



C.R.P.Nos.1013 of 2025 & 2774 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.Nos.1013 of 2025 & 2774 of 2024

and

C.M.P.No.14710 of 2024

C.R.P.No.1013 of 2025 :

R.Rasappan

... Petitioner

Vs.

D.Rajalakshmi (died)

V.Duraisamy (died)

1.D.Sivakumar

2.D.Shanmughamani

3.Pappammal

4.Sathyabama

5.M.R.Imayavaramban

... Respondents

*[Cause title accepted vide Court order dated 20.02.2025
in C.M.P.No.3419 of 2025 in C.R.P.SR.No.51015 of 2024]*

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 17.10.2005 made in O.S.No.534 of 2000 passed by the I Additional Sub-Court, Erode.

*[Prayer amended vide Court order dated 23.04.2005
in C.M.P.No.8592 of 2025 in C.R.P.No.1013 of 2025]*



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For Petitioner : Mr.P.Valliappan
Senior Counsel
for M/s.PV Law Associates

For R1 to R4 : Mr.P.Suresh

R5 : No such person

C.R.P.No.2774 of 2024 :

R.Rasappan ... Petitioner

Vs.

D.Rajalakshmi (died)
V.Duraisamy (died)
1.D.Sivakumar
2.D.Shanmughamani
3.Pappammal
4.Sathyabama

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 07.03.2023 made in E.A.No.43 of 2019 in E.P.No.2 of 2017 on the file of the Sub-Court, Avinashi.

For Petitioner : Mr.P.Valliappan
Senior Counsel
for M/s.PV Law Associates

For R1, R2 & R4 : Mr.P.Suresh

For R3 : Mr.C.Vigneshwaran
assisted by Mr.P.Vasanthakumar



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COMMON ORDER

C.R.P.No.1013 of 2025 has been filed under Article 227 of the Constitution of India to set aside the judgment and decree, dated 17.10.2005, in O.S.No.534 of 2000 on the file of the I Additional Sub-Court, Erode, on the ground that the judgment in the present suit is not in conformity with Order XX Rules 4 and 5 CPC and the same cannot be construed as a valid judgment. C.R.P.No.2774 of 2024 has been filed under Section 115 CPC challenging the order of the Sub-Court, Avinashi, dated 07.03.2023, in E.A.No.43 of 2019 in E.P.No.2 of 2017, dismissing the application under Section 47 CPC filed on the ground that the decree has been obtained by playing fraud. Both these revisions are filed by the 2nd defendant in the suit.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



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3. Brief background of the case is as follows :

The suit in O.S.No.534 of 2000 has been originally filed by D.Rajalakshmi, for specific performance to enforce the sale agreement dated 19.01.2000 entered into between the plaintiff and the 1st defendant in respect of the suit property. The said suit was originally decreed *ex parte* on 31.10.2003. Thereafter, the 1st defendant alone filed an application to set aside the *ex parte* decree and the *ex parte* decree was set aside on 03.08.2005. However, again, the suit was decreed *ex parte* by judgment and decree dated 17.10.2005. Thereafter, the 2nd defendant filed an application in I.A.No.269 of 2006 to condone the delay of 772 days in filing an application to set aside the *ex parte* decree in the suit, which was dismissed by the trial Court by a detailed order dated 29.01.2007. Meanwhile, the plaintiff filed Execution Petition in E.P.No.56 of 2006, pursuant to which, sale deed was executed in favour of the plaintiff through Court on 29.03.2007. The plaintiff filed Execution Petition in E.P.No.166 of 2007 for delivery of possession. The said Execution Petition, after various transfers, was renumbered as E.P.No.2 of 2017 on the file of Sub-Court, Avinashi. Thereafter, delivery was ordered in E.P.No.2 of 2017 on



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22.01.2019. Now, the 2nd defendant/2nd judgment debtor has filed the present application under Section 47 CPC in E.A.No.43 of 2019 in E.P.No.2 of 2017. It is the contention of the 2nd defendant that the suit property does not absolutely belong to the 1st defendant, but also belongs to his son. According to him, he is the lawful owner of the property who has purchased the property from the 1st defendant and his minor son based on a sale agreement executed in his favour on 25.08.1999 and sale deed registered on 26.07.2000. Therefore, the application has been taken out contending that the suit sale agreement was a forged one. The said application was dismissed by the Execution Court, challenging which, C.R.P.No.2774 of 2024 has been filed by the 2nd defendant. The 2nd defendant has also filed C.R.P.No.1013 of 2025 to set aside the judgment and decree in the suit on the ground that it is not in conformity with Order XX Rules 4 and 5 CPC.

