

SA(MD)No.133 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.133 of 2005

1.S.P.Chandran (Died)

2.S.P.Mohan (Died)

3.Thiyagavali

4.Poongothai

5.Renganayaki

: (*)Appellants/ Appellants/
Plaintiffs 2 to 6

6.Amaravathy

7.S.P.C.Jeeva

8.S.P.C.Balu

: LR.s of the deceased
1st appellant

((*)Appellants 6 to 8 are brought on record
as LR.s of the deceased 1st appellant
vide court order, dated 26/10/2016
in CMP(MD)No.2553 of 2016 in SA(MD)
No.133 of 2005)

9.M.Renugadevi

10.(*)M.Indrajith

11.M.Jayasri

12.M.Periyakaruppan

: LR.s of the deceased
2nd appellant

(Appellants 9 to 12 are brought
on record as LR.s of the deceased
2nd appellant, vide court order,
dated 26/11/2021 made in CMP(MD)
No.2930 to 2932 of 2021 in SA(MD)
No.133 of 2005)

Vs.



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- 1.Muniyayee
- 2.Somasundaram (Died)
- 3.Narayanan Ambalam
- 4.Sankaranarayanan
- 5.Velayutham
- 6.Pandidurai

**(*)...1 to 3 Respondents /
Respondents/Defendants**

(*)... Respondents 4 to 6

(R4 to 6 are brought on record
as LR.s of the deceased 2nd respondent
vide Court order, dated 10/02/2021
made in CMP(MD)No.2933, 2936 and 2937
of 2021 in SA(MD)No.133 of 2005)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.48 of 2003 on the file of the District Judge, Sivagangai, dated 20/07/2004 confirming the judgment and decree passed in OS No.86 of 1995, dated 21/02/2003 on the file of the Principal District Munsif, Manamadurai.

For Appellants : Mr.Natarajan
Senior counsel
for M/s.Vijayakumari Natarajan

For R4 to R6 : **(*)Mr.D.P.Sundara Raj**
for Mr.A.Sivaji

For R1 and R3 : Ex-parte

For R2 : Died



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JUDGMENT

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This second appeal is filed against the judgment and decree passed in AS No. 48 of 2003 by the District Judge, Sivagangai, dated 20/07/2004, confirming the judgment and decree passed in OS No.86 of 1995, dated 21/02/2003 by the Principal District Munsif, Manamadurai.

2.The plaint:-A portion of the suit property situated in Survey No.(*)326/188 measuring about 0.11.34 Hectare belongs to the plaintiffs ancestors. Another portion was purchased by the father of the 2nd plaintiff on 23/06/1945. After purchase, they are enjoying the property without any division and partition, in occupation and possession by constructing the house, cattle shed, etc. They were issued with patta No.1607. The defendants have no right over the property. They are having house and vacant site on the north of the suit property. When the defendants started constructing a house in the vacant site, attempted to encroach upon the suit property. Hence, the suit for permanent injunction and costs.

3.The second defendant filed written statement adopted by the first defendant:- The title and possession of the plaintiffs are denied. The suit property belongs to the second defendant ancestrally. They were dealing with the property



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right from the beginning and enjoying the same by paying kist. It was locally called as 'Kalangarai Thottam'. The enjoyment of the second defendant was objected. So, a panchayat was arranged, in which the possession and enjoyment of the second defendant's ancestors were recognized and issued a receipt by the objectors. In the receipt, Sevugan Ambalam the grand father of the plaintiffs 2 and 3 signed as a witness. Similarly in various documents, the possession and title of this defendant are mentioned and they were in the habit of mortgaging and redeeming the same. Apart from that, it is also stated that the suit is bad for non-joinder of necessary parties and the suit simpliciter for permanent injunction is not valid, since the title of the plaintiff is denied.

4. Additional statement filed by the second defendant states that the description of the property is not proper and correct. In the property measuring about 6 cents, wherein one SP.Sekaran, the brother of the 3rd plaintiff and Kannathal constructed houses. The remaining 22 cents belonged to the second defendant as mentioned in the written statement. In the suit, the father of the second plaintiff is not added as party, since the sale deed dated 23/06/1945 was standing in his name. In the main plaint, the sale deed, dated 23/06/1945 was suppressed. But they have stated in the petition before the DRO during patta transfer proceedings. The sale deed, dated 23/06/1945 is fabricated one. The suit property was not mentioned in



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the partition that took place between the 1st plaintiff's father and his sharer in 1950.

