the defendant.

19.Now we will go to the findings of the trial court on this aspect, before we go to the judgment of the appellate after remand.

20.A finding has been recorded by the trial court to the effect that the 2nd item is covered under 1st item and



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the title of the plaintiff is established, whereas the defendant not.

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21.To arrive at a conclusion, the trial court has made the following observation or finding.

22.Ex.A2 is the sale deed executed by Chidambaram Pandaram in favour of the plaintiff Uravinmurai. It is dated 27/09/1982. Survey number is 338/1 and Town survey number is 928/1B4. Total extent is 76 cents. In the above said survey number, the property measuring about 1130 square feet in triangle shape was purchased by the plaintiff. The four boundaries are mentioned like this. On the south, the defendant's house and Mayandi, road on the north and east, on the west one Krishnan, Petchiammal and Avudaiyappan houses are located.

23.It is the case of the defendant that out of 76 cents belongs to Chidambaram Pandaram, the defendant's mother purchased 3-3/4 cents under Ex.B4. In respect of Ex.B4, there is a finding by the trial court. So, according to the trial court, the plaintiff Uravinmurai and the defendant's mother purchased separate extents in the very same survey number. But the defendant does not claim right over the 2nd item of the property through



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Ex.B4. It is admitted by the defendant that Ex.B4 is relating to the property situated on the south of the present disputed portion. He has further admitted that in respect of the purchase under Ex.B4, there is no issue. As mentioned in Ex.A2, the defendant's property is shown as southern boundary. Probably, Ex.B4 might be related to the southern portion in the entire extent. Ex.B4 is dated 13/05/1982. Ex.A2 is dated 27/09/1982. So, this also confirms that on the date of Ex.A2, the defendant house was situated. So, after purchase made by the defendant's mother only, the plaintiff Uravinmurai purchased the northern portion. So, according to the trial court, the title over the 2nd item of the property is established by the plaintiff.

24.Coming to the defendant's right, it was found that it was not properly established, since there is no proper tracing of title. The defendant claims title over the property by way of Ex.B10 settlement deed executed by his mother. But the survey number was found corrected in Ex.B10. When the certified copy of Ex.B10 was produced by the plaintiff in the form of Ex.A9, there is a clear finding by the trial court in para 28 to that effect. So, Ex.B10 is not related to the suit property. By correcting the survey number, the defendant tries to get the unfair advantage.



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25.Regarding the prior title also, it was not established since contradictory plea has been taken by the defendant.

26.Now we will go to the judgment of the first appellate court after remand.

27.Curiously, the first appellate court has taken up the defendant's case first for deciding the title, which is not proper. Now, the first appellate court recorded a finding that that the defendant has not established the title with regard to the 2nd item of the property and confirmed the title of the plaintiff as recorded by the trial court. Curiously the first appellate court having found that the defendant has no right over the property and the title of the plaintiff stands established, again committed another mistake by dismissing the suit stating Order 1 Rule 8 CPC has not been complied.

28.As mentioned above, dismissed the application filed by the appellant herein namely the plaintiff under Order 1 Rule 8 CPC stating that without complying the same, the suit is not maintainable and chose to dismiss the suit. Curiously enough, it dismissed the appeal also. So, it is nothing, but violation of the procedural



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aspect. The first appellate court ought to have taken the maintainability of the suit itself as a preliminary point for consideration. Because of the above said dismissal of the suit as well as the appeal, both the defendant and the plaintiff are before this court by way of filing separate appeals.

29.Now there is concurrent finding with regard to the title of the plaintiff, necessity arises once again to go into the title, since because of the mistake committed by the first appellate court. For that purpose only, common questions of law were framed at the time of admission.

30.Even though, this substantial question of law was framed showing the plaintiff as respondent, it must be read as arrayed before the trial court to avoid confusion.

31.Ex.A2 is the title document of the plaintiff. The prior documents are produced in the form of certified copies by the plaintiff as Exs.A10 to A12. Commissioner was appointed to identify the property. He filed a report under Exs.C1 to C3. From the Commissioner's report, the first appellate court has recorded a finding that the suit property is covered under Ex.A2.



