

AS.(MD)No.61 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.02.2025

Pronounced On : 20.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.61 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

S.Ramasamy

... Appellant

Vs.

1.S.Chellathambi

2.Nachammai

3.R.Kannan

... Respondents

PRAYER : Appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 09.10.2014 made by the learned I Additional District Judge (PCR), Thiruchirapalli in O.S.No.175 of 2009.

For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel,
for Mr.C.Mahadevan



WEB COPY



AS.(MD)No.61 of 2015

For R1 : Mr.S.Parthasarathi
For R2 : Mr.T.Antony Arul Raj
For R3 : Mr.J.Anand Kumar

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN, J.**)

The unsuccessful first defendant has preferred appeal before this Court as against the judgement and decree passed in O.S.No.175 of 2009 dated 09.10.2014 on the file of the I Additional District Judge (PCR), Thiruchirapalli. For the sake of convenience, the parties are referred as per their rank before the trial Court.

2.Brief case of the plaintiff is as follows:-

The plaintiff, first defendant and one Late.S.Subramanian are the sons of one V.Singaram Chettiar. The second defendant is the wife of the Late.S.Subramanian. The said V.Singaram Chettiar died on 02.06.2009 and the Subramanian had predeceased Singam Chettiar leaving the 2nd defendant as his legal heir. The suit schedule properties item Nos.1 and 2 are belonged to Singaram Chettiar. The suit schedule properties item



AS.(MD)No.61 of 2015

WEB COPY

No.3 is the Bank deposits. A legal notice dated 24.07.2009 was sent by the plaintiff to the defendants for seeking partition. The first defendant attempted to alienate the suit property. Public notice was also served on 14.07.2009 and 15.07.2009 in the leading Newspaper. Another legal notice dated 13.07.2009 was also issued to ICICI Bank, Trichy. A reply notice dated 21.07.2009 and 19.08.2009 were received from the first defendant containing false and frivolous allegations. A reply notice dated 22.08.2009 was received from the Bank by stating that first defendant has already withdrawn the amount. In the reply notice issued by the first defendant would contend that Singaram Chettiar has executed a Will dated 28.10.2008 in favour of the first defendant. The said Singaram Chettiar was not in a sound disposing state of mind and he has not subscribed his signature to the alleged Will. The said Singaram Chettiar was under the influence and control of the first defendant right from the beginning of October 2008. The said Will alleged to have been executed is surrounded by suspicious circumstances. Hence, this suit.

3.Brief Case of the first defendants is as follows:-

The defendant contended that on 28.10.2008, Singaram Chettiar



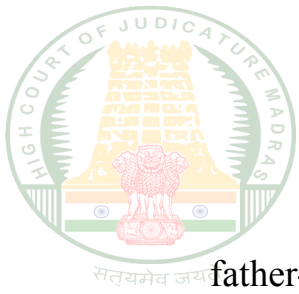
AS.(MD)No.61 of 2015

WEB COPY

executed an un-registered Will, while he was in sound disposing state of mind. The Will was executed in the presence of the attestors and on his demise, the Will has come into force. The first defendant has been appointed as nominee in respect of the fixed deposit and savings bank account held in ICICI Bank. Nomination has also been confirmed by the recitals found place in the recitals of the Will. The plaintiff had received the entire sale proceeds of the agricultural land owned by the first defendant's mother Late.Valliyammal by playing fraud upon his father Late.Singaram Chettiar. In spite of several mediations held in the presence of V.N.Chidambaram Chettiar and other elders, the plaintiff did not yield to any of their advise. The plaintiff has suppressed the above facts. On the 16th day ceremony, the Will was exhibited in the presence of the plaintiff, other members of the family. The first defendant had already executed a registered settlement deed on 12.06.2009 in favour of his son. The assessment of property tax is also been transferred. Hence, the suit is bad for non joinder of necessary parties and the same is liable to be dismissed.

