



S.A. No. 1086 of 2008

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 1086 of 2008

and

M.P.No. 1 of 2008

1. D.Yasotha
2. Mohanraj

... Appellants

Vs.

M.Pappayee (died)

K.Murugan (died)

3. M.Radha
4. M.Jaganathan
5. M.Rameshkumar,

(respondents 2 to 5 brought on record as
LRs of deceased sole respondent vide
court order dated 12.06.2019 made in
M.P.No. 1 of 2011)

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil

Procedure, praying to set aside the judgment and decree dated 22.08.2005



S.A. No. 1086 of 2008

WEB COPY

passed in A.S.No.86 of 2004 on the file of II Addl. Sub-Court, Coimbatore reversing judgment and decree dated 10.09.2004 passed in O.S.No.1796 of 1999 on the file of III Addl. District Munsif Court, Coimbatore.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.N.Damodaran for R2 to R5

JUDGMENT

The appellants herein are the plaintiffs filed the suit in O.S.No.1796 of 1999 on the file of III Addl. District Munsif Court, Coimbatore filed against the defendant seeking for the relief of declaration and permanent injunction. On hearing both sides, the trial judge decreed the suit in favour of plaintiff. Against which, the defendant preferred an appeal in A.S.No. 86 of 2004 on the file of II Addl. Subordinate Judge, Coimbatore, wherein the first appellate judge independently analysed the facts and evidence on record, allowed the appeal by setting aside the findings of trial judge. Challenging the said reversal findings of the first appellate court, the plaintiffs preferred this Second Appeal.



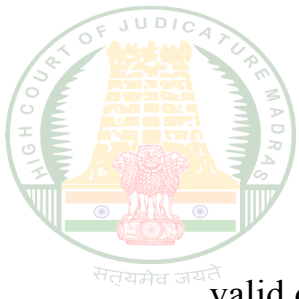
S.A. No. 1086 of 2008

WEB COPY

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. Before the trial court, minor plaintiffs represented by their guardian mother filed the original suit for declaration praying to declare that the Will dated 16.05.1994 is true and valid and the same is binding on both plaintiffs and defendant and also restraining the defendant not to cause interference with the peaceful possession and enjoyment of suit property against the defendant Pappayee. The said Pappayee contested the suit stating that the Will relied on by the plaintiff said to be executed by her mother Chinnammal was cancelled by herself and she executed a second Will dated 04.08.1995. Thereafter, the second Will also been cancelled and finally, Chinnammal executed a Will in favour of this defendant on 29.07.1997 bequeathing entire suit property in her favour. Hence, she prayed to dismiss the suit.

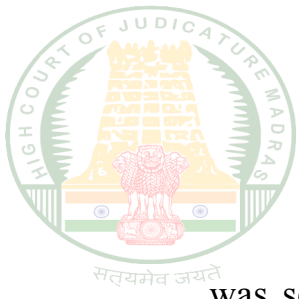
4. Before the trial court, both parties adduced evidence and on hearing both sides, the trial judge framed an issue “whether the plaintiff is entitled for the relief of declaration?” and also framed another issue “whether the Will relied on by the defendant dated 29.07.1997 is true and



S.A. No. 1086 of 2008

valid one?".
WEB COPY

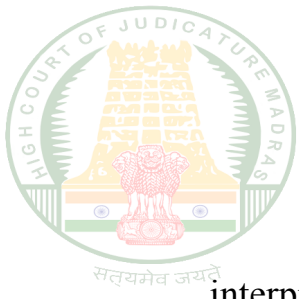
5. On the side of plaintiff, witnesses P.W.1 and P.W.2 were examined and the documents Ex.A1 and Ex.A2 were marked. On the side of defendants, D.W.1 to D.W.9 were examined and the documents Ex.B1 to Ex.B14 were marked. Considering the evidence on record, the trial judge held that the suit property belong to Testator Chinnammal and she executed a Will in favour of her son's children, who are the plaintiffs herein on 16.05.1994 by appointing their father as guardian. Thereafter, the said Thangavelu, father of minor plaintiffs was died. After that, the activities of daughter-in-law was changed. Therefore, the trial judge considering the evidence on record, held that the Will relied on by the defendant has not been proved nor any explanation was offered to give the property entirely in favour of defendant ignoring other legal heirs, besides, the said Chinnammal was seriously ill and admitted in hospital. At that time, the third Will relied on by the defendant marked as Ex.B9 was said to be executed. But, the attesting witnesses D.W.3 and D.W.4 have not clearly stated that they have seen a thumb impression affixed by the testator. That apart, the Doctor, who gave treatment to Chinnammal also stated that she



