



C.M.A(MD)No.983 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)No.983 of 2021
and
C.M.P.(MD)No.10689 of 2021

K.Mayilvel

... Appellant

Vs.

1.B.Muthumari
2.Minor.Athisona
3.S.Manikandan
4.S.Veeralakshmi

(Minor 2nd respondent represented
through her father and natural
guardian namely the 3rd respondent)

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under order 43 Rule 1 of CPC, against the Judgment and Decree, dated 01.09.2021, passed in A.S.No.22 of 2020, on the file of the Sub-Court, Manamadurai, remanding the Judgment and Decree, dated 01.06.2020, passed in O.S.No.26 of 2019 on the file of the District Munsif Cum Judicial Magistrate, Tiruppuvanam.

For Appellant : Mr.V.Ramakrishnan
For R1 : Mr.K.K.Mahesh Raja



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JUDGMENT

The plaintiff has preferred the present Civil Miscellaneous Appeal against the Judgment and Decree, dated 01.09.2021 passed in A.S.No.22 of 2020. In the impugned judgement the Appellate Court had remanded the case to the Trial Court for reconsideration. Aggrieved over the remand the present appeal is preferred.

2. The suit is filed to direct the defendants for ejectment and to hand over the vacant possession and enjoyment of the suit property to the plaintiff after removing the super structure put up by Late.A.Subbiah at their cost within a reasonable time and pay a sum of Rs.15,000/- being arrears of rent and also for mesne profits.

3. The brief facts of the case as stated by the plaintiffs are that the suit property in Survey No.101/3A admeasuring in East – West about 22.5 feet and in North - South about 39 feet belongs to the plaintiff. One Subbiah who is the father of the 1st and 3rd defendants, paternal grandfather of the 2nd defendant and father-in-law of the 4th defendant was inducted by the plaintiff as tenant in respect of the said suit property and the said Subbiah was given a right to put up temporary



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super structures subject to the condition that the same shall be removed by him on termination of tenancy. Initially the monthly rent was fixed at Rs.175/- payable on 5th of every month, with interest free advance of Rs.15,000/- and in case of default the arrears shall be paid with 24% interest per month. From February 1997 onwards it was enhanced to Rs.180/- per month. Later on, the rent was periodically enhanced and finally, it was fixed at Rs.1,500/- per month from 2012 onwards. Even though the lease was oral, thereafter the same was reduced to writing and confirmed vide document dated 23.02.1997.

4. The said Subbiah died on 17.12.2012. While the said Subbiah was alive, it seems he had executed a registered Will, dated 05.04.2011, bequeathing the super structures put up by him in favour of the 1st defendant (daughter of Subbiah) and her 3 other daughters namely Athilakshmi, Subbulakshmi and Anandalakshmi and to the second defendant (who is a minor daughter of the 3rd defendant). The 3rd defendant is the son of Subbiah and the 4th defendant is the daughter-in-law of Subbiah. In the above said Will he had specifically referred to the extent of the portions of the superstructures in the suit property to which his legatees are entitled to succeed him. Though in the said Will a portion of the superstructures was bequeathed in favour of the minor / 2nd defendant by appointing her mother as



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the guardian, the minor remained under the maintenance of 3rd defendant / father. Later it was learnt that the said three daughters had sold their rights in the superstructure through sale deed dated 19.09.2013 to the 4th defendant marked as Ex.A4. After the said sale deed the rights of the parties have changed. Except the portion allotted to the 1st defendant, the other portions are in favour of 2nd and 4th defendants. Even though the specific portion was given to the 1st defendant, virtually, the defendants 3 and 4 are in physical possession and enjoyment of the entire portion of the property. When the defendants stopped paying the rent from August 2013, the plaintiff has issued legal notice. After the receipt of the notice, the 1st defendant did not reply to the said notice but the 3rd and 4th defendants issued reply notice, dated 16.07.2014 by incorrect facts and claimed that the suit property was sold by the plaintiff to the defendants by “oral sale”. For the said reply, the plaintiff issued a rejoinder dated 06.08.2014 denying such oral sale. Thereafter, the plaintiff filed the suit with the aforesaid prayer.

5. The 1st defendant had filed written statement stating that the suit property is the self-acquired property of the father. The allegation of rent, enhanced rent are not known to the defendant and the same is denied as fraudulent and false. The 1st defendant is enjoying the suit property as per the Will. The 3rd defendant



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(brother of the 1st defendant) has filed a suit against the 1st defendant in O.S.No. 127 of 2011 on the file of Principle District Court, Manamadurai to declare the cancellation of settlement deed dated 13.04.2009 as null and void. Hence the present suit is not maintainable. Further the 1st defendant admitted the receipt of suit notice and also admit she had not replied since the allegations in the notice are not true. Further the 1st defendant is not liable to pay the 1/5th share of the arrears of rent. The father of the 1st defendant had demolished the tiled house and had put up concrete construction. Hence prayed to dismiss the suit.

6. The other defendants had not filed any written statement. However, had filed memo submitting to the decree.

7. Hence the plaintiff had filed petition under Order 12 Rule 6 petition and prayed to direct the 1st defendant to hand over the possession of the suit property. The contention of the 1st defendant is that the memo filed by 2 to 4 defendants is false and forged one, hence the 1st defendant had filed a petition praying to reject the memo, but the said petition was dismissed. Aggrieved over the 1st defendant had preferred Civil Revision Petition and the same was pending. The Trial Court had considered the plea of plaintiff and the 1st defendant, then had framed the



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issue as “whether the 1st defendant had admitted the case of the plaintiff, if so whether the plaintiff is entitled to decree as prayed for?”. During Trial the 1st defendant due to her aliment had not deposed but her son had deposed before the Court as DW1, wherein he had stated that he was not aware of the suit notice. But the fact remains the suit notice was received by the 1st defendant which was admitted in the written statement. In the written statement the 1st defendant had also admitted that she had not replied to the suit notice. Therefore, the Trial Court had considered the case based on pleadings, evidences and depositions of the parties and allowed the suit with costs and directing the defendants to vacate the premises within a period of three months. Aggrieved over the same, the defendants had preferred the first appeal.

8. The Appellate Court had framed the points for consideration as follows:

- i. whether the 1st defendant had admitted the case of the plaintiff through her written statement and deposition.
- ii. whether the judgment of the Trial Court is correct.
- iii. Whether the 2 to 4 defendants are having any right to file the appeal
- iv. Whether the appeal is maintainable.



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9. After hearing the arguments of both the side the Appellate Court had dismissed the appeal as far as the defendants 2 to 4 are concerned. But had allowed the appeal as far as the 1st defendant is concerned and remanded the case back to the Trial Court for reconsideration. Aggrieved over the same the plaintiff had preferred the present Civil Miscellaneous Appeal.

10. The contention of the 1st defendant is that the Trial Court had accepted the memo filed the defendants 2 to 4 and had decreed against all the defendants including the 1st defendant. The Trial Court had decreed the suit by relying on the judgment rendered in the case of *M/s.Jeevan Diesels and Electricals Limited Vs M/s.Jasbir Singh Chadha (Huf) & Another* reported in *2010 (6) SCC 601*. But the Trial Court had failed to consider the fact that the said memo was not signed by the 1st defendant and the 1st defendant had filed written statement denying the averments of the plaint. The contention of the plaintiff is that since the defendants 2 to 4 have accepted the contention of the plaintiff, they have submitted to the decree and the Lower Court had considered the claim and had passed the decree in favour of the plaintiff directing the defendants 2 to 4 to vacate the premises. Thereafter, the plaintiff took a plea when the 1st defendant received suit notice, the 1st defendant had not chosen to reply the same. Hence, it has to be considered that



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that the first defendant has also accepted and admitted the averments of the plaintiff as true and the 1st defendant cannot go beyond the plea of lease. Hence the Trial Court has allowed the petition filed under Order 12 Rule 6 and decreed the suit.

11. It is seen that the Appellate Court has held that the Trial Court ought not to have allowed the petition under Order 12 Rule 6 and order eviction of the 1st defendant. The Appellate Court further held that the first defendant's son has deposed before the Trial Court, based on his admission alone, the first defendant cannot be ejected from the suit property. The Appellate Court further held that the DW1 is the son of the 1st defendant, he cannot be considered as appropriate witness in the case. Further, the Appellate Court has held that the first defendant has stated in the written statement that there is no lessor - lessee relationship between the parties. In such circumstances, suit notice filed in Exhibit A5, dated 09.06.2014, cannot be relied on and cannot come to the conclusion that there is tenancy agreement between the parties. For these reasons, the First Appellate Court had remanded the case back to the Trial Court for reconsideration.

12. This Court is of the considered opinion that the Appellate Court had



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misdirected itself. The 1st defendant had admitted in the written statement that she had received the suit notice, when that is so then the 1st defendant is aware of the claim of the plaintiff that there is lease agreement between the plaintiff and the 1st defendant father, there is default in paying rent and hence eviction proceedings are initiated. If the claim of the 1st defendant that the property is self-acquired property of the 1st defendant's father, then the 1st defendant ought to have issued reply notice and claimed right over the property. Having failed to do so then the 1st defendant had not right to deny the title of the property. Further when the 1st defendant had chosen not to be witness and allowed the son of the 1st defendant to depose, now cannot turn around and claim that DW1 is not proper witness. The Appellate Court had accepted such plea of the 1st defendant and had held the DW1 cannot be considered as appropriate witness in the case, which finding is absolutely erroneous, absurd and perverse. Furthermore, the contention of the 1st defendant there is no lessor - lessee relationship between the plaintiff and the 1st defendant is incorrect. And the Appellate Court accepting such contention and rendered a finding that the suit notice filed in Exhibit A5, dated 09.06.2014, cannot be relied on and based on the same cannot come to the conclusion that there is tenancy agreement between the parties is totally against the Will executed by the 1st defendant father. Infact the DW1 has deposed that only vacant site was



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given under lease and the same has been stated in the said Will and the relevant portion is extracted hereunder:

“எனது தாத்தா அவருக்குள்ள உரிமையை மட்டும் தான் உயிலில் எழுதிவைத்துள்ளார் என்றால் சரிதான். என்னிடம் காட்டப்படும் வா.சா.ஆ.2 ஆவணத்தில் எனது தாத்தாவின் கையொப்பம் உள்ளது என்றால் சரிதான். தாவாசொத்தின் அடிமனையை பொறுத்து வாடகை எனது தாத்தாவுக்கும் வாதி மயில்வேலுக்கும் ஏற்படுத்திக்கொண்ட பதிவு செய்யப்படாத ஒப்பந்தப்பத்திரம் என்று சொன்னால் சரிதான். அதில் சொத்து விபரத்தில் சர்வே எண்: 101/3ஏ வீட்டின் ஒரு பகுதி என்று எழுதிக்கொடுத்துள்ளார் என்றால் சரிதான். 1997-ம் வருடம் பிப்ரவரி மாதத்திலிருந்து மாத வாடகை ரூ.150 என நிர்ணயம் செய்து வாதிக்கு எனது தாத்தா வாடகை அடிமனையை பொறுத்து வாடகை கொடுக்க வேண்டும் என்று உள்ளது என்றால் சரிதான். ”

13. On perusing the Will that was executed by the said A.Subbiah, it is seen that the entire rights of the said property on the super structure was granted to the defendants and there is a specific mention that except the ground (அடிமனை நீங்கலாக மேல்போகு மட்டும்) in Ex.A13 (Will). Further, the plaintiff had relied on Exhibit A2, which is a lease agreement which was executed by the plaintiff with the Late.A. Subbiah and the lease agreement specifically states that only the vacant land was granted for rent and the lease agreement was executed for the vacant land alone. There is a specific condition in the lease agreement stating that



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the said A.Subbiah is permitted to put up super structure but at the end of lease, the said Subbiah should remove the super structure and hand over the vacant possession of land to the plaintiff. In these two documents, there is a reference of vacant site and also reference of the super structure, and the documents clearly states that there was a lease agreement only for the land and the super structure was put up by the 1st defendant's father.

14. In fact, the 1st defendant has created the registered mortgage over the suit property and executed a deed, dated 03.03.2014, in that also while describing the property, it has been stated as except land only super structure. Therefore, Exhibits A2, A13, A17, A18, A19 and A20 clearly states only the vacant land was leased out and the super structure was put up by the Late.A.Subbiah. When the facts are so, while filing the written statement, the first defendant has denied the plaintiff is the owner of the property and also denied existence of tenancy relationship between the plaintiff and the 1st defendant. But all the documents referred above would clearly indicate that there was tenancy agreement between the plaintiff and the Late.A.Subbiah.

15. The first defendant has further claimed that it is a self-acquired property



of the Late.Subbiah. When the documents clearly states the lessor and lessee relationship and the plea of self-acquired property is totally false, without any documentary evidence. Without going into Exhibits A2, A13, A17, A18, A19 and A20, the Appellate Court has held that the deposition of the DW1 cannot be relied on. If the Appellate Court had perused the A2, A13, A17, A18, A19 and A20, then the Appellate Court would not have come to such conclusion. Infact the DW1 has spoken correctly and the same is coinciding with the Exhibits as stated supra and the deposition of DW1 can be relied on. Therefore, this Court is of the considered opinion that the Appellate Court has terribly erred in rendered the finding and the remand order is illegal.

16. Further, the defendant cannot put forth any case beyond the Will which was executed by Late.Subbiah, since the defendants are deriving right only through the said Will. When the Exhibit A13 (Will) clearly states the Late.Subbiah has bequeathed only the super structure alone leaving out the land, the defendants are entitled to super structure alone. But that super structure ought to be removed based on Exhibit A2, since the vacant land was leased out to Subbiah. Therefore, the Appellate Court has clearly erred in the said findings.



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17. The learned Counsel appearing for the appellant relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Muddasani Venkata Narsaiah Vs. Muddasani Sarojana** reported in **2016 0 AIR(SC) 2250** and the relevant portion of the judgment is extracted hereunder:

“15. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in Jahuri Sah & Ors. v. Dwarika Prasad Jhunjhunwala, AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors., 1978 MPLI 717. The High Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors., AIR 1959 MP 305 relying on P.L.N.K.L. Chettyar Firm v. Ko Lu Doke, AIR 1934 Rang 278 and Lakhmi Chand v. Ram Lal, AIR 1931 All, 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.”

18. The learned Counsel appearing for the plaintiff / appellant further relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Uttam**



Singh Duggal and Company Limited Vs. United Bank of India and others

reported in ***(2000) 7 Supreme Court Cases 120*** and the relevant portion of the judgment is extracted hereunder:

“12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

19. The learned Counsel appearing for the appellant also relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Karam Kapahi and others Vs. Lal Chand Public Charitable Trust and another*** reported in ***(2010) 4 Supreme Court Cases 753*** and the relevant portion of the judgment is



extracted hereunder:

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“43. In Uttam Singh Duggal case it was contended on behalf of the appellant, Uttam Singh Duggal, that:

(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5(1) of the Code and the court may call upon the party relying on such admission to prove its case independently.

(c) The expression "either in pleadings or otherwise" should be interpreted ejusdem generis. (See para 11, p. 126-27 of the Report.)

Almost similar contentions have been raised on behalf of the Club. In Uttam Singh those contentions were rejected and this Court opined no effort should be made to narrow down the ambit of Order 12 Rule 6.

44. In Uttam Singh this Court made a distinction between a suit just between the parties and a suit relating to the Specific Relief Act, 1962 where a declaration of status given which not only binds the parties but also binds generations. The Court held that such a declaration may be given merely on admission (SCC para 16 at p. 128 of the Report). But in a situation like the present one where the controversy is between the parties on an admission of non-payment of rent, judgment can be rendered on admission by the court.”



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In the present case when the Will is admitted by the 1st defendant, then the 1st defendant cannot deny the lease agreement between the plaintiff and the father of the 1st defendant and also cannot go beyond the Will. Hence, based on the judgements stated supra the 1st defendant is liable to be evicted.

20. The learned Counsel appearing for the plaintiff / appellant also relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Jagat Ram Sethi Vs, R.B.D.D.Jain and others** reported in **AIR 1972 SC 1727** and the relevant portion of the judgment is extracted hereunder:

“7. Mr. Chagla has sought to urge that the respondents were estopped from filing the suit. According to him, several constructions were made by the appellant on the land in question with the knowledge of the respondents. The High Court relied on the findings of the Courts below that no such action on the part of the lessor had been proved on the basis of which it could be held that the appellant had altered the position to his detriment. If the lessee chose to make unauthorised constructions at his own risk and the lessor did not take action the latter could not, on that account, be estopped from filing a suit for ejectment. According to Mr. Chagla the allotment Order made in February 1950 by the Rent Control Officer in favour of the appellant was never challenged by Harbans Lal or the respondents. It was on the basis of that Order and the representation contained in it that it was accommodation which was to be the subject matter of tenancy that the appellant had expended a good deal of money on



