



C.R.P. (MD) Nos. 1405 of 2022 and 175 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) Nos. 1405 of 2022 and 175 of 2024
and
C.M.P (MD) Nos.5824 of 2022 and 727 of 2024

C.R.P. (MD) No.1405 of 2022

R.S.Rajendran

... Petitioner/
Defendant

-VS-

K.S.Ramaraj

... Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating with the ex-order and fair order dated 08.06.2022 made in E.P.No.67 of 2014 in O.S.No.70 of 2002 on the file of the District Munsif, Bodinayakanur and set aside the same.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.K.Guhan



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C.R.P. (MD) No.175 of 2024

1.R.S.Ramaraj
2.R.Rajapandian

... Petitioners/
Plaintiffs

-VS-

K.S.Ramaraj

... Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating with the ex-order and fair order dated 01.11.2023 made in I.A.No.3 of 2023 in O.S.No.130 of 2022 on the file of the District Munsif Court, Bodinayakanur and set aside the same.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.K.Guhan

COMMON ORDER

These two Civil Revision Petitions are interconnected to each other and as such are taken up and disposed of by way of this common order.

2. The Civil Revision Petition in C.R.P (MD) No.1405 of 2022 is filed against an order dated 08.06.2022 made in E.P.No.67 of 2014 in O.S.No.70 of



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2002. The Civil Revision Petition in C.R.P (MD) No.175 of 2024 is filed against the order dated 01.11.2023 made in I.A.No.3 of 2023 in O.S.No.130 of 2022 on the file of the District Munsif Court, Bodinayakanur. By the said order, the prayer of the plaintiffs in the suit to appoint an Advocate Commissioner to inspect and measure the suit property was dismissed by the Trial Court.

3. The factual matrix in which these controversies arise are as follows:-

3.1. The decree holder in O.S.No.70 of 2002 is one K.S.Ramaraj. According to him, he is the owner of the property admeasuring 4.93 cents in Survey No.77/4-B10 measuring 15.6 meters East to West and 12.8 meters North to South, in all totaling to 129.68 square metres;

3.2. The defendant in the suit, namely R.S.Rajendran, is the owner of the property which is on the western side comprised in 77/4B and 77/5. They are running a cinema theatre in the said property. While so, when they have put up construction in their entire extent of their property, however they have shown an emergency exit on the western side thereby meaning that if people come out of the emergency exit, then they have to land up only in the plaintiffs' property and thus, claiming ownership to the lane which is in between the plaintiffs' house and their theatre, which is nothing but the plaintiffs' property.



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3.3. As a matter of fact, the said K.S.Ramaraj filed O.S.No.70 of 2002 claiming so and praying for a permanent injunction restraining the peaceful possession and enjoyment of the plaintiff.

3.4. The said suit was resisted by the defendant in the suit, namely, R.S.Rajendran by tracing their title to the Survey No.74/2 and Survey No. 77/5A etc. They have contended that there is further space after their theatre building which belongs to them to an extent of about one and half metres in width. It is their contention that in keeping the exit gate as well as in showing the said lane as their property, they have not encroached even an inch on the suit property belonging to the plaintiff. It is their further case that the description of the property and the boundaries in the schedule of the property in the plaint itself would actually go to show that they have not encroached into the plaintiffs property. In that background, the parties went into trial and the Trial Court framed the following reliefs:-

- (i) Whether the plaintiff has been in possession and enjoyment of the suit property;
- (ii) Whether the plaintiff is entitled to the relief of permanent injunction.



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4. The Trial Court and the First Appellate Court dismissed the suit after considering the measurements and the evidence on record. It is essential to extract the relevant paragraph in the First Appellate Court's judgment:-

“At this juncture, it is to be seen that the plaintiff has filed objections Ex.A9 for the report of the commissioner. So, the commissioner's warrant was reissued and again the commissioner has measured the property with another surveyor on 27.11.04 and fresh commissioner's report Ex.C3 and Ex.C4 filed. Even in this report and plan. The measurement of survey number 77/4B10 is given as 14.3 metres on the northern side and 15.2 metres on the southern side, thereby corresponding and correlating to the earlier report and plan. The measurements given by 3 different persons on 3 different occasions under Ex.B3, Ex.C2, Ex.C3 and Ex.C4 reveal that the actual measurement on ground in respect of survey number 77/4B10 cannot be morethan what it was actually before sub-division of survey numbers 77/4B10 comes within survey number 77/5B the east west measurement on its northern side cannot be more than 14.3 metres (73



links) and cannot go beyond the survey number 77/5B so as to extend into survey number 77/5A or 74/2B. Further on the side of the plaintiff it is contended that the defendant's property was not surveyed east west inspite of several requests made by the plaintiff and if it is measured the dispute would come to end. Here it is to be seen that the plaintiff has to prove that he is in possessions of the suit property and cannot sit on the loopholes of the defendant's case.”

