



C.R.P.(MD)No.2434 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2024

Pronounced on : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2434 of 2018

and

C.M.P.(MD)No.10840 of 2018

Nagarajan

... Petitioner/
Petitioner/
Plaintiff

Vs.

1. T.Senpagavalli
2. T.Muthu @ Subramanian
3. T.Vijayarajan
4. Government of Tamilnadu represented by
District Collector,
District Collector Office,
Pudukkottai.
5. The Tahsildar,
Taluk Office,
Aranthangi.

... Respondents/
Respondents/
Defendants



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Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the same fair and decreetal order dated 21.03.2017 in I.A.No.1272 of 2016 in O.S.No.58 of 2011 on the file of the District Munsif Court, Aranthangi and allow this Revision with costs.

For Petitioner : Mr.K.Baalasundharam, Senior Counsel
for Mr.P.Ajmal Mohamed

For R1 to R3 : Mr.M.Suresh

For R4 & R5 : Mr.J.Ashok
Additional Government Pleader

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1272 of 2016 in O.S.No.58 of 2011 dated 21.03.2017 on the file of the District Munsif Court, Aranthangi, dismissing the application filed under Order 6 Rule 17 of the Code of Civil Procedure.

2. The revision petitioner as plaintiff has filed the suit in O.S.No.58 of 2011 claiming declaration that the second item of the 'A' schedule property is belonging to the revision petitioner/plaintiff and for consequential permanent injunction restraining the respondents/defendants and their men from interfering with the revision petitioner/plaintiff's



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peaceful possession and enjoyment of the suit property and also for permanent injunction restraining the respondents/defendants and their men from in any manner restraining or disturbing the revision petitioner/plaintiff from using 'B' schedule property as pathway to the 'A' schedule property by making any construction therein. The respondents 1 to 3/defendants 1 to 3 and fifth respondent/fifth defendant have filed separate written statements and are contesting the suit. Pending suit, the revision petitioner/plaintiff has filed the present application in I.A.No.1272 of 2016 under Order 6 Rule 17 C.P.C. seeking permission to amend the plaint for adding the declaratory prayer with respect to the 'B' schedule property. The respondents 1 to 3/defendants 1 to 3 have filed counter statements raising serious objections. The learned District Munsif, after enquiry, has passed the impugned order dated 21.03.2017 dismissing the amendment application. Aggrieved by the order of dismissal, the present revision came to be filed.

3. The case of the revision petitioner/plaintiff, in the affidavit filed in support of the amendment application, is that the revision petitioner/plaintiff in the plaint itself has alleged that the revision petitioner/plaintiff



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has no other pathway except the 'B' schedule property to reach his 'A' schedule property and since the respondents/defendants have been attempting to interfere with the revision petitioner/plaintiff's using of pathway, he was constrained to claim permanent injunction, that the first respondent/first defendant with the help of pattas has created a sale deed and thereby denying the rights of the revision petitioner/plaintiff in the 'B' schedule property, that therefore it has become just and necessary for the revision petitioner/plaintiff to seek declaration with respect to the 'B' schedule property also, that the respondents/defendants would not be prejudiced in anyway, if the proposed amendment is permitted and that the revision petitioner/plaintiff will be put to great loss and hardship, if the application is not allowed.

4. The defence of the respondents 1 and 3/defendants 1 and 3 is that the written statement was filed by them on 12.12.2012 and in the said written statement, they had denied the title of the 'B' schedule property, that the amendment application has been filed after four years since the filing of the written statement, that if the proposed amendment is allowed, the valuation of the suit property will exceed and in that situation, the



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Munsif Court will not have pecuniary jurisdiction and that when the trial was about to be commenced, the above application came to be filed and hence, the same is liable to be dismissed. The second respondent/second defendant has also filed a counter statement stating that the amendment application has been filed only to prolong the proceedings and that the amendment application has no merits and the same is liable to be dismissed.