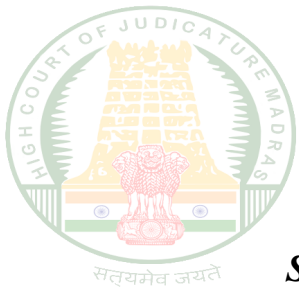
4. Though two revision petitions are filed, the main challenge is to the *ex parte* decree passed in the suit on 17.10.2005 on the ground that no reasons, whatsoever, have been given in the judgment and the judgment is not in conformity with Order XX Rules 4 and 5 CPC and therefore, it is a nullity in the eye of law.



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5.Learned Senior Counsel appearing for the petitioner would strenuously submit that, in a suit for specific performance, though the defendants are set *ex parte*, the basic requirement is to assess the readiness and willingness of the plaintiff, which has not been done by the trial Court. Hence, it is his contention that, when the very judgment and decree is not as per law, the same can be gone into by this Court by exercising powers under Article 227 of the Constitution of India. Such decree can be set aside even in collateral proceedings. In support of his submissions, he has relied upon the following judgments :

- i. *Balrej Taneja and another v. Sunil Madan and another* [1999 (8) SCC 396]
- ii. *B.Booma Devi and others v. District Collector and others* [2020 (1) MLJ 493]
- iii. *S.Baskar v. S.Ranjithkumar and others* [2024 (6) CTC 819]
- iv. *Shanthimalai Trust represented by its Managing Trustee v. Arunachala Education and Environment Development Trust represented by its Managing Trustee and others* [2021 (1) CTC 539]
- v. *N.Maheswari v. Mariappan and others* [2013 (2) CTC 388]
- vi. *Ayyasamy v. Shanmugam* [2023 (6) MLJ 164]
- vii. *Muthalammal and others v. K.P.Natarajan and others* [2020



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viii.K.P.Natarajan and another v. Muthalammal and others [2021

(15) SCC 817]

6.Further, it is the contention of the learned Senior Counsel that the suit has been filed suppressing the earlier sale agreement dated 25.08.1999 in favour of the 2nd defendant. Therefore, a plea of forgery is also raised in this matter. It is his contention that the decree obtained by playing fraud, is a nullity and therefore, the same is not executable. In support of his contentions, he relied upon the following judgments :

- i. *KishanLal Barwa v. Sharda Saharan and another [2015 SCC Online All 4980]*
- ii. *A.V.Papayya Sastry & another v. Government of A.P. and others [2007 (4) SCC 221]*

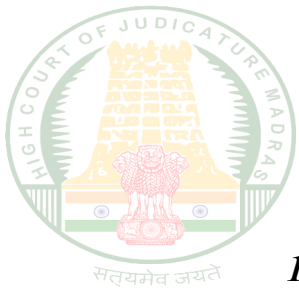
7.Whereas, it is the contention of the learned for the respondents that the present application is nothing but a clear abuse of process of law. The suit has been originally filed for specific performance on the basis of sale agreement executed by the 1st defendant in favour of the plaintiff on 19.01.2000. The said suit was originally decreed on 31.10.2003 as against two defendants. However, the 1st defendant alone filed an application to set



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aside the *ex parte* decree. The said decree has been set aside on 03.08.2005. Thereafter, once again, the defendants were set *ex parte* and an *ex parte* decree has been passed on 17.10.2005. To set aside the *ex parte* decree, an application was taken out by the 2nd defendant/revision petitioner along with an application to condone the delay of 772 days, which was dismissed by the trial Court by detailed order in I.A.No.269 of 2006 dated 29.01.2007. The said order is also confirmed by this Court in ***C.R.P.No.1203 of 2007***, by order dated 26.06.2007. As against the said order, Special Leave Petition was filed in ***S.L.P.(Civil) No.20382 of 2007***, which was also dismissed by the Hon'ble Supreme Court by order dated 04.01.2008. Thereafter, the execution proceedings have been concluded and possession is also delivered in favour of the decree holder. At this stage, the present application has been filed only in order to protract the proceedings. The learned counsel further submitted that the Execution Court cannot go beyond the decree and re-agitate the issues which are already decided in the Interlocutory Application in I.A.No.269 of 2006 itself. Hence, the learned counsel opposed the revisions. In support of his submissions, the learned counsel relied upon the following judgments :

i. R.Viswanathan v. Muthuvel and others [2018 (2) MWN (Civil)]



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ii. *K.S.Ravi v. K.P.Manickam and another* [2018 (4) MWN CTC

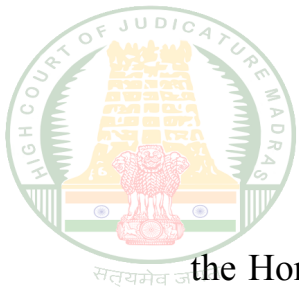
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iii. *SnehLata Goel v. Pushpalatha and others* [2019 (1) CTC 710]

iv. *Shanthilal Kothari v. Sasthrasala Venkatram (D) Sasthrasala Sharathbabu* [2020 (1) LW 561]

8.Heard the learned counsel on either side and perused the entire materials available on record.