4.Brief case of the second defendant is as follows:-

The second defendant has got equal right in the properties of her



AS.(MD)No.61 of 2015

WEB COPY

father-in-law. The alleged Will dated 28.10.2008 is nothing but concocted one. The deceased Singam Chettiar was not in sound disposing state of mind during his last days. The father-in-law of the second defendant was having very much love and affection with her and she is entitled for share in the suit schedule properties.

5. Based on the above pleadings, the trial Court framed the following issues:-

i) Whether the suit properties are self acquired properties of Sri.Singaram Chettiar?

ii) Whether the Will dated 28.10.2008 is true, valid and binding on the plaintiff?

iii) Whether the plaintiff is entitled for the relief of partition to the suit properties into three equal shares and whether he is entitled to get 1/3rd share of the suit properties?

iv) Whether the plaintiff is entitled to a decree against the defendant to render true and proper accounts of the income and profits pertaining to the 1/3rd share of the plaintiff?

v) Whether the plaintiff is entitled to a decree of future profits with respect to the 1/3rd share of the plaintiff?



AS.(MD)No.61 of 2015

WEB COPY

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

vii)To what other relief?

6.During trial, on the side of the plaintiff, the plaintiff himself examined as P.W.1. P.W.2 to P.W.4 are Doctors and Ex.A1 to Ex.A17 were marked. On the side of the defendants, first defendant himself examined as D.W.1, one Palaniammal was examined as D.W.2, one Manimaran was examined as D.W.3, one Sathishkumar was examined as D.W.4 and the second defendant was examined as D.W.5 and Ex.B1 to Ex.B17 were marked and Ex.X1 has also been marked.

7.Findings of the Trial Court:-

The trial Court disbelieved the testimony of D.W.3 and decided the issue No.2 against the propounder of the Will and the suit was decreed in favour of the plaintiff and he is entitled for preliminary decree for partition of 1/3 share in the suit schedule properties.

8.The points for determination arises in this appeal is,

(i)Whether Ex.B8 “Will” dated 28.10.2008 is genuine?



AS.(MD)No.61 of 2015

WEB COPY

(ii) Whether the plaintiff is entitled 1/3 share in the suit schedule properties?

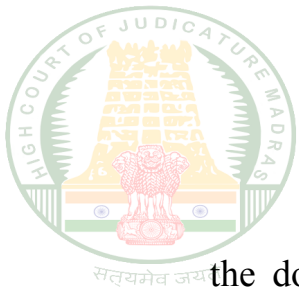
9.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant/first defendant would submit that Ex.B8 is genuine one, which was executed by Singaram Chettiar in a sound disposing state of mind. Singaram Chettiar was disappointed on the plaintiff's conduct in taking away the full amount of sale proceeds of the properties of the Late.Valliyammal and the plaintiff did not yield to any of the advise of V.N.Chidambaram Chettiar and other elders. Therefore, the said V.N.Chidambaram did not give any property to the plaintiff and the same has been clearly mentioned in the Will. The Will was exhibited on the 16th day ceremony of Late.Singaram Chettiar. He would submit that when the plaintiff has pleaded fraud and forgery, it is for him to prove the same. One of the attesting witness was examined as D.W.3 and no infirmity found in his testimony. Non-examination of the person, who had typed the Will or Advocate, who prepared the Will, cannot be a ground to discard the Will. There was no infirmity in the testimony of D.W.3. Merely because minor contradiction in his testimony, while