5. As already pointed out, the revision petitioner/plaintiff has claimed permanent injunction with respect to the 'B' schedule property restraining the respondents/defendants and their men from in any manner interfering or disturbing the revision petitioner/plaintiff using the 'B' schedule property as pathway to reach his 'A' schedule property. The revision petitioner/plaintiff, by alleging that since the respondents/defendants have denied his rights to the 'B' schedule property, he was forced to seek amendment for including the declaratory relief with respect to the 'B' schedule property also, has filed the above application. No doubt, proviso to Order 6 Rule 17 has been added to prevent any amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not



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have raised the matter before the commencement of trial. But in the case on hand, admittedly, the amendment is sought for at pre-trial stage. It is not in dispute that when the case was pending for trial, the above application has been filed and that the trial has not been commenced.

6. The main ground on which the trial Court has rejected the proposed amendment is the plea of limitation raised by the respondents/defendants. Admittedly, the respondents 1 to 3/defendants 1 to 3 have filed their written statement on 12.12.2012 and the present amendment application came to be filed on 16.12.2016 after the expiry of four years from the date of written statement. The learned trial Judge, by relying on the judgment of this Court in ***The Federal Bank Ltd., through its Branch Manager Vs. Chinnamalar Plantation Pvt. Ltd., represented by its Managing Director and others*** and by invoking Article 58 of Limitation Act that declaratory relief has to be claimed within three years when the right to sue first accrues, dismissed the amendment application.

7. This Court had an occasion to deal with a similar issue in the case of S.Saravanan and Others Vs. M.Dhanalakshmi and Others reported in (2021) 6 CTC 821 and the relevant passages are extracted hereunder:



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“11.Considering the above, the main contention of the revision petitioners/defendants is that since the plaintiffs have not filed the suit within 3 years from the date of knowledge of the alleged transactions, as per Articles 58 and 59 of the Limitation Act, the reliefs claimed are barred by limitation and as such, the plaint is liable to be rejected. As rightly pointed out by the learned trial Judge, the plaintiffs have not only claimed the relief of declaration with respect to the nullity of the documents, but also declaration with respect to their title to the suit property and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. At this juncture, it is necessary to refer Article 58 and 59 as well as Article 65 of the Indian Limitation Act.

	Description of suit	Period of limitation	Time from which period begins to run
58	To obtain any other declaration.	Three years	When the right to sue first accrues.
59	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
65	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.



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12. *It is pertinent to note that in the first division of schedule to the Indian Limitation Act, 1963, Part III deals with suits relating to declarations, Part IV deals with suits relating to decrees and instruments and Part V deals with suits relating to immovable property. In Part III, suits relating to declarations, Article 56 deals with the suits to declare the forgery of an instrument issued or registered and Article 57 deals with the suits to obtain declaration that an alleged adoption is invalid and the remaining Article in the said Part III 58 deals with any other declaration. No doubt, Article 113 in Part X deals with any suit for which no period of limitation is provided elsewhere in the said schedule and according to the said Article, period of limitation is 3 years and the same is to be computed from the date when the right to sue accrues.*

.....

16. *It is settled position of law that a suit for declaration and for recovery of possession or for recovery of possession alone, Article 65 of the Limitation Act is applicable and as such, the suit is to be instituted within 12 years from the date, when the possession of the defendant becomes adverse to the plaintiff. But the dispute is what will be the period of limitation, if a suit is filed for declaration of title to the property and for consequential permanent injunction restraining alienation or encumbering the property or*



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restraining the interference with the peaceful possession and enjoyment of the property.

17. As already pointed out, according to the revision petitioners/defendants, Article 58 alone is applicable to the declaration and injunction, now claimed in the present suit and that since the same has been filed after the lapse of three years, the suit is barred by time. Even logically speaking, if a person, who is out of possession files a suit for declaring his title and to recover the possession, he will have 12 years period of limitation as per Article 65 of the Limitation Act, but at the same time, if a person who is in continuous possession of the property files a suit to declare his title to the property and for permanent injunction restraining interference or restraining the alienation, can it be said that he will have only 3 years, invoking Article 58 of the Limitation Act.

*18. It is pertinent to note that, as already pointed out, Part III of the first division deals with declaratory suits and the 1st two Articles in Part III are with respect to the forged instruments and adoption and that the remaining third Article i.e., 58 is a residuary and relates to any other declaration. But Part V of the first division specifically contemplates the period of limitation for suits relating to immovable property. It is necessary to refer the judgment of Division Bench of this Court in **Muniammal And Ors. vs Venkitammal And Others**,*



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reported in 1992(2) MLJ 425.