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Right from 1937 onwards, the document was available to show the title and possession of the defendants. The second defendant is in enjoyment of the property by constructing cattle shed, raising trees, dumping yard.

5. On the basis of the pleadings, the following issues were framed by the trial court:-

(1) Whether the suit property is the ancestral property of the plaintiffs?

(2) Whether the plaintiffs are entitled for injunction as prayed for?

(3) Whether the suit property is property owned by the 2nd plaintiff ancestrally?

(4) Whether the suit is bad for non-joinder of necessary parties?

(5) Whether the plaintiffs are barred by estoppel?

(6) To what other reliefs, the plaintiffs are entitled to?



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(7)Whether the sale deed, dated 23/06/1945 is a genuine document?

6.During trial, on the side of the plaintiffs, 2 witnesses were examined and 7 documents marked. On the side of the defendants, 4 witness were examined and 36 documents marked. The Commissioner's report & plan are marked as Exs.C1 to C4.

7.At the conclusion of the trial, the trial court dismissed the suit without any costs. Against which, the plaintiffs filed appeal before the District Court, which confirmed the judgment and decree of the trial court.

8.Against which, this second appeal is preferred.

9.At the time of admission, the following substantial questions of law are framed:-

(1)When the plaintiffs' lawful possession on the date of and prior to the filing of the suit is established, whether the courts below are right in dismissing the suit for bare injunction?

(2)When the suit is for mainly against the 1st defendant,



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who is the owner of the property which is north of the suit property and attempting to encroach into the suit property and when she has not contested the suit and further remained *ex-parte* in the appeal, whether the courts below are right in not passing decree for injunction against the 1st defendant?

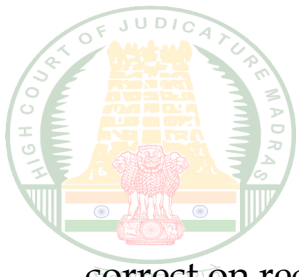
(3)Whether the view of the courts below that by attesting the document Ex.B3 by the grand-father of the plaintiffs 2 and 3 will amount to admission, is in consonance with the settled principles under section 115 of Evidence Act and the Judicial Pronouncement in 2003(1)MLJ (DB)?

10.Heard both sides.

Substantial question of law No.2:-

11.This question of law is taken up first before proceeding further for clarity.

12.The learned Senior counsel appearing for the appellants would repeatedly contend that in the plaint, permanent injunction was sought primarily against the first defendant. But she did not contest the matter. Remained *ex-parte* before the appellate court. So, both the courts committed an error on law and in-fact in not passing the order of permanent injunction against him. Whether this argument is



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correct on record is to be clarified first.

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13.In the plaint, there is specific plea that the defendants are having property on the north. They attempted to encroach upon the suit property at the time of constructing the house.

14.But there is no specific plea in the plaint to the effect that the first defendant namely Muniyae attempted to encroach upon the property. It has been simply stated that the defendants attempted to encroach upon the property. Even in the prayer portion, injunction was sought against all the defendants and not against the first defendant alone. So, the argument raised by the appellants at the first instance is not correct on record.

15.Now coming to the next question, whether the first defendant did not contest the matter before the trial court is concerned, this is also not correct on record. The statement was filed by the second defendant on the ground that he claimed exclusive title and possession over the suit property. The first defendant adopted the written statement. She was represented by Counsel before the trial court. But did not appear before the appellate court. When the plaint is filed against all the defendants claiming permanent injunction, now it is too late for the



