



*S.A.No.1090 of 2013*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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DATED : 03.06.2025

CORAM :

**THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

Second Appeal No.1090 of 2013  
and M.P.Nos. 1 and 2 of 2013

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M/s.Sri Manakula Vinayagar Educational Trust  
Rep. by its Secretary M. Dhanasekaran  
S/o. Mahalingam  
residing at Mariamman Koil Street  
Madagadipet, Puducherry.

.. Appellant

Versus

Chinnadurai @ Janarthanan

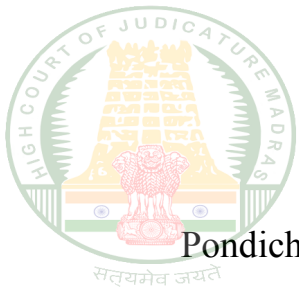
.. Respondent

Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the decree and judgment dated 28.01.2013 passed in A.S. No. 3 of 2009 on the file of the Principal Sub Court, Pondicherry confirming the decree and judgment dated 06.09.2006 passed in O.S. No. 770 of 2004 on the file of the learned II Additional District Munsif, Pondicherry.

|                |   |                  |
|----------------|---|------------------|
| For Appellant  | : | Mr. K. Hariharan |
| For Respondent | : | Mr. R. Natarajan |

**JUDGMENT**

This Second Appeal had been filed to set aside the decree and judgment dated 28.01.2013 passed in A.S. No. 3 of 2009 by the learned Principal Sub Judge, Pondicherry, confirming the decree and judgment dated 06.09.2006 passed in O.S. No. 770 of 2004, by the learned II Additional District Munsif,



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2. The Appellant in this Second Appeal is the Defendant before the learned II Additional District Munsif, Pondicherry in O.S. No. 770 of 2004. The Respondent/Plaintiff filed the said suit in O.S. No .770 of 2004 praying to grant the relief of declaration to declare that he is the owner of the 'C' Schedule mentioned property in the plaint and for a consequential permanent injunction in respect of the “C” schedule property restraining the Defendants, their men, servants, agents or anyone from in any manner interfering with the same.

3. The brief facts, which are necessary for the disposal of this Second Appeal, are as follows:

3.1. According to the Plaintiff, Plaint 'A' Schedule property belonged to his Grandfather Murugappa Gounder, who acquired the suit “A” Schedule Property through a registered Deed of Partition dated 27.08.1943. In the deed of partition dated 27.08.1943, the “A” Schedule Property is indicated as item No.13. From the said date, the Plaintiff's grandfather had been in possession and enjoyment of the said property by cultivating it. On the death of Murugappa Gounder, his son Chinnathambi Gounder inherited all the properties, including the plaint 'A' Schedule property. During his life time, Chinnathambi Gounder partitioned the properties along with his three sons



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namely (1) Chinna Durai @ Janarthanam (Plaintiff) (2) Rajamanickam and Paneerselvam which was registered on 12.11.1976 on the file of Sub-Registrar, Thirukkanur. The “A” Schedule property in the plaint was allotted to the Plaintiff in the partition deed dated 12.11.1976. After such partition, the Plaintiff has been in possession and enjoyment of the property as an absolute owner thereof by mutating the revenue records.

3.2. According to the Plaintiff, the Defendant through their Secretary purchased land measuring 87 Kuzhis, 13 Veesams in the “A” schedule property out of the total extent of 100 Kuzhis through a registered sale deed dated 18.11.2002. The land so purchased by the Defendant is shown as “B” schedule property in the plaint. The remaining properties, after sale to the Defendant remain with the Plaintiff viz., 12 Kuzhis 3 Veesams and it is mentioned as “C” Schedule of the Plaint.

3.3. While so, on 25.09.2004, the Defendant through the brother-in-law of their Secretary viz., Sugumaran made a rival claim over the suit “C” schedule mentioned property and attempted to interfere with the possession of the same by the Plaintiff but it was thwarted. Again on 27.09.2004, the Secretary of the Defendant sent his brother-in-law along with some rowdy elements who forcibly entered into the “C” schedule property under some



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fictitious sale deed. The Plaintiff therefore given a complaint to the Station House Officer, Thirukkanur. On an enquiry conducted by the Police Officials, the Defendants were warned not to interfere with the possession of the Plaintiff again. However, on 09.10.2004, once again, the Defendant through its Secretary, men and officers threatened the Plaintiff along with their henchmen to dispossess the Plaintiff. The Plaintiff therefore given a complaint on 09.10.2004 to the Station House Officer, who advised him to approach the Civil Court for appropriate relief. Accordingly, the Plaintiff had filed the suit.

3.4. On notice, the Defendant filed a written statement contending *inter alia* that it is true that the “B” schedule property was purchased through a registered sale deed dated 18.01.2002. However, after such purchase, the Plaintiff did not retain any land with him. There is no excess or remaining extent of land as alleged by the Plaintiff. The Plaintiff is therefore put to strict proof that the “C” schedule property still owned and possessed by him. In the partition deed dated 12.11.1976 referred to by the Plaintiff, the extent of the property conveyed to the Plaintiff was wrongly mentioned as 1 *Kani* instead of 87 *Kanies* 13 *Veesams* and it is the correct measurement. In spite of sale of the property in favour of the Defendant, the Plaintiff is taking undue advantage of the wrong entry of the measurement of the property. The revenue records clearly indicate that what was available on ground is only 87 *Kuzhis* and 13



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Veasams, but taking advantage of the wrong entry indicating the extent of the property as 1 Kani, the Plaintiff is defeating the right of the Defendant from enjoying the property purchased by them. Thus, it is the fervent defence of the Defendant that after sale of 87 Kuzhis and 13 Veasams to the Defendant, there was no excess or surplus land in existence. Therefore, the “C” schedule mentioned property does not exist on ground and it is part and parcel of the “B” schedule property sold to the Defendant. There is no cause of action for instituting the suit. The Defendant has no objection to take or recover the alleged “C” schedule mentioned property because there is no such property available on the ground in favour of the Plaintiff. Accordingly, the Defendant prayed for dismissal of the suit.