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“9. We must give credit to the learned Counsel for the respondents that he realised in the course of the arguments that Article 58 of the Limitation Act shall have no application on the facts of this case. The error which the trial court committed in applying Article 59 of the Limitation Act, which is applied to suits relating to decrees and instruments was no doubt rectified by the court below, but the error committed in applying Article 58 is obvious. Article 58 falls in Part III of the Schedule to the Limitation Act. This part deals with suits relating to declaration. Part V deals with suits relating to immovable property. Article 65 thereof reads that for possession of immovable property or any interest therein based on title, the period of limitation is twelve years. The instant suit based upon Ex.A-1 is undoubtedly a suit for interest based on title in immovable property. The period of limitation in such a situation will be 12 years and not three years.

10. The view that we have taken thus leads to the irresistible conclusion that the courts below erred in holding that the first defendant was a benamidar and the title in reality vested in the second defendant and not in the first defendant and



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so Ex.A-1 executed by the first defendant conveyed no property to the plaintiffs. Since the suit concerned immovable property and interest therein, the limitation period for the suit was 12 years and not 3 years as held by the courts below.”

*19. A single Judge of Andhra Pradesh High Court in **Mechineni Chokka Rao And Others. vs Sattu Sattamma**, reported in 2006 (1)ALD 116, has held as follows :*

“11. One shall not be oblivious of the fact that part-V of first division specifically deals with category of suits relating to immovable property. Coming in the domain of part-V, Articles 64 and 65 specifically deal with the period of limitation to institute a suit for possession of immovable property based on previous possession and to institute a suit for possession of immovable property or any interest therein based on title. Having regard to the categorisation sought to be made in the Schedule, although Part-III of the first division thereof apparently deals with suits relating to declarations, that part does not deal with suits relating to immovable property inasmuch as Part-V thereof exclusively deals with the suits pertaining to immovable property, prima facie it appears, therefore, that notwithstanding the fact that the suit



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is filed for the relief of declaration but the suit is in respect of an immovable property, Article 58 of the Act has no application, instead Articles 61 to 67, which specifically deal with the suits relating to immovable property, seem to be applicable.

12. A suit for the relief of declaration simplicitor is not maintainable as per the mandate contained in Section 34 of the Specific Relief Act. If the suit is filed for declaration of title over an immovable property and for the consequential relief of either possession or injunctions, if it is said that still Article 58 governs, it does not stand to reason, nay appears to be somewhat odd. A suit for possession or a suit for perpetual injunction obviously is governed by the relevant Article in Part-V of the first division when that suit pertains to immovable property. Article 58, in my considered view, will not fall foul of Article 65 of the Act. In the event of any inconsistency in between the two Articles mentioned in the Schedule, the endeavour of the Court shall be to give a harmonious construction having due regard to the scheme and object of the Act.

13. The problem can be viewed in a different



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dimension. The right over an immovable property will get extinguished as can be seen from Section 27 of the Act only after the expiry of the period prescribed for filing the suit for possession as per Articles 64 and 65 of the Act. Therefore, if the period falls short of the requisite period of 12 years the right over an immovable property will not get extinguished. When the person has a right over an immovable property which right is not extinguished as yet, he can lay the suit in respect of an immovable property even praying for the relief of declaration at any time within the period of 12 years at the end of which, his right would get extinguished. When we consider this clear mandate contained in Section 27 of the Act, it becomes manifest that a declaratory relief in respect of an immovable property can be sought for at any time within the period of 12 years after which the right will get automatically extinguished, notwithstanding the fact that Article 58, the residuary Article for filing declaratory suits, prescribes a period of three years limitation. Thus, when we look, at the scheme of the Act, the above view seems to be plausible and reasonable qua the contrary view sought to be canvassed.

