



S.A(MD)Nos.473 and 474 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 04.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)Nos.473 and 474 of 2017
and
Cross.Obj.(MD)Nos.1 and 2 of 2018
and
C.M.P(MD)No.10031 of 2017

S.A(MD)Nos.473 and 474 of 2017

1.Muniyandi (Died)	... Appellant/Appellant/ Defendant in both SAs
2.M.Lakshmi	
3.M.Rohini	
4.M.Rajasekaran	
5.M.Natarajan	
6.Mahalakshmi	
7.Maheswari	
8.M.Jothirani	... Appellants 2 to 8/ LRs of 1 st Appellant in both SAs

(Appellants 2 to 8 brought on record as LR's of deceased sole appellant vide order dated 28.04.2016 made in M.P(MD)Nos.4 to 6 of 2015 in S.A(MD)SR.No.19595 of 210)

Vs.



S.A(MD)Nos.473 and 474 of 2017

1.Krishnaveni (Died)

... Respondent/Respondent/
Plaintiff in both SAs

2.Vanniya Perumal @ Perumal

3.Kalai Arasi

4.Ganesan

5.Gandhi Murugan

6.Panchavarnam

... Respondents 2 to 6/
LRs of 1st Respondent in both SAs

7.Pushpa

8.Minor Praveen Kumar

9.Minor Manisha

... Respondents 7 to 9/
LRs of 4th Respondent in both SAs

(Respondents 2 to 6 herein brought on record as LR
of the deceased sole respondent (Krishnaveni) vide
order, dated 28.04.2016 made in M.P.No.1 of 2011
in S.A(MD)SR.No.19595 of 2010)

(Respondents 3, 5, 6 & 7 are represented by their
Power of Attorney Vasanthi vide Court order, dated
22.08.2017 in C.M.P(MD)No.7255 & 7256 of 2017
in S.A(MD)SR.Nos.19595 & 19596 of 2010)

COMMON PRAYER:-

These Second Appeals are filed under Section 100 of the Civil Procedure Code against the common judgment and decree passed in A.S.No. 93 and 112 of 2006 on the file of the Sub Court, Sivagangai, dated 14.08.2007, confirming the judgment and decree passed in O.S.No.42 of 2000 on the file of the Additional District Munsif, Sivagangai dated 05.09.2005.



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In Both Second Appeals:-

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For Appellants	: Mr.R.Sundar Srinivasan
R1 & R4	: Died
For R2, R3, R5 to R7	: Mr.S.Srinivasa Raghavan
R8 & R9	: Minors

Cros.Obj(MD)Nos.1 and 2 of 2018

- 1.Krishnaveni (Died)
- 2.Vanniya Perumal @ Perumal
- 3.Kalai Arasi
- 4.Ganesan
- 5.Gandhi Murugan
- 6.Panchavarnam
- 7.Pushpa
- 8.Minor.Praveen Kumar
- 9.Minor. Manisha

... Cross Objectors in
both Cros.Obj.

Vs.

- 1.Muniyandi (Died)
- 2.M.Lakshmi
- 3.M.Rohini
- 4.M.Rajasekaran
- 5.M.Natarajan
- 6.Mahalakshmi
- 7.Maheswari
- 8.M.Jothirani

... Respondents in
both Cros.Obj.



S.A(MD)Nos.473 and 474 of 2017

COMMON PRAYER:- Cross Objections filed under Order XLI Rule 22 of Civil Procedure Code, to set aside the common judgment and decree dated 14.08.2007 made in A.S.Nos.93 and 112 of 2006 on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 05.09.2005 made in O.S.No.42 of 2000 on the file of the Additional District Munsif Court, Sivagangai, insofar as restricting the title of cross objectors only for half of the suit property is concerned and allow this cross objection.

In Both Cross Objections:-

For Cross Objectors : Mr.S.Srinivasa Raghavan

For Respondents : Mr.R.Sundar Srinivasan

COMMON JUDGMENT

These Second Appeals in S.A(MD)Nos.473 and 474 of 2017 are filed against the common judgment and decree, dated 14.08.2007 passed in A.S.No.93 and 112 of 2006 on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 05.09.2005 passed in O.S.No.42 of 2000 on the file of the Additional District Munsif Court, Sivagangai.

2. The respondent/plaintiff has filed Cross Objection(MD)Nos.1 and 2 of 2018 in S.A.(MD)Nos.473 and 474 of 2017.



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3. The appellant is the defendant and the respondent is the plaintiff in O.S.No.42 of 2000 on the file of the Additional District Munsif Court, Sivagangai.

