

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.09.2025

Judgment pronounced on : 10.10.2025

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.1135 of 2024
& CMP.No.28912 of 2024

Renu

..Appellant

Vs.

Murugan

..Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree of the learned Additional District Judge, Kallakurichi in O.S.No.91 of 2020 dated 19.08.2024.

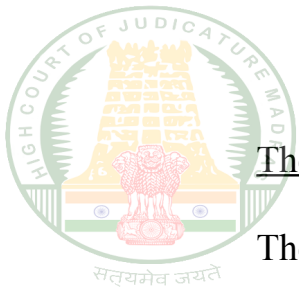
For Appellant : Mr.K.Sakthivel

For Respondent : Mr.N.Manoharan

JUDGMENT

The defendant in a suit for specific performance is the appellant in the present appeal suit.

2.For the sake of convenience and reference, the respective pleadings of the parties before the Trial Court, is culled out briefly hereunder:

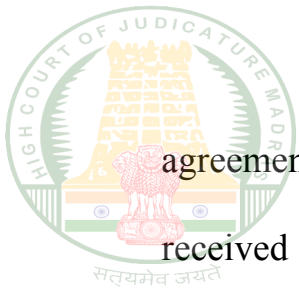


The case of the plaintiff in brief:

The defendant was the owner of the suit property. The defendant agreed to sell the said property to the plaintiff for a total sale consideration of Rs.13,12,500/-. On 04.10.2019, a registered sale agreement was executed between the parties and the plaintiff paid a sum of Rs.7,50,000/- as advance. For payment of balance sale consideration of Rs.5,62,500/-, one year time was fixed under the agreement of sale. According to the plaintiff, he has been ready and willing to perform his part of contract, but however the defendant evaded to execute the sale deed. Therefore, on 01.09.2020, the plaintiff issued a notice to the defendant and despite the said notice, the defendant neither chose to send a reply nor comply with the demands in the said notice, thereby necessitating the plaintiff to file the suit for specific performance.

3.The case of the defendant in brief:

The defendant was constrained to borrow Rs.5,00,000/- from third parties for performing the marriage of his grand-daughter, Sivaranjani and it was only to discharge the said loans, the defendant approached the plaintiff and the plaintiff demanded interest at Rs.5/- for Rs.100/- per month and insisted upon a sale agreement being entered into as security. It is therefore the case of the defendant that only under compulsion, the defendant executed the sale

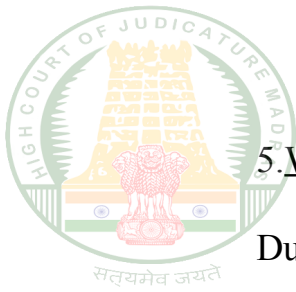


agreement on 04.10.2019 and the amount of Rs.7,50,000/- was only a loan received by him. According to the defendant, there was no necessity for him to sell the suit property and even on the date of the agreement, the value of the property was more than Rs.60,00,000/- and the defendant being a prudent land owner would have never agreed to give away the property for a throw away consideration of Rs.13,12,500/-. It is also contended that the defendant has paid interest for 10 months. Insofar as the legal notice, the defendant states that on receipt of the said notice, he approached the plaintiff and requested for further time to settle the loan amount. However, despite the same, the plaintiff has approached the Court and sought for specific performance.

4. Issues framed by the Trial Court:

Based on the pleadings, the trial Court has framed the following issues:

- 1) Whether the plaintiff is entitled for the relief of specific performance as prayed for?
- 2) Whether the sale agreement was executed by the defendant to getting hand loan of Rs.7,50,000/- as security?
- 3) Whether the sale agreement was executed out of compulsion made by the plaintiff?
- 4) To what other relief, the plaintiff is entitled to?



5. Witnesses examined and exhibits marked before the Trial Court:

During trial, on the side of the plaintiff, he examined himself as P.W.1 and marked Ex.A1 to A3. One Mr.Mani, an attesor to the sale agreement was examined as P.W.2. On the side of the defendant, he examined himself as D.W.1 and the witnesses, Mr.Palani and Mr.Suresh were examined as D.W.2 and D.W.3 and one Mr.Murthy was examined as D.W.4 and no exhibit was marked on the side of the defendant.