3.5. During trial, the Plaintiff examined himself as P.W-1 and marked Ex.A-1 to Ex.A-13 documents. The Defendant did not examine any witness or mark any document on their side. The trial Court, on analysing the oral and documentary evidence, concluded that admittedly the Plaintiff sold land measuring 87 Kulzhis 13 Veasams i.e., “B” schedule property to the Defendant. After such sale, the Plaintiff is in possession of the remaining property which is described as “C” schedule in the plaint. However, it is claimed by the Defendant that in the partition deed and other documents dated 27.08.1943 and 12.11.1976 the total extent is mentioned as 1 Kani but no such

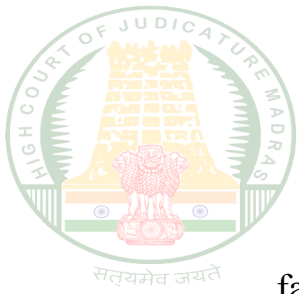


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property exist on ground. The trial Court, by considering Ex.A-6 and Ex.A-8 Patta concluded that “A” Schedule property is to the extent of 1 Kani in Cadastre No.731/1, 732/2 and R.S. No. 156/1 which was later sub divided into R.S. No.156/1/A and 156/1/B as per Patta. As far as the disputed property in “C” Schedule is concerned, it is duly covered under Patta No.627 marked as Ex.A-8 and it proves that the Plaintiff owns 1 Kani of land and it was described as “A” schedule property. Accordingly, the trial Court found that the Defendant has no defence at all to be raised in the suit and decreed the suit as prayed for by the Plaintiff.

3.6. Assailing the Judgment and Decree dated 06.09.2006 in O.S. No. 770 of 2004, the Defendant filed an appeal in A.S. No. 3 of 2009. In the appeal, the Defendant had filed I.A. No. 63 of 2009 seeking permission of the Court to let in evidence on behalf of the Defendant and I.A. No. 64 of 2009 to mark documents. Both petitions were dismissed and the Appeal was also dismissed on 28.01.2013. Aggrieved by the concurrent decisions of the Courts below, the present Second Appeal is filed.

4. On 17.02.2022, when this Second Appeal was taken up for admission, the following substantial questions of law are framed for consideration of this Second Appeal and they are as follows:-



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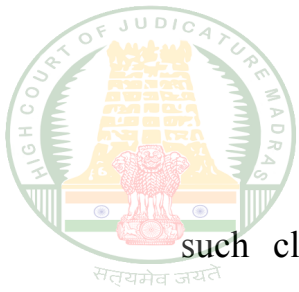
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(i) Whether both the Courts below lost sight of the fact that the Defendant had purchased through a separate Sale Deed marked as Ex.A-13 from the mother and sister of the Plaintiff and the balance extent claimed by the Plaintiff in the present suit, falls under this document?

(ii) Whether the lower Appellate Court failed to re-appreciate the entire evidence as is required under Order 41, Rule 31 of CPC?

(iii) Whether the findings rendered by both the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence?

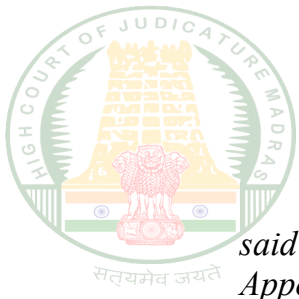
5. The learned Counsel for the Appellant invited the attention of this Court to the documents marked as Ex.A-6, copy of Patta in the name of the Plaintiff, Ex.A-8 Patta extract in the name of Chinnathambi Gounder and his wife, Ex.A-12 Sale deed of Andal Ammal dated 28.08.1958 and Ex.A-13 Sale deed in favour of Defendant executed by Lakshmi @ Mangai and Kalaivani @ Sucila and submitted that the contention of the Defendant that the Plaintiff had not established his right to claim 12 Kuzhis, 3 Veesams in “C” schedule properties is substantiated. In all the above documents which the Plaintiff relies, the land in Cadastre No.732/2 is not at all mentioned. Therefore, the attempt of the Plaintiff in the suit by claiming title to “C” schedule property by interpolating Cadastre No.732/2 subdivided as R.S.Nos.156/1, 156/1A and 156/1B are without any documentary evidence. The typed set filed by the Appellant contains the copies of the above documents. It is for the Plaintiff to explain how he succeeded to the land in Cadastre No.732/2. Till he establishes



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such claim through cogent documentary evidence, he is not entitled to declaration of title. The person who was conducting the case on behalf of the Trust suffered cancer and died, therefore, he was unable to prosecute the case on behalf of the Defendant. However, the Court had drawn adverse presumption against the Defendant and had decreed the suit in favour of the Plaintiff which is perverse. The Plaintiff's documents viz., Ex.A-6, Ex.A-8, Ex.A-12 and Ex.A-13 itself are against the case of the Plaintiff, but they were simply brushed aside by the Trial Court as well as the Appellate Court. The learned Counsel for the Appellant also invited the attention of this Court to paragraph 17 of the judgment dated 28.01.2013 made in A.S.No.3 of 2009 by the learned Appellate Judge, which is extracted as under:

*“17. Learned II Additional District Munsif has correctly come to the conclusion that the Plaintiff has proved that 'A' schedule of property in the plaint is to an extent of 1 kani, in which 87 kuzhis and 13 veesams falls under patta No.959 (Ex.A6) and the remaining 12 kuzhis 13 veesams falls under patta No.627 (Ex.A8). A perusal of Ex.A7, the certified copy of sale-deed, dated 18.11.2002 in favour of Defendant, reveals that the Defendant had purchased only 87 kuzhis 13 veesams in R.S.No.156/1 only and not the property comprised in R.S.No.156/1B, which is described as 'C' schedule in the plaint. It is crystal clear that the defendant making claim for the property not covered under sale-deed (Ex.A7), in his favour. Learned II Additional District Munsif has correctly come to the conclusion that the 'A' schedule property in the plaint is 1 Kani only and in which the Plaintiff has sold only 87 kuzhis 13 veesams to the Defendant under a registered sale-deed, dated 18.11.2002 (certified copy of which is marked as Ex.A7) and the remaining unsold portion in 'A' schedule is described as 'C' schedule for which the Plaintiff is having absolute right and accordingly granted permanent injunction preventing the Defendant and its men and servants from disturbing the possession of the 'C' schedule property in any manner. This Court finds no infirmity in the finding of the learned II Additional District Munsif, Puducherry and no interference is required in the above*



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*said findings. Accordingly, these points are decided against the Appellant/Defendant and in favour of Respondent/Plaintiff.”*

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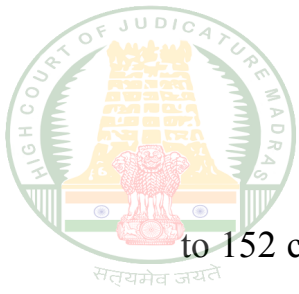
6. The learned Counsel for the Appellant also invited the attention of this Court to the contents of Ex. A-7 with regard to the property that was conveyed to the Defendant by the Plaintiff. The relevant portion of which is extracted as under:

“GOVERNMENT OF PUDUCHERRY  
REGISTRATION DEPARTMENT  
COPY OF DOCUMENT

vii. That the vendor delivers possession of the property to the purchaser; vii. That the vendor agrees to execute any further deed of assurance that may be necessary in order to protect the title of the purchaser in respect of the said property at the expense of the vendor ix. The vendor has delivered to the Purchaser whatever title deed and other documents he has in his possession in respect of the schedule mentioned property and all the tax receipts, the particulars whereof are given in annexure hereto the receipt of which the purchaser hereby acknowledges. C.Chinnadurai M.Dhanasekaran 5. SCHEDULE OF PROPERTY.

In the Registration District of Pondicherry, in the Registration - Sub - District of Thirukkanur in Mannadipet Commune Panchayat limits in Kalitheerthalkuppam velli, dry land having Patta No.959, R.S.No.156/1 A, Cad No.732/1 Pt, Pt.732/2 Pt extending to 87 Kuzhi 13 Veesam (0.47.00 Hectors) bounded on North by Gnanavel and Kothari Land, West by Andal and Chinnathambi land, South by the Paradesi Pond, East by Thangarasu land.”

7. According to the learned Counsel, the property in Patta No.959, R.S No.156/1A, Cad. No.732/1 Part., Cad.No.732/2 Part measuring 87 Kuzhis, 13 Veesams i.e., 0.47.00 Hectares is with specific boundaries, bounded on the North by Gnanavel and Kothari Land, West by Andal and Chinnathambi land, South by the Paradesi Pond, East by Thangarasu land. One Kani is equivalent



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to 152 cents. Out of this 152 Cents, 87 Kuzhis and 13 Veesams was conveyed

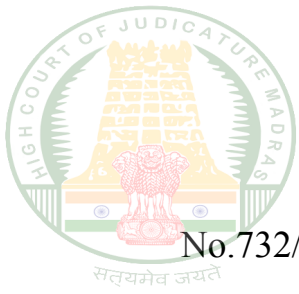
by the Plaintiff to the Defendant with specific boundaries. While so, it is for the Plaintiff to prove that after sale of 87 Kuzhis 13 Veesams, morefully described as “B” Schedule, the remaining extent of 16 cents with specific boundaries given in “C” schedule property is available with him as on the date of filing of the suit. The Plaintiff had not stated in the plaint about the details of 16 cents with specific boundaries. Out of 152 cents, by selling 87 Kuzhis 13 Veesams, the Plaintiff had sold 116 Cents. The Plaintiff's claim is admittedly in R.S. No. 156/1A that is 12 Kuzhis but that is not available in R.S.No.156/1A. The Plaintiff had not established his claim in the plaint. The Plaintiff claims “C” schedule property with Cadastre No.732/2 alone, but in the plaint it was nowhere stated about the availability of the “C” schedule property. Nowhere Cadastre No. 732/2 is stated to have been allotted to the father of the Plaintiff. While so, it is for the Plaintiff to explain how, after sale of 87 Kuzhis 13 Veesams, he retained 16 cents or 12 Kuzhis in R.S. No. 156/1A. The learned trial Judge granted the decree in favour of the Plaintiff on the ground that the Defendant had not entered witness box. Such a conclusion is against the principle that the Plaintiff has to stand or fall on the strength of his own evidence. Ex.A-8 is the Patta issued to the father of Plaintiff/Chinnathambi in which the property in R.S. No. 156/1B is stated to be measuring 00.58.50 ares i.e., 135 cents.