4. The respondent/plaintiff filed the suit for declaration that she is entitled to the suit property measuring 3 cents and for permanent injunction restraining the defendant not to disturb her possession and enjoyment of the suit property.

5. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.42 of 2000 on the file of the Additional District Munsif Court, Sivagangai.

6. Case of the plaintiff: (Case of the Plaintiff Krishnaveni)

The suit property is measuring 3 cents in S.No.108/4 of Idayamelur village of Sivagangai Taluk. The suit property is the self acquired property of one Natarajan, who is the father of the defendant. The plaintiff purchased the suit property by way of oral sale in the year 1973 from Natarajan by paying proper sale consideration. The said Natarajan executed a sale deed,



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dated 26.02.1986. The plaintiff has been enjoying the suit property from 1973 by running a grocery shop in a portion. That shop was given a door number, property tax assessment and electricity service connection. The plaintiff constructed a house at 3/4 cent leaving 2 1/4 cent. When she along with her husband went to Andhaman, asked her sister, the power agent herein, to maintain the suit property. Taking advantage of the plaintiff's absence the defendant encroached 1 1/2 cent and constructed a house and also tried to encroach the rest portion of 3/4 cent. The plaintiff and her sister, power agent herein, have been enjoying the suit property beyond the statutory period, they are entitled to prescriptive title.

7. Case of the Defendant: (Case of Defendant Muniyandi)

The suit property originally belonged to the father of the defendant namely Natarajan. The plaintiff Krishnaveni and her husband came as refugees and asked the defendant's father to run a grocery stall for rent. Accordingly, they were permitted to run grocery shop by putting tiled shed for monthly rent of Rs.150/-. As the business was not run effectively, they returned to Andhaman. After a few months, the plaintiff's sister, the power agent herein, asked permission from the father of the defendant to continue



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the shop and she was permitted. In this circumstance, the suit property was partitioned among the children of Natarajan and the suit property was allotted to the defendant. As the suit property was in need of personal use, on demand, the plaintiff sought time to remove the shed and hand over possession of the same, but the plaintiff failed to do so. The plaintiff never enjoyed the suit property on her own title, she was in possession for running a grocery stall as a tenant. The suit is liable to be dismissed.

8. Originally during trial of O.S.No.42 of 2000, on the plaintiff's side, seven witnesses were examined and marked 27 exhibits as Ex.A.1 to Ex.A.27. On the defendant's side, six witnesses were examined as D.W.1 to D.W.6 and Ex.B.1 to Ex.B.11 were marked and also Ex.C.1 to Ex.C.3 marked. The suit was disposed on 28.03.2001 and challenging the same A.S.No.9 of 2002 was preferred. While disposing appeal, the first Appellate Court remanded the case as the plaintiff wanted to produce sale deed. After remand, Ex.A.28 was marked.

9. After hearing both sides, the learned Additional District Munsif, Sivagangai concluded that the plaintiff is entitled to 1 ½ cent by adverse



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possession and the defendant is entitled to 1 ½ cent as a legal heir of Natarajan and accordingly suit was partly decreed and partly dismissed by passing judgment and decree, dated 05.09.2005.

10. Aggrieved by the judgment and decree in O.S.No.42 of 2000, the plaintiff preferred the Civil Appeal in A.S.No.93 of 2006 and the defendant preferred the Civil Appeal in A.S.No.112 of 2006 before the Sub Court, Sivagangai. The first Appellate Court after hearing both and after perusing material records of the case dismissed both the appeals in A.S.Nos.93 of 2006 and 112 of 2006 by passing common judgment, dated 14.08.2007 and confirmed the judgment and decree passed in O.S.No.42 of 2000 and also remanded the matter with liberty to the plaintiff to file a petition for appointment of advocate/commissioner to demarcate 1 ½ cents from the suit property and allot the same to the plaintiff.

11. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred these Second Appeals in S.A(MD)Nos. 473 of 2017 and 474 of 2017 and the same have been admitted on 08.11.2017 by framing the following substantial questions of law.



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"1. Whether the Courts below are correct in holding that the respondent is having the adverse possession in the suit property without pleadings, warrants interference or not?

2. Whether the Courts below are correct in holding the respondent is having the adverse possession of 1 ½ cents in the suit property, when the respondents has claimed the title over the suit property through the oral sale in the year 1973 and the registered sale deed dated 26.02.1986 warrants interference?

3. Whether the Courts below has failed to consider the evidence of D.W.1 to D.W.6 by corroborating the respondent was only tenant for the rent of Rs.150/- under the appellant or not?

4. Whether the Courts below have appreciated the documents marked on the side of the appellant especially Ex.B.1, B.2, B.3 and B.6."