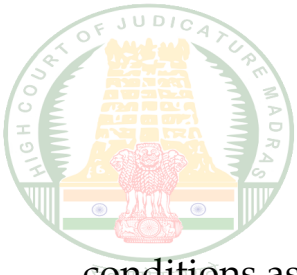
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appellants to say that primarily it was against the first defendant. Simply because the first defendant did not file any independent written statement and lead evidence, it does not mean that she remained *ex-parte* or she ought to have been set *ex-parte* by the trial court. This argument does not appeal to me. There is no compulsion of law that a party to the suit must lead evidence, failure will amount to remain *ex-parte*. Such a course is not at all available. So, this primary contention made by the appellants is devoid of merit and rejected outright. So, the judgments cited by the appellants in *Ramachandra Keshav Adke (Dead) by Lrs. Vs. govind Joti Chavare and others* {AIR 1975 SUPREME COURT 915}; and *Chintaman Sukhdeo Kaklij and others Vs. Shivaji Bhausaheb Gadhe and others* [2004(4)MHLJ 739] have no application at all. So, this argument is rejected outright and this substantial question of law does not arise at all.

Substantial question law No.1:-

16.Since it is the concurrent finding by the trial court and appellate court with regard to the possession and title of the plaintiffs, it is submitted by the learned Senior Counsel appearing for the appellants that by virtue of law settled by the Hon'ble Supreme Court in *State of Rajasthan and others Vs. Shiv Dayal and another* [2019(5)CTC 843], there is no bar for this court to interfere if the following



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conditions as narrated in para 21 and 22 of the judgment attract.

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“21.When any concurrent finding of fact is assailed in Second Appeal, the Appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonable have reached (See observation made by learned Judge Vivian Bose,J., as His Lordship then was a Judge of the Nagpur High Court in Rajeshwar Vishwanath Mamindwar and others Vs. Dashrath Narayan Chilwelkar and othrs, AIR 1943 Nag. 117, Para 43).

22.In our opinion, if any one more ground, as mentioned above, is made out in an appropriate case on the basis of the pleadings and evidence, such ground will constitute Substantial Question of Law within the meaning of Section 100 of the Code.”

17.So, according to him, when the finding of the trial court and the appellate court are not in consonance of the principles set out above, this court can interfere. According to him, the trial court and the appellate court non-suited the plaintiff mainly based upon the boundary recitals in various documents and the attestation made in Ex.B3 by the grand-father of the 2nd plaintiff. So, according to him, re-appreciation of the facts is required.



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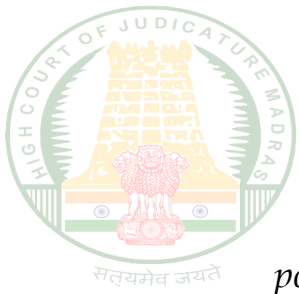
18. Before we go into the main issue, one primary point which requires to be addressed first is absent of declaratory relief in the plaint. In a suit for injunction simpliciter, when a genuine plea is raised regarding the title, it is the duty of the plaintiffs to amend the plaint. This is the settled proposition of law.

19. The learned counsel for the respondents 4 to 6 is referring to the judgment of the Hon'ble Supreme Court in *Anathula Sudhakar Vs. P.Buchi Reddy* [2008(6)CTC 237(SC)], which is a classic on this point, wherein it has been held as follows:-

“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with



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possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c)But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d)Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction."



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20. Against this judgment, the learned counsel appearing for the appellants would rely upon the judgment of the Hon'ble Supreme Court in *Iqbal Basith and others Vs. N.Subbalakshmi and others* [2021(2)CTC 104] and would contend that since the title of the plaintiffs is not disputed and the possession is proved on the basis of the evidence on record, both the courts committed illegality in dismissing the suit.

21. But in the judgment reported in **2021(2)CTC 104**, there was no issue with regard to the title of the property. But in spite of that, the suit was dismissed stating that title was not established. Only on that circumstance, the Hon'ble Supreme Court allowed the suit for permanent injunction. Here, it is not the case. As mentioned above, the title was disputed by the defendants in a *bona-fide* and genuine manner as the documents and the discussion made by the trial court and the appellate court indicates. With this background, we will go further.

22. Another important feature is that the trial court and the appellate court committed an error in appreciating the documentary evidence. They relied upon the boundary recitals in various documents filed by the defendants. Now it is well



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settled principles of law, boundary recitals in a document, which is not inter party is
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not an evidence in the absence of examination of executants *V.Amaiappa Nainar*
died and others Vs. A.Annamalai Chettiar (died) and others (1972(1)MLJ 317 (DB).