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The learned Counsel for the Appellant invited the attention of this Court to additional typed set of papers containing the copies of the revenue records viz., FMB sketch for the entire properties in R.S. No. 156/1 which is subdivided as R.S. No. 156/1A and R.S. No.156/1B having 286.52 cents. Under R.S.No.156/1A, the Plaintiff sold 47 ares roughly 116 cents, under R.S.No.156/1B the Plaintiff claims that 114.5 cents are still available. The learned Counsel for the Appellant also invited the attention of this Court to Document No.3 in the additional typed set which is the settlement register in the name of Manakula Vinayagar Educational Trust/Defendant. The land in R.S. No. 156/1B (old Survey number is given as Cadastre Nos.732/1 part), 732/2 part and 729/1 which are not the subject matter of this case, having an extent of 00.58.50 ares i.e., 135 cents. He also invited the attention of this Court to Document No.5 of the additional typed set which refers to the land in R.S.No.156/1A (old Survey No.732/1 part 732/2 part) having an extent of 00.47.00 ares i.e., 113.5 cents in the name of Manakula Vinayakar Educational Trust/Defendant. The FMB sketch issued by the Tahsildar is also enclosed in the additional typed set showing the entire R.S.No.156/1 prior to subdivision and after subdivision. It also contained R.S.Nos. 156/1A, 156/1B and 156/2 issued by the Tahsildar-cum-Executive Magistrate. It also contained the settlement register for R.S. No. 156/1A, which contained the earlier Cadastre



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No.732/1 part, 732/2 part totally 00.47.00 ares roughly 113.5 cents standing in the name of Manakula Vinayagar Education Trust. The Plaintiff had not challenged the sale deed executed by the sisters of the Plaintiff in favour of the Defendant in respect of Cadastre No.732/2 part. Therefore, the claim of the Plaintiff is that the Defendant attempted to encroach on the Plaintiff's property and thereby claim the entire land in R.S.No.156/1. The Plaintiff filed the suit seeking declaration of title to suit "C" schedule property in the plaint and consequential injunction restraining the Defendant, their servants, agents, subordinates, officers, men and henchman from interfering with the peaceful possession and enjoyment of the Plaintiff in the suit "C" schedule property and dispossessing the Plaintiff from suit "C" schedule property. While claiming relief against suit "C" schedule property in Cadastre No.732/2 the Plaintiff ought to have impleaded the vendors of the Defendant as a necessary party to get an appropriate relief, but the Plaintiff had not challenged the sale to the Defendant by the sisters of the Plaintiff in respect of the property under Cadastre No.732/2 which was clearly stated by the Defendant in the written statement. The learned Counsel for the Appellant/Defendant invited the attention of this Court to the contents in the written statement which is extracted as under:

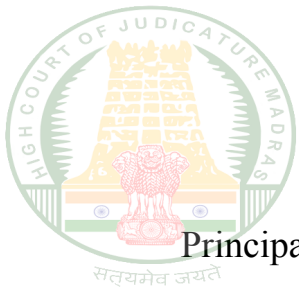
"It is further submitted that, except the said extent there is no excess or remaining property as alleged by the Plaintiff. It is further submitted that the patta is also stand and speak for the said extent of 87 Kuzhis and 17



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Veasams. It is further submitted that, there is no excess or remaining property ie., C.Sch. mentioned property as alleged by the Plaintiff but, through one partition deed ie., antecedental document to the B. Sch. Mentioned property i.e., the said partition deed, dated 12.11.1976, in favour of the Plaintiff, there is a wrong entry for 1 kani instead of correct and actual property i.e., 87 kanies 13 veesams through the said wrong entry overt the said partition deed, the Plaintiff is taking steps to recover the alleged C Sch. Mentioned property. In fact, there is no such property i.e., C.Sch. property, if it is there, this Defendant has no objection to take the same i.e., alleged C. Sch. Mentioned property”

9. Thus, it was pleaded in defence that there had been a wrong entry in the Plaintiff's patta stating that there is one kaani land available. However, there was only 87 Kuzhis and 13 Veasams is in possession of the Plaintiff and that was sold to the Defendant. It is the contention of the learned Counsel for the Appellant/Defendant that there is no such property as claimed by the Plaintiff in “C” schedule property. The Defendant has no objection to take “C” schedule property, if such property is available on ground. It is the submission of the learned Counsel for the Appellant that all the revenue records tracing title to the property of the Plaintiff through his ancestors, is an extent of 87 Kuzhis and 13 Veasams. Taking advantage of the wrong entry in the patta passbook, for one *Kaani*, the Plaintiff filed the suit for declaration of title to “C” schedule property without any cause of action. Considering the fact that the Defendant had not entered witness box, the learned II Additional District Judge, Pondicherry had granted the decree favouring the Plaintiff. Aggrieved by the same, the Defendant filed appeal in A.S.No.3 of 2009 before the learned



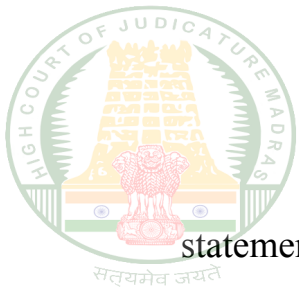
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Principal Sub Judge, Pondicherry. The learned Principal Sub Judge,

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Pondicherry, after hearing the arguments of both parties as per judgement dated 28.01.2013 dismissed the appeal in A.S.No.3 of 2009 and confirmed the judgement dated 06.09.2006 passed in O.S.No.770 of 2004 by the learned II Additional District Munsif, Pondicherry, holding that the Defendant had not entered the witness box and thereby drawn adverse inference against the Defendant. Therefore, the Defendant had approached this Court by filing this Second Appeal raising the grounds that (i) Whether the grant of decree by the trial Court and the first Appellate Court in favour of the Plaintiff based on Patta alone is valid? (ii) Whether Patta is a document of title ? (iii) When the properties for Cadastre No.732/2 was sold by the Plaintiff's sisters, whether the Plaintiff can claim declaration of title to the property in Cadastre No.732/2 part as property in Survey No.156/1A? Both the courts below failed to consider the above points while passing the impugned judgment and decree and accordingly, the learned Counsel for the Appellant prays to set aside the concurrent findings of the learned II Additional District Munsif, Pondicherry in O.S.No.770 of 2004 and the learned Principal Sub Judge, Pondicherry in A.S.No.3 of 2009 granting decree in favour of the Plaintiff.