After filing Second Appeals, the plaintiff has filed Cross Appeals in Cross.Obj(MD)Nos.1 and 2 of 2018.

12. Heard both sides and both sides have submitted their written arguments and also advanced oral arguments.

13. The learned counsel for the appellant/defendant has submitted that the suit property originally belonged to the father of the defendant.



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The plaintiff's case is that the plaintiff purchased the suit property by way of oral sale in the year 1973 and also through Ex.A.28 an unregistered sale deed, dated 26.02.1986. Originally, the suit was dismissed by the trial Court as the plaintiff has not proved her title. Upon appeal preferred by the plaintiff, the case was remanded and the plaintiff has marked the unregistered sale deed, dated 26.02.1986 as Ex.A.28 subject to objection. Though the trial Court correctly held that the oral sale and Ex.A.28 sale are not proved, but held that the plaintiff is entitled to 1 ½ cents in the suit property by adverse possession. The plaintiff has not pleaded adverse possession. Both the Courts below erred in observing that the defendant is residing in the suit property and the plaintiff has constructed a tiled shed and has been in possession with the knowledge of the defendant. The Courts below have not appreciated the evidence adduced by the defendant that the plaintiff is a refugee and she was permitted by the father of the defendant to run a grocery stall on monthly rental basis. The trial Court has not taken into consideration of the necessary ingredients of adverse possession. It is settled law that when a party seeks adverse possession, there must be specific pleading in the plaint. In this case, the plaintiff has not pleaded any adverse possession regarding the starting point of possession, when it became



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adverse and when the owner was put on notice about the alleged animus and when the statutory period expired to find that the title has been prescribed by adverse possession. The plaintiff has not proved prescribed title for 1 ½ cents by way of adverse possession. Further, the first Appellate Court reiterated the finding of the trial Court and passed the decree for demarcation by remitting the matter to the trial Court, which is complete miscarriage of justice and also is not in conformity with the parameters prescribed under Order 41 Rule 23 of the Civil Procedure Code. The findings of the Courts below are perverse and contrary to the settled principle of law. The plaintiff filed the cross objection as to Ex.A.28. The trial Court has correctly held that the said Ex.A.28 is a fake one, the name of the vendor is corrected and also Ex.A.28 is an unregistered one. The trial Court has also held that the oral sale pleaded by the plaintiff is not proved. So, the Second Appeal may be allowed and the cross objections may be dismissed.

14. In support of his argument, the learned counsel for the defendant has relied on the following citations:

"(i) Judgment of the Hon'ble Supreme Court in Civil Appeal No.1196 of 2007 dated 23.09.2008.



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(ii) Decision in C.R.P(MD)No.1493 of 2011 dated 02.06.2020 by the Madurai Bench of Madras High Court.

(iii) Decision in S.A.No.1066 of 2011 dated 28.06.2012 by the High Court of Madras."

15. Per contra, the learned counsel for the plaintiff has contended that the plaintiff has purchased the suit property from the father of the defendant in the year 1973 and she got an unregistered sale deed, dated 26.02.1986, marked as Ex.A.28. The plaintiff has examined witnesses to prove her case. Though the trial Court held that the unregistered sale deed was invalid, the first Appellate Court rightly found a title to the suit property subject to payment of stamp duty penalty in accordance with law. So, the first Appellate Court has correctly remanded the matter for complete adjudication. The trial Court has correctly held that the defendant failed to prove the tenancy of the plaintiff. The plaintiff is in long possession of the suit property with the knowledge of the defendant. The Courts below correctly held that the plaintiff proved her title over 1 ½ cents in the suit property, but, failed to consider Ex.A.28, through which the plaintiff has proved the purchase of entire three cents of the suit property. The first Appellate Court correctly remanded for demarcation of property of the plaintiff marked by



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advocate/commissioner as “DEFC” with the assistance of revenue officials.

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The first Appellate Court correctly held that the plaintiff is entitled to 1 ½ cents and remanded only to demarcate the plaintiff’s property.

The plaintiff is enjoying the suit property measuring 3 cents by running a grocery shop from the year 1973 and also she has been paying property tax and having separate electricity service connection. The Courts below correctly held that the defendant has not objected for those payment of property tax and electricity consumption charges in the name of the plaintiff for grocery shop in the suit property. The plaintiff has right to claim adverse possession. The plaintiff is not in permissive possession. The defendant has not proved partition as alleged by him and he is an encroacher of 1 ½ cents as held by the Courts below. So, the plaintiff is entitled to 3 cents of suit property. The plaintiff’s suit for declaration and injunction is maintainable when the plaintiff perfected title by adverse possession. In support of his argument, the learned counsel for the plaintiff relied on citation reported in **2019 (4) CTC 936 (Ravinder Kaur Grewal & Ors. /v/ Manjit Kaur & Ors.)**.