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20. *The Law Commission in its 89th Report recommended for the amendment of Article 58 by adding the words "without seeking further relief after the word "declaration" in the first column of Article 58 so as to avoid any confusion. However, so far no amendment has been brought in by the Parliament as recommended.*

21. *The preponderance of authority which holds the view that in respect of declaratory suits pertaining to immovable property, the period of limitation is governed by Articles 64 and 65 but not Article 58 of the Act is in conformity with the Scheme of the Act, as discussed hereinabove.*

22. *The question seems to be a mixed question of law and fact, having regard to the matrix of the case as set out in the plaint. Per se if the suit is barred by limitation, there can be no difficulty for the Court to dismiss the suit on that ground, notwithstanding the absence of any plea in regard thereto inter alia in the written statement filed by the adversary but if the matter requires some evidence for effective adjudication of the point of limitation, the plaintiff cannot be non-suited at the threshold and it is only at the culmination of hearing of the*



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suit, the point of limitation can be adjudicated upon.

When that being the view, the principle that relief is barred by limitation and, therefore, amendment cannot be allowed, will not uniformly apply to all cases. Where the point of limitation is a mixed question of law and fact, the amendment can be allowed, appears to be the law on the point. I am reinforced in my above view by a judgment of the Apex Court in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil , Ragu Thilak D. John v. S. Rayappan 2001 (2) ALD 31 (SC) : (2001) 2 SCC 472 and Narne Rama Murthy v. Ravula Somasundaram (2005) 6 SCC 614.”

20. Considering the above legal position, it cannot be said that Article 58 of the Limitation Act is to be applied automatically and it is to be seen as to which of the Article, whether Article 58 or 65 is applicable to the case on hand.”

8. At this juncture, it is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Government of Andhra Pradesh and others Vs. Pratap Karan and others*** reported in ***AIR 2016 SC 1717*** and the relevant passages are extracted hereunder:



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“27. So far as the issue with regard to the suit, being barred by limitation it was submitted by the respondents that the suit for declaration of title and injunction falls under Article 65 of the Limitation Act 1963 where limitation is 12 years from the date when possession of the defendant become adverse to that of the plaintiff. There is no pleading in the written statement that the State has obtained title by adverse possession. In the present case the defendant-State has never set up and or cannot set up title by adverse possession, hence the suit cannot be held to be barred by limitation. There is no evidence adduced from the side of the defendants that the State ever came in possession. On the contrary the possession of the plaintiff-respondents was sufficiently proved by the trial court while deciding the injunction petition as also in the finding recorded by the High Court dismissing the appeal against the order of injunction.

.....

61. On the issue of maintainability of suit, the learned Judge finally held that:-

“We have already noticed the judgment of the Nazim Atiyat, which has rejected computation amount for List III villages in Ex.B1. Hence there is nothing improper in filing the present suit for declaration of title. It is settled law that a claim for



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declaration of title never gets extinguished by efflux of time. Even under Article 65 of the Limitation Act, 1963 the Limitation runs only from the date on which the possession of the defendants becomes adverse to the plaintiffs. Hence we hold that the plaintiffs are not disqualified from filing the suit even if they had approached the Nazim Atiyat under Ex. B1 proceedings.”

.....

90. In the instant case, although the Trial Court decided the Interlocutory Application for injunction not only on consideration of documentary evidence, but also admission made by the appellant State admitting possession of the plaintiff over the suit land but in the final judgment, no finding recorded with regard to possession of the suit land except that these documents do not prove title of the plaintiff on the suit land.

91. One of the learned Judges of the Division Bench on consideration of all the documentary evidence and the Revenue Records recorded the finding in favour of the plaintiff. The said finding of the learned judges has been affirmed and upheld by the learned third Judge of the High



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Court and allowed the appeal and set aside the finding of the Trial Court.

92. We have given our thoughtful consideration on the finding recorded by the learned Judges of the Division Bench and finding recorded by the third learned Judge to whom the matter was referred for passing the final judgment. In our view, there is no material on the record to reverse the finding of the two learned Judges of the High Court.