10. Per contra, the learned Counsel for the Respondent submitted that the Defendant had not raised any substantial questions of law in the written



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statement at the initial stage. Substantial questions of law has to be raised not

at the stage of Second Appeal, it should be raised in the pleadings. The

learned Counsel for the Respondent invited the attention of this Court to Order

VIII, Rule 1-A of the Code of Civil Procedure which reads as under:

"1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.--(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the defendant under this Rule, but, is not so produced shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to documents--

(a) produced for the cross-examination of the Plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory."

11. The learned Counsel for the Respondent also submitted that if it is the defence of the Defendant that 'C' schedule property also belongs to him he has to prove the same by cogent evidence. However, the Defendant did not enter the witness box or produced any document. While so, the Defendant cannot maintain this Appeal under law. On the other hand, the Respondent traced the title of the property from his paternal grandfather Murugappa Gounder in the partition dated 27.08.1943. The learned Counsel for the Respondent invited the attention of this Court to the document marked as



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Ex.A-1 certified copy of the partition deed between Murugappa Gounder and

his siblings in which Item 13 is mentioned as “இருபதாவது நெம்பரில் கண்ட

கதாஸ்தர் நெம்பர் 732/1 நஞ்சை நிலம் காணி 1” which is not at all disputed by

the Defendant. While so, the Defendant cannot be permitted to challenge the

extent that was allotted to the paternal grandfather of the Plaintiff Murugappa

Gounder in his family partition in the year 1943. Murugappa Gounder's son

was Chinnathambi Gounder who is the father of the Plaintiff. Murugappa

Gounder was alive even during the time of purchase of property in favour of his

wife. Ex.A-2 is the sale deed in favour of Andal Ammal, mother of the

Plaintiff. At that time, the grandfather of the Plaintiff was alive in 1950 in

which the property in Cadastre No.732/2 to an extent of 47 Kuzhis 4 Veesams

was purchased in favour of the daughter-in-law of Murugappa Gounder viz.,

Andal Ammal, wife of Chinnathambi Gounder. The Plaintiff was the only son

of Chinnathambi Gounder. The Plaintiff's father Chinnathambi Gounder was

one of the sons of Murugappa Gounder. Therefore, the immovable properties

naturally fell to the share of the Plaintiff. While so, the Defendant after having

purchased 87 Kuzhis 13 Veesams cannot claim the entire property including

Cadastre No.732/2. The Defendant had not filed any document disputing the

claim of the Plaintiff. The Defendant had not entered the witness box or

marked documents. The document in favour of the Defendant by the Plaintiff



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for 87 Kuzhis, 13 Veesams was marked as Ex.A-13. Certified copy of the sale

deed executed by the Plaintiff in favour of the Defendant dated 18.11.2002 was marked as Ex.A-7 during the trial before the learned II Additional District Munsif, Pondicherry in which the lands had been identified with extent and Cadastre number. The Defendant had not questioned the part of Cadastre No.732/2 sold by the Plaintiff to the Defendant under Ex.A-7 with specific boundaries wherein it is stated as, “West by Andal Ammal and Chinnathambi land” to show that there are lands on the Western side of the property sold to the Defendant by the Plaintiff. Therefore, the claim of the Defendant that there is no property other than the property sold by the Plaintiff for 87 Kuzhis 13 Veesams is false. That is why, the Defendant had not come forward to enter the witness box and let in evidence. Therefore, both the trial Court as well as the Appellate Court had drawn adverse inference against the Defendant. The judgment of the learned II Additional District Munsif in O.S.No.770 of 2004 and the learned Principal Sub Judge in A.S.No.3 of 2009 are well reasoned judgment that does not warrant interference by this Court. Since there are two concurrent findings, independent of each other, there cannot be any substantial question of law. The learned Counsel for the Respondent also submitted that as per Order VIII, Rule 1-A of CPC, the Defendant is duty bound to let in evidence and prove the pleadings. The Defendant had not done so. Under those circumstances, the Court can draw adverse inference against the



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Defendant. The legal obligation is on the Defendant to prove his defence through cogent evidence. The Defendant cannot maintain this Appeal when he had not let in evidence or entered the witness box to disprove the case of the Plaintiff. Ex.A-13 is an irrelevant document and it need not be given due weightage. After disposal of the appeal in A.S.No.3 of 2009 the Defendant attempted to mark documents which was not permitted by the appellate Court. During trial, the Defendant had not entered witness box and after disposal of the case by the trial Judge, in the Appeal, the Defendant as Appellant filed I.A. Nos. 63 and 64 of 2009 seeking permission of the Appellate Court to let in evidence and mark documents but they were rightly refused by the Appellate Judge stating that the Defendant ought to have contested and let in evidence before the trial Court.