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16. Heard both sides arguments and perused the written arguments and material records of the case.

17. Upon hearing both and upon perusal of material records, it is admitted that the suit property originally belonged to one Natarajan, who is father of the defendant. The plaintiff states that she purchased the suit property orally in the year 1973 and subsequently got sale deed on 26.02.1986. It is her further case that she has been enjoying the suit property by running a grocery shop. The defendant case is that the plaintiff was permitted to run a shop in the suit property by his father on monthly rental basis. On perusal of evidences adduced by both sides, the defendant has not proved that the plaintiff was inducted as tenant by his father. The trial Court has correctly appreciated the evidence of defendant/D.W.1 who admitted in his cross examination as follows:

“என் தகப்பனார் தாவாயிடத்தை
கிருஷ்ணவேணிக்கு தரை வாடகைக்கு விட்டார்
என்பதை காட்ட என் தரப்பில் யாதொரு
ஆவணமும் தாக்கல் செய்யவில்லை. என்
தகப்பனார் இறந்த பின்னர் வாடகை
வாங்கவில்லை ..”

So, the defendant himself admitted that there is no document to show that the plaintiff was enjoying the property as tenant.



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18. On perusal of Ex.A.2, Ex.A.3 shows the payment of tax to the Panchayat. The plaintiff had service connection in her name for the building in the suit property and she has made payment of electricity consumption charges as seen from Exs.A.5, A.6, A.9 and A.10 as correctly held by the trial Court. Further on perusal of the judgments of the Court below, the defendant has not raised any objection for payment of property tax and electricity service connection by the plaintiff in her name for running a grocery shop in the suit property. The plaintiff states that she is in possession from the year 1973, which is proved by Ex.A.2, Ex.A.3 and Ex.A.4 which are property tax receipts from the year 1973. Even as per evidence of defendant/D.W.1, he has not received any rent from the plaintiff. So, the plaintiff has proved her long possession and enjoyment of the suit property.

19. It is the case of the defendant that the plaintiff has not taken a stand regarding adverse possession and has not pleaded such averments, but the Courts below held that the plaintiff has perfected title to 1 ½ cents by adverse possession. On perusal of plaint averments, it is averred in paragraph No.4 as follows:

“மேற்படி சொத்தையும் வாதியின் சகோதரி
கிருஷ்ணவேணி தகுந்த பிரதிபிரயோசனமாக 1973ம்



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ஆண்டு முதலே தாவாசொத்தை தொடர்ந்து கிருஷ்ணவேணியே அனுபவித்து வந்தார். பின்னிட்டு கிருஷ்ணவேணி அந்தமான் சென்றது முதல் இந்த வாதியே தொடர்ந்து தாவா சொத்தில் இருந்த பலசரக்கு கடையில் குடியிருந்து பக்கத்தில் டீக்கடை தொழில் நடத்தியும் மீதமுள்ள காலி இடத்தில் புழங்கியும் அனுபவித்து வருகிறார். எனவே. தாவா சொத்தையும் கிருஷ்ணவேணியும் பின்னிட்டு இந்த வாதியும் சட்ட காலத்திற்கு மேல் அனுபவித்து வருகிறார். வாதிக்கும் தாவா சொத்தில் **Prescriptive** பாத்தியமும் சித்தித்துள்ளது.....”

From the above pleadings, the plaintiff impliedly pleaded that she has perfected prescriptive title by long possession and enjoyment with the knowledge of defendant. The defendant has not specifically denied the same. Apart from that the defendant so far not taken any proceedings to evict the plaintiff. Moreover, the plaintiff pleaded only a defective title through oral sale which itself can be taken for her entry point of possession to the knowledge of defendants and his family. So, the citations relied on by the defendant are not applicable to the facts and circumstances of the case. The citation relied on by the plaintiff is applicable to the facts of the case.



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20. On perusal of records, the Courts below correctly found that the plaintiff is in possession and enjoyment of 1 ½ cents marked as “DEFC” and the defendant is in possession of 1 ½ cents marked ‘ABEF’ as per the Ex.C.3 advocate commissioner’s report. According to the plaintiff, the defendant has encroached and constructed a house in 1 ½ cents and admitted the same in Ex.A.19. So, the plaintiff has perfected title only for 1 ½ cents in the suit property by way of adverse possession as rightly held by the trial Court.