23.We can eschew or remove those documents from consideration and takn up
only title document relied on.

24.So, before we go into the documents of the defendants, it is the duty of the
plaintiffs to prove the possession and of course, the title *prima facie*. Before that, we
will take up the physical feature available in the suit property as brought by the
Commissioner. In a portion of the suit property, houses of one Kannathaal,
SP.Sekaran (who are not parties) and the third plaintiff are situated. Here and there,
we find some trees and haystack on the north of the third plaintiff's house and on
the south-east. The importance of the physical feature is that when SP.Sekaran and
Kannathal houses are situated, the suit is filed for permanent injunction without
impleading them as parties.

25.It is admitted by the defendants that the plaintiffs are entitled for 6 cents
situated on the north- east side. Even during the course of the argument, it was
fairly conceded that they have no objection in respect of their 6 cents on the north-



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east. On that account, the learned Senior counsel appearing for the appellants would submit that the trial court as well as the appellate court have committed an error in not granting the limited prayer in respect of the admitted portion. But a valid reason was assigned by the trial court for not granting this limited portion of injunction and we will discuss about that point later.

26. Now coming back to the case of the plaintiffs, as mentioned above, they are claiming title over the property by virtue of the sale deed, dated 23/06/1945 for a portion, which covers 6 cents, which is admitted by the defendants. So, we can concentrate on the remaining portion. Whether the plaintiffs established the title and possession, the trial court has traced the genealogy of the plaintiffs. As per the trial court finding, one Karuthan Ambalam was the ancestor. He had two sons namely Sevugan Ambalam and Krishnan Ambalam. Sevugan Ambalam had two children namely Periya Karuppan and Chinna Karuppan. The plaintiffs 2 and 3 are the children of Peria Karuppan. Krishnan had a son by name Paulchamy. Paulchamy's wife is Kannathal. The daughter was Ayyammal. The plaintiffs 1 and 2 are the children of the deceased first plaintiff. The first plaintiff is the maternal Uncle of the plaintiffs 2 and 3.



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27.This is not disputed by the parties. As mentioned above, the house of Kannathal is situated in a portion of the suit property. Now coming to the second defendant's case is that the first defendant ancestor purchased the property from one Yegal. From the legal heirs of Yegal, the first defendant purchased the property under Ex.B1, on 03/12/1991 and we will go to the evidentiary value of Ex.B1 later. So, except Ex.A1, no other title document is produced by the plaintiffs. Ex.A4 is the patta standing in the name of SP.Mohan and Vellaichamy. Ex.A5 is Natham survey patta issued in the name of SP.Mohan and Vellaichamy. This, according to the defendants, was cancelled under the order, dated 07/06/1996 by the DRO.

28.At this juncture, the learned Senior counsel appearing for the appellants would submit that against the order passed by DRO, he filed writ petition before this court. That writ petition was allowed and the order passed by the DRO was set aside. The matter was remitted back to the DRO. But so far, no order was passed. This was not noticed by the appellate court. So, according to him, when the order was set aside and so far no proper order was passed, the patta granted under Ex.A5 will show their possession.



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29.Since the revenue proceedings are still pending, no definite finding can be recorded by this court in respect of the relevancy of the pattas.

30.Now ignoring the patta, we will go to the other documents produced on the side of the defendants to show that the suit property did not belong to the plaintiffs. They would rely upon Ex.B2 partition deed took place in the family of the plaintiffs, which is dated 01/06/1950.

31.It is contended on the side of the defendants that if really the property belongs to the plaintiffs family and in enjoyment, they would have definitely partitioned the property under Ex.B2, wherein specific recital is made to the effect that except the property mentioned in the partition deed, no other properties are available, ancestral in character for division. So, this was admitted by PW1 during the course of the evidence that in the partition deed under Ex.B2, this property was not shown.

32.Another indirect plea raised by the defendants is that Ex.B3 arose, when the possession of the second defendant was disputed by the third party. A panchayat



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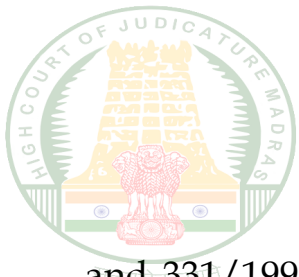
was convened, in which they received Rs.25/-, recognized the possession of the second defendant, in which the plaintiffs' grand father signed as a witness. In respect of which, the 3rd substantial question of law was framed.