S.A. No. 1086 of 2008

WEB COPY

was seriously ill and her conscious was also been disturbed and she had undergone surgery for amputation. So, at that time, the said Will was not said to be executed with sound state of mind (Ex.B9). Accordingly, the trial judge held that the Will relied on by the defendant is not true and valid one, on the other hand, the Will relied on by the plaintiffs admitted by all the parties as true and valid one. Therefore, the suit was decreed as prayed for. Challenging the said findings, the defendant preferred an appeal in A.S.No.86 of 2004, wherein the first appellate judge independently analysed entire evidence as well as oral and documentary evidence and finally held that during the life time of Chinnammal, she cancelled the Will relied on by the plaintiffs dated 16.05.1994 by issuing a notice and the same was also been admitted by P.W.1 during the cross-examination. Thereafter, there was a misunderstanding between Testator Chinnammal and daughter-in-law, hence, she cancelled the earlier Will and executed a second Will on 16.08.1995 marked as Ex.A6, but the same was not been objected by the plaintiffs. Furthermore, the Will Ex.B9 was cancelled by testator Chinnammal executed in favour of defendant on 29.07.1997, at that time, she was in sound state of mind, but the trial judge erroneously



S.A. No. 1086 of 2008

WEB COPY

interpreted the evidence of Doctor and wrongly held that Chinnammal was not in sound state of mind as such is liable to be set aside. Therefore, the findings to that effect is liable to be set aside and finally concluded that the Will relied on by the defendant Ex.B9 is proved. Accordingly, the plaintiffs entitled for the relief is not sustainable one, thereby, the findings of trial judge was set aside and the Appeal was allowed. Challenging the reversal findings of first appellate court, the plaintiffs preferred this Second Appeal by raising the following grounds :-

- (1) The lower appellate court ought to have seen that the plaintiffs/appellants are entitled to the relief sought for in the suit based on the Will dated 16.05.1994 marked as Ex.A1 admitted by defendant.
- (2) The lower appellate court ought to have seen that Ex.B6, B7 and B9 documents are not genuine and the same were made by the defendant to defeat the interest of plaintiffs.
- (3) The lower appellate court failed to note that the defendant who relied upon Ex.B6 and Ex.B9 subsequent Will said to have been executed by the deceased have not been proved in a manner

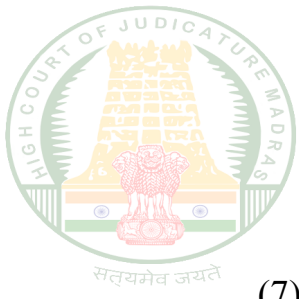


S.A. No. 1086 of 2008

WEB COPY

known to law.

- (4) The lower appellate court ought to have seen that ultimately the defendant claims title to the suit property under Ex.B9 Will and therefore, the onus is on her to prove Ex.B9 in a manner known to law. Admittedly, P.W.3 and P.W.4, who are attesting witnesses to Ex.B9 have categorically disposed that the said Chinnammal did not see them signing Ex.B9 as attesting witnesses.
- (5) The lower appellate court ought to have seen that in the absence of specific statement of the attesting witnesses as stated in the previous ground, the mandatory requirements as contemplated under Sec.63 of the Indian Succession Act is not complied with and consequently, the Will under Ex.B8 is not proved.
- (6) The lower appellate court totally failed to consider evidence of D.W.7 complied with the document marked under Ex.B14 in a proper perspective manner, since these crucial place of evidence discloses that the deceased was not on the same state of mind at the time of execution of Ex.B9.



S.A. No. 1086 of 2008

WEB COPY

(7) Equally the defendant has not proved Ex.B.7 also even assuming without admitting that she is entitled to same relief under the same. Here again the mandatory requirements under Sec.63 of Indian Succession Act is totally absent.