6.The Trial Court, finding that the agreement of sale was true and not a loan transaction as projected by the defendant and also that the plaintiff was ready and willing to perform his part of the contract, decreed the suit.

7.The present appeal arises against the said judgment and decree for specific performance of the suit agreement of sale.

8.I have heard Mr.K.Sakthivel, learned counsel for the appellant and Mr.N.Manoharan, learned counsel for the respondent.

9.Arguments of the learned counsel for the appellant:

Mr.K.Sakthivel, learned counsel for the appellant would contend that the



defendant had categorically pleaded and established that the agreement was only a loan transaction and not an actually intended sale. He would refer to the averments in the agreement of sale, where an unusual one year time has been fixed for payment of the balance sale consideration and further, it was the admitted case of the plaintiff that he did not have necessary funds to pay the balance sale consideration and therefore he requested further time. He would therefore state that these would clearly demolish the case of the plaintiff that the plaintiff was ready and willing throughout.

10. Even as regards the lawyer's notice dated 01.09.2020, the learned counsel for the appellant would contend that though the plaintiff had issued the notice, calling upon the defendant to come forward to register the agreement on 07.09.2020 at the Sub-Registrar's Office, the notice itself was despatched only on 07.09.2020 and received by the defendant on 10.09.2020. He would also state that merely because the balance sale consideration was deposited before the Trial Court, it would not imply readiness and willingness.

11. Referring to the contents of the lawyer's notice dated 01.09.2020, the learned counsel for the plaintiff would state that the plaintiff, even in the said notice, does not say that the balance sale consideration is ready and the



language in the said notice only indicates that he is likely to get necessary funds. He would also invite my attention to the averments in the plaint where there is no whisper about whether the plaintiff was ready for registration on 07.09.2020, as indicated in the lawyer's notice dated 01.09.2020. Referring to the cross-examination of P.W.1, the learned counsel for the appellant would state that even though the admitted balance payable, according to the plaintiff, was Rs.5,62,500/-, the plaintiff himself admitted that he had only Rs.2,50,000/- lakhs as balance in his bank account and therefore, he would contend that the plaintiff was not possessed of sufficient funds to meet the balance sale consideration. It is his further contention that mere deposit of balance sale consideration, in pursuance of directions of the Court, would not imply readiness and willingness.

12.It is also the argument of the learned counsel for the appellant that 'resources' is different from 'means' and in a suit for specific performance, the plaintiff has to necessarily prove readiness and willingness and in the instant case, the plaintiff has miserably failed to establish that he was ready and willing to pay the balance sale consideration and strong reliance is placed and reiterated with regard to the plaintiff's admissions that he needed about 5 to 6 months to muster the balance sale consideration. In support of his contention, the learned counsel for the appellant would rely on the following decisions:



WEB COPY

1.Abdul Hag Vs. Hafiz Abdul Rashid Khan and another, reported in 1975 AIR (Del) 13.

2.K.P.Mohamed Ibrahim Vs. State Bank of Travancore, reported in 1964 AIR (Mad) 233.

3.Gomathinayakam Pillai and others Vs. Pallaniswami Nadar, reported in 1967 AIR (SC) 868.

4.Uma Bai and another Vs. Nilkanth Dhondiba Chavan, reported in 2005 (6) SCC 243.

5.Sukhwinder Singh Vs. Jagroop Singh, reported in 2020 AIR (SC) 4865.

13.Arguments of the learned counsel for the respondent:

Per contra, Mr.N.Manoharan, learned counsel for the respondent would firstly contend that the suit agreement is a registered agreement of sale and there is a legal presumption under Section 114 of the Indian Evidence Act and Sections 56 to 60 of the Registration Act, that the agreement was for the intended purposes. He would further contend that even though it is open to a party to such agreement to contend, taking advantage of Section 92 of the Indian Evidence Act and state that the agreement was for a different purpose altogether, at the same time, the recitals in the agreement cannot be contradicted.

14.In any event it is the specific contention of the learned counsel for the respondent that there is absolutely no iota of evidence adduced by the defendant and even the witnesses, who spoke on behalf of the defendant, who also clearly admitted the agreement of sale and therefore there was no



requirement to even rely or fall back on the provisions of Section 92 of the Indian Evidence Act in the present case.