5. As against the said judgment, the plaintiff filed Second Appeal in S.A. (MD) No.529 of 2010 to the file of this Court. The said second appeal was allowed by a judgment dated 05.08.2013. In paragraph 8, this Court had made the following findings:-

“8. Before considering the rival submissions made on either side, the Court has to narrate the juxtaposition of the suit property and the property of the defendant. The present suit has been instituted for the relief of permanent injunction. In the plaint it has been clearly stated that the suit property is comprised in new Survey No.77/4B10. It is an submitted fact that the property of the defendant is comprised in two survey numbers viz., 74/2B and



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77/5A. The suit property is situate on the eastern side and immediately on the western side, the property of the defendant comprised in Survey Nos.74/2B and 77/5A is situate and immediately on the southern side, an east-west street is situate.”

6. Again in paragraphs 12 and 13, the following findings are given:-

“12.As narrated earlier, the suit property is comprised in new survey No.77/4B10 which situates immediately on the eastern side of survey No.77/5A. In paragraph – 7 of the plaint it has been clearly averred to the effect that the defendant has tried to put up a gate so as to suit his convenience.

13. It is an admitted fact that in survey Nos.74/2B and 77/5A a cinema theatre is in existence. The main grievance expressed on the site of the appellant/plaintiff is that the defendant has tried to put up a gate so as to have ingress and egress through the suit property which is comprised in new Survey No.77/4B10.”

7. Thereafter, it decided the second appeal in paragraphs 14 to 17, which are extracted hereunder:-

“14. In fact, this Court has perused the entire averments made in the written statement. No where it has been specifically stated to



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the effect that the defendant is the owner of the suit property.

15. Considering the nature of the dispute that exists between the parties and also considering the averments made in the plaint as well as written statement, this Court is of the view that the relief of permanent injunction can easily be granted in respect of the suit property which is comprised in new Survey No.77/4B10. Further the defendant can be directed not to open the gate which situates in Survey No.77/5A.

16. The Courts below without considering the nature of relief sought for in the plaint and also without considering the nature of the contention put forth on either side, have erroneously non-suited the plaintiff and therefore, the concurrent judgments and decree passed by the Courts below are liable to be interfered with and the substantial questions of law settled in the present Second Appeal are really having substance to the to the extent mentioned supra.

17. In fine, this second appeal is allowed without cost. The concurrent judgments and decrees passed by the Courts below are set aside and original suit No.70 of 2002 is decreed as prayed for without cost. However, it is made clear that the defendant should not put up any gate so as to cause hindrance or disturbance for better enjoyment of suit survey No.77/4B10 by the plaintiff.”



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8. In this background, when the defendant's brother applied for renewal of 'C' Form by showing the very same exit gate and the lane was shown as if it was the pathway for the occupants of the theatre to exit in case of an emergency, by an order dated 08.06.2022, the Trial Court found that when the relief of permanent injunction has been granted by the Court in the decree by virtue of the judgment in the second appeal, the said action amounts to violation of the decree and therefore, ordered arrest of the respondent judgment debtor.

9. In the meanwhile, the brother of the said judgment debtor, namely, R.S.Ramaraj and his son Raja Pandian filed O.S.No.130 of 2022. It is their contention in the said suit that by the way for family partition between R.S.Ramaraj and R.S.Rajendran, now the suit properties have come to their share. The partition was effected in the year 2009 itself. According to them, by virtue of the partition deed, they are the owners of the land in 74/2B as well as 77/5 and the aforesaid K.S.Ramaraj is interfering in the same without right, title or interest whatsoever and therefore, by claiming title over the very same lane, the present suit is again filed by them for a permanent injunction by showing the entire property owned by them in Survey Nos.74/2B and 77/5 (Re-survey



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No.77/5A) as belonging to them and seeking for a permanent injunction restraining the said K.S.Ramaraj, the plaintiff in the earlier suit, from interfering with their possession.