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32.Now the learned counsel appearing for the defendant would submit that the prior title of the plaintiff was not properly established. Under Ex.A9, the property mentioned in Survey No.338/1 belongs to one Ananda Rao. So, according to him, as stated in the written statement, Chidambaram Pandaram has no right to sell the property to the plaintiff. Against Ex.B21, the plaintiff has not produced any document to show the title of Chidambaram Pandaram. So, for that purpose, the defendant would rely upon Ex.B21 (it is wrongly mentioned in the judgment of the first appellate court as Ex.A19). This document is the re-settlement survey register, wherein the survey number is mentioned as 338/1. Old survey number is mentioned as 338. The measurement is noted as 76 cents. So, the first appellate court recorded a finding that absolutely there is no evidence on record to show that Ananda Rao was enjoying the property. No subsequent documents were also available in his name. On the other hand, the documents produced by the plaintiff shows that the original survey No.338/1 is now mentioned as survey No.928/1B4 under Ex.A8, old survey No.338/1 was standing in the name of Chidambaram Pandaram. Chidambaram Pandaram after purchase sold to several persons during Ex.A8 period. Now, again, survey No. 928/1B4 is sub-divided into 22 sub divisions and several



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persons are in enjoyment. Now correlating with the old to the new survey number, the first appellate court confirmed the trial court finding with regard to the title of the plaintiff. The other finding is that the contention on the part of the defendant that the property mentioned as a common village under Ex.B19. That was the another contention on the part of the defendant that the property never belongs to Chidambaram Pandaram and the plaintiff. To that effect also, there is a finding that how it is mentioned as village common property is not known. So, simply because there is an entry in Ex.B19 that it is a village common property, the title documents produced by the plaintiff were taken into account and recorded a finding that it will override the town survey register entries. Finally, the finding of the trial court was confirmed in respect of the title of the plaintiff, so also the failure on the part of the defendant to prove their title.

33.But as mentioned above, on the technical issue, he dismissed the suit. At that time, the appeal was also dismissed. As mentioned above, it is not proper. So, re-appreciation of evidence is required at the hands of this court.



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34.We can ignore for a moment the consent letter alleged to have been executed by the defendant in favour of the plaintiff, which was marked before the trial court. It is settled that mere acknowledgement or consent of a party will not confer title upon any one. On that account, the consent letter submitted to the plaintiff need not be taken into account.

35.As mentioned above, since the plaintiff claims title, he has to stand or fall on his own legs. Since the defendant disputed the title of the plaintiff and their predecessor-in-title, the plaintiff has produced the certified copy of the prior title document under Exs.A10 to A12. These documents are pertaining to 1951-1952. Through these documents, Chidambaram Pandaram purchased several properties. So, the contention on the part of the defendant that Chidambaram Pandaram has no right over the property is not correct. It stands established through Exs.A8, A10 and A11. But Ex.A10 is the mortgage deed in favour of Chidambaram Pandaram. Later, that property was purchased by Chidambaram Pandaram under Ex.A1. Under Ex.A11 Chidambaram Pandaram purchased the property from Radhakrishnan. It was admitted by the defendant during the course of cross examination that apart from the properties covered under Exs.A10 to A12, larger extent



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was available in that survey numbers. PW4 namely Dharmaraj was not able to identify the document in which the present property is covered. Even in Ex.A2, prior document is not mentioned, when larger extent is available in the original survey number, naturally it will not be possible for PW4 to identify the property. But, as mentioned above, the property was identified with reference to the title document by the Commissioner and the revenue records. Now the property is situated in Town Survey No.928/25. The construction is available on the western side portion of Town Survey No.928/25. The construction is admitted by the defendant. But, as mentioned above, he says that the plaintiff has no right over the property which is not properly established by the defendant. But from the documents produced by the plaintiff, it stands established that the property absolutely belongs to the appellant Uravinmurai. So, the finding of the trial court, as confirmed by the first appellate court shall stand confirmed even on re-appreciation of the evidence. The contention on the part of the defendant that the plaintiff has no right over the property is absolutely not correct and has no title over the property.