WEB COPY

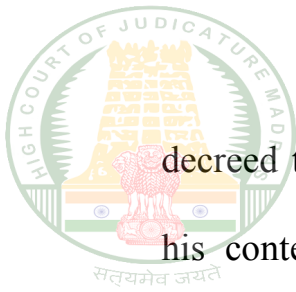
15.As regards, the delayed despatch of the lawyer's notice, the learned counsel for the respondent would contend that such a plea was never raised in the written statement or even taken up during the trial and it is not open to the appellant to raise the said contention in appeal for the first time, without even back up pleading for the same. The learned counsel for the respondent would contend that along with the suit that was filed on 29.10.2020, the plaintiff had taken out a lodgement schedule and even before the written statement was filed in the suit, the balance sale consideration was deposited on 30.09.2021. It is therefore contended by the learned counsel for the respondent that the plaintiff had clearly established readiness and willingness on his part.

16.Also referring to the explanation to Section 16(c), he would state that there was no requirement to deposit the balance sale consideration and despite the same, as already indicated above, the entire balance sale consideration was deposited before the trial Court, even before pleadings were completed. He would therefore state that the plaintiff had clearly discharged his burden regarding readiness and willingness to perform his part of the contract. He



would also invite my attention to the witnesses, who have been examined, specifically D.W.2 and D.W.3, who are sons of the defendant himself and none of the witnesses have challenged the sale agreement or the actual nature of transaction. He would therefore state that the evidence of the sons of the defendant was, in fact, fatal to the case of the defendant himself.

17. Referring to the entire oral evidence, the learned counsel for the respondent would state that all the witnesses, who have been examined, have in one voice admitted to the agreement of sale. As regards the contention regarding readiness and willingness, as argued by the learned counsel for the appellant, the learned counsel for the respondent would contend that even as on the date of agreement, approximately 60% of the total sale consideration has been paid and when the parties themselves had contemplated a years' time to pay the balance sale consideration, much cannot be made out from the admissions of the plaintiff that he needed 5 to 6 months time to arrange for the balance sale consideration. He would also contend that not even a suggestion was put to P.W.1 regarding his lack of readiness and willingness. He would therefore state that the plaintiff had clearly established readiness and willingness with the deposit of the entire balance sale consideration and nothing remained to be performed on his side and rightly, the Trial Court has



decreed the suit and no interference is warranted in this appeal. In support of his contentions, the learned counsel for the respondent would rely on the following decisions:

- 1.Madhkur Nivrutti Jagtap Vs. Pramilabai Chandulal Prandekar, reported in 2020 15 SCC 731.*
- 2.Bhavyanath Vs. K.V.Balan, reported in 2020 11 SCC 790.*
- 3.Lakshmi Ammal Vs. Gejaraj, reported in 2022 SCC Online Mad 7211.*
- 4.P.Ramasubbamma Vs. Vijayalakshmi and others, reported in 2022 7 SCC 384.*
- 5.Syed Dastagir Vs. T.R.Gopalakrishna Setty, reported in (1999) 6 SCC 337.*
- 6.Muddasani Venkata Narsaiah (dead) through LR's Vs. Muddasani Sarojana, reported in (2016) 12 SCC 288.*

18.I have carefully considered the submissions advanced by the learned counsel on either side. I have gone through the pleadings, oral and documentary evidence as well as the judgment of the trial Court.

19.Point for consideration:

On consideration of the arguments referred above, I frame the following point for consideration.

- (i) Whether the suit agreement of sale was actually a loan transaction or an intended agreement of sale alone?
- (ii) Whether the plaintiff has pleaded and proved readiness and willingness, entitling him to a decree for specific performance?

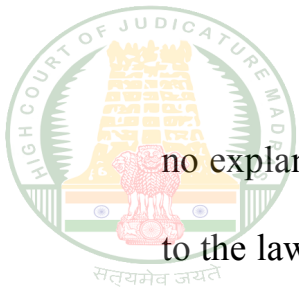


20. Points 1 and 2:

WEB COPY

The execution of the sale agreement dated 04.10.2019 is not in dispute. It is the contention of the defendant that though the agreement of sale was entered into, it was only as a security for the loan availed of by the defendant from the plaintiff, to pay off debts incurred to meet the marriage expenses of his granddaughter. In such circumstances, the burden of proving that the agreement was only a loan transaction and not a sale transaction was heavily on the defendant. In this regard, I have gone through the oral evidence adduced by the parties.