10. In the said suit an application was filed to appoint an Advocate Commissioner. The said application was resisted by the said K.S.Ramaraj on the ground that as far as the suit subject lane is concerned, the same has been measured repeatedly in the earlier proceedings and ultimately in the second appeal, it has been held in his favour. The Trial Court accepted the same and dismissed the Advocate Commissioner application stating that it is unnecessary to appoint an Advocate Commissioner since in the earlier round of litigation it has been held in favour of the the defendant

11. Heard Mr.R.Suriya Narayanan, the learned Counsel appearing on behalf the petitioner and Mr.K.Guhan, the learned Counsel appearing on behalf of the respondents.

12. Mr.R.Suriya Narayanan, the learned Counsel appearing on behalf the petitioner would submit that there is absolutely no finding whatsoever in the earlier round of litigation with reference to the disputed lane. The dispute



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between the parties is one of boundary. The earlier injunction which is granted is in respect of the entire property belonging to the defendant in Survey No. 74/4B10. The plaintiffs in the present second suit are not claiming any right or title in respect of 74/4B10, whereas it is their contention that the space after the house which is put up by the defendant actually lies in their property that is 74/2B and 77/5 (Re-survey No.77/5A) and therefore, they have filed a suit for injunction. While so, the said dispute has to be resolved only in the present suit and the Commissioner reports which are filed in the earlier suit will have no bearing at all in the present case. In the earlier suit, the suit schedule property was that of the defendant and not the Survey Nos.74/2B and 77/5 (Re-survey No.77/5A). Therefore, when the present Advocate Commissioner application is made with reference to the present suit scheduled property which is owned by the plaintiffs herein admittedly, the Trial Court ought to allowed the same. If only a measurement is done properly, the right with reference to the said vacant space in between the house of the defendant and theatre of the plaintiff can be determined.

13. According to the learned Counsel, the earlier second appeal was decreed only based on the survey number alone. As a matter of fact, the last sentence directing the defendant not to put up a gate by itself would make it



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clear that the Court has not decided on the said vacant lane. Therefore, when the present *lis* was not finally decided in the earlier round, the second suit was perfectly justified. This apart, when the suit theatre is now being enjoyed by the plaintiffs in the subsequent suit, namely. R.S.Ramaraj and R.S.Raja Pandian, filing the execution petition as against the erstwhile judgment debtor, namely, R.S.Rajendran and ordering of his arrest was totally unwarranted. He is not in any manner interfering with the possession nor the 'C' Form license was applied by him. Learned Counsel would also submit that on his behalf, it will be undertaken that he will not interfere with the possession of the said property.

14. Per contra, Mr.K.Guhan, the learned Counsel appearing on behalf of the respondents would submit that when in the earlier round, the suit was dismissed by the Trial Court as well as the First Appellate Court, the High Court had reversed the concurrent findings and has decreed the suit. The suit property was held to be within Survey No.77/4B10 and permanent injunction has been granted against the R.S.Rajendran, who was the owner of the theatre at that point of time. Whilst pending the suit, the said R.S.Rajendran has released his right in favor of his brother, the same was not brought to the notice of the Court up to the second appeal when the judgment was delivered on 05.08.2013. Therefore, even if the present plaintiffs in the subsequent suit is



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claiming through the said R.S.Rajendran, they would be bound by the earlier judgment inter parties. He would submit that when the lane is held to be the property of the decree holder K.S.Ramaraj, there is no question of again the Commissioner measuring the property.

15. By producing a photograph of the suit property, he would submit that the entire premises of the plaintiffs in the second suit and the judgment debtor in the earlier suit is compound walled/fenced. Therefore, there is no question of their opening up an emergency exit beyond their fence and the wall and only for the said cause of action, the earlier suit was filed which was ended in favour of the decree holder and therefore, now the present suit is nothing but a re-litigation of a concluded affair. In any event, when the very same site has been measured by the Commissioner and ultimately ended up in a judgment in second appeal, there was no question of measuring or re-inspecting the very same property by yet another commissioner in the present suit. He would further submit that when the judgment debtor or persons claiming through them have again obtained for renewal of 'C' Form license and if they are showing the very same lane, which is belonging to the plaintiff as if land belonging to them, and if they show the emergency exit on that side into the property of the decree holder, then the decree holder is fully entitled to move for execution and the



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executing Court has rightly passed the order of arrest.