6. Considering the facts and circumstances and on considering submissions of learned counsel for appellants, this Second Appeal was admitted on the following grounds :-

- (a) Whether the lower appellate court erred in law in reversing the well considered judgment and decree of the trial court based on Ex.B9 Will, which has not been proved by the defendant/respondent as contemplated under Sec.63 of Indian Succession Act when admittedly the attesting witnesses to the said document have admitted that the testator has not seen them attesting the said Will under Ex.B9?
- (b) Whether the lower appellate court in law in dismissing the suit when admittedly the plaintiffs are given right under Ex.A1 Will dated 16.05.1994 and the same has not been denied or disputed



WEB COPY

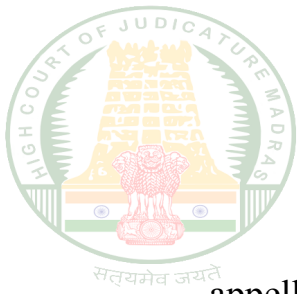


S.A. No. 1086 of 2008

by the defendant except claiming right by a subsequent Will under Ex.B9, which admittedly not proved in accordance with the mandatory requirements under Sec. 63 of Indian Succession Act?

7. The learned counsel for appellants/plaintiffs argue that at the time of execution of alleged Ex.B9 Will the testator Chinnammal was admitted in the hospital and she was not in sound state of mind, but the defendant with ill motive in order to grab the entire property, by herself fabricated the Will by affixing thumb impression in the document Ex.B9 by colluding with other witnesses, who are her sister and another sister's son, but the evidence of Doctor D.W.7, who gave evidence based on the discharge summary Ex.B14 clearly reveals that the testator Chinnammal was not in sound state of mind and her leg was also been severely amputated and she also undergone surgery and she suffered with chest pain, which clearly shows that Chinnammal was seriously ill and not with sound state of mind. Therefore, the alleged Will Ex.B9 relied on by the defendant is fabricated one. Though it was properly appreciated by the trial judge, but the first

9/22



S.A. No. 1086 of 2008

WEB COPY

appellate judge erroneously held that the Will was proved as such is totally perverse and liable to be set aside. Further he would argues that the Will relied on by the plaintiffs was admitted by all the parties including testator Chinnammal. Therefore, it does not require any roof. So, the trial judge granted the relief, but the same was erroneously appreciated by the first appellate court. Hence, they prayed to allow this Second Appeal.

8. By way of reply, learned counsel for respondent argues that the Will relied on by her Ex.B9 was proved as per manner known to law by examining one of attesor as well as to prove the registration of document, staff from the Registrar office was examined as D.W. 2 as well as medical records proved with the help of Doctor D.W.7 as well as Ex.B14, thereby the execution of Will as well as Testator's sound state of mind was proved and the same was rightly appreciated by the first appellate judge, but the lower court fails. Therefore, the findings rendered by the first appellate judge is sustainable one and also contended that Will relied on by the plaintiffs was already been cancelled during the life time of Testator herself and the same was intimated to the plaintiffs. Therefore, they are not entitled

10/22



S.A. No. 1086 of 2008

WEB COPY

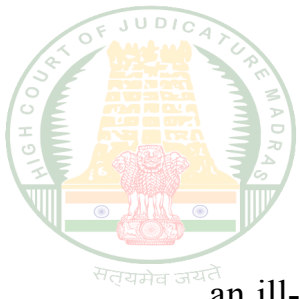
for any relief as prayed for. Hence, she prayed to dismiss this Second Appeal as no merit.

9. Heard and considered rival submissions of both learned counsel for appellants as well as respondent and perused the materials available on record.

10. Brief facts of the case is as follows :-

The suit property as described in the plaint schedule entirely belong to one Chinnammal, she had one son Thangavelu and three daughters viz., Lakshmi, Neelaveni and Pappayee. During the life time of Chinnammal, her son Thangavelu was died. His wife and children are his legal heirs, who are plaintiffs herein. The defendant herein is one of daughter of the said Chinnammal. The plaintiffs' case is that out of love and affection, Chinnammal executed a Will dated 16.05.1994 in favour of minor plaintiffs, who are her grandchildren born through her son Thangavelu by appointing the said Thangavelu, father of children as guardian. Thereafter, Thangavelu was died. Thereafter, her daughters/sisters of Thangavelu with