9.Firstly, according to the 2nd defendant/revision petitioner, the 1st defendant in the suit has executed an agreement in his favour on 25.08.1999, later, he executed a registered sale deed on 26.07.2000. The fact remains that the suit in O.S.No.534 of 2000 was filed on 18.07.2000. The suit has been filed much prior to such sale, whereas, the revision petitioner claims to have purchased the property on 26.07.2000. Therefore, the sale deed executed in favour of the 2nd defendant/revision petitioner is hit by Doctrine of *lis pendens*. The Doctrine applies to the suit for specific performance also. This Court, in *Gunaseelan and another v. P.Perumal and others* reported in (2025) 2 CTC 509, has taken note of the judgment of



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the Hon'ble Supreme Court in *M/s.Siddamsetty Infra Projects Pvt. Ltd., vs. Katta Sujatha Reddy and others* [Review Petition (C).No.1565 of 2022 in C.A.No.5822 of 2022], wherein, it is held that doctrine of *lis pendens* will apply even in a suit for specific performance. The relevant portion is extracted hereunder :

“18.The Hon'ble Supreme Court in the case of M/s.Siddamsetty Infra Projects Pvt. Ltd., vs. Katta Sujatha Reddy and others in a review petition in Review Petition (C).No.1565 of 2022 in C.A.No.5822 of 2022 has held that even in a suit for specific performance, doctrine of lis pendens will apply. To apply lis pendens, the following conditions are essential:

- a. There must be a pending suit or proceeding;*
- b. The suit or proceeding must be pending in a competent court;*
- c. The suit or proceeding must not be collusive ;*
- d. The right to immovable property must be directly and specifically in question in the suit or proceeding;*
- e. The property must be transferred by a party to the litigation; and*
- f. The alienation must affect the rights of any other party to the dispute”*



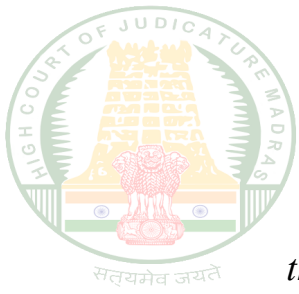
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10.Be that as it may, the main ground raised by the revision petitioner/2nd defendant in these revision petitions as well as in the application to condone the delay filed on an earlier occasion in I.A.No.269 of 2006, is that the agreement relied upon by the plaintiff in the suit dated 19.01.2000 is a forged one.

11.Absolutely, there is no doubt, in extreme cases, when a decree is obtained by playing fraud on the Court, the decree is a nullity in the eye of law. Even this Court has exercised powers under Article 227 of the Constitution of India and set aside the *ex parte* decree in those cases. One such case is ***R.Chandrasekaran and another v. Ganesan and others*** [***C.R.P.No.1602 of 2025, dated 24.06.2025***], wherein, this Court, after referring to various precedents, has held as follows :

“15.All the above precedents make it abundantly clear that a decree obtained by playing fraud upon the Court or by abuse of the process of law is a nullity in the eyes of law. In such cases, the supervisory jurisdiction of the High Court under Article 227 of the Constitution can rightly be invoked to set aside such an illegal and void decree, in order to uphold



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the sanctity of the judicial process and prevent miscarriage of justice.

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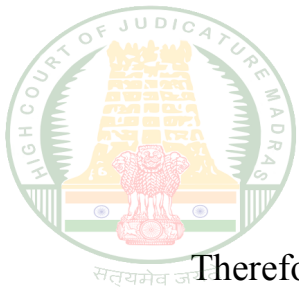
19. Ordinarily, a challenge to a decree on the ground that it was obtained by fraud must be raised by way of an appeal or appropriate proceedings wherein the alleged fraud must be specifically pleaded and established by evidence. Mere allegations of fraud and collusion are not sufficient and there must be concrete facts to substantiate the allegations of fraud and collusion. However, in cases where the fraud is evident on the face of the judgment and decree, or discernible from the conduct of the parties, it may not be necessary to await a full-fledged trial for determination. In such exceptional circumstances, where the decree itself is a product of fraud and amounts to an abuse of the process of court, the High Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, is empowered to intervene and set aside such decree. The jurisdiction of the High Court under Article 227 is not ousted in cases where the decree is a nullity in law owing to fraud perpetrated upon the court itself.”