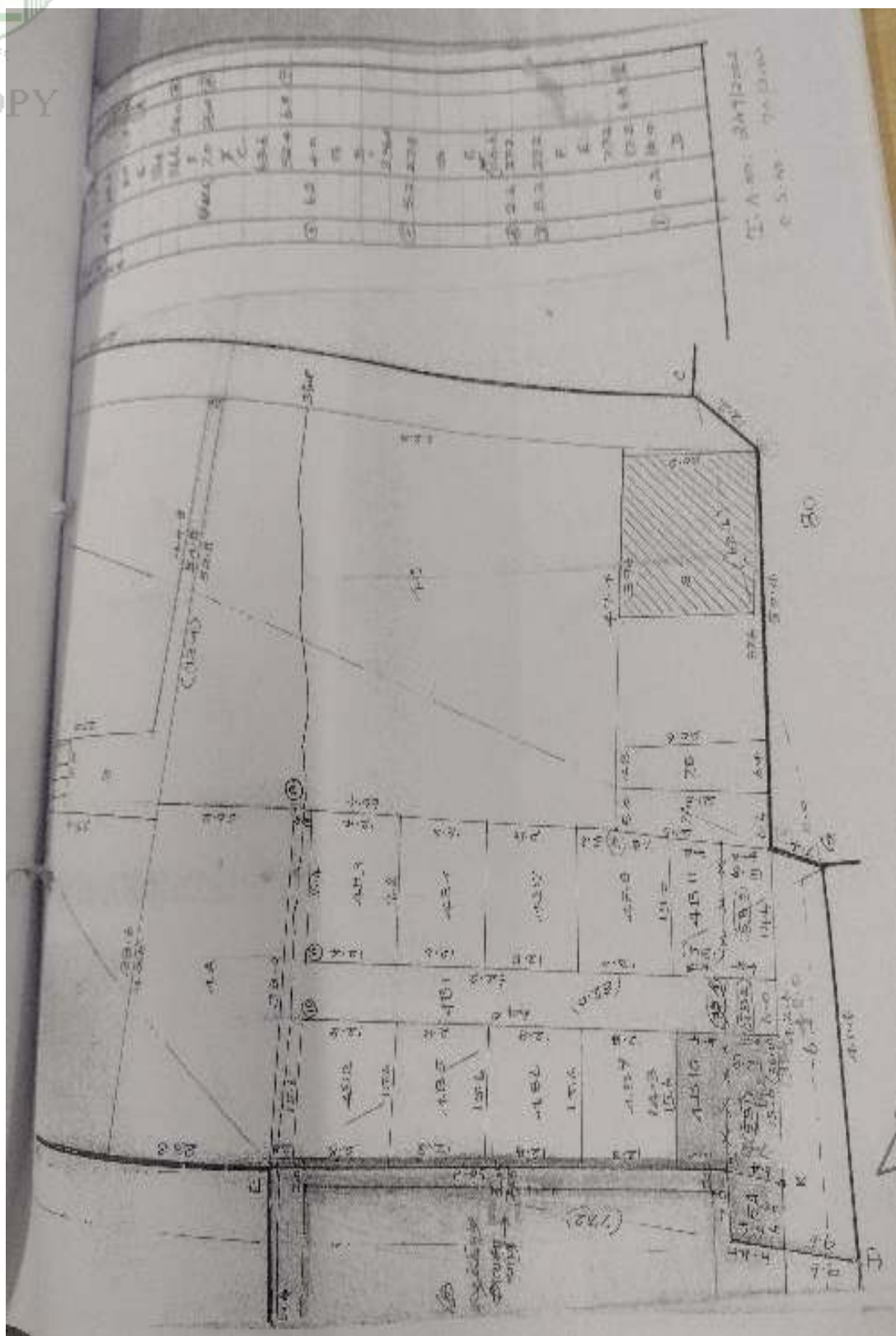
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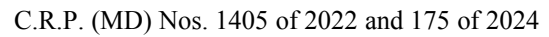
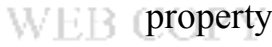
16. I have considered the rival submissions made on either side and perused the material records of the case.