11/22



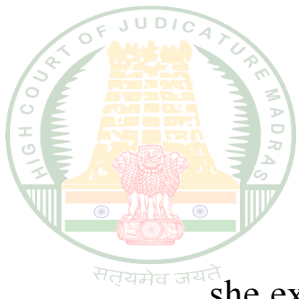
S.A. No. 1086 of 2008

WEB COPY

an ill-motive to grab the property without giving any share to the plaintiffs and gave ill-advise to their mother Chinnammal and attempted to dispossess from the property, except the property they have no other residence. The said Chinnammal died on 29.08.1997. Thereafter, the Will came into force. Subsequently, the defendant caused interference. Hence, they come forward with the suit for declaration as well as permanent injunction seeking to declare the Will dated 16.05.1994 is true and genuine.

11. The defendant contested the suit stating that her mother Chinnammal was ill-treated by the plaintiffs' mother Dhanalakshmi, daughter-in-law after the demise of Thangavelu and she took away original documents of the property without knowledge of Chinnammal. At her own decision, Chinnammal executed a Will and intimated to the plaintiffs. Thereafter, she executed another Will on 14.08.1995 by giving equal half share to the plaintiffs and the remaining half share to this defendant. Since there was unfair treatment suffered by Chinnammal from the plaintiffs, she executed the second Will and written a third Will dated 29.07.1997 bequeathing her entire property in favour of this defendant and voluntarily

12/22

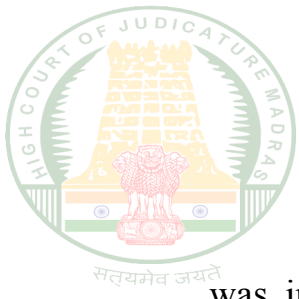


S.A. No. 1086 of 2008

WEB COPY

she executed the Will with sound state of mind. Thereafter, one month later Chinnammal died. As per the last Will, this defendant is the absolute owner of property, thereby she claimed lawful ownership. Before the trial court, both parties adduced the evidence, but the trial judge has held that third Will was not proved and the first Will is admitted one. Therefore, the plaintiffs are entitled for declaration. But the first appellate judge reversed the findings holding that the third Will is true and valid and the first Will was already cancelled. Therefore, the plaintiffs are not entitled for any relief.

12. The relationship between the parties are admitted. The deceased Thangavelu, who is son of testator Chinnammal. The defendant herein is the daughter of Chinnammal. As per Ex.A1 Will, the plaintiffs claimed that testator Chinnammal gave the entire property to the minor child. But the defendant contended that the first Will dated 16.05.1994 was already cancelled by her mother due to the ill-treatment made by daughter-in-law, mother of minor plaintiffs. During the trial, D.W.1 also admits that she received notice Ex.A3 from Chinnammal, through which she stated that she



S.A. No. 1086 of 2008

WEB COPY

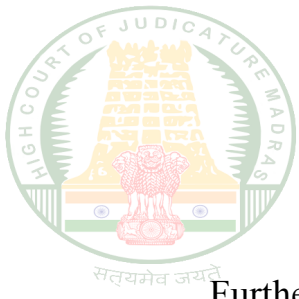
was informed that the Will dated 16.05.1994 Ex.A1 was cancelled. So, during the life time of Chinnammal, she executed a Will and also been intimated to plaintiffs' mother Dhanalakshmi. However, she has not challenged the attitude of Chinnammal after issuance of Ex.B3. Thereafter, the second Will Ex.B7 was executed in favour of both plaintiffs and given share in the suit property and remaining half share was given to the defendant on 14.08.1995 by revoking the earlier Will dated 16.05.1994 and the same was registered one. After that, again defendant contended that she cancelled a second Will and executed a third Will dated 29.07.1997 marked as Ex.B9. Based on that, the defendant claimed absolute right over the property. But on perusal of recitals of Ex.B9, it reveals that the defendant alone is the only daughter, but the testator had three daughters and one son, but no reason was assigned why other legal heirs are not given share in her property. Admittedly, testator was admitted in the hospital at the time of alleged execution of third Will. So, the burden is casted upon the defendant to prove Ex.B9 was executed by testator in a sound state of mind. For that she relied the evidence of D.W.4, one of the attesor, but he is the grandson of testator. He identified thumb impression in the Will that it belongs to his