93. For the aforesaid reasons, we find no merit in C.A. No.2963 of 2013 and the same is dismissed.”

9. In an earlier decision reported in ***AIR 2008 SC 2023 (Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs., and others)***, where the plaintiffs have filed a suit for permanent injunction alleging that they have purchased the property in dispute and had been in possession and enjoyment of the same and that when they were digging trenches for their construction, the defendant interfered with the said work, that the defendant has filed a written statement alleging that he has purchased the said property and he had been in possession and enjoyment of the same and that when he commenced construction in the suit property, the



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plaintiffs tried to interfere with his possession and filed false suit claiming to be in possession, that after trial, the trial Court has decreed the suit and in the appeal, the District Court by observing that a mere suit for injunction was not maintainable and that though the defendant had denied the title of the plaintiff, the plaintiffs ought to have amended the plaint to convert the suit into one for declaration and injunction, allowed the appeal and dismissed the suit. When the matter was taken in the Second Appeal, the High Court allowed the Second Appeal and restored the judgment of the trial Court. When the same was challenged before the Hon'ble Supreme Court, the Hon'ble Apex Court has held as follows:

“27. We are therefore of the view that the High Court exceeded its jurisdiction under Section 100 CPC, firstly in re-examining questions of fact, secondly by going into the questions which were not pleaded and which were not the subject matter of any issue, thirdly by formulating questions of law which did not arise in the second appeal, and lastly, by interfering with the well reasoned judgment of the first appellate court which held that the plaintiffs ought to have filed a suit for declaration.

28. We are conscious of the fact that the suit was filed in the year 1978 and driving the plaintiffs to a fresh round of



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litigation after three decades would cause hardship to them. But the scope of civil cases are circumscribed by the limitations placed by the rules of pleadings, nature of relief claimed and the court fee paid. The predicament of plaintiffs, was brought upon themselves, by failing to convert the suit to one for declaration even when the written statement was filed, and by not seeking amendment of issues to include an issue on the question of title. In the absence of a prayer of declaration of title and an issue regarding title, let alone the pleadings required for a declaration of title, the parties cannot be said to have an opportunity to have a full-fledged adjudication regarding title.

29. We, therefore, allow this appeal, set aside the judgment of the High Court and dismiss the suit. Nothing stated herein or by the courts below shall be construed as expression of any opinion regarding title, in any future suit for declaration and consequential reliefs that may be filed by the Appellants, in accordance with law. Parties to bear their respective costs.”

10. In the case of ***M/s South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and Others*** reported in ***AIR 2009 SC 117***, the Hon'ble Supreme Court has dealt with the question of allowing or



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rejecting the prayer for amendment of pleadings, when the plea of limitation was taken by one of the parties in the suit and the relevant passages are extracted hereunder:

8.

" It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice."

9. Again in *T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors.* [(2004) 3 SCC 392 this Court observed as follows:

" The law as regards permitting amendment to the plaint, is well settled in L.J. Leach and Co. Ltd. v. Jardine Skinner and Co., it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But this is a factor to be taken into account in exercise of the discretion



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as to whether amendment should be ordered, and does not affect the power of the court to order it. It is not disputed that the appellate court has a coextensive power to the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law."

10. From the above, therefore, one of the cardinal principles of law allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interest of justice . In Ragu Thilak D.John vs. S. Rayappan & Ors. [2001 (2) SCC 472], this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself. In a decision in Vishwambhar & Ors. vs. Laxminarayan (Dead) through Lrs. & Anr. [(2001) 6 SCC 163], this Court held that the amendment though properly



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made cannot relate back to the date of filing of the suit, but to the date of filing of the application. Again in Vineet Kumar vs. Mangal Sain Wadhera [AIR 1985 SC 817] this Court held that if a prayer for amendment merely adds to facts already on record, the amendment would be allowed even after statutory period of limitation.”

11. In the case on hand, as already pointed out, the learned trial Judge, by specifically holding that the proposed amendment is barred by time, has rejected the proposed amendment and as such, the same is not in accordance with the legal position above referred. Hence, this Court has no hesitation to hold that the impugned order is legally not sustainable and the same is liable to be set aside.

12. In the result, this Civil Revision Petition is allowed and the impugned order dated 21.03.2017 passed in I.A.No.1272 of 2016 in O.S.No.58 of 2011 is hereby set aside. After amendment to the plaint, the learned District Munsif, Aranthangi, is directed to frame an issue with regard to the plea of limitation and consider the same along with other issues. Since the suit is pending from 2011 onwards, the learned District Munsif, Aranthangi, is directed to complete the trial in O.S.No.58 of 2011



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and dispose of the same within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

28.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif,
Aranthangi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2434 of 2018
and
C.M.P.(MD)No.10840 of 2018

Dated : 28.03.2024