AS.(MD)No.61 of 2015

WEB COPY

giving details of execution of the Will, the same cannot be discarded. He would also submit that the surviving attester was examined as D.W.3 and he has deposed that during the month of October 2008, Singam Chettiar asked him and his brother-in-law Anbalagan to be witnesses. D.W.3 deposed that he met Thiru.Vanangamudi, Advocate along with Thiru.Anbalagan and the said Thiru.Vanangamudi drafted the Will as per the instructions of Singaram Chettiar. The draft Will was verified by Singaram Chettiar and after making few corrections, original was prepared. He also deposed that Singaram Chettiar signed in the original Will in the presence of D.W.3 and Thiru.Vanangamudi, Advocate. D.W.3 also confirmed that the Testator Singaram Chettiyar also aware about the witnesses, who are attesting in the Will. He would submit that the propounder has to establish both execution of the Will as well as the testamentary capacity. In this case due execution as well as the testamentary capacity of the testator was duly established, therefore, the onus stands on the propounder was discharged. There is no prescribed form in which the execution and attestation of the document should be recorded on the face of the document itself. Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act only require



AS.(MD)No.61 of 2015

WEB COPY

the document to be attested by two attesting witnesses. The same is satisfied in the present case.

10.The learned counsel appearing for the first respondent/plaintiff would submit that the alleged Will executed by Singaram Chettiar in favour of the first defendant is surrounded by suspicious circumstances. The alleged Will is forged and fabricated one. One of the attesor was examined as D.W.3. In the alleged Will, D.W.3 has given his address as 114, Naicker Street, Ward No.5, Periya Kadhampalayam, Pavithram Panchayath, Karur. Therefore, he could not have been present at the time of alleged execution of Will. If really he was present, at the time of execution of alleged Will, he would have given address as Gounder Street as deposed by him in his cross-examination. Therefore, the evidence of D.W.3 cannot be taken into consideration. During cross-examination he has denied the signature found in Ex.B1 deed executed by the Singam Chettiar. But he would admit the signature found in blank papers in Ex.A15 to Ex.A17. He would submit that Ex.B8 is a computer generated document and not a type-written document. Though D.W.3 deposed in his chief examination that the title deeds were handed over to



AS.(MD)No.61 of 2015

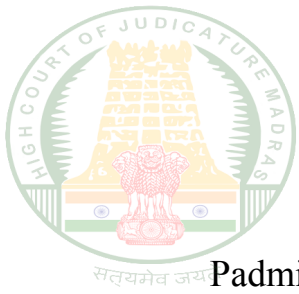
WEB COPY

the scribe of the document, in his cross-examination, he deposed that he does not know what documents were handed over to the scribe of the document. He would further submit that the question of affixing photograph and signature in the will is quite un-natural. He would submit that the name of the person, who drafted the Will, has not been mentioned in the alleged Will was not examined before the trial Court. There is no indication in Ex.B8 Will as who has been drafted, only by the Thiru.Vanangamudi or any other person. To strengthen his contention, he has relied upon the following judgment of the Hon'ble Supreme Court:-

i)AIR 1977 SC 74, in a case of Smt.Jaswant Kaur Vs. Smt.Amrit Kaur and others to show that the propounder has to discharge his burden lies on him explaining the suspicious circumstances surrounding the execution of Will and of establishing that the document which he propounded was the last Will and testament of his father.

ii)2009 (3) SCC 687, in a case of Bharpur Singh and others Vs. Shamsheer Singh to show that the propounder must prove the sound and disposing state of testator's mind and signature.

iii)2009 (1) SCC 354 in a case of K.Laxmanan Vs. Thekkayil



AS.(MD)No.61 of 2015

WEB COPY

Padmini and others to show that the propounder should prove that the legality of execution and genuineness of the Will by explaining the suspicious circumstance, if any surrounding Will and also by proving testamentary capacity and the signature of the testator, even whether plea of specific circumstance is not raised, but circumstance give raise to doubt, the propounder must satisfy the conscious of the Court by removing such doubt.

iv)2020 (4) CTC 321 in a case of Shivakumar & Ors Vs. Sharanabasappa & Ors to show that the Court has to test whether the testator had signed the Will, while being aware of its contents and after understanding the nature and effect of the disposition of the Will and the Court must satisfy its judicial conscious in testing genuineness of the Will.