12. The learned Counsel for the Respondent also submitted that the Appellate Court has to consider the appeal only based on the materials available before the trial Court. If the Defendant had not had the opportunity of marking documents due to exigencies beyond his control, it will be permitted only in rare instances and not as a rule. Therefore, the learned Appellate Judge had rightly dismissed the petitions filed by the Appellant in the Appeal before the first Appellate Court. Also the learned Counsel for Respondent submitted that the Defendant had not disclosed the purchase of



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property by him from the sisters of the Plaintiff. The written statement is silent

in this regard. Therefore, the sale deed under Ex.A-13 need not be considered

by the Court. The Plaintiff cannot question or seek relief of declaration against

Ex.A-13. The learned Counsel for the Respondent also invited the attention of

this Court to the cross-examination of the Plaintiff as P.W-1 by the learned

Counsel for the Defendant wherein the Plaintiff had filed additional affidavit

regarding the attempt of the Defendant by stating that *“it is stated in the*

*additional affidavit of the Plaintiff that the Defendant by manoeuvring to get a*

*concocted sale deed for an extent of 59 Kuzhis 5 Veesams dated 18.11.2002 in*

*Cadastré No.732/1, 732/2 and R.S. No.156/1B from my sisters marked as*

*Ex.A-13 is trying to interfere in my possession and enjoyment of “C” schedule*

*property in order to suit the same by dispossessing me from the suit “C”*

*schedule property. Neither my sisters nor the Defendant have got any right or*

*title over the suit “C” schedule property. I am the absolute owner of the suit*

*“C” schedule property.”* The learned Counsel for the Defendant had not

attempted to cross-examine the Plaintiff as P.W-1 with respect to the above

statement.

13. Further, the learned Counsel for the Respondent invited the

attention of this Court to the cross-examination of the Plaintiff as P.W-1 by the

Defendant wherein they had not claimed or suggested that they had purchased



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the property from the sisters of the Plaintiff under Ex.A-13. They had wantonly burked the fact of purchase from the sisters of the Plaintiff. After cross-examination, the Plaintiff sought for reopening of the Plaintiff side evidence and mark additional affidavit which was permitted by the learned trial Judge. In the cross-examination regarding Ex.A-13, the learned Counsel for the Defendant had stated that Ex.A-13 is not connected to the dispute and only to confuse the Court Ex.A-13 was marked. Therefore, the learned Counsel for the Respondent submitted that there is no substantial question of law involved in this appeal. The concurrent findings rendered by both the trial Court as well as the first Appellate Court, on independently assessing the evidence before the trial Court, need not be interfered with. Also the learned Counsel for the Respondent submitted that the possession of the Property in dispute is in continuous enjoyment of the Plaintiff for a long time and the revenue records also stood mutated in the name of the Plaintiff.

14. The learned Counsel for the Respondent invited the attention of this Court to paragraph 14 of the judgment of the first Appellate Court. In fact, it was the Plaintiff who had produced the sale deed of the Defendant. As per Order VIII, Rule 1-A of CPC, Defendant ought to have enclosed the sale deed as proof of their claim but they had not done so to show that they have purchased the property from the sisters of the Plaintiff. Ex.A-8 Patta stands in



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the name of Chinnathambi Gounder and Andal Ammal, parents of the Plaintiff.

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Ex.A-1 is the partition deed in the family of the paternal grandfather of the Plaintiff viz., Murugappa Gounder. Therefore, the claim of the Defendant was rejected by the learned trial Judge and the learned first Appellate Judge.

15. In support of his contention, the learned Counsel for the Respondent relied on the ruling reported in the case of ***Vidhyadhar vs. Mankikrao and another*** reported in ***AIR 1999 Supreme Court 1441*** wherein it is held that “Where a party to the suit does not enter into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.” The same judgement was reiterated by the Honourable Supreme Court in the case of ***Man Kaur vs. Hartar Singh Sangha*** reported in ***(2010) 10 SCC 512***. Also the Hon'ble Supreme Court had stated that Pleadings under Order VII, Rule 8 of CPC are to be proved before the Civil Court and Section 26 of CPC insists how the Civil Court has to exercise discretion regarding the judgment in civil cases by appreciation of evidence.

16. Also the learned Counsel for the Respondent relied on the ruling of the Hon'ble Supreme Court reported in ***(2008) 17 SCC 491*** in the case of ***Bachhaj Nahar vs. Nilima Mandal and another*** wherein it is held as under:



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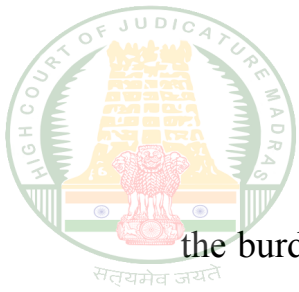
“10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the Plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”

17. The learned Counsel for the Respondent also relied on the ruling of the Hon'ble Supreme Court in the case of ***P.Kishore Kumar vs. Vittal K. Patkar in Civil Appeal No.7210 of 2011, dated 20.11.2023*** wherein it is observed as follows:

“12. This Court in ***Sawarni vs. Inder Kaur and Ors.***<sup>2</sup> held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question. (1996) 6 SCC 223

13. This was further affirmed in ***Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors.***<sup>3</sup> wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.”

18. Relying on the above decisions, the learned Counsel for the Respondent submitted that this Second Appeal has no merit and the Appellant ought not to have been allowed to argue the case when he had not discharged



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the burden cast upon him by the Evidence Act and as per Order VIII, Rule 1A

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19. For reception of additional evidence at the stage of appeal, the learned Counsel for the Respondent relied on the ruling of the Hon'ble Supreme Court reported in *AIR 1951 SC 193* in the case of *Arjun Singh v. Kartar Singh and others* wherein it is held as follows:

“(A) Civil P.C. (5 of 1908), Order 41, Rule 27 – Discretion to admit additional evidence – How to be exercised.