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36.Now coming back to the other reliefs of demolition of the construction in the 2nd item and handing over of the vacate possession, since it has been held that the suit 2nd item belongs to the plaintiff, naturally any construction made by the defendant in violation of the title and right of the plaintiff is bound to remove and hand over the vacant possession. Here comes the issue of latches and acquiescence.

37.Before we go into the findings of the trial court as well as the first appellate court, the plaintiff pleadings requires consideration. The defendant made encroachment in the first week of February 2000. The defendant admitted the encroachment and promised to hand over the vacant possession by removing the construction after 25/03/2002, since his daughter's marriage was arranged at that time. The plaintiff relies upon the letter of undertaking issued by the defendant on 10/03/2002. As mentioned above, that letter of undertaking is denied and disputed by the defendant. As mentioned above, dehors the undertaking, whether the right is available to the plaintiff is a matter for consideration, since the latches and acquiescence is pleaded by the defendant. The suit was filed on 24/10/2003. The alleged date of encroachment is first week of February 2000. The suit is filed within time.



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38.Now we will go to the evidence on record.

39.DW1 has stated in his evidence that during his father's life time, the 2nd item was allotted to him. He planted stone pillars fencing the property. On 25/10/1997, the house was available. The photos were marked as Ex.B1, during the course of the cross examination of PW1. But the correct date of the construction is not mentioned by him. At one point of time, he says that he constructed a house in 1998. So, according to him, even before 01/06/1999, the construction was completed and was known to the plaintiff. He relies upon EB connection charges, dated 19/08/1999, house tax receipts, drinking water connection charges. Having known all these things, the plaintiff remained silent without taking any proper action. So, he is not entitled for the above reliefs.

40.Even if we say that even during 1999, the construction was made, the plaintiff cannot be non-suited, unless the defendant is able to establish by long possession and possession adverse to the plaintiffs right he has prescribed title. This is not a plea. Actually, this plea cannot also be taken, since the defendant has not admitted the title of the plaintiff. So, the trial



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court recorded a correct finding with regard to the removal of the encroachment and recovery of possession.

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41.The first appellate court says that doctrine of latches and acquiescence is not available to the defendant, since he has not admitted the title of the plaintiff. So, that conclusion reached by the first appellate court is also perfectly legal and it requires no interference.

42.Regarding the past and future mesne profit, the trial court partly allowed the claim. But granted future mesne profit at the rate of Rs.500/- per month till delivery. That portion of the finding also requires no interference.

43.For all those reasons, the first substantial question of law is answered that the first appellate court has committed mistake in dismissing the suit and dismissed the appeal as mentioned above.

44.Regarding the second substantial question of law it is answered that the trial court and the first appellate court correctly held that the plaintiff has established the title over the suit property.



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45.Regarding the third substantial question of law, as mentioned above, the suit was filed within time. So, the finding recorded by the trial court as well as the first appellate court is perfectly legal.

46.The fourth substantial question of law has already been concluded during discussion. So, the fourth substantial question of law is answered that the defendant has not established that the right of the plaintiff is latches by principles of latches and acquiescence.

47.In the result, the second appeal filed by the plaintiff namely SA(MD)No.506 of 2021 stands **allowed** and the judgment and decree of the first appellate court is set aside and the judgment and decree passed by the trial court are restored. Consequently, the second appeal namely SA(MD)No.639 of 2021 filed by the defendant stands **dismissed**. The plaintiff is entitled for costs through out namely the appellant in SA(MD)No.506 of 2021. Consequently, connected Miscellaneous Petitions are closed.

29/10/2024

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To,

- 1.The Sub Court,
Srivilliputhur.
- 2.The District Munsif Court,
Srivilliputhur.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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