The learned counsel appearing for the respondent / plaintiff relied upon the following decision of the Madras High Court:-

i)1997 (3) CTC 707 in a case of Kushaldas and 8 ors Vs. Mohanarangam & another to show that the nominee is entitled to collect amount form the Bank and pay over same to legal heir of the deceased depositor.



AS.(MD)No.61 of 2015

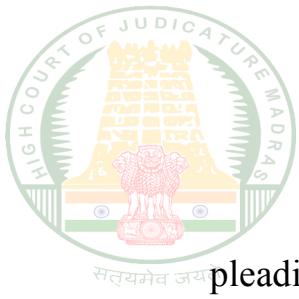
WEB COPY

ii)2007 (5) CTC 318 in a case of J.Mathew (died) and others Vs. Leela Joseph to show that the propounder of the Will is required to prove that the testator has signed the will after understanding the contents thereof or after understanding the nature of disposition.

iii)2014 (2) LW 816 in a case of J.S.Vasudevan Vs. R.Murari & ors to show that the Notary who drafted the Will not summoned and examined and also failed to indicate as to whether he has entered the execution of the document in his register, kept under the Notaries Act and Rules and on failure to clear all doubts, the legal representatives entitled to oppose grant of probate.

11.Heard the learned Senior Counsel appearing for the appellant, the learned counsel appearing for the first respondent, learned counsel appearing for the second respondent and the learned counsel appearing for the third respondent and perused the materials available in the record.

12.The relationship between the parties is not disputed. The said Singam Chettiar died on 02.06.2009. The first defendant has admitted that his father Singaram Chettiar is very big business man and he has number of relatives and friends in Trichy and Pudukottai. The above



AS.(MD)No.61 of 2015

WEB COPY

pleadings of the first defendant shows that the deceased Singaram Chettiar has worldly experience.

13.It is pertinent to mention that in cases, where the execution of Will is surrounded by suspicious circumstances, then the true question which arise for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the Court that the Will was duly executed by the testator in a sound mind. The learned Senior Counsel appearing for the appellant would submit that even though a vague pleading was put forth by the plaintiff that the father was not in a sane disposing state of mind on account of health issues. The evidence of P.W.2 to P.W.4 in their cross examination clearly brings out that testator was conscious and there was no opinion, as if he was a person with unsound mind. As per the evidence of D.W.1, the deceased Singaram Chettiar has handed over the Will in the year 2008 itself. However, he has not disclosed the same till the death of Singaram Chettiar. The plaintiff has issued a notice on 12.07.2009 calling upon the defendants not to alienate the suit schedule Item Nos.1 & 2 properties. The plaintiff has also chosen to issue another notice dated 24.07.2009



AS.(MD)No.61 of 2015

WEB COPY

seeking for partition. Both notices were received by the first defendant and he had given reply for the first notice on 21.07.2009 by stating that his father has bequeathed the properties under a Will dated 28.10.2008. He had also sent reply for the second notice on 13.08.2009 wherein he has stated that his father executed the Will and the plaintiff has no right over the suit schedule properties. However, the first defendant had executed the settlement deed in favour of his son as early as on 12.06.2009, ie., immediately after the death of his father. It shows that he has not even waited for 16th day ceremony. But, without revealing of execution of Will or caused any notice to the plaintiffs, he had settled the property. It is also pertinent to note that he has not revealed the same in his reply notice dated 21.07.2009 and 13.08.2009. He has waited till the filing of the suit by the plaintiff. The plaintiff has filed the suit in the month of October 2009 and he had filed the written statement on 22.10.2010. In his written statement, he has chosen to reveal the settlement deed executed in favour of his son.

14.It is pertinent to mention that in the reply notice dated 21.07.2009, under Ex.A8, the first defendant would state that Ex.B8 Will



AS.(MD)No.61 of 2015

WEB COPY

was known to the plaintiff, immediately after the death of their father.