S.A. No. 1086 of 2008

WEB COPY

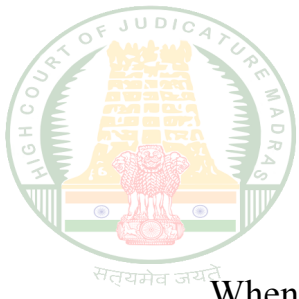
grandmother, but he has not deposed that he has seen thumb impression affixed by the testator. As per the evidence of scribe D.W.9, she deposed that Will was written in her office. The attestor D.W.4 deposed that his grandmother/testator directed D.W.3 to bring the scribe to execute the Will, but Doctor D.W.7, who gave the evidence along with discharge summary Ex.B14 deposed that testator was admitted in hospital on 20.07.1997 and discharged on 28.08.1997, at that time, she was aged about 65 years, even on the date of admission, patient was disoriented and her right leg was also infected due to diabetic. Even on 22.07.1997, she was under treatment and entire discharge summary reveals that she was disoriented at the time of discharge and sedation was given to her, thereby she was in drowsy and she does not respond to the situation. With that condition, she was discharged on 28.08.1997, however the defendant contended that the Will was executed on 29.07.1997 just one month before, but the staff D.W.5 from the Registrar Office deposed that he was not aware of registration formalities. Hence, on a bare perusal of Will Ex.9, the alleged last Will, the date was mentioned in ink while other recitals was typed and on the second page, the statements about the execution of Will also been seen that it was inserted.



S.A. No. 1086 of 2008

WEB COPY

Furthermore, as per the recitals, she gave the property to the defendant, who is her only daughter, but no reason was assigned for not giving the share to other legal heirs and also not even mentioned about the names of son and daughters born to her, which itself cause suspicious in the minds of court that the Will was not executed by the testator with sound state of mind, because even at the time of admission itself in the hospital as per Ex.B14, discharge summary, the testator was disoriented and even at the time of discharge, she was in the same condition. Therefore, the court below given more weightage to the fact that testator was in sound state of mind, but the attester witness, who is close relative of defendant also not clearly deposed that she has seen the thumb impression affixed by the testator. The evidence of D.W. 7 Doctor, who gave treatment to her in the hospital deposed that testator undergone treatment during the last days, thereby it was proved that patient had undergone amputation of one of the portion of leg as well as she was disoriented. Therefore, the testator Chinnammal was not in sound state of mind at the time of execution of Will Ex.B11. But the first appellate judge erroneously appreciated the evidence of defendant and not properly appreciated the facts and circumstances.

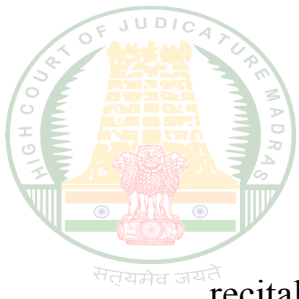


S.A. No. 1086 of 2008

WEB COPY

When the facts are not properly appreciated, this court is empowered to cause interference. Accordingly, the findings rendered by the first appellate judge is set aside. Ex.B9 Will was not proved beyond reasonable doubt surrounded with suspicious circumstances. Accordingly, the question of law (1) is answered.

13. Now, the learned counsel for appellants would argue that when the third Will is invalid, automatically the first Will held to be true, thereby the plaintiffs are entitled for the declaration relief as granted by the trial court. It is true that the first Will dated 16.05.1994 is admitted by both parties, but as per legal notice Ex.B3 testator herself cancelled the said Will and the same was intimated to the plaintiffs also admitted by them during the cross-examination. Therefore, the testator is empowered to cancel the Will. Accordingly, during her life time she executed a second Will dated 14.08.1995 marked as Ex.B7 by cancelling the earlier Will. Another attester of the third Will was also been examined by the defendant as D.W.3, who is daughter of testator, but she herself stated that she is not aware of the contents of Ex.B9 Will and she has not raised any objections about the