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further construction. We are wholly unable to understand how any description of the property in the allotment Order could be treated as a representation made by the respondents. It has not been shown that the allotment Order created any such rights on the basis of which the appellant could found his defence on the Rule of estoppel. The Additional Civil Judge had found on issue No. 4 that Harbans Lal never gave express consent for the constructions to be raised but he knew about their existence. We concur in the view of the High Court that mere inaction on the part of the lessor did not entitle the lessee to resist the suit on the ground of estoppel. The lessee had the right under Section 108(h) of the Transfer of Property Act to remove the constructions while he was in possession. There was no provision in that Act which debarred the lessor from determining the lease under Section 111 merely because constructions had been made by the lessee even to the knowledge of the lessor, and from instituting the suit for ejectment.”

In the present case, the contention of the 1st defendant that earlier there was titled house but concrete house was constructed by the father with the knowledge of the plaintiff will not give any right to the defendants and the same will not debar the lessor from terminating the lease. And the above judgment squarely applicable to the present case also.

21. The learned Counsel appearing for the appellant further relied on the



judgment rendered by the Hon'ble Supreme Court in the case of **Mohd. Raza and another Vs, Geeta @ Geeta Devi** reported in **2021 (4) TLNJ 27 (Civil)** and the relevant portion of the judgment is extracted hereunder:

“Thus from the aforesaid, it is clear that the defendants are claiming the ownership of the suit property. The defendant no.2 is claiming to be in possession as an owner and claiming to be the owner. It can also be seen that the plaintiff has filed the suit as an owner. It is not in dispute and even it is the case on behalf of the defendants that defendant No.2 had instituted the suit for specific performance against the plaintiff with respect to the suit property, meaning thereby there is a clear cut admission that the plaintiff is the owner.

9. It is to be noted at this stage that defendant No.2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff – respondent herein continues to be the owner and defendant No.1 – appellant herein continues to be the tenant. In the written statement in paragraph 1, it is specifically stated by the defendants that the defendants are not ‘now’ the tenant of the plaintiff but the actual owner of the suit property. As observed hereinabove, till the suit for specific performance is decided in favour of the defendants, more particularly defendant No.2, she cannot be said to be the owner and that therefore the plaintiff – respondent herein continues to be the owner and defendant No.1 continues to be the tenant. Therefore, the aforesaid is rightly treated as an admission on



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behalf of the defendants with respect to the ownership of the plaintiff and that defendant No.1 is a tenant. Therefore, the High Court as such has rightly passed the decree on admission under Order XII Rule 6 of CPC which in the facts and circumstances of the case cannot be said to be erroneous.”

In the present case the defendants are relying on the Civil Revision Petition which is pending before the High Court and the revision petition was filed challenging the memo filed for submitting to decree. Even though the same is pending, the fact remains that the Will itself has bequeathed the rights of superstructure only and not for the vacant land. In such circumstances, pendency of CRP will not improve the case of the defendants.

22. As far as the defendants 2 to 4 is concerned the said defendants have no right to file the appeal at all, when the said memo is filed. Further the defendants had filed Revision Petition claiming the said memo was claimed to be false and such claim cannot be entertained. Since the defendants 1 to 4 are claiming their rights over the property based on the Will executed by the original lessee A.Subbiah, when the said A.Subbiah had categorically stated in the Will that only superstructure alone is bequeathed, then the land owner is the plaintiff. Hence the



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plaintiff is having every right to evict the defendants 1 to 4 and also claim to remove the superstructure and handover possession of the suit property.

23. For the reasons stated supra, the order of remand passed by the Appellate Court is erroneous, illegal, perverse. Hence, this Court is setting aside the judgment and decree passed by the Appellate Court and the judgment and decree passed by the Trial Court is confirmed. Therefore, the Civil Miscellaneous Appeal is allowed. The defendants are granted six months time from the date of receipt of the present judgment and decree to remove the superstructure and to hand over the vacant possession of the land, to pay the rent and mesne profits to the plaintiff as stated in the judgment and decree of the Trial Court along with costs.

24. With the above said directions, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

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

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- 1.The Sub-Court, Manamadurai.
- 2.The District Munsif Cum Judicial Magistrate,
Tiruppuvanam.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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