The discretion given to the Appellate Court by Order 41, Rule 27 to receive and admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in that rule, if the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence. It will be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it is non-existent.

(B) Civil P.C. (5 of 1908), Order 41, Rule 27 – Test for admitting additional evidence.

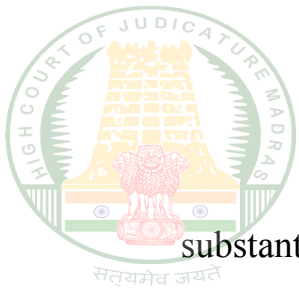
The legitimate occasion for the application of Order 41, Rule 27 is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the Court, of fresh evidence and the application is made to import it. The true test, therefore, is whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

(C) Civil P.C. (5 of 1908), Order 41, Rule 27 – Additional evidence when to be admitted.

Where the first appellate Court admitted additional evidence before examination of the evidence on the record and consequently before reaching a decision that the evidence as it stood disclosed a lacuna which the Court required to be filled up for pronouncing its judgment;

Held, that the appellate Court was not justified in admitting the additional evidence.”

20. The learned Counsel for the Respondent further submitted that



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substantial question of law was not canvassed by the Appellant. In this regard

he relied on the decision of the Hon'ble Supreme Court reported in **(2001) 3**

**SCC 179** in the case of **Santosh Hazari vs. Purushottam Tiwari (Deceased)**

**by LR.s.** wherein it was held that “a question of law must be debatable”. The

Defendant had avoided the witness box. The pleadings by the Defendant in the

written statement, when they had not attempted to prove the pleadings through

cogent evidence or when they had avoided the witness box it can be presumed

that the Defendant had abandoned the written statement. While so, as against

such concurrent finding of fact, exercise of jurisdiction under Section 100 of

CPC must be restricted. The judgment of the trial Court and the first Appellate

Court are well considered judgments which does not warrant any interference

by this Court. Therefore, this Second Appeal has to be dismissed.

21. By way of rejoinder to the submissions by the learned Counsel for the Respondent, the learned Counsel for the Appellant invited the attention of this Court to Order XLI of CPC which provides additional evidence by the Appellate Court and also Section 90 of the Indian Evidence Act regarding presumption of old document. It is only with regard to attestation, with regard to signature and handwriting and it is not a presumption that the contents of the document is genuine or *bona fide*. It is not a guarantee that 30 years old document is to be accepted as such. The Plaintiff had not at all pleaded where



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from he claimed title for Cadastre No.732/2. The written statement opens with a question - documents sought to be marked as additional document are not forged document. They are issued under seal by the Revenue Officials. The Plaintiff cannot seek a decree by explaining that there is no evidence on the part of the Defendant. The Plaintiff has to prove his case through cogent evidence. The question before this Court are (i) whether the Plaintiff had established his claim regarding Cadastre No.732/2? Therefore, the second appeal is to be allowed and the concurrent findings of the learned trial Court as well as the first Appellate Court has to be set aside.

22. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent and perused the rulings cited by the learned Counsel for the Respondent. Perused the typed set containing plaint, written statement and deposition of the Plaintiff as P.W-1 and the copies of the documents marked as Ex.A-1 to Ex.A-13, the judgement dated 06.09.2006 passed in O.S.No.770 of 2004 by the learned II Additional District Munsif, Pondicherry and the judgment dated 28.01.2013 passed in A.S.No. 3 of 2009 by the learned Principal Sub Judge, Pondicherry.

23. The Plaintiff had filed the suit seeking declaration of title to the suit “C” schedule property, after sale of the property described in “B” schedule



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of the plaint. As per the claim of the Plaintiff in the plaint, the Plaintiff's father

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Chinnathambi Gounder succeeded to the property in the family partition in which Cadastre No.732/1 having 1 Kani was allotted to the share of Murugappa Gounder the paternal grandfather of the Plaintiff as per the partition in the family under Ex.A-1. Subsequently, the mother of the Plaintiff Andal Ammal, wife of Chinnathambi Gounder purchased the property in Cadastre No.732/2. Therefore, the properties under “A” schedule had 1 Kani. Out of 1 Kani, the Plaintiff sold 87 Kuzhis and 13 Veesams to the Defendant under Ex.A-7. What remains after sale of 87 Kuzhis, 13 Veesams was identified by the Plaintiff as “C” schedule property in the plaint.

24. On perusal of the sale deed under Ex.A-7, it is found that the property was sold with specific boundaries wherein the property that was sold to the Defendant was on the Western side of the remaining portion in the name of Andal Ammal and Chinnathambi Gounder. Therefore, the claim of the Defendant in the written statement that there is no property after sale to the Defendant is found unacceptable. Also in the partition deed, which is marked as Ex.A-1, it has been clearly stated that the property that was allotted to the share of Murugappa Gounder in Cadastre No.732 had an extent of 1 Kani, which cannot be disputed by the Defendant. After filing the suit, after evidence, when the Plaintiff came to know that the Defendant had purchased



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the property surreptitiously from the sisters of the Plaintiff, the Plaintiff himself had sought permission of the Court to reopen the case and filed additional affidavit in which he had stated that the Defendant in an attempt to grab the suit “C” schedule property had created document as though they had purchased it from the sisters of the Plaintiff which was marked as Ex.A-13. During cross-examination of P.W-1, the learned Counsel for the Defendant had stated that Ex.A-13 is not at all connected to the suit properties.

