



*C.R.P.(MD)No.2503 of 2018*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 27.02.2024

Pronounced on : 28.03.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.2503 of 2018

and

C.M.P.(MD)No.11045 of 2018

S.Maheswaran

... Petitioner

Vs.

1. K.Thavasianandam

2. K.Selvam

... Respondents

**Prayer** : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 14.08.2018 made in I.A.No.345 of 2018 in O.S.No.409 of 2012 on the file of Additional District Munsif, Srivilliputtur and allow the present civil revision petition.

For Petitioner : Mr.M.Vijayarathinam

For R1 : Mr.B.Rajesh Saravanan

For R2 : No appearance



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### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.345 of 2018 in O.S.No.409 of 2012 dated 14.08.2018 on the file of the Additional District Munsif Court, Srivilliputtur, allowing the application filed under Order 6 Rule 17 of the Code of Civil Procedure.

2. The revision petitioner is the second defendant, the first respondent is the plaintiff and the second respondent is the first defendant. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

3. The plaintiff has filed the suit in O.S.No.409 of 2012 against the first defendant claiming permanent injunction restraining the first defendant and his men from laying any pathway or trespassing or from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Pending suit, One Maheswaran, by alleging that after laying the pathway, he has been enjoying the same and hence, he has to be impleaded as a defendant, has filed an application in I.A.No.136 of 2013 and as per the order passed by the trial Court, he was impleaded as second



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defendant. The defendants have filed written statement and are contesting the suit. When the suit was pending for trial, the plaintiff has filed the present application in I.A.No.345 of 2018 under Order 6 Rule 17 C.P.C. seeking permission to amend the plaint as detailed in the application. The second defendant has filed a counter statement raising serious objections. The learned trial Judge, after enquiry, has passed the impugned order dated 14.08.2018 permitting the proposed amendment. Aggrieved by the impugned order, the second defendant has preferred the present revision.

4. The case of the plaintiff, in the affidavit filed in support of the amendment application, is that he has filed an application for appointment of Advocate Commissioner in I.A.No.2325 of 2012 along with the plaint, that the trial Court has appointed an Advocate Commissioner, that the defendants, after the receipt of suit summons, on that night itself by filling up red sand over the portion shown as ABEF in the rough plan, have laid a pathway illegally, that the Advocate Commissioner has also mentioned about the laying of new pathway in the property, that the defendants have encroached a portion measuring 14½ feet East-West and 108 feet North-South, that since they have also disputed the rights of the plaintiff in the



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said portion and in view of the laying of pathway subsequent to the suit, the plaintiff was constrained to file the above application to amend the plaint for including the prayer for declaration and for mandatory injunction, that the proposed amendment will not change the nature and character of the suit, that no prejudice will be caused to the other side and that it has become just and necessary to amend the plaint or else the plaintiff will be put to loss and hardship.

5. The second defendant has filed the counter statement stating that vendor of the plaintiff has already executed a gift settlement deed in respect of the ABEF portion measuring 14½ feet length and 108 feet breadth in favour of the second defendant and the common public, that the plaintiff, after fully knowing about the same, has purposely given wrong boundaries, that since the decree already passed in the earlier suit with respect to the ABEF portion is binding on the plaintiff, the amendment application is hit by doctrine of *res judicata*, that the present application has been filed only to avoid the plea of limitation and to avoid filing of separate suit and that the application is liable to be dismissed.



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6. As already pointed out, the plaintiff has claimed the permanent injunction in respect of the suit property restraining the defendants from laying any pathway and from encroaching or interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

7. The main contention of the plaintiff is that subsequent to the filing of the suit, they have encroached portion of the property and laid the pathway. But according to the second defendant, the said portion of the property, for which, declaration and mandatory injunction is now sought for, is not belonging to the plaintiff and that the said property has been used as a common pathway by the general public, agriculturist and traders of Krishnankovil village of Villuppanoor.

8. As rightly pointed out by the learned counsel appearing for the plaintiff, the defendants in their written statement have also taken a stand that Thaipooosam festival maintenance work was in progress in the suit pathway. As rightly contended by the learned counsel appearing for the plaintiff and as rightly observed by the learned trial Judge, the Advocate Commissioner has specifically observed that he noticed a newly laid red



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sand pathway and also found traces of using JCB and using JCB bulldozer for laying the pathway. Whether the pathway laid by the defendants was in existence even prior to the suit or whether the pathway has been laid subsequent to the suit is a matter to be decided at the trial.

9. As rightly contended by the learned counsel appearing for the plaintiff, the second defendant has also not taken any specific plea with regard to limitation, but only canvassed a stand in the counter statement that the above application has been filed only to avoid the plea of limitation. Even assuming for arguments sake that the second defendant has taken the plea of limitation alleging that the suit was filed in the year 2012 and that the written statement was filed in the year 2013 and as such, the proposed amendment claiming declaration of title and mandatory injunction, which came to be filed in 2018 is barred by time, the same also cannot be gone into at this stage.

10. 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*, reported*



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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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*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.”*

11. 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.”*

12. 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.”*

13. 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.”*

14. In the case on hand, the learned trial Judge, by referring to the averments raised in the written statement and Commissioner's report, has specifically observed that the proposed amendment is not barred by limitation. Considering the legal position above referred, such a finding cannot be given at this stage and hence, the finding of the trial Court that the proposed amendment is not barred by time is liable to be set aside. But however, considering the facts and circumstances of the case and also the legal position above referred, the impugned order permitting the proposed amendment cannot be found fault with.

15. However, today, when this case is taken up for pronouncing orders, the learned counsel appearing for the revision petitioner would submit that the suit itself was disposed of on 21.03.2024 and he has also filed a Memo dated 27.03.2024 to that effect. Since this Court has already



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decided to confirm the impugned order and now taking note of the fact that the suit in O.S.No.409 of 2012 was disposed of, this Court has no other option but to dismiss the revision as infructuous.

16. In the result, this Civil Revision Petition is dismissed as infructuous. Consequently, connected Miscellaneous Petition is closed. No costs.

**28.03.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
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**To**

1. The Additional District Munsif,  
Srivilliputtur.
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**  
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and  
C.M.P.(MD)No.11045 of 2018

**Dated : 28.03.2024**