21. On perusal of records, the plaintiff has stated that the defendant encroached 1 ½ cents in the suit property and he is in possession of 1 ½ cents as seen from Ex.A.19, which is a third party affidavit filed by the plaintiff. Though the defendant failed to prove that the suit property was allotted to him in his family partition, the plaintiff admitted that he is in enjoyment and possession of the 1 ½ cents in the suit property, which is admittedly belonged to his father. The first Appellate Court has remanded the case to the trial Court to demarcate actual physical measurement by filing the petition for advocate/commissioner with the assistance of revenue official. The first Appellate Court correctly held as per Ex.C.3 - commissioner report the parties are in respective portions marked as ‘ABEF’ and “DEFC”, as the



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commissioner report is only shown the possession of portion and it can not be done with correct measurement of possession of the parties and it can be done only by revenue official. There is nothing wrong in it as both the Courts below rightly held that the plaintiff and defendant are having title 1 ½ cents each.

22. The defendant's argument that since the matter was remanded back, the Second Appeal will not lie and only the Civil Miscellaneous Appeal lie is not tenable. Because the first Appellate Court passed a judgment in the appeal suit and conclusively determined the parties rights to the suit property. When the rights are conclusively determined and a decree is passed in the appeal then the course open to the parties are to prefer Second Appeal. Further, the defendant also filed Cross Appeal, then she cannot legally object the maintainability of preferring appeal.

23. As rightly held by the Courts below, Ex.A.28 is not a valid document in the eye of law and further, the trial Court has correctly discussed about Ex.A.28 that the signature of Natarajan is found corrected and overwritten and so, the same is a fake one. Further, the plaintiff has not



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established oral purchase by adducing acceptable evidence as rightly held by the Courts below. Even otherwise property valued more than Rs.100/- can not be transferred orally. Hence, the plaintiff has not established her case in the cross objections filed by her.

24. It is a settled proposition of law that after giving concurrent findings by the Courts below, the High Court can not interfere with the concurrent findings of the Courts below, except upon some exceptions, as held by the Hon'ble Supreme Court in the case of **Nazir Mohamed v. J.Kamala** reported in **(2020) 19 SCC 57**, held as follows:

“37.4 The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognized exceptions are where: (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence,



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taken as a whole, is not reasonably capable of supporting the finding.”

But, in this case, the concurrent findings of the Court below do not fall in the above criteria. Both the Courts below correctly appreciated the evidences adduced on both sides and correctly came to conclusion that the plaintiff failed to establish her case.

25. From the above facts and circumstances conjoined with evidences oral and documentary adduced in this case, the Courts below recorded concurrent finding. The said findings need not be interfered by this Court by way of Second Appeal. Hence, the questions of law framed in these Second Appeals are answered against the appellant/defendant. Thus, these Second Appeals and Cross Objections fail.

26. Therefore, the remand order of 1st Appellate Court that the plaintiff is at liberty to file petition for appointment of advocate/commissioner to measure the 1 ½ cents marked as DEFC in Ex.C2 – commissioner's report and allot the said 1 ½ cents to the plaintiff, since the same does not bear correct measurement and to that effect the suit was remanded back to the trial



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Court is upheld. There is nothing wrong in its decision. At this juncture, the learned counsel for the plaintiff has submitted that the trial Court may be directed to carry out the decretal order of the first Appellate Court on filing appropriate petition by the plaintiff. In the facts and circumstances of the case, the submission of the learned counsel is accepted in the interest of justice. Hence, there would be a direction to the trial Court to carry out the decretal order of the 1st Appellate Court on filing petition by the plaintiff.

27. In the result, the Second Appeal (MD)Nos.473 and 474 of 2017 are dismissed. The Cross Objection(MD)Nos.1 and 2 of 2018 are also dismissed. The common judgment and decree, dated 14.08.2007 passed in A.S.No.93 of 2006 on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 05.09.2005 passed in O.S.No.42 of 2000 on the file of the Additional District Munsif Court, Sivagangai remanding the suit in O.S.No. 42 of 2000 to the trial Court for allotting 1 ½ cents as per Ex.C.2 to the plaintiff granting liberty to the plaintiff to file petition for appointment of advocate/commissioner is confirmed. The plaintiff is permitted to file a petition seeking such allotment of 1 ½ cents in the suit property. The trial Court is directed to carry out the decision of the I Appellate Court for



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allotting 1 ½ cents marked as DEFC in Ex.C.2 – Commissioner's report on filing petition by the plaintiff. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.10.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Sub Court,
Sivagangai.
- 2.The Additional District Munsif Court,
Sivagangai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
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and
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