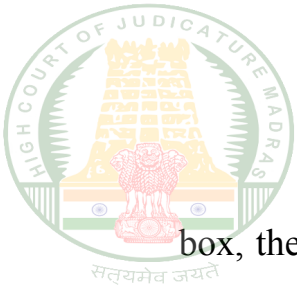
25. It is to be noted that in the written statement, the Defendant had not claimed as per Order VIII, Rule 1-A of CPC that they had purchased the property under Cadastre No.732/2 from the sisters of the Plaintiff. The written statement is completely silent with reference to such purchase by the Defendant. What was pleaded is that there was no property available on ground which is morefully set out as “C” Schedule in the plaint. When the Defendant had not pleaded the purchase of the property other than the property purchased from the Plaintiff, the claim of the Defendant would amount to suppression of material fact. When the Defendant did not refer to the sale from the sisters of the Plaintiff, in the written statement, his right, if any, to question the so called property purchased from the sisters of the Plaintiff, is closed. What has not been pleaded in the written statement cannot be permitted to be raised subsequently. After pleading their case in the written statement that there is no



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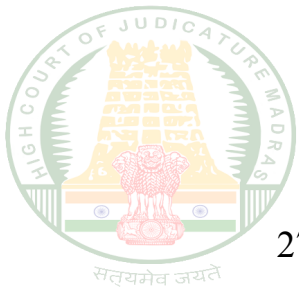
property other than 87 Kuzhis and 13 Veesams in Cadastre No.372/2, the attempt of the Defendant seeking to dismiss the case is found unacceptable when the Defendant themselves had not entered the witness box. The excuse stated by the learned Counsel for the Appellant in the Second Appeal that the case was conducted by the Secretary of the Trust who was suffering from cancer and was prevented from appearing before Court by his illness cannot at all be accepted. If that be so, some other responsible members of the Trust or office bearers of the Trust could have entered the witness box and proceeded with the conduct of the suit by letting in evidence on behalf of the Trust. That was not done. Therefore, the learned II Additional District Munsif in the judgment had rightly drawn adverse inference for the conduct of the Defendant in not entering the witness box. Such a conclusion reached by the Trial Court was also upheld by the learned Appellate Judge in the appeal in A.S.No.3 of 2014 by drawing adverse inference against the conduct of the Defendant having filed the written statement disputing the claim of the Plaintiff and avoiding the witness box.

26. The submissions of the learned Counsel for the Appellant that the Appellate Court has the discretion to let in evidence for the Defendant under Order XLI of CPC cannot be accepted as a rule. It is an exemption. When the Defendant had not chosen to enter the witness box and avoided the witness



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box, the learned trial Judge delivered the judgement on the materials available before trial Court. On appeal, with the very same materials available before the learned trial Judge, the Appellate Court cannot take a contra decision than the one reached by the Trial Court. At the appeal stage, the Defendant who did not choose to let in evidence to prove the pleadings in the written statement as per Order VIII, Rule 1-A of CPC cannot be permitted to do so as a matter of routine. If the party to the suit had been prevented by any natural causes beyond their control in adducing evidence by marking documents which are an exempted circumstances, the Appellate Judge shall consider it in the light of fairness, equity and good conscience to render justice but it is not as a rule in all cases. Here the Defendant having stated that there is no property under Cadastre No. 732/2 as 1 Kani and only 87 Kuzhis and 13 Veesams were available, had subsequently chosen to dispute such claim which is legally impermissible. If the Defendant had entered the witness box, the learned Counsel for the Plaintiff would have cornered the Defendant regarding their claim of title for the entire extent of 1 Kaani beyond the sale under Ex.A-7. In order to avoid it, the Defendant had not entered the witness box. Therefore, the arguments of the learned Counsel for the Appellant that the Plaintiff cannot be granted any decree by picking holes in the evidence of the Defendant will not be applicable to the facts and circumstance of this case.

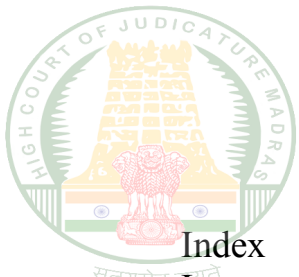


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27. In the light of the above discussion, the substantial questions of law raised in this Second Appeal are answered in favour of the Respondent-Plaintiff and against the Appellant/Defendant especially when the Appellant/Defendant had not stated anything about the so-called purchase of the property from the sisters of the Plaintiffs while making a claim for the property mentioned in “C” Schedule of the plaint. The judgement dated 06.09.2006 made in O.S.No.770 of 2004 by the learned II Additional District Munsif, Pondicherry granting decree to the Plaintiff regarding suit “C” schedule property and the judgment dated 28.01.2013 passed in A.S.No.3 of 2009 by the learned Principal Sub Judge, Pondicherry, are found to be well reasoned judgments which does not warrant any interference by this Court and the same is to be confirmed.

In the result, **this Second Appeal is dismissed.** The judgment dated 28.01.2013 passed in A.S. No. 3 of 2009 passed by the learned Principal Sub Judge, Pondicherry confirming the judgement dated 06.09.2006 passed in O.S. No. 770 of 2004 by the learned II Additional District Munsif, Pondicherry is upheld. No costs. Consequently, connected miscellaneous petitions are closed.

.06.2025



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Index : Yes / No

Internet : Yes / No

Speaking/Non-speaking order

srm

To

1. The II Additional District Court,  
Pondicherry.
2. The Principal Sub Judge,  
Pondicherry.
3. The Section Officer,  
V.R. Section,  
High Court Madras.



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**SATHI KUMAR SUKUMARA KURUP, J**

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Judgment made in  
S.A.No.1090 of 2013

03.06.2025