Per contra, in his written statement, he would state that he had exhibited the Will on the 16th day ceremony to the plaintiff and all his relatives read over the recitals of the Will and therefore, the plaintiff has no right over the suit schedule properties. If really Ex.B8 is genuine one, he ought to have sent a notice to their legal heirs with a copy of the Will and thereafter, he can transfer the property. But, before his father's 16th day ceremony, he had executed settlement deed in his son's favour, which creates doubt over the execution of Ex.B8. It is not in dispute that the said Singaram Chettiar is a big businessman and he was living separately till death, after his wife's death. The first defendant himself admitted that his father chosen to appoint servant-mates and they were alone looking after him. It is also not in dispute that the plaintiff was stay away from his father, on account of his employment, from the year 1999 and the second defendant is also residing with his wife at Trichy in separate house. It is also not in dispute that the said Singaram Chettiar is a man of means and he has not dependent on anybody.

15.It is the case of the first defendant that he alone spent medical

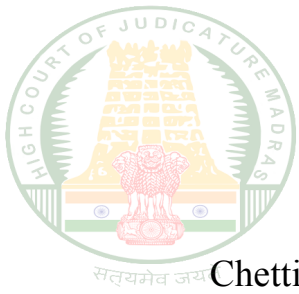


AS.(MD)No.61 of 2015

WEB COPY

expenses for his father and relied upon Ex.B12 medical bills. The first defendant in his cross examination admits that after dismissal from service, he has no earnings and was depends upon his wife's income. There is no evidence to show that the first defendant nor his wife spent money for maintaining the said Singaram Chettiar.

16. According to the first defendant, the reason stated in the Will for not allowing the properties in favour of the plaintiff and the second defendant is that the plaintiff has received the entire sale proceeds of the agricultural land owned by the mother of the first defendant, Late.Valliyammal, by playing fraud upon his father, Late.Singaram Chettiar. It is also pleaded that in respect of several mediations held in the presence of V.N.Chidambaram Chettiar and other elders of the family, the plaintiff did not yield to any of their advise. In order to prove the above said facts, the said V.N.Chidambaram Chettiar was not examined as witness. Though the first defendant pleaded that his father allotted properties in favour of the plaintiff's daughter, no documents were produced to that effect. As per recitals found in Ex.B1, the sale consideration was fixed at Rs.4,50,000/- and the executant Singaram

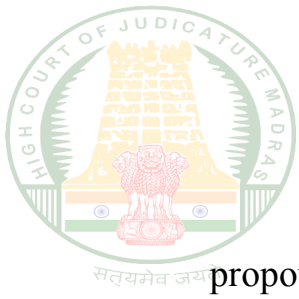


AS.(MD)No.61 of 2015

WEB COPY

Chettiar himself has admitted therein that he had already received a sum of Rs.2,00,000/-. Further, as per the document recital, the executant Singarm Chettiar himself has received balance in sale consideration, a sum of Rs.2,50,000/- and the plaintiff is one of the attestor in the said document. So even as per the document recitals in Ex.B1, it was Singaram Chettiar who had received the entire sale consideration and hence, there is no room or role for the plaintiff except being one of the attestors. Further, much against the recitals in Ex.B1, there cannot be any evidence. So, the allegation as if the first respondent / plaintiff has taken away all the sale consideration as found in Ex.B8 cannot be taken into consideration.

17.A perusal of Ex.B8 Will and the evidence of D.W.3 shows that it was prepared by one Thiru.Vanangamudi, Advocate/Notary Public. In Ex.B8, there is no mention about who has prepared or who has typed the same. Admittedly, the Advocate/Notary Public has not been examined to prove that it was prepared by him. It is an admitted fact that the deceased Singaram Chettiar has three sons and after his life time, three legal heirs alone his right to inherit the property and if the testator decided to bequeath his properties by leaving two sons, it is duty-bound on the



AS.(MD)No.61 of 2015

WEB COPY

propounder, who has relