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SA No. 2 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-04-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 2 of 2024

AND

CMP NO. 154 OF 2024

1. Annapoorani (died) THENMOZHI

No.4/750A2,6th Main Road, Ram
Nagar South Extension, Madipakkam,
Chennai 600 091.

2. Ezhilarasi

No.4/750A2,6th Main Road, Ram
Nagar South Extension, Madipakkam,
Chennai 600 091.

3. Niraimathi

No.4/750A2,6th Main Road, Ram
Nagar South Extension, Madipakkam,
Chennai 600 091.

Appellant(s)

Vs

1. K.R.Venkataraman

S/o. K.Rajamannar, Plot Nos.2 and 3,
Avtar City, Vengamandalam, Kandigai,
Chennai-625106.

Respondent(s)



SA No. 2 of 2024

PRAYER

Setting Aside the Judgment and decree of the Learned Principal District Judge, Chengalpattu AS.No.35/2017 dated 29-03-2023 confirming the judgment and decree of the subordinate Judge -Tambaram in O.S.NO.15/2009 dated 11-07-2017 and thus render justice

SA No. 2 of 2024

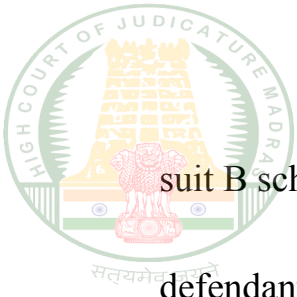
For Appellant(s): M.Sri Ram

For Respondent(s): T. Easwaradhas For Respondent
Mr.K.Suresh For Advocate
Commissioner

JUDGMENT

This second appeal has been filed to set aside the Judgment and decree of the Principal District Judge, Chengalpattu in AS. No.35/2017 dated 29-03-2023 confirming the judgment and decree of the subordinate Judge -Tambaram in O.S.NO.15/2009 dated 11-07-2017.

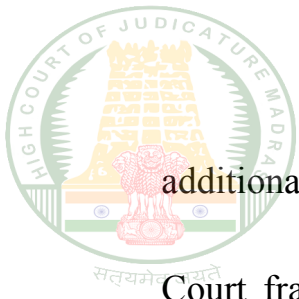
2. Challenging the concurrent findings of the Court below, the defendants 3, 5 and 6 preferred this second appeal. Before the Trial Court, the respondent herein/plaintiff filed the suit in OS No. 15 of 2009 against one Govindaswamni direct him to remove the illegal construction and to deliver the possession of the



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suit B schedule property to the plaintiff. While pending suit proceedings the said defendant Govindasami died and his legal heirs were impleaded as defendants 2 to 6. The defendants 2, 3, 5 & 6 contested the suit by filing the written statement before the Trial Court, on the side of the plaintiff, documents Ex.A1 to Ex.A10 were marked and plaintiff was examined as P.W.1. The defendants' has not produced any oral and documentary evidence but contested the case. Based on the available records, the Trial Court framed three issues with additional issues. Considering the evidence on record, the Trial Court concluded that the plaintiff proved his claim, but on the other side the defendants have not proved their defence nor produced any evidence. Besides, they are also not chosen to examine themselves as witnesses. Thereby, the Court has drawn adverse inference as per Section 114 of Indian Evidence Act. Accordingly, suit was decreed as prayed for.

3. Challenging the said findings, the Defendants preferred an appeal before the Principal District Judge, Chengalpattu in AS. No.35/2017, wherein independently analysed the oral and documentary evidence available on record as well as application filed by the appellant in IA No. 1 of 2021 to let in



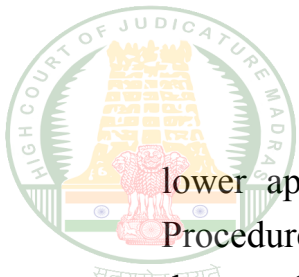
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additional evidences. Considering the both side submissions, the first appellate Court framed separate issues and finally held that Trial Court rightly drawn adverse inference against the defendants, who have failed to entered into witness box and also held that defendants are not entitled to collect the evidence by filing the application before the first appellate Court. Accordingly, issues were answered by the first appellate Court. Further, it observed that the plaintiff has rightly proved his right and title over the suit property as well as illegal construction made by the defendant in the B schedule property. Besides, the defendants have not proved their defence as they have suggested for alternative remedy to exchange their property. Accordingly, dismissed the appeal. Challenging the concurrent findings of the Court below the defendants 3, 5 & 6 preferred this second appeal.

4. The appellants challenging the findings of the Court below on the following grounds:

1. The judgment and decree of the Courts below is contrary to law, weight of evidence and the probabilities of the case.

2. The lower Appellate Court has by confirming the judgment and decree of the trial court grossly failed to exercise the ample powers conferred on the



lower appellate Court by Section 107 and Order 41 Rule 33 of the Civil Procedure Code which has resulted in grave injustice to the appellants vis a vis the plaintiff/respondent herein, for no fault of theirs.

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3. The judgment and decree of the lower appellate court confirming removal of the dwelling house of the defendants in the suit property. which suit property is alleged to belong to the plaintiff, is liable to be set aside as it has mechanically accepted the view taken by the trial court and thereby erred in not dealing with the merits in the appeal suit independently.

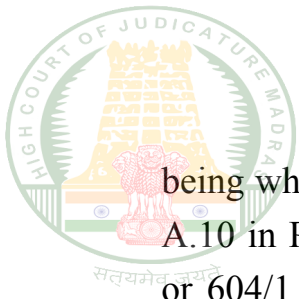
4. The observation of the lower appellate Court in paragraph 6 of the judgment, that only the defendants 2 & 3 have filed the appeal is ex-facie incorrect and exhibits the non-application of mind in deciding the appeal suit. This has resulted in the decree containing only the names of appellants 1 and 2 only/defendants 2 and 3 and not the other appellants 3 & 4 namely defendants 5 & 6.

Further, the lower appellate Court also failed to note that even the 2nd defendant/1" appellant expired on 29-05-2022 (exactly 10 months prior to the date of judgment viz 29-03-2023) and a memo to this effect is also on record of the lower Appellate Court.

5. The issue framed by the lower appellate Court in paragraph 11 of the judgment that "whether the findings of the Trial Court that the plaintiffs are entitled for partition is correct" exhibits gross non-application of mind when especially the appeal was one filed arising out of a judgment and decree in a suit for mandatory injunction and delivery of possession without the constructed building.

6. While narrating the synopsis of the written statement the lower appellate Court concludes that the defendants/appellants before the lower appellate court, prayed for dismissal of the appeal which is against the desire of the defendants/appellants herein.

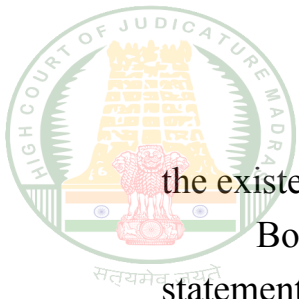
7. The lower appellate court ought to have seen that the dispute in the suit



being whether the appellants vendors constructed the building shown in Exhibit A.10 in Plot No. 606/1 (as pleaded by the defendants in the written statement) or 604/1 as alleged by the plaintiff, ought to have taken a pragmatic view by allowing the application namely I.A. No. 2 of 2021 filed by the defendants/appellants, to appoint an Advocate Commissioner to find out traces of any building found in the said plot taking the assistance of a Civil Engineer. Further, the dismissal of the application on 13-03-2023 without valid reasons is not only contrary to the spirit of the order in C.R.P. No. 1171 of 2022 but has resulted in depriving the defendants of an opportunity to prove that they are not the first encroachers as alleged by the plaintiff and that they are the bonafide Purchasers/ occupants of the suit property through their vendors.

8. The lower appellate Court failed to note that the finding of the trial court that the house property shown in Exhibit A.10 was constructed in Plot No. 604/I is without any evidence and it was based only on the recitals in the sale deed namely Exhibit A.10 and therefore ought to have either appointed an Advocate Commissioner as prayed for or decided the issue based on the additional documents filed by the defendants at the time of arguments in the LA. No. 2 of 2021. Further, the findings are also not supported by any evidence or documents on the side of the plaintiff on whom was the burden to prove that the defendants/appellants are the first encroachers of his suit property.

9. The Courts below have thoroughly lost sight of the pleadings of the defendants/appellants herein in the written statement to the effect that the plots were in even numbers as Plot Nos, 600, 602, 604, 606, 608, etc and some of the plots were sub-divided and sold to different parties as 604/1, 604/II and so on and that the single owner of plots comprised in Plot No. 600 and 602 fenced inclusive of 604/1 & II belonging to the defendants and one Mr. George, and it was only when the owner of Plot No. 608 came in February 2004 and fenced the plot on the west side of the appellants house and the plot fenced by George and put up a board as 608, the appellants who purchased namely Plot No. 604/1 on 29-10-1999 and Mr. George who purchased Plot No. 604-11 on 10-03-2000 came to know of the mistaken identity. The respondent having not identified his property properly has allowed the appellants to re-construct after demolishing



the existed old building put up by the appellants' vendors 13 years ago.

Both the Courts below erred in ignoring the pleadings in the Written statement regarding the shifting of the fence by Mr. George (who did not begin any construction by then) to the actual plot 604-11 whereas, the appellants could not since the construction was over by then, when the wrong identity of the suit property by the plaintiff came to light in February 2004, which, if would have been traversed by spending some time, would have enabled the lower appellate court to conclude in which plot, the building shown in Exhibit A10 was actually constructed and the falsity in the plaintiff's case as pleaded by the defendants/appellants herein and consequently feel justified to accept and appreciate the documents tendered as additional documents while arguing L.A. No. 2 of 2021 which were nothing other than the pleadings, judgment and decree in the suit filed against Mr. George by Mrs E. Unnamalai/owner of Plot No. 600 & 602 for shifting the fence etc. and which would have thrown light on the fact that the appellants vendors had constructed the building only in Plot No. 606/1 and there was no building constructed at any point of time in Plot No. 604/1 and that Plot No. 604/1 was lying vacant ever since 1986. Further, the lower appellate Court would not have attributed malafide intention on the part of the defendants, for constructing in Plot No. 606/I namely the suit property.

11. The Courts below had missed the important fact relating to the construction and the existence of the building in the suit property and had the lower Courts spent some time on Exhibit A. 10 dated 29. 10-1999 and the recitals therein, the Trial Court as well as the lower appellate court would have come to just conclusion that the construction was legally and bona-fide made in the suit property even by the appellants' vendors by following all due process of law.

12. The Courts below failed to appreciate that no prudent man on earth will after following and complying with all the formalities required for putting up construction in his plot namely, applying for Planning Permit, obtaining loan from bank, applying for E.B. connection and engaging labourers, most especially investing huge amount for the foundation being a clayey land, in order to secure the safety of the proposed super-structure by the appellants,



leave his plot and put up construction in another man's plot/plaintiffs plot and invite mental agony for themselves for decades.

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13. The lower appellate court failed to exercise its jurisdiction by not considering the documents relating to O.S. No. 814 of 2004 on the file of the District Munsif Court, Alandur, which were tendered along with an affidavit and petition while advancing the arguments on 27-02-2023 in the application LA. No. 2 of 2021 for appointment of Advocate Commissioner which if had considered would have certainly enabled the lower appellate Court to decide the appeal on merits.

14. The non-application of mind of the lower appellate Court in deciding the appeal gets further re-inforced with the lower appellate Court citing 1. A. No. 4 of 2023 in paragraph 12 of the judgment which does not appear to be related to the above appeal suit, since the copy application filed on 30-06-2023 for a certified copy of the fair and decretal order in I.A. No. 4 of 2023 in A.S. No. 35 of 2017 has been returned by the Registry on 05-07-2023 as "I.A. No. 4 of 2023 not filed in Appeal. Hence C.A. is returned."

15. The lower appellate Court, by delivering the judgment dated 29-03-2023 has not followed the direction issued by this Hon'ble Court in C.R.P. No. 1171 of 2022 dated 6-4-2022 and is directly in violation of the order in and by which the lower appellate court was directed to first decide I. A. No. 2 of 2021 (filed for appointment of Advocate Commissioner by the defendants/appellants herein) and then decide the appeal suit. Because L.A. No. 2 of 2021 itself came up for hearing only on 27-02-2023 after the order dated 6-4-2022 in C.R.P. No. 1171 of 2022, and the orders were not passed until 15-03-2023. The orders in the I.A. No. 2 of 2021 was not up-loaded and a certified copy itself was made ready only on 17-04-2023. Meanwhile the appeal suit itself has been taken up for judgment which is evident from the preamble portion of the judgment which reads that the appeal suit came up before the lower appellate court for final hearing on 13-03-2023 in the presence of advocates for appellants and respondent etc.,

16. The lower appellate Court failed to consider the specific direction of

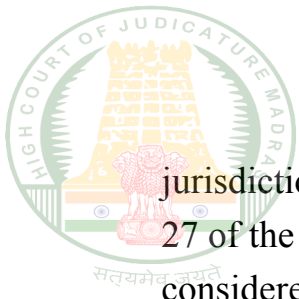


the Hon'ble High Court to decide the application for appointment of Advocate Commissioner before disposing of the appeal suit and thereby committed an error of depriving the appellants' right to put forth their case.

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17. The lower appellate Court erred in mechanically adopting/following the view taken by the Trial Court in paragraph 24 of the judgment dated 11-07-2017 in O.S. No. 15 of 2009 for drawing adverse inference against the defendant for not stepping into the witness box, when the sole defendant died as early as on 6-11-2005 immediately after the first hearing date and his legal heirs were impleaded as D2 to D6 and again after the death of the 4 defendant, the Defendants 2,3 and 5 have been pursuing the suit through counsel and the 6th defendant/3rd appellant herein has been appearing as Party-in-person. This is the reason for the Trial Court for not considering that the 6th defendant is entitled to be given an opportunity to defend the suit. Both the Courts below in referring to the sole defendant who died on 6-11-2005 immediately after the first hearing date in the suit have failed to note that the cause of action also did not survive with the demise of the sole defendant. It is further submitted that the plaintiff/respondent herein has not pleaded any specific cause of action as against the legal heirs of the sole deceased defendant when they were brought on record as defendants 2 to 6 in the suit and as such the suit is bereft of cause of action and liable to be dismissed as against the legal heirs of the sole defendant.

18. The lower appellate court ought to have gone through the records thoroughly and come to a conclusion that there was genuinity and truth in the reasons assigned by the appellants in L.A. No. 1 of 2021 and most specially the 6th defendant for not letting in evidence before the Trial Court, and allowed the applications filed by the appellants to let in additional evidence, instead of dis-believing and rejecting the reasons for want of action by the appellants against the counsel who has taken a decision unilaterally to close the evidence of the defendants, when especially two of the defendants (Appellants 2 and 3 herein) are practicing advocates and cannot be expected to take action against their own fraternity when there was an alternate remedy available to redress the damage caused to them, by invoking the original



jurisdiction of the lower appellate Court by filing petitions under Order 41 Rule 27 of the Civil Procedure Code. The lower appellate Court neither remanded nor considered itself and by this the entire judgment and decree of the lower appellate court stands vitiated.

19. The Lower Appellate Court ought to have gone through the records and held that the 6th defendant/3rd appellant herein who was appearing as Party-in-person was denied of an opportunity to defend the suit especially when the defendants/appellants had raised a ground in the memorandum of appeal suit in this regard about the deprivation of an opportunity to the 6th defendant to defend the suit.

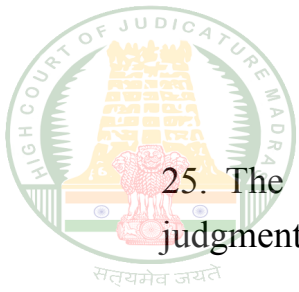
20. The lower appellate court erred in casting aspersions on the appellants throughout the judgment, who are practicing advocates before this Hon'ble Court for the past 33 years and have a good reputation.

21. The lower appellate court has gone wrong in portraying the defendants as if one who is inclined to prolong the matter by filing petitions. It is submitted that the applications filed are all genuine and with a purpose and on that score the lower appellate court ought not to reject those applications.

22. The lower appellate Court has blind-foldedly accepted the allegations leveled against the defendants/appellants herein by the plaintiff/respondent to come to the conclusion that the appellants have protracted the proceedings when the records on the file of the Hon'ble Court would prove otherwise.

23. The Lower Appellate Court failed to appreciate the circumstances which warranted the change of counsel by the appellants as narrated in every application and memo filed by them before the lower appellate Court which form part of the records.

24. The purpose for not attending the court and remaining ex-parte on one occasion before the Trial Court has been right and therefore the trial court has allowed those applications and this factor cannot be taken as a ground for the purpose of prejudicing the case of the appellants by the lower appellate Court and it cannot also stand in the way of considering the applications in the appeal as well as the appeal suit on merit.



25. The remarks of the lower appellate court made in paragraph 21 of the judgment that

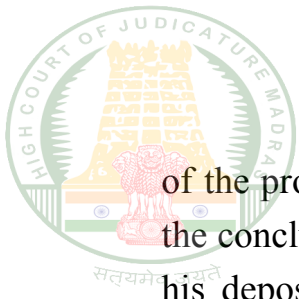
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"21. The defendants having made an endorsement before the trial court that they have no oral evidence to let in but with the malafide intention they alleging that their counsel was responsible for not allowing them to let in evidence thereby filed a petition before this court to let-in oral evidence. But the contention of the appellants is not acceptable, because no action reported to have taken against the said advocate so far. Therefore it is clearly proved that the defendants with the malafide intention encroached upon the plaintiff's property. The defendants have alternate remedy to exchange their property but for the reasons best known to them they are not coming for amicable settlement. The trial court has considered the oral and documentary evidence in a right perspective and therefore the judgment of the trial court need not be interfered. The appellants/defendants with the malafide intention even after their defeat in the trial court wants to conduct the appeal without surrendering the property of the plaintiff. It appears the appellant further wants to take the matter on appeal which may cause further delay from getting the fruits of decree by the plaintiff. Therefore, no merits in this appeal. The judgment and decree of the trial court is correct and need not be interfered. This issue is answered against the appellants/defendants."

clearly shows a thoroughly prejudiced mind of the court and amounts to criticizing the appellants for availing the lawful remedy available to them under law and the above remarks cannot stand in the way of considering the appeal on merits. Whereas, it is the plaintiff who has by filing a false case wasted 18 years of the precious time of the court.

26. It is submitted that all along, the case of the defendants was that the suit property was in the bonafide occupation of the appellants vendors and later by the defendants till they came to know of the mistaken identity of Plots (in February 2004) and therefore the malafide intention attributed on the appellants by the lower appellate court for constructing the house in the suit property in paragraph 22 wrongly numbered as paragraph 20 is, without any basis.

27. The lower appellate court has decided the matter relating to exchange



of the property without any pleadings or evidence by the plaintiff and therefore the conclusions on that score is totally unsustainable Further, the plaintiff has in his deposition, during cross examination categorically stated that there is no need for him to seek for an exchange of the defendants plot No. 604/1. The same status prevailed even at the appellate stage which is evident from the adjudication of the lower appellate court dated 11-03-2022 recording no settlement reported by the counsel for the plaintiff/respondent taking the submission for granted, when there was no appearance either by the plaintiff or his counsel before the Lok Adalat whenever the matter was posted before the LokAdalat.

28. The conclusions arrived by the lower appellate court are based on surmises and conjectures as they are not borne out of records. It has been rendered with a prejudiced mind and hence liable to be set aside by this Hon'ble Court.

29. The lower appellate court has not considered the appeal in a lawful manner. The lower appellate Court has dismissed the appeal only with a view to circumvent the lawful remedy available to the defendants/appellants under law. Furthermore, the lower appellate Court has exhibited lean towards the plaintiff and for his enjoyment This is evident from the following over the suit property. observation of the lower appellate court in the impugned judgment.

To extract: "it appears the appellant further wants to take the matter on appeal which may cause further delay from getting the fruits of the decree by the plaintiff. Therefore, no merits in the appeal. The judgment and decree of the trial court is correct and need not be interfered",

It is submitted that it is this thought which weighed in the mind of the lower appellate court to dismiss the appeal when the plaintiff who did not approach the Court with clean hands did not deserve such a lean or indulgence by the lower appellate Court. Such a disposal of the appeal is against the exercise of powers conferred on the lower appellate court under Section 107 and Order 41 Rule 33 of the Civil Procedure Code and well settled principles of law.

30. The Courts below totally lost sight of the fact that the dispute is also



relating to the possession of the suit property purchased by the plaintiff and therefore it should have considered the objection relating to title in its proper perspective and the respondent plaintiff having not chosen to seek for declaration of his title in respect of the suit property, the suit as framed is not maintainable and is time-barred.³¹ The lower appellate Court failed to correct the error committed by the trial court in decreeing the suit when the plaintiff has not proved his case based on his pleadings, the documents filed by him and the oral evidence let in by him. In fact his own documents are against him especially Exhibits A8, A9 and A10.

32. The lower appellate Court failed to note that the remaining documents Exhibits A1 to A7 filed by the plaintiff to seek mandatory injunction to remove the building constructed by the defendants are nothing else than the title deeds to his plots and in no way relevant to prove his possession within 12 years of the filing of the suit. The suit itself is barred by limitation.

33. The conclusions arrived and the findings rendered relating to the limitation regarding possession by the Courts below is per se illegal and without any discussion on the issue in a proper manner.

34. The appellants reserve their right to raise additional grounds if necessity arises in future.

5. This Court admitted the appeal on the following substantial questions of law:

1. Whether, the disposal of the appeal suit on 29th March 2023, is in violation of the order of this Hon'ble Court made in C.R.P. No. 1171 of 2022 dated 6-4-2022 in which the operative portion of the order reads as follows:

"the First Appellate Court ought to take up I. A. No. 2 of 2021 for



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appointment of Commission earlier to the final hearing of the A.S. No. 35 of 2017 since the report of the Commissioner may evoke any objection from parties which may have to be considered before the appeal is taken up for hearing."

since the appeal suit was reserved for judgment on the very same day when the I.A. No. 2 of 2021 was dismissed by the lower appellate Court without enabling the appellants to let in arguments after knowing the reasons for dismissing the application?

2. Whether, the lower appellate court is justified in rejecting the application to receive additional documents filed under Order 41 Rule 27 without stating any cogent reasons when particularly the defendants were disabled to lead evidence by an endorsement made by the counsel for the defendants 2, 3 and 5 in the suit and which was not binding on the 6th defendant who was appearing as party-in-person ?

3. Whether, the suit filed for mandatory injunction without praying for declaration of title is maintainable?

4. Whether, the lower appellate court appreciated the appeal suit



correctly, as laid down by the courts, on the principles relating to acquiescence

before granting the decree for mandatory injunction.?

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5. Whether, the appellants have perfected their title to the suit property by tacking of their possession with their vendors?

6. Whether, in a suit filed for mandatory injunction to remove the dwelling house of the defendants, the unsuccessful defendant has no remedy other than first surrendering the suit property to the plaintiff and

7 Whether the suit is itself barred by limitation in the circumstances of the case?

8. whether the provisions of the Civil Procedure Code or any other law of the land, contemplate so?

6. When the matter was taken up for hearing more than three occasions number of advocates including senior advocates were appeared and submitted their arguments for appellants, and the respondent's counsel submitted that the respondent is aged about 81 years all these years the appellants' successfully dragged on the proceedings from the year 2005 onwards. Further, this court pending proceedings with the consent of both parties appointed a Advocate



Commissioner, who visited the suit property and submitted his report along with photograph in order to show the existence of the suit property. It is brought to

the notice of the Court that two appellants in the appeal namely Niraimathi and Ehilarasi are advocates by profession they represented through their counsels.

Considering the age of the respondent as well as nature of the claim in the suit, this Court suggested to settle the issue amicably. When this court suggested for settlement the counsel appeared on the side of the respondent submitted that as alternative remedy if plot No. 604/1 is allotted, they need 10 feet pathway on the backyard of the said property in order to reach their adjacent another plot No. 606/2 which is vacant site. As on date, third appellant residing in that suit plot, contended that at the time of purchase there was building in the B schedule property. so they have not committed any illegal construction, therefore she is not inclined to give pathway on the back side of the house nor she is inclined to demolish portion of the compound wall in order to give 10 feet pathway from North Eastern side in plot No.604/1.

7. When the matter was heard in part. The learned counsel Mr. N. Manokaran, who is then counsel for the appellant suggested before this Court



to settle the issue. After hearing both sides, at request of the said counsel this

Court adjourned the matter for another hearing by giving sufficient time. Again

when the matter was taken up for hearing, the learned counsel submits that

appellant not cooperating for alternative remedy nor inclined to give pathway,

and unable to give any suggestion hence withdrawn his vakalat. Thereafter,

another counsel Mr. Srinivasan appeared before this Court he wanted to give

some submissions before this Court. Already the matter was heard only for

settling the issue the matter was posted today. Even then he has not inclined to

give any another suggestion, as rightly pointed out by the respondent's counsel

many number of the Advocates including senior counsels were appeared before

this Court on behalf of the defendants/appellants and when the matter was heard

in part again again they sought adjournment which shows that appellants

neither inclined to settle the issue nor dispose the appeal but they enjoyed the

suit property. From the year 2005, the respondents knocking the door of the

Court in order to get his own property purchased through his hard earned

money. While pending proceedings, Advocate Commissioner visited the

property submitted his report and noted down the physical feature of the

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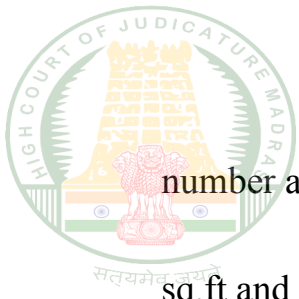
property.

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8. On the side of the appellants, they have raised many number of grounds challenging the concurrent findings. It is pertinent to mention here that before the Trial Court they have not adduced any material evidence. Further they filed detailed written statement through their counsel admitting that plot No. 606 I belongs to plaintiff at the time of final arguments. Though they have contested the case properly before the Trial Court, they have not adduced any oral and documentary evidence.

9. The brief facts of the case as follows

The plaintiff(respondent herein) is the absolute owner of vacant house site, at Madipakkam village, Ram Nagar South Old S.No.114, Paimash Nos. 1301/5, 1301/7, 1301/9, 1301/10, Plot No.606 1 as per patta No.3921 New S.No.114/1A3B to an extent of 2000 sq.ft. and common rights in the passage on its eastern side to an extent of 500 sq.ft.more fully described in Item No.1 of the suit schedule A. He purchased the same by a registered sale deed dated 13.10.1985 in Doc. No.3357/85 from one Mr.VN.Subbarao S/o V.R. Babu Rao. Similarly, the plaintiff is also the owner of vacant house site in the same survey



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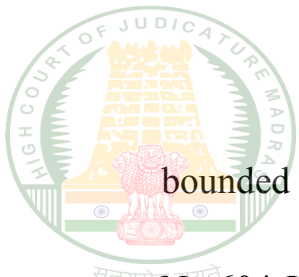
number as well as Paimash number bearing Plot No. 606 11 to an extent of 2400 sq.ft and common rights in the passage on its southern side approaching 6th main road morefully described in Item No.2 of the suit A schedule property which is the suit B schedule and purchased the same by a registered sale deed dated 13.10.1985 from the said vendor Mr. V.N.Subbarao S/o V.R.Babu Rao in Doc. No.3356/85. Originally one Mr.K.B.Gopinathan S/o late Balakrishna Mudaliar was the absolute owner of vast extent of land (111.88 acres) which included the suit A schedule properties and greater extent in S.No.114 of Madipakkam village, besides land in other survey numbers. The said Gopinathan developed the said vast extent of land into house sites laid road and sold plot No.606 to an extent of 4900 sq.ft. to the plaintiff's vendor Mr.Subbarao by a registered sale deed dated 03.08.1962 in Doc. No. 1652/62. Plot No.606 is bounded on the North by 841, south by 6th Main Road, east by plot No.604 and west by plot No.608. The local authorities granted approval during the year 1973 in LPDM/DDTP No.307/73, C.No.6767/73 MCR3. The said Mr.Subbarao sub divided the Plot No.606 into 2 plots as 606 I which is item No. 1 of the schedule A property and 606 II which is item No.2 of the suit A schedule property which



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is the suit B schedule property and sold the same to the plaintiff by two separate sale deeds dated 13.10.1985 in Doc.No.3357/85 and in Doc No. 3356/85 respectively From the date of purchase the plaintiff has been in continuous possession and enjoyment of the suit A schedule properties as an absolute owner. At the time of purchase the plaintiff identified the suit schedule A property and his vendor delivered physical possession of the suit A schedule properties to the plaintiff. As already stated the suit A schedule properties bounded on the eastern side by plot No.604. After purchasing the suit schedule 'A' properties the revenue officials effected name transfer issued patta in favour of the plaintiff, the julia number item No.1 of the A schedule property is 3921 and as per the said patta new S.No. 114/1A3B and patta number to Item No.2 of the suit schedule property is 1736 and as per the said patta new S. No is 114/1A3A.

10. The defendant(appellant herein) is the owner of southern half of the plot No.604 which is demarcated as 604 I to an extent of 2400 sq.ft. which is on the eastern side of the suit B schedule property. He purchased the same by a registered sale deed dated 29.10.1999 in Doc. No.3349/99. The said property is



bounded on the North by Plot No.602 II, east by 10 feet passage leading to Plot No.604 II from 6th Main road, South by 6th Main Road, west by Plot No.606.

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One Mr. V.George s/o Mr. Varuvel is the owner of plot No.604 II.

From the above facts it is evident that the defendant is the owner of Plot No.604

1 which is on the eastern side of Plot No.606 I and the plaintiff is the owner of

the entire plot No.606 which included 606 I and 606 II with 10 feet passage

leading to 606 II from the 6th main road on the eastern side of Plot No.606 I.

11. The plaintiff is residing far away from the suit schedule properties.

Once in a year he used to visit the suit schedule properties. Like wise when he

visited the suit schedule property during the month of January 2005 to his great

surprise some third parties were carrying on constructing activities in schedule

B property. On enquiry the plaintiff came to know that, the defendant is the

person who was carrying on the construction activities. Immediately he

approached him, he replied that he is owner of Plot No.604 I and was carrying

on construction work in Plot No.604 I only and not is plot No. 606 I. On

verification of the approved lay out plan it is clear that the defendant carried out



construction activities only in plaintiff's Plot No.606 I and not in Plot No.604 I.

It is evident from the fact that, eastern side of Plot No.604 is Plot No.602 and

eastern side of Plot No.602 is Plot No.600 and the Plot No.600 is bounded on

the east by 30 feet road. Similarly Plot No.600 is bounded on the north by Plot

No.835, Plot No.602 is bounded on the north by Plot No.837 and plot No.604 is

bounded on the north by plot No.839 and plot No.606 is bounded on the north

by plot No.841. The owner of plot No.604 II is still keeping his own property

but the defendant without identifying his property which is on the eastern side

of Item No.2 of the schedule property encroached into the plaintiff's Item No.1

of the schedule A property which is the suit schedule B property herein and

started construction. When the plaintiff questioned the illegal act of the

defendant, the defendant started to threaten the plaintiff and hence he

approached the CI Madipakkam Police station during the month of March 2005

but the police refused to receive the complaint by stating that it is purely a civil

dispute and directed the plaintiff to approach the civil court for suitable remedy.

In the meanwhile the defendant sent some mediators and requested the plaintiff

to wait for some time and solve the problem amicably by removing the

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encroachment. But till date he failed to do the same and not put the plaintiff in possession of the same. Only with malafide intention to grab the plaintiff's Item No.1 of the suit A schedule property which is the suit B schedule property, the defendant trespassed into the item No.1 of the suit schedule A property even though he well aware and admitted that he purchased only Plot No.604 I. Since the defendant refused to remove the illegal construction in item No.1 of the suit A schedule property which is the suit B schedule property even after repeated request, this suit for mandatory injunction for the removal of illegal construction and delivery of possession. It is an admitted fact that the defendant purchased Plot No. 604 I and got building approval for Plot No. 604 I but constructed in time plot No. 606 I i.e., No. 1 of the schedule A property of this case, which is admittedly belongs to the plaintiff, hence there is no title dispute with respect to the item No. 1 of the suit A schedule property which is the suit B schedule property.

12. For the sake of convenience the parties are denoted as per the suit.

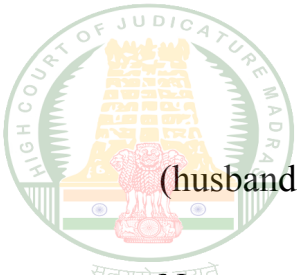
13. It is evident that owner of the suit property during absence of the plaintiff there was construction in the B schedule property belongs to the



plaintiff. Immediately, he approached the original defendant Govindasami he admitted that he has not purchased the plot No.606/1, 606/2 and also contended that he carried out construction in the plot purchased by him in 604/1 but as per approved plan defendant was carried out construction on the only in 606/1 not in plot No. 604/1. Therefore, the plaintiff raised objection for the illegal act of the defendants and also given complaint before C1 Madipakkam, Police Station, in the month of March 2005 since it is civil dispute police had not taken the complaint. Thereafter, with the help of the Mediator the plaintiff attempted to settle the issue but the defendant refused to remove the illegal encroachment made in the suit B schedule property and started to put up further construction by obtaining building approval plan. Therefore, necessity arose to the plaintiff to file the suit to remove the construction put up in B schedule property belongs to him by way of mandatory injunction.

In the meanwhile, original defendant's legal heirs defendants 2, 3, 5 & 6 raised their objection as follows:

14. The suit as such is not maintainable. The plaintiff suppressed all the truth and approached this court with unclean hands. One. D.Vasu Naidu



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(husband of the 1st vendor of the 1 defendant) purchased Plot No.604 1 at Ram Nagar south, Madipakkam, Chennai 91 comprised in S. No. 114, Paimash No.1301/5, 1301/7, 1301/9 and 1301/10 to an extent of 2400 sq.ft. on 11.8.1986 vide sale deed dated 11.8.1986 registered as Doc. No.2301 of 1986 in the office of the Sub Registrar, Alandur. At the time of his purchase the entire area was barren, undeveloped and fully water logged. No road was formed as per the layout. No plot owner fenced the plots purchased by them. It was the said D. Vasu Naidu who improved the plot purchased by him after the same was identified by the local surveyor and immediately thereafter he constructed a house of an extent of 2055 sq.ft. after genning the plan approved by the Local Body Authority in the year 1987. The building was assessed-to property tax by Madipakkam Panchayat since 1990-1991. Later the said D.Vasu Naidu applied for permission to put up an additional construction of similar extent in the first floor and the permission was sanctioned to him vide Proceedings D.Dis. No.8488 of 1990 of the Member Secretary, Madras Metropolitan Development Authority dated 12-1-1990. The said D.Vasu Naidu has prior to putting up the construction in the first floor mortgaged the plot with the constructed house in



the ground floor with M/s. Karthekeyapuram Co-operative Building Society

Limited under a mortgage deed registered as Doc.No.1035/91 in the office of

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the Sub Registrar, Alandur, for the purpose stated therein. After his death on

31.8.1997 his legal heirs being the 1st defendant's vendors continued to live in

the said house openly, peacefully and without any disturbance whatsoever and

hostile in rem until the sale on 29.10.1999 in favour of the 1st defendant on

which the vendors of the defendants handed over vacant possession of the house

property and put the defendants in actual physical possession of the same. After

these defendants took possession of the Plot on 29.10.1999 from their vendors

they sought to put up the present construction by applying for permission to the

appropriate authorities. Permission was accorded under Reference No.007989

dated 21.10.2002 by the Member Secretary, CMDA, Chennai. The demolition

of the building put up by these defendants vendors commenced on 11.5.2003.

On seeing the building being demolished one Mr.George who is the owner of

Plot No.604 II came with his wife and introduced himself as the owner of Plot

No.604 II. He verified the extent of the construction proposed to be put up by

these defendants and requested the defendants to be careful about leaving 10



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feet passage towards the eastern side of the defendants plot being the passage to

his plot No.604 11. Even at that point of time as there was no access to the suit

property by way of well formed road or even cart-track, Mr.George was

requested to permit these defendants to unload their building materials in his

plot as the distance to his plot from the V main Road was only about 40 sq.ft. (It

may not be out of place to submit that even the V Main road, to an extent of 2

feet wide was laid only by Mr.Gurumoorthy residing in the Vth Main Road).

Mr.George readily gave his consent for the same.

15. As a matter of fact, even to reach George's Plot from the Vth main road, the vehicles had to cut across the vacant plots in and around the suit property. (The entire construction got completed on 28.6.2004 and the defendants moved into the present construction. While so, in February 2004 a group of persons visited the Plot on the Western side of the suit property and later erected a Board mentioning the Plot No. as 608 belonging to one Mrs.Sarada Ramachandran and Mrs. Karpagam Sankaran, Dio M.Ramakrishnan after fencing the entire plot. It was only then that the defendants came to know



that the plot on which was in the enjoyment of the defendants vendors and subsequently by the defendants was Plot No.606/1 and not in Pol No.604/1.

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Thus the defendants and their vendors have in possession of plot No. 606/1 from the year 1986-87 when the defendants vendors had put up construction in the year 1986-87 and had been in continuous un-interrupted possession of Plot No 606/1 by asserting title to the exclusion of all the persons who are interested in the suit property. Even as of today the other plots and around the said property is lying vacant and the roads are yet to be formed. The various plots in and around the suit property came to be fenced only from June 2004. The plaintiff was fully aware of the enjoyment of the suit property by the defendants and their vendors even from the year 1986, eventually having purchased the plot of land much earlier on 13.10.1985 had remained silent spectator to the development of the same without any construction/or hindrance whatsoever for the past more than 21 years.

Thus the plaintiff estopped from making any claim to the suit property having allowed the vendors of the defendants as well as the defendants to enjoy the property as belonging to them to the knowledge of the plaintiff and in assertion



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of their vendors have openly asserted title by creating mortgage and putting up construction with the approval of the appropriate authorities to the knowledge of the plaintiff and hence the plaintiff is bound by the principle of equitable estopped, estopped by acquiescence and estopped by conduct from questioning and disputing the right of the defendants in the suit property.

While matter stood thus, the plaintiff approached the defendants in the month of March 2004 introducing himself as Mr. Venkatraman and purchaser owner of Plot No.606 and requested them to help him by offering their plot No.604/1 which was vacant in exchange to plot No.606/1 and in pursuant thereto he had also handed over a draft sale deed of the exchange to be executed by the parties. However, due to ill-advice of the said Mr.George the plaintiff did not turn up for execution of the exchange document hence plaintiff filed the present suit to create an evidence as if the defendants had been at fault and had put up constructionillegally.

16. As a matter of fact the shifting of the fence by Mr.George after a period of 4 years from the date of his purchase on 10.3.2000 caused one Mrs. Unnamalai who is the owner of Plot Nos.600 & 602 file a suit in O.S.No.814 of



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2004 on the file of the District Munsif Court, Alandur claiming that the property

on the eastern side of the defendants construction is situated in Plot No.600 and

Plot No. 602 and had sought for necessary reliefs as against Mr.George and the

defendants is pending for consideration. As of today the identity of Plot

Nos.600, 602, 604 and 606 are still in issue and subjudice.

The defendants are not at fault and they have openly asserted title to the suit

property all these years. Further the defendants and their vendors have been in

possession and enjoyment of the plot No.606/1 all over the statutory period.

The plaintiff came to court belatedly and is guilty of laches. He who seeks

equity must do equity is well settled principle of law and the plaintiff has not

followed the rules of equity before approaching the court by way of the suit.

17. Another objection that In view of the estoppel by conduct and estoppel by acquiescence the plaintiff is not entitled to the equitable relief of Mandatory injunction directing the defendants to remove the super structure from Plot No.606/1 and hand over vacant possession of the plot. The defendants are entitled to continue in possession of the suit property and the plea made in the



suit is therefore without merits and liable to be dismissed.

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18. Further, they contended that the plaintiff approached them in the month of March 2005, claiming himself as owner of plot No.606 in order to help them and also offered their plot 604/1 which was vacant, in exchange of plot No. 606/1 and also claiming passage on the Eastern side of the property. When the matter was not settled and he put up the fence after four years from the date of his purchase and other adjacent owner also put up fence. Thus defendant and their vendor have been in possession and enjoyment of Plot No. 606/1 over the statutory period. Thereby, prescribed title, all these years plaintiff not raised objection. Therefore, he is not entitled to claim equitable relief of mandatory injunction as he prayed for in the suit. After considering the oral and documentary evidence, the Trial Court held that after original suit though filed in the year 2005 July even as per the defendant's submission encumbrance pleaded in the year 2005 thereafter construction was completed. Therefore, within three years suit was filed in time. Accordingly, limitation issue was answered.

19. The defendant raised one more objection in written statement that



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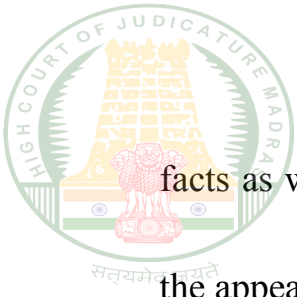
without claiming any title over the property declaratory relief of mandatory injunction sought by the plaintiff as such is no maintainable. The Trial Court has rightly concluded that in respect of purchase by the plaintiff in S. No. 606/1 is undisputed fact, the plot purchased by the defendants' in S. No. 604/1 also undisputed. Therefore, when the title is not disputed there is no necessity for declaratory relief, title need not be proved. Admittedly, the defendants put up construction in S. No. 606/1 which belongs to the plaintiff, the plot which they purchased through sale deed is S. No. 604/1, which is an admitted fact. Therefore, the construction put up by the defendant in S. No. 606/1, which belongs to the plaintiff and it is an illegal construction and it is also admitted fact that the defendants are their vendors they are not owner of S. No. 604/1 therefore, the Trial Court has concluded that super structure found in Plot No. 606/1 deemed to be illegal construction. Before the Trial Court counsel for the defendant argued that they were in possession of the S.No. 606/1 more than statutory period way back in the year 1990 itself. Even all the defendant put up construction openly without any disturbance in that all the plaintiff enjoyed the property more than statutory period. Therefore, prescribed right and title but



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admittedly property in S.No. 606/1 was vacant site construction completed in the year 2008 therefore in the year 1990 there was no construction in suit B schedule property not established by adducing any independent evidence without which in their written statement they admits construction completed in the year 2004 therefore they are not entitle to raise such defence that they were permitted to prescribe title by long possession, thus the Trial Court negatived such objection made by the defendants by relying the Ex.A10 sale deed plaintiff proves that the defendant lawful owner in S.No. 604/1. Therefore, the alleged right and possession in respect of Plot No. 606/1 is illegal therefore the Court granted mandatory injunction as prayed for with regard to plot No. 606/1. As narrated above the defendants have not inclined to come into witness box nor submitted any evidence, to draw adverse inference about the conduct of the defendants as per Section 114 of Indian Evidence Act. Also held that alternative remedy to exchange plot as suggested on the side of the defendant also not been proved, finally suit is decreed as prayed for.

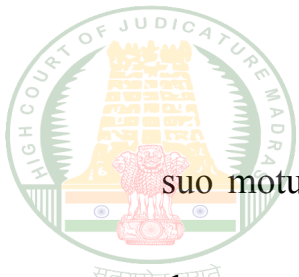
20. Challenging the same appeal was preferred by the defendants before the first appellate Court, wherein the first appellate Court independently entire



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facts as well as discussed elaborately conduct of the defendant while disposing the appeal. Before the first appellate Court they filed two applications to appoint advocate commissioner and to receive the additional evidence both the applications were taken by the Court below. However, the learned judge held that they should have taken steps before the Trial Court but they were not adduced any oral and documentary evidence, though they contested the case. Hence, in appeal suit they are not entitled to file such applications, accordingly, disposed those applications. Indeed, the Trial Judge considering the sale deed Ex.A10 held that defendants are owner of plot No. 604/1 not 606/1 and if at all any right and title over property, the burden is upon the defendants to prove the same before the Trial court but they are not inclined to adduce oral and documentary evidence. That apart, the counsel for the defendants failed to file written arguments accordingly, appeal was dismissed.

21. Now, the learned counsel for the appellants/defendants submits that as per direction in CR.P No. 4698 of 2013 they were not given opportunity and the same was not appreciated by the first appellate Court. As narrated above, on hearing both sides, when the second appeal filed before this Court, this Court



suo motu appointed advocate commissioner accordingly commissioner visited the property and submitted his report. Therefore, the sufficient opportunity was given to them to show the physical feature they sought before the Court below.

22. It is an undisputed fact that even before filing the suit itself there was building constructed in the B schedule property belongs to the plaintiff. As per the commissioner report salient features existed in the building on ground admitted by both parties. The defendants themselves admitted that they put up construction in plot No. 606/1 and they gave alternate suggestion to take their plot No. 604/1 to the plaintiff, it is pertinent to mention here that two defendants are advocate by profession they are not illiterate, and voluntarily they are not inclined to give any evidence, thus court is empowered to draw adverse inference against them therefore the objection raised on the side of them that the fair opportunity was not given is not sustainable. Title also not under dispute since defendant admits that Plot No. 606/1 belong to plaintiff. So prayer for declaration not necessary as rightly observed by Court below. Accordingly, questions of laws 1, 2 and 3 are answered.



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23. On seeing the ground raised by the appellant they raised many number of ground challenging the findings of the Court below as well as proceedings taken by the Court. Even before this Court when the appeal was taken up for hearing the conduct of the appellants clearly implies that they are not inclined to proceed with appeal. They frequently changed the counsels and abused the court from the year 2005 and they are not inclined to proceed with the matter and intentionally harassed the plaintiff. Further they raised objection about the court proceedings. Being the advocates they are very well aware about the Court proceedings. The grounds raised by the them is unsustainable for the reason that they have not adduced any evidence to prove their defence. Moreover, the plaintiff proves that dispute stars in the year of 2005-2006, within three years suit filed, within the limitation period. Accordingly, question of law 7 is answered. Even if there is no evidence on the side of the defendant, as per sale deed/Ex.A10 defendants are owner of the plot No. 604/1 not 606/1 is an undisputed fact. Even in the written statement they have suggested to come for alternate remedy which itself shows that they were aware about the consequence while constructing plot in the land belongs to the plaintiff in plot



No. 606/1. So the plea of adverse possession would not arise, accordingly

question of law 5 is answered. Many times this Court suggested to settle the issue and they are not inclined. Now, plaintiff aged about more than 80 years standing before this Court to realise the fruits of the decree. There is no other substantial question of law involved in this case and suit as such is maintainable, thus question of law 8 is answered. Accordingly, this appeal is dismissed with costs. The appellants are directed to remove the super structure within three months from the date of receipt of a copy of this judgement.

24. If the defendants refused to demolish the building the plaintiff is entitled to file execution petition to remove the same. If the plaintiff filed and execution petition, the Trial Court is directed to pass the order within a three months without giving any unnecessary adjournments since because he is aged about 80 years. Considering the conduct of parties, the appellants are directed to pay a exemplary cost of Rs.25,000/- to the legal service authority, Kancheepuram. Pending petition(s), if any, is/are closed. No Costs.

25-04-2025

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SA No. 2 of 2024



Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

SA No. 2 of 2024

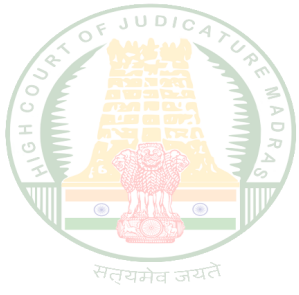
To

1.K.R.Venkataraman

S/o. K.Rajamannar, Plot Nos.2 and 3,
Avtar City, Vengamandalam, Kandigai,
Chennai-625106.

2. The Section Officer, V.R Section,
High Court, Madras.

3. The subordinate Judge -Tambaram



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SA No. 2 of 2024



T.V.THAMILSELVI J.
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**SA No. 2 of 2024
AND CMP NO. 154 OF
2024**

25-04-2025