12. However, in the case on hand, the very contention of the revision petitioner/2nd defendant that the subsequent sale agreement that is subject matter of the suit in O.S.No.534 of 2000 is a forged and fabricated, has



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been extensively dealt with by the trial Court in I.A.No.269 of 2006, wherein, oral evidence is also given by the petitioner/2nd defendant. After assessing the oral evidence on record, the trial Court, in I.A.No.269 of 2006, has clearly held that the revision petitioner/2nd defendant is not a *bona fide* purchaser and the agreement and sale deed in his favour have been created only in order to defeat the rights of the plaintiff in the suit. By holding so, the application in I.A.No.269 of 2006 to condone the delay of 772 days, was dismissed. The said findings of the trial Court in I.A.No.269 of 2006 have been confirmed by this Court in ***C.R.P.No.1203 of 2007***, by order dated 26.06.2007, and ultimately, the Special Leave Petition in ***S.L.P.(Civil) No.20382 of 2007***, filed as against the order in the Civil Revision Petition has also been dismissed by the Hon'ble Supreme Court by order dated 04.01.2008. Therefore, this Court is of the view that, any finding with regard to a particular document and conduct of the parties, which already reached finality in the same proceedings, even at Interlocutory Application stage, will operate as *res judicata*. The same cannot be re-agitated once again. The main ground raised in the application under Section 47 CPC filed before the Execution Court and also raised before this Court in these revisions, is that the suit sale agreement is forged.



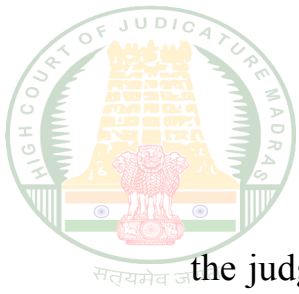
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Therefore, once again, the parties cannot be permitted to re-agitate the same ground in an application under Section 47 CPC.

13.It is relevant to note that the execution proceedings has also concluded. The sale deed has been executed and possession has also been handed over to the respondents. This fact is not disputed. Therefore, merely on the basis of repeated applications, filed one after another, on the same grounds which have been already decided and which finding has reached finality upto the Hon'ble Supreme Court, it cannot be said that those applications have to be decided once again. Since the very issue with regard to the alleged forgery of the suit agreement has been decided in earlier litigation and the finding therein has reached finality, filing an application once again under Section 47 CPC and re-agitating the same issue, in the view of this Court, is an abuse of process of law.

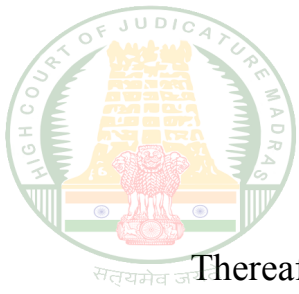
14.As far as the contention of the learned Senior Counsel that the decree passed by the Court is not in conformity with Order XX Rules 4 and 5 CPC is concerned, absolutely there is no dispute with regard to the legal proposition in this regard. Every judgment should contain the reasons and



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the judgment should fall within the parameters of Order XX Rules 4 and 5 CPC. No doubt, the Courts are bound to give reasons for such decision.

15.However, in the given case, the fact remains that the decree has been passed and it has reached finality, and while obtaining the decree, no materials have been placed or established before the Court to show that such decree has been obtained by playing fraud either on the Court or on the party. Therefore, this Court is of the view that, merely because reasons have not been stated and the judgment has been passed without giving proper reasons, such judgment or decree cannot be set aside, that too, after a long delay, particularly when several developments have been taken place in between the date of decree and the date of challenge made to such decree later. From the very inception when earlier *ex parte* decree was passed on 31.10.2003, the revision petitioner/2nd defendant was very much aware of the *ex parte* decree and notice was also served on him in the execution proceedings. However, when *ex parte* decree was passed on 31.10.2003, he had not filed any application to set aside the *ex parte* decree dated 31.10.2003, nor had he challenged that. However, only the 1st defendant in the suit alone has filed the application to set aside the *ex parte* decree.



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Thereafter, when the *ex parte* decree was passed once again on 17.10.2005, the revision petitioner/2nd defendant has filed an application to set aside the *ex parte* decree with a delay of 772 days. It is highly improbable that a person, in whose favour sale deed is executed, has remained silent all these years without taking any step to contest the suit on merits and now, coming up with an application by contending as if he has entrusted the matter to the counsel for the 1st defendant. In any event, these things cannot be now gone into. The trial Court has clearly recorded a finding that the revision petitioner is not a *bona fide* purchaser and the sale deed in his favour has been created with the help of his relative only in order to defeat the rights of the plaintiff in the suit, in whose favour, the decree has been already passed. Such finding has also reached finality. Therefore, at this stage, once again, the same cannot be re-agitated.

16.No doubt, even this Court, in extreme cases, as stated above, has held that, if it is established that the decree is a result of fraud and when the decree is a nullity in the eye of law, the same can be set aside even in collateral proceedings or by exercising powers under Article 227 of the Constitution of India. Any decree which is patently illegal and when fraud



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played on the Court or on the party is apparently evident from the very nature of decree itself, such decree can be set aside under Article 227 of the Constitution. However, if the fraud pleaded requires proof and evidence, this Court, under Article 227 of the Constitution, cannot venture upon that issue. Mere erroneous decree which is not challenged all these years, which has also been acted upon by the parties, cannot be interfered with in exercise of powers under Article 227 of the Constitution.

17.A judgment or decree can be said to be a nullity only when it is obtained by fraud, misrepresentation, against a dead person, against a minor without the minor being represented or by illegal means. Such a judgment or decree can be set aside even at the stage of execution or in collateral proceedings.

18.However, a judgment not in consonance with Section 2(9) or Order XX of the Code of Civil Procedure, is only an improper judgment, which is not *void ab initio*. It is akin to a judgment given in violation of any provision of law. Such a judgment can be set aside only in Appeal or Review.



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19.If a non-speaking *ex parte* judgment is passed, it can be set aside in an Appeal or Review or under Order IX Rule 13 CPC, subject to the law of limitation. It cannot be set aside in a proceeding seeking to condone the delay under Section 5 of the Limitation Act or by invoking Article 227 of the Constitution of India.

20.Judgment which has been obtained by abusing the process of law or in flagrant violation of the principles of natural justice or suits which amount to re-litigation are liable to be set aside/struck off in exercise of powers under Article 227 of the Constitution of India.

21.A non-speaking *ex parte* judgment cannot be set aside by invoking Article 227 of the Constitution of India, as suitable remedies by way of Appeal and Review are available. All such proceedings are subject to the law of limitation. Even if the said *ex parte* judgment is non-speaking, its correctness can be assailed only in an Appeal or Review or by seeking to set it aside under Order IX Rule 13 CPC.



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22.If such non-speaking *ex parte* judgments are allowed to be set aside by invoking Article 227 of the Constitution and that too, after several years, it will open the Pandora's Box and lead to a spike in litigation.

23.In the given case, it is also brought to the notice of this Court that the revision petitioner had also filed a suit in O.S.No.563 of 2016 on the file of the Sub-Court, Avinashi, to cancel the judgment and decree in O.S.No.534 of 2000 and also for permanent injunction. The said suit had also been dismissed for default. Therefore, having failed in all attempts, this revision is also one more attempt to stall the execution proceedings. In any event, since the contention of the petitioner that the earlier agreement which was subject matter of the suit was forged, is held to be false on evidence in I.A.No.269 of 2006, which has been confirmed upto Hon'ble Supreme Court in S.L.P.(Civil) No.20382 of 2007, this Court is of the view, the present application under Section 47 CPC once again on the same ground, is an abuse of process and challenge to dismissal of such application is not maintainable under Article 227 of the Constitution of India.



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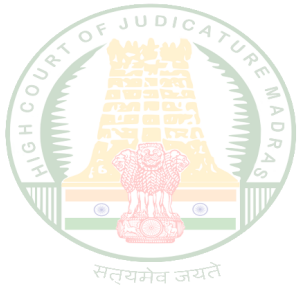
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24.In the given case, though reasons have not been properly given by the trial Court, the parties are always bound by the decree. Further, the Execution Petition has been opposed tooth and nail. Having lost the battle all these years, now, a revision is filed under Article 227 of the Constitution of India to set aside the judgment in the suit on the ground that no reasons are recorded in the judgment and that the judgment is not in conformity with Order XX Rules 4 and 5 CPC, particularly after this length of time when the judgment has been acted upon and possession has been handed over and much water has flown under the bridge. Further, the decree has not been challenged all these years, therefore, to set aside such decree after long delay, this Court cannot exercise its power under Article 227 of the Constitution.

25.In view of the above discussion, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1.The I Additional Subordinate Judge,
Erode.

2.The Sub-Judge,
Avinashi.

3.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.

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