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33.In this context, the learned Senior counsel appearing for the appellants would submit that mere attestation to a document will not operate as estoppel that too against the interest of the plaintiffs and for that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in *K.A.Selvanachi and another Vs. Dr.S.R.Sekar and another* [(2003)5 MLJ 769].

34.No doubt that mere estoppel will not create any title in favour of any party. More over, the document Ex.B3 under was not executed in the presence of the plaintiffs. Only their grand-father signed as a witness in the document. More over, none was examined on the side of the defendants to prove the document that it was executed in the presence of the grandfather of the plaintiffs. So, that document need not be taken into account.

35.But the documents filed by the defendants in the form of mortgage, redemption and more particularly, the suit in OS Nos.69/1945, 124/1962, 142/1962



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and 331/1994 between the parties, it was admitted by the plaintiff himself, which shows that he has knowledge about the previous suits. Para 24 of the trial court judgment is devoted to this pervious suits. When the plaintiff's predecessor-in-title or ancestors as the case may be are parties to the above said proceedings, now the plaintiffs are estopped from disputing the correctness of those findings.

36.More importantly, ignoring all those things, the present plaintiffs are the parties in the partition deed, dated 01/06/1950. As mentioned above, the present suit property was not mentioned in the partition deed, which fact is also admitted by the plaintiffs. The relevancy of this document is elaborately discussed by the trial court in para 18. Wherein a specific admission by the plaintiff's ancestor that the suit property belongs to the defendants. This finding of fact was approved by the appellate court also. So, this record of finding with regard to the factual aspect clearly shows that the plaintiffs or their ancestors were not having any right, title or possession over the suit properties. Without any basic document, it appears that the suit has been filed for mere injunction. When a genuine dispute of title is raised by the defendants, it is the duty of the plaintiffs to amend the plaint for declaratory relief. But they failed to do so. So, the judgment of the Hon'ble Supreme Court in **Anathula Sudhakar's** case clearly applies. On that ground also, the suit is not maintainable.



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37.Now coming back to the limited request made by the plaintiffs regarding north-east 6 cents, as mentioned above, that request of the plaintiffs or limited prayer was rejected by the trial court for valid reasons.

38.Now we will see the reason assigned by the trial court for negating the limited request. As mentioned above, within the north-east 6 cents, the house of Kannathal and SP.Sevugan Ambalam are situated. Kannathal was allotted with the property as per Ex.B2, partition deed. When this being the position, how the plaintiffs are entitled for injunction in respect of north-east 6 cents is not satisfactorily explained by the plaintiffs. The plaintiffs are not entitled to get injunction, wherein they had no houses, but the houses of third parties are available. It is also the finding of the trial court, which requires no interference.

39.Accordingly, the first substantial question of law is answered that the plaintiffs failed to establish the possession and title on the date of filing of the suit. The finding of fact recorded by the trial court as confirmed by the appellate court are sustained and no substantial question of law arises.



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40.The second substantial question of law does not arise at all for the reasons or discussion made above.

41.The third substantial question of law is also answered that *dehors* Ex.B3 the title and possession of the defendants are established. On the contra, the plaintiffs were not.

42.In the result, this second appeal is **dismissed** with costs, confirming the judgment and decree passed by the courts below.

Sd/-

10/03/2025

(*)Corrected as per the order of this Court dated 16.04.2025 in SA(MD).No133 of 2005.

Sd/-

ASSISTANT REGISTRAR (CS - III)

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Sub Assistant Registrar()

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To,

1.The District Judge,
Sivagangai.

2.The Principal District Munsif,
Manamadurai.

Copy to:

The Section Officer,
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Madurai Bench of Madras High Court,
Madurai. (2 copies)

+3 CC to M/s.A.SIVAJI, Advocate (SR-15377[F] dated 10/03/2025)

+1 CC to M/s.VIJAYAKUMARI NATARAJAN, Advocate (SR-15395[F] dated 10/03/2025)

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10/03/2025

AS - (12 .06.2025) 22P/ 9C

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