



S.A. No.875 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.02.2025

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

S.A.No.875 of 2014

and

MP.No. 1 of 2014

and

Contempt petition No.814 of 2016

1.V.Nirmala

2.R.Vijayakumar

... Appellants

Vs

V.Vimala

... Respondent

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree in A.S.No.15 of 2013 on the file of the II Additional District and Sessions Court, Vellore, Ranipet, Vellore District, dated 11.04.2014 in reversing the judgement and decree in O.S.No.78 of 2004, on the file of the Subordinate Court, Ranipet, dated 29.10.2012.



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For Appellants : Mrs.V.Srimathi

For Respondent : Mr.R.Bharath Kumar

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 11.04.2014 in A.S. No. 15 of 2013 on the file of the II Additional District and Sessions Court, Vellore, Ranipet, in reversing the judgment and decree in O.S.No.78 of 2004 on the file of the Subordinate Court, Ranipet, dated 29.10.2012.

2. Heard Mrs.V.Srimathi, learned counsel for the appellants, Mr.R.Bharath Kumar, learned counsel appearing for the respondent, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. The appellants in this case are the defendants 1 and 2 in Suit O.S. No. 78 of 2004, filed before the Subordinate Court, Ranipet, by the

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respondent/plaintiff. The suit was filed seeking relief for the delivery of vacant possession of the suit property. After contesting the case, the trial court dismissed the suit. Aggrieved by the dismissal, the plaintiff preferred an appeal, A.S. No. 15 of 2013, before the II Additional District and Sessions Judge, Vellore, Ranipet. The learned first appellate judge allowed the appeal. Challenging the said findings, the defendants have now preferred this second appeal.

5. Brief Facts of the Case

The plaintiff's case is that the suit property originally belonged to the defendants, who are husband and wife, and was acquired by them through three different sale deeds. Due to urgent family expenses, they sold the suit property to the plaintiff for valid consideration, and the sale deed was duly registered in her favour on 20.07.2000. Subsequently, the name transfer was effected in the municipal records, and the plaintiff paid property tax as the absolute owner of the suit property.

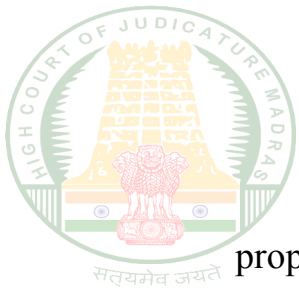


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6. After executing the sale deed, the defendants agreed to deliver vacant possession of the suit property but failed to do so. However, since the first defendant is the plaintiff's sister, she did not take immediate steps to evict them. Later, the defendants expressed their intention to repurchase the property and entered into a sale agreement on 05-08-2001. As per the agreement, the plaintiff agreed to sell the property for Rs.3,20,000/- and received an advance of Rs.50,000. The sale was to be completed on or before 05-11-2001. However, the defendants failed to fulfill their part of the agreement.

7. The plaintiff issued a legal notice on 22-07-2002, calling upon the defendants to execute the sale deed. The first defendant evaded the notice, while the second defendant received but did not reply or comply with the terms. Furthermore, the defendants neither handed over possession of the suit property as per the terms of the sale deed nor showed any inclination to complete the purchase as per the sale agreement dated 05-08-2001. The plaintiff issued another notice on 22-03-2004, demanding possession of the



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property. The second defendant received the notice but did not respond or surrender possession. Hence, the suit was filed.

8. In their written statement, the defendants admitted their relationship with the plaintiff but denied all other allegations. They contended that the second defendant and the plaintiff's husband were involved in an unregistered chit fund and had accumulated debts. To safeguard the property from being sold to settle the debts, they executed a nominal sale deed, which was never intended to be acted upon. They further claimed that, on the same day, another document was executed on 20.07.2000, wherein the plaintiff agreed to reconvey the property.

9. The defendants asserted that the market value of the property was Rs.6,00,000/- but the alleged sale deed mentioned only Rs.1,25,000/-. However, in the sale agreement, the property value was stated as Rs.3,20,000/-, and an advance payment of Rs.50,000/- was made, thereby confirming the defendants' continued possession of the property. According to them, the plaintiff was entitled only to claim the balance



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amount and not to seek recovery of possession. They also argued that the

two sale agreements dated 20-07-2000 and 05-08-2001 were still in force.

Additionally, they claimed that the plaintiff had neither correctly stated the value of the property nor paid the appropriate court fee. Alleging suppression of material facts, the defendants prayed for the dismissal of the suit.

10. Before the trial court, both parties presented oral and documentary evidence. The plaintiff was examined as P.W.1, and Ex. A1 to A11 were marked on her behalf. On the defendants' side, the first defendant was examined as D.W.1, and Ex. B1 to B5 were marked.

11. The learned trial judge framed three issues, the prime ones being:
i) Whether the sale deed dated 20-07-2000 was a sham and nominal transaction. ii) Whether the plaintiff was entitled to recover possession of the suit property.

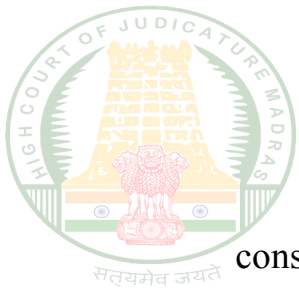


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12. Upon considering the evidence on record, the learned trial judge noted that, after the execution of the sale deed (Ex.A1), the plaintiff's husband executed two letters in favour of the defendants, marked as Ex.B4 and Ex.B5, along with another sale agreement, Ex.B3. Based on the recitals in these documents, the learned trial judge concluded that, due to the ongoing dispute between the parties, the defendants were compelled to execute a nominal sale deed in favour of the plaintiff as a form of guarantee to settle the chit fund liabilities. The averments of the letters indicated that the defendants never intended to sell the suit property to the plaintiff, and the plaintiff was aware that the sale deed (Ex.A1) was not executed for valid consideration. Consequently, the trial court held that the sale deed dated 20-07-2000 was a sham and nominal document, not intended to be acted upon. Therefore, the plaintiff was not entitled to recover possession of the suit property.

13. Aggrieved by the trial court's findings, the plaintiff preferred A.S. No. 15 of 2013. In the appeal, the learned first appellate judge analyzed the evidence on record and formulated the primary issue for



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consideration: *Whether the plaintiff was entitled to claim recovery of possession as prayed for?"*

14. The learned first appellate judge, upon considering the evidence of DW1, noted that she deposed that her husband and the plaintiff's husband were conducting a monthly chit, to evade their debtors, she, along with her husband, executed a sale deed in the name of her sister, the plaintiff. However, she admitted that she had not taken any steps to recover the property by canceling the sale deed through a court of law.

15. The learned First appellate judge also observed that the trial court had erroneously relied on the recitals in Ex.B4 and Ex.B5, despite the absence of specific pleadings to that effect on the defendants' side. Furthermore, the person who wrote the letter, namely the plaintiff's husband, Velu, was not examined, nor did the second defendant, who conducted the chit, enter the witness box. As a result, the individuals associated with the said letters were not examined, yet the learned trial judge gave undue weight to the recitals in the letters and erroneously held



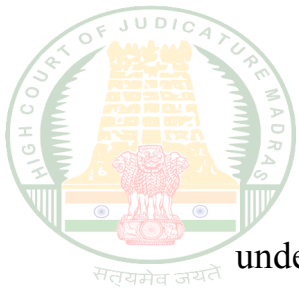
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that the sale deed, Ex.A1, was sham, nominal, and not acted upon. This finding is legally unsound and is liable to be set aside.

16. Furthermore, the defendants did not take any steps to execute the sale deed as per the alleged sale agreement, nor did they hand over possession as stipulated in the sale deed. Therefore, the plaintiff was rightly entitled to the relief as she prayed for. Accordingly, the findings of the trial court were set aside, and the suit was decreed. Aggrieved by this decision, the defendants challenged the said findings and preferred this appeal.

17. The learned counsel for the appellants challenged the findings of the first appellate court on several grounds, specifically,

i) That the lower appellate court ought to have seen that the case of the plaintiff is that she was not willing to rely upon the document of the sale dated 20.07.2000. The sale consideration mentioned there does not reflect the true value. Hardly within a year on 05.08.2001, the plaintiff admits that the price indicated on 05.08.2011 is Rs.3,20,000/- and that she had received Rs.50,000/- on the date of the agreement itself. The document



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under Ex.A.1 though christened as a sale deed, it is not a voluntarily transaction as would be evident from the following

a. Possession had not been given to the plaintiff in pursuance of the sale.

b. The value of the property is far below the sale price

c. The agreement dated 05.08.2001 shows the intention of the parties is not to treat the document dated 20.07.2000 as a sale deed

ii) That the court below should have seen that the plaintiff had executed a document on 20.07.2000 agreeing not to treat the document under Ex.A.1 as a deed of sale.

iii) That the lower appellate court should have appreciated that the document dated 16.06.2001 a letter written by the plaintiff's husband wherein the circumstance under which the Ex.A.1 was executed is narrated.

iv) That the lower appellate court should have seen that under Ex.A.1 only a sum of Rs. 50,000/- was paid as would be evident from Ex.B.5. It is

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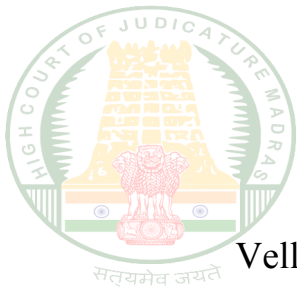
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also an admitted fact that while Ex.B.3 was executed a sum of Rs.50,000/- was paid to the plaintiff. Therefore, the document under Ex.A.1 could be treated only as an accommodation transaction.

v) That the lower appellate court should have seen that the document under which the plaintiff had claimed a right was consciously abandoned in the exchange of letters. The trial court had considered the records objectively but the lower appellate court had ignored the document without even appreciating its relevance.

vi) That the lower appellate court should have appreciated that the document which is sham and nominal could be ignored and it requires no decree for annulment. This is particularly true when the plaintiff herself admits to the fact that she had not taken possession nor wrest control over the property

vii) That the order of the lower appellate court in A.S. 15/2013, on the file of the II Additional District and Sessions Court, Vellore at Ranipet,



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Vellore District, dated 11.04.2014 in reversing the judgment and decree in O.S. 78/2004, on the file of the Subordinate Court, Ranipet, dated 29.10.2012, is unjust, illegal, manifestly erroneous and contrary to the principle of law and in any event liable to be set aside.

18. The Second Appeal was admitted on 15.07.2016, with the following substantial questions of law:

"a. Whether Ex.A.1 could be considered as a deed of sale, when the plaintiff had admitted she had not taken possession and Ex.P.5 and B.6 establishes that document was executed without any consensus and consideration?

b. When Ex.B.5 and B.6 are crucial in deciding the nature of transaction under Ex.A.1 and in view of the admission of the plaintiff not to make claim over the property, is the lower appellate court below justified in decreeing the suit based on Ex.A.1 alone?

c. When the defendants are in possession of the property as owners and coupled with the facts Ex.B.3



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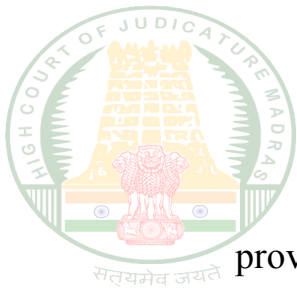


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recognizes such possession, is the suit for recovery of possession maintainable at the instance of the respondents?"

19. In response, the learned counsel for the respondent/plaintiff argued that, as per the sale deed (Ex.A1), the defendants were bound to hand over possession of the property. Since the plaintiff and the first defendant are sisters, the defendants requested additional time to vacate and deliver possession, but they failed to do so. Despite the existence of a sale agreement between the parties and the notice issued by the plaintiff, the defendants were unwilling to comply with its terms. Therefore, based on the sale deed, the plaintiff is entitled to recover possession, a conclusion rightly appreciated by the learned first appellate judge. To date, the plaintiff has been paying property tax as the absolute owner.

20. The defendants, who claim the sale deed was sham and nominal, cannot rely on oral evidence to contradict the written recitals in the sale deed they executed. Additionally, they failed to provide any contrary evidence to disprove the contents of the sale deed. Since the plaintiff



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proved her ownership, the burden was on the defendants to prove that the sale deed was not executed as alleged, but they failed to do so by producing material evidence. The first appellate judge rightly appreciated both law and facts, therefore, no interference is necessary. The respondent thus pray for the dismissal of the appeal on the grounds of lack of merit.

21. To support his arguments, the learned counsel for the respondent relied on the following authorities: **2009 (5) SCC 713 Vimal Chand Ghevarchand Jain and others Vs. Ramakant Eknath Jadoo**, in which stated as follows:

" A. Transfer of Property Act, 1882 --- Ss. 54, 580 and 8 -- Sale of immovable property --- Nature/Genuineness of -- Sale or money lending transaction Determination of Relevant considerations Pleadings and proof necessary --- Burden of proof as to transaction, lies on whom --- Existence of registered sale deed --- Effect

----Held, a registered deed of sale carries presumption that the transaction was a genuine one --- if execution of sale deed is proved, onus is on defendant to prove that the deed was not executed and it was a sham transaction

----- Father of appellant purchased disputed property under a registered sale agreement, for which respondent, son of vendor was a witness - vendor was put in possession of disputed property as licensee on monthly rent - since cheques



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issued for rent were dishonoured, appellant, legal heir, filed suit for recovery of premises - Respondent (son of vendor and successor) refusing to vacate premises denying such sale transaction - sustainability

---- Held, real dispute was as to character of possession: whether father of respondent possessed disputed property as owner or as licensee - Courts below failed to pose correct question unto themselves and consider relevant facts - respondent neither examining himself nor adducing documentary evidence as to ownership - being a witness to the transaction, respondent should have examined himself - non-examination of respondent should have led to adverse inference against him - Courts wrongly placed burden on appellant - appeal allowed - Registration Act, 1908 - S. 48 - Evidence Act, 1872, Ss.91, 92, 103 and 114 Iii.(g)

C. Transfer of Property Act, 1882 S. 8 Deed of sale, registration of --- Effect --- Held, as soon as a deed of sale is registered, the title passes to the vendee --- The vendor, in terms of stipulations made in deed of sale, is bound to deliver possession of the property sold --- If he fails to do so, he is liable for damages --- Further held, the right of possession over a property is a facet of title --- Property Law --- Ownership and Title --- Registration Act, 1980 --- Ss. 17 and 47 to 49"

22. Furthermore, the learned counsel for the respondent argued that the defendants relied on Ex.B4 and Ex.B5, letters purportedly written by the plaintiff's husband and received by the second defendant. However, to establish the veracity of these documents, the second defendant, who relied



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on them, did not enter the witness box, nor did the defendants prove the alleged money-lending transactions. Consequently, the learned first appellate judge rightly drew an adverse inference, which does not warrant interference by this court.

23. To support this argument, he relied on the precedent set in **1999**

(3) SCC, 457.- Iswar Bhai C.Patel Alias Bachu Bhai Patel Vs.Harihar Behera and another, in which stated as follows:

"C.Evidence Act, 1872 - Ss.114. (g) and 106 - Adverse Presumption - must be drawn against defendant who does not present himself for cross-examination and refuses to enter the witness-box in order to refuse allegations made against him or to support his pleading in his written statement. (Para 17)."

24. Upon considering both submissions, the facts reveal that the plaintiff and the first defendant are sisters, that apart the first and second defendants are husband and wife. The plaintiff contends that the defendants were the original owners of the suit property, due to urgent family needs, they agreed to sell the property, and the plaintiff purchased it for valid consideration of Rs.1,25,000/-. Since they were close relatives, the

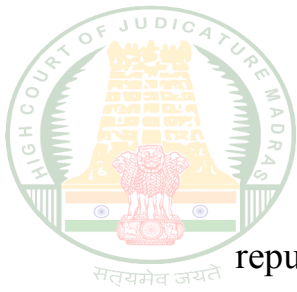


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defendants requested additional time to hand over possession but failed to do so. In the meantime, a sale agreement was executed between them, in which the defendants agreed to repurchase the property. However, they failed to comply with the terms of the agreement even after receiving notice. Consequently, the plaintiff filed the suit seeking delivery of vacant possession.

25. The defendants denied not only the plaintiff's claim but also disputed the right and title of the plaintiff based on the sale deed, Exhibit A1. They contend that it is a sham and nominal document executed due to a money transaction dispute between them. The defendants claim that they were forced to execute the sham and nominal sale deed in favour of the plaintiff.

26. The said sale deed is marked as Ex.A1. Admittedly, it is a sale deed executed for valid consideration. As per the terms and recitals, the defendants were bound to hand over possession of the suit property to the plaintiff. After executing Exhibit A1, the defendants entered into a



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repurchase sale agreement with the plaintiff, which is also an admitted fact.

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To comply with the terms of this agreement, the plaintiff issued a notice to the defendants, but they did not come forward to complete the sale deed as per the terms of the alleged sale agreement marked as Exhibit B2, dated 20.07.2000.

27. Therefore, based on Ex.A1 as well as Ex.B1, a lawful presumption arises that the plaintiff is the absolute owner of the suit property. Since the defendants executed a registered sale deed (Ex.A1), as per Section 92 of the Evidence Act, oral evidence contradicting the recitals of such an instrument is excluded. Consequently, the registered sale deed carries the presumption that the transaction was genuine. The burden of proof is on the defendants to establish that the deed was not executed and that it was a sham and nominal transaction.