17. In order to decide the controversy on the hand, it is necessary to produce the picture of the Advocate Commissioner's report in the earlier suit hereunder:-



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19. It can be seen that when the plaintiff filed the earlier suit without describing this lane and without claiming for any declaration, the plaintiff merely claimed that the property, including the lane, was part and parcel of Survey No.74/4B10 and by describing his entire property, a suit for permanent injunction was filed. Even in the present suit, which is now filed by the brother



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of the judgment debtor, identically by describing their property in Survey Nos. 74/4B and 74/5 (Re-survey No.77/5A) and by claiming that this piece of lane to be part and parcel of the said property and injunction is now claimed.

20. It is in this background, the relevant finding of the Trial Court as well as the First Appellate Court has to be seen. The relevant paragraph was extracted supra. The First Appellate Court actually found that the decree holder is claiming in excess of what is in his possession as per record and found that in view of the earlier Commissioner's report etc., it cannot be held that the said lane belongs to the plaintiff or is in the possession of the plaintiff and on that score dismissed the suit. However, as extracted supra, this Court in the second appeal has found that the suit property was comprised only in Survey No. 77/4B10. An express finding was made in paragraph 8 and thereafter, the same is reiterated in paragraphs 12 and. 13. Thereafter, in paragraph 16, it has interfered with the concurrent findings of the Trial Court and the First Appellate Court and decreed the suit as prayed for in paragraph 17. It has even further gone to the extent of saying that the emergency exit gate itself should not be put up by the defendants even in their property so as to facilitate a convenient enjoyment of the plaintiff. In the said sentence, instead of describing it as 'emergency exit', the Court has described as 'any gate'. The



words 'any gate' cannot be now interpreted as if a 'gate blocking the lane' itself.

What the Court meant was the emergency exit, which was shown by the judgment debtor in their property. Therefore, when a judgment is granted by this Court, it cannot be simply brushed aside in the subsequent proceedings by stating that the issue is not actually decided.

21. On a careful reading of the judgment of the second appeal, though the Court has not expressly gone into the measurements and has not expressly dealt with about the findings of the Trial Court as well as the First Appellate Court, it has specifically given a finding that the space in controversy i.e., the vacant lane in between the building of the decree holder and the theater of the judgment debtor belongs only to the plaintiff and therefore, decreed the suit. Therefore, according to me, the issue has been decided in the earlier second appeal and if at all there is any doubt or claim regarding the same, it can be only be made by further resorting to the remedies such as an appeal or review against the said judgment. So long as the said judgment remaining final, I am of the view that that the finding of the execution Court that there is violation of the decree and the finding of the Court in the subsequent suit that the very same property is measured in the earlier Advocate Commissioner cannot be interfered with. It must be further seen that even the present suit one is only for



a permanent injunction. Therefore, the question whether in the earlier suit an issue of title was framed and since the issue was only with reference to the possession, whether the parties would be further entitled to bring a fresh of comprehensive nature relating to declaration are all does not arise because, the present suit is also one of injunction only.

22. In that view of the matter, when the lane i.e., the space in between the house of the decree holder and the theater of the judgment debtor was the only issue of controversy in the earlier proceedings throughout and the same have gone in favour of the decree holder, the parties have to abide by the final verdict in the second appeal and on technical or other considerations, the matter cannot be again at large.

23. However, it is to be seen that since the property has been given to the brother of the judgment debtor, *pendente lite*, the order of arrest need not be made in respect of the original judgment debtor, however, he should also file an affidavit of undertaking within a period of one week from today before this Court that he will not in any manner interfere with the suit property which includes the lane/space in between the theater and the house of the decree holder. Upon filing such affidavit, the order of arrest shall remain set aside. It



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would be open for the Plaintiffs in O.S.No.130 of 2022 also to file a such an undertaking before this Court; if they choose to do so, they can file the same within two weeks from the date of receipt of a copy of the order. If they do not file such an affidavit of undertaking, it would be open for the decree holder to file an appropriate execution application against them as they are claiming through the judgment debtor, with reference to the violation, if any, made as against the earlier decree. The order of the learned District Munsif, Bodinayakanur, made in I.A.No.3 of 2023 in O.S.No.130 of 2022 is upheld and these Civil Revision Petitions are disposed of accordingly. Consequently, the connected Miscellaneous Petitions are closed. No costs.

29.07.2024

NCC : Yes/No

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D.BHARATHA CHAKRAVARTHY, J.

PKN

To

1. The District Munsif, Bodinayakanur.

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