S.A. No. 1086 of 2008

WEB COPY

recitals of the Will Ex.B9, wherein her name has also been not mentioned, since she being one of daughter. Furthermore, she deposed that she was not aware, who has written the Will and she was not aware what was mentioned in the Will. Therefore, the evidence of D.W.3 attesor of Ex.B9 not inspired in the minds of the court that Will was executed by testator in her sound state of mind. To prove the second Will Ex.B7 attesor of the second Will one Sundaram was examined, wherein he has stated that he is close relative of both plaintiff and he has also deposed that earlier the first Will executed by the testator was cancelled and she intended to cancel the second Will by giving equal share to the plaintiffs as well as to the defendant. Accordingly, third Will was executed in his presence and he has seen that his grandmother Chinnammal affixed her signature in the said Will. Thereafter, Testator went to the Registrar Office and affixed her thumb impression and the same was also identified by him. Furthermore, she herself deposed before the Registrar that she was inclined to cancel the earlier Will. So, there is no much contradiction from the mouth of D.W.2 about the execution of Ex.B7. Therefore, Ex.B7 was clearly proved beyond reasonable doubt.

18/22

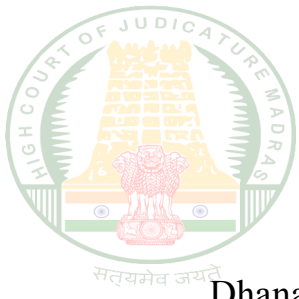


S.A. No. 1086 of 2008

WEB COPY

14. On seeing entire prayer of the plaint, the appellants/plaintiffs approached the court to declare the first Will dated 16.05.1994 Ex.A1 is true and valid, thereby they have claimed right over the suit property, but the said Will was cancelled during the life time of testator and executed the second Will dated 16.08.1995, wherein the entire property belongs to testator, half share given to the plaintiffs and half share was given to the defendant, thereby equally the property was divided. Now, the third Will relied on by the defendant was also been proved. Therefore, the second Will Ex.B7 is true and valid. Though the prayer claimed by the plaintiffs with regard to Ex.A1 is unsustainable, as per the Will relied on by the defendant marked as Ex.B7, in the suit property the plaintiffs were given share and remaining half share given to this defendant. As discussed above, the attesor D.W.2 was examined and Ex.B7 second Will was proved through D.W.2 beyond reasonable doubt as per manner known to law. As per Ex.B7, the suit property admeasuring an extent of 525 sq.ft. as described in the Will along with tiled house with four boundaries with other amenities was allotted to the plaintiffs and minor children of

19/22



S.A. No. 1086 of 2008

WEB COPY

Dhanalakshmi, who was appointed as guardian. Therefore, as per the second Will Ex.B7, the plaintiffs are entitled to half share in the suit property. The description found in Ex.B7 Will is forming part and parcel of decree. Minor children along with widow mother filed the suit in the year 1999 in respect of suit property, but all these years they are fighting before the court due to the collusion among defendant and her sisters and not allowed the brother's children to enjoy the property. Therefore, to avoid further multiplicity of proceedings and also considering the fact that plaintiffs were already lost their father and depend upon widow mother, they need not put to face another litigation. Thus, in the interest of justice, prayer sought by the plaintiffs is modified. Accordingly, as per second Will Ex.B7, the plaintiffs are entitled for half share of 525 sq.ft. in the suit property and the remaining 525 sq.ft. goes to the defendant. Furthermore, Neelaveni, one of daughters of testator has not raised objections, though she was examined as one of the witnesses before this court. Hence, as per the Ex.B7 second Will, the plaintiffs are entitled for half share and the defendant is entitled for half share. Accordingly, this Second Appeal is allowed and the findings of first appellate court in A.S.No. 86 of 2004 is

20/22



S.A. No. 1086 of 2008

WEB COPY

confirmed and the suit is partly decreed by granting half share in the suit property in favour of plaintiff and the remaining half share goes to the defendant. Through the execution proceedings, both parties are directed to take possession of property. If any execution petition is filed, the trial judge is directed to dispose the execution proceedings within a period of three months, since the parties are standing before this court from the year of 1999 onwards. No costs. Consequently, connected Miscellaneous Petition is closed.

03.06.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

1. II Addl. Subordinate Judge, Coimbatore.
2. III Addl. District Munsif, Coimbatore.
3. Section Officer, VR Section, Madras High Court.



WEB COPY



S.A. No. 1086 of 2008

T.V.THAMILSELVI, J.

rpp

S.A. No. 1086 of 2008

03.06.2025

22/22