28. To support their defense, the defendants relied on letters allegedly executed by the plaintiff's husband, marked as Exhibit B4 and Exhibit B5, dated 16.06.2001. The recitals of these letters were extracted by

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the learned trial judge in paragraph 10 of the trial court's findings. Upon examining the recitals, it is evident that there was an exchange of communication wherein the plaintiff's husband demanded that the second defendant return their house by repaying the amount. He stated that he had borrowed money from third parties and demanded Rs. 3,30,000/- from the defendants, as he had already taken loans at an exorbitant interest rate. Furthermore, there was a dispute between the plaintiff's husband and the second defendant regarding a chit fund business.

29. However, as rightly pointed out by the learned first appellate judge, the second defendant, who relied on these letters, did not enter the witness box to establish the circumstances under which the alleged sham and nominal sale deed was executed in favour of the plaintiff.

30. The first defendant alone was examined as DW-1. Her testimony reveals that her husband was a government conductor in state transport, and she was unaware of the chit business conducted by her husband and the plaintiff's husband. She also admitted that she had not taken any steps to



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reclaim the property from the plaintiff. Therefore, the evidence of DW-1 does not establish that they were forced to execute a sham and nominal document in favour of the plaintiff. Despite the lack of concrete evidence regarding Exhibit B4 and B5, the learned trial judge erroneously concluded, based solely on their recitals, that the sale deed executed by the defendants in favour of the plaintiff was sham and nominal.

31. As discussed above, neither the evidence of DW-1 is sufficient nor have the defendants established that Exhibit A1 is a sham and nominal sale deed. Furthermore, the second defendant's failure to enter the witness box allows the court to draw an adverse inference against him.

32. In this regard, the authority relied upon by the respondent, in **1999 (3) SCC, 457.- Iswar Bhai C.Patel Alias Bachu Bhai Patel Vs.Harihar Behera and another** is squarely applicable to the facts of this case. Therefore, the letters marked as Exhibit B4 and B5 have not been proven in the manner required by law. Additionally, the defendants did not mention these two letters in their written statement. When there are no



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pleadings, no evidence can be adduced in support of Exhibit B4 and B5.

Consequently, the defendants have failed to establish, through these letters, that Exhibit A1 is a sham and nominal sale deed.

33. On the other hand, as per the recitals of Ex.A1, the plaintiff is the absolute owner of the suit property. The defendants have failed to discharge their burden by adducing contrary evidence to disprove the recitals of Ex.A1, a fact rightly observed by the learned first appellate judge. Accordingly, questions of law A and B are answered.

34. Admittedly, the plaintiff and the first defendant are sisters. Considering their relationship, the plaintiff initially permitted the defendants to reside in the house. However, they subsequently refused to vacate. As per the sale deed (Exhibit A1), the property was conveyed by the defendants to the plaintiff for valid consideration of Rs.1,25,000/-. As of now, the sale deed remains in force. The defendants have not taken any steps to get the sale deed canceled if they believed it to be sham and nominal, nor have they taken steps to enforce the alleged sale agreement.



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35. Therefore, as per the sale deed, the plaintiff remains the absolute owner of the suit property. Based on the recitals, the defendants are bound to deliver possession of the property to the plaintiff. The right of possession over a property is an essential aspect of ownership, and the legal principle laid down in **2009 (5) SCC 713 Vimal Chand Ghevarchand Jain and others Vs. Ramakant Eknath Jadoo**, is squarely applicable to the facts of this case.

36. Thus, the defendants do not possess the property as owners, and their continued occupation is illegal. As per Exhibit A1, the plaintiff is the absolute owner and is entitled to recover possession. Accordingly, question of law C is answered.

37. According to the medical records relied upon by the plaintiff, her husband is suffering from heart disease. Since the execution of the sale deed in 2000, nearly 25 years have passed, yet they have not been able to take possession of the property. Therefore, the appellants / defendants are



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directed to hand over vacant possession of the property by removing the superstructure within six weeks from the date of receipt of a copy of this order.

38. Hence, the appeal is dismissed, and the findings of the first appellate judge are confirmed. The suit is decreed as prayed for. Consequently, the connected miscellaneous petition(s) is / are closed. There shall be no order as to costs. In view of this order, the contempt petition is also closed.

13.02.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The II Additional District and Sessions Judge, Vellore, Ranipet, Vellore District.
2. The Subordinate Judge, Ranipet.
3. The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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