21. Two of the sons of the defendant themselves have been witnesses to the agreement of sale. Quite strangely, five witnesses have signed the agreement of sale and all the witnesses, who have been examined, one on the side of the plaintiff and the three on the side of the defendant, have clearly stated that the suit agreement was only an agreement of sale. Though the defendant claimed that he had paid 10 months interest, the defendant has not been able to substantiate the said contention taken in the written statement. The overall assessment of the oral and documentary evidence on record clearly points out to the fact that the suit agreement was only an intended sale agreement and not a loan transaction, as claimed by the defendant. There is also

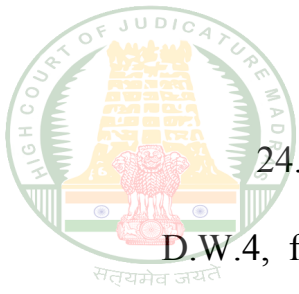


no explanation on the side of the defendant as to why he did not send any reply to the lawyer's notice, Ex.A2, despite having acknowledged receipt of the same.

WEB COPY

Except for bald denial and a weak explanation that the defendant contacted the plaintiff and promised to repay the amount borrowed, there is nothing brought on record to establish that the defendant actually met the plaintiff in person, as contended in the written statement. In fact, there is not even a suggestion put to P.W.1 that pursuant to the receipt of the notice, the defendant contacted the plaintiff. Though non issuance of a reply per se may not be fatal to the party who did not send a reply to the pre-suit notice, but however, such conduct and the explanation offered read together would certainly have a bearing while adjudicating the issues that arise for consideration in the suit.

23.In the present context, it is clear that if really, the defendant's case that the amount was only borrowed from the plaintiff and it was only a loan transaction and not a sale agreement as projected by the plaintiff, in such event, a normal prudent property owner would not risk not replying to such a notice calling upon the defendant to come forward to execute a sale deed in furtherance and compliance of the agreement of sale in Ex.A1



24. As already discussed, both P.W.2 as well as D.W.2, D.W.3 and D.W.4, four out of five attesting witnesses to Ex.A1, sale agreement have clearly admitted to the fact that the transaction was only an agreement of sale and nothing has been brought out in cross-examination to indicate that the transaction was only a loan transaction. The Trial Court has rightly assessed the oral and documentary evidence and arrived at a finding that the case of the defendant that it was a loan transaction and not an agreement of sale is unsustainable. I do not find any grounds to disagree or interfere with such reasoned findings arrived at by the trial Court.

25. Coming to the readiness and willingness of the plaintiff, it is not in dispute that in a suit for specific performance under Section 16(c) of the Specific Relief Act, it is mandatory for the plaintiff to plead as well as prove that he has been always ready and willing to perform his part of the contract. In this regard, there is no difficulty with regard to the pleadings. The plaintiff has set out in the plaint that he has always been ready and willing to perform his part of the contract. In order to establish his readiness and willingness, even when the suit was instituted, he has filed a lodgement schedule with an intent to deposit the balance sale consideration. However, it was much later after the suit came to be registered, but however before even the defendant filed his defence



that the trial Court permitted the plaintiff to deposit the balance sale consideration and accordingly, on 30.09.2021, the entire balance sale consideration was also deposited.

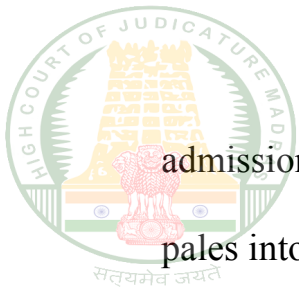
26.It is vehemently contended by the learned counsel for the appellant that mere deposit, that too in furtherance of the directions of the Court would not automatically imply readiness and willingness. In this regard, the learned counsel for the appellant has strongly relied on the admission of P.W.1 that he needed about 5 to 6 months time to get ready with the balance sale consideration. I do not see that this admission being fatal to the plea of readiness and willingness. Firstly, when the agreement of sale was entered into itself the parties contemplated a period of one year for payment of the balance sale consideration. Even on the date of sale agreement, the plaintiff has paid a substantial sum of Rs.7,50,000/-.

27.It is not uncommon for the prospective purchaser to seek time to pay the balance sale consideration and get the sale deed registered in his favour. When the parties have expressly covenanted to a one year time period for payment of balance sale consideration, the fact that the plaintiff required 5 to 6 months to get ready for the sale is of no consequence. The plaintiff, by issuing a



lawyer's notice, before the lapse of the one year period and also following it up with the filing of the suit without any further delay thereafter and also showing his bonafides by seeking to deposit of the entire sale consideration, in my considered opinion, would be sufficient to discharge his requirement of proving his 'readiness and willingness'. In fact, it is admitted that subsequently on 30.09.2021, the plaintiff has also deposited the entire balance sale consideration of Rs.5,62,500/- and merely because it was pursuant to Court directions does not in any way impeach the readiness and willingness exhibited on the side of the plaintiff.

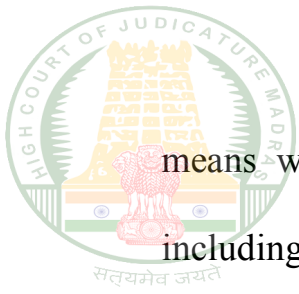
28.As rightly contended by the learned counsel for the respondent, the explanation to Section 16(c) of the Specific Relief Act also does not require a mandatory deposit of the balance sale consideration. Therefore, this is only yet another factor which would aid the Court to come to the conclusion as to whether the plaintiff was ready and willing to perform his part of the contract. Even as regards the argument of the learned counsel for the appellant that the plaintiff had admitted that he had only a sum of Rs.2,50,000/- as available in his bank account and it was not sufficient to meet the balance sale consideration, when the plaintiff has deposited the entire balance sale consideration, even before the defendant filed his written statement, the



admission of P.W.1 that he had a sum of Rs.2,50,000/- in his bank account
pales into insignificance.

WEB COPY

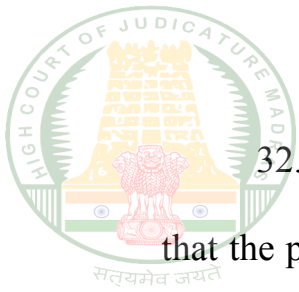
29. Coming to the decisions that have been relied on by the learned counsel on either side, in *Abdul Hags's case (stated supra)*, the Division Bench of the High Court of Delhi held that the word "means" has no relation to source and that it is wider in its scope than the word "income". I do not see this decision applying to the facts of the case for the simple reason that the case before the Delhi High Court was pertaining to the earning capacity of the tenant in proceedings under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956. It is in this context, the Division Bench of the Delhi High Court discussed the word "means" and in fact, referring to Oxford English Dictionary, the Division Bench of the Delhi High Court found that 'means' would indicate resources at (one's) disposal for effecting some object, chiefly (of a person's) pecuniary resources viewed with regard to the decree of adequacy to the requirement or habits of expenditure". In fact, the Division Bench has also referred to the observation in *Howard Vs. Howard (1945) P.I (C.A.) Lord Greene*, where it was observed that 'means' is meant what the person concerned is in fact getting or can fairly assume to likely to get. In fact, applying the said observation and also definition of means, it is clear that



means would only be equated with resources at the disposal of a person, including what he is getting or can fairly be assumed likely to get, irrespective of the source. Therefore, this judgment, in fact, would only, in my considered opinion, help the plaintiff and not the defendant.

30.The Division Bench of this Court in *K.P.Mohamad Ibrahim's case*, (stated supra) while deciding an appeal arising out of the order of arrest in execution proceedings and testing whether the judgment debtor had "means", held that means would only mean realizable assets and it not be equated to cash available with the judgment debtor. This decision also, in my opinion, does not come to the aid of the appellant.

31.In *Gomathinayakam Pillai's case*, (stated supra) the Hon'ble Supreme Court held that in a suit for specific performance, the plaintiff has to plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit. There is no quarrel with regard to the above proposition and as I have already discussed and found the plaintiff has not only pleaded but also established that he was ready and willing to perform his part of the contract.



32. In *Uma Bai's case*, (stated supra) the Hon'ble Supreme Court found that the plaintiff had deposited the balance sale consideration only in the Court of appeal and that the High Court had committed an error in taking that into consideration to hold that the plaintiff was ready and willing to perform his part of the contract. The facts of the present case are entirely different and admittedly even before the written statement was filed, the entire balance sale consideration has been deposited. Hence, this decision would also not help the appellant.

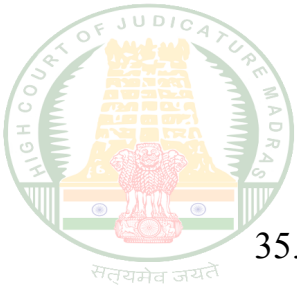
33. In *Sukhwinder Singh's case*, (stated supra) the Hon'ble Supreme Court held that even if the balance sale consideration was deposited or paid prior to or at the time of filing of the suit, readiness and willingness and possession of sale consideration as on date on which the parties contemplated registration should have been established by the plaintiff. The Hon'ble Supreme Court further held that even in the absence of any defence put forth, the plaintiff was required to prove readiness and willingness. However, it was a case where the Supreme Court noticed the fact that though the plaintiff and the defendant had agreed on 15.06.2004 to conclude the sale deed and according to the plaintiff, he had gone to the Sub-Registrar's Office on the said date. In such circumstances, the plaintiff's evidence was lacking as regards his possessing sufficient means to



pay the balance sale consideration on the said date. This coupled with the fact that the balance sale consideration was deposited only after the suit was decreed at the first instance on 14.06.2007 was taken note of by the Hon'ble Supreme Court and therefore, the background on which the said decision was rendered being entirely in a different context and fact situation, the ratio laid down in the said case cannot be applied to the facts of the present case.

34.In *Madukar Nivrutti's case*, (stated supra) the Hon'ble Supreme Court held that even though there was a suggestion remotely available in the document in question that it was a loan or borrowing transaction between the parties, but when the recitals and stipulations in the agreement had only affirmed the agreement of sale and receipt of part payment against sale consideration, the transaction could have only been a sale transaction and not a security for a loan availed of by the defendant.

34.In *Lakshmi Ammal's case*, (stated supra) this Court held that when substantial amounts paid towards sale consideration have been established there is nothing more to be proved by the agreement holder to establish readiness and willingness to perform his part of the contract and natural consequence would be that the plaintiff will be entitled to the relief of specific performance.



WEB COPY

35. In *P. Ramasubbamma's case*, (stated supra) the Hon'ble Supreme Court held that when the execution of the agreement of sale was admitted and payment of substantial advance sale consideration was also admitted, nothing further was required to be proved by the plaintiff/vendee.

36. On applying the relevant principles enunciated by the Hon'ble Supreme Court as well as this Court, the facts of the present case as well, I do not see how the appellant can succeed in his plea that the transaction was only a loan transaction and not an intended sale agreement. At the risk of repetition, there is absolutely not a shred of evidence adduced by the defendant to establish even a prima facie that the transaction was only a loan transaction and the defendant never intended to sell the property.

37. Even though the plea of the value of the property being abysmally low compared to the then prevailing market rates has been raised, there is absolutely no evidence even on this ground. Even as regards the receipt of the belated posting of the lawyer's notice in Ex.A2, the defendant has not even pleaded that the notice was received by him after the date on which the plaintiff called upon him to be present before the SRO for executing the sale deed. These coupled



with the fact that along with the suit, the plaintiff has attempted to pay the entire sale consideration and also subsequently, pursuant to the orders of the trial Court, he has also deposited the entire balance sale consideration would only go to show that the plaintiff has discharged all his obligations and nothing remained on the side of the plaintiff to be performed.

38.The Trial Court has considered all the relevant material evidence in this regard and rightly come to the conclusion that the plaintiff is entitled to a decree for specific performance, having not only pleaded, but also established 'readiness and willingness'. In the light of the above, I do not find any necessity or grounds arising to interfere with the well considered findings of the trial Court. Accordingly, the points 1 and 2 are answered in favour of the respondent and against the appellant.

39.In fine, the Appeal Suit is dismissed with costs. Connected Civil Miscellaneous Petition is closed.

10.10.2025

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
ata



WEB COPY



P.B.BALAJI.J.

ata

To

The Additional District Judge, Kallakurichi.

Pre-delivery judgment made in
A.S.No.1135 of 2024
& CMP.No.28912 of 2024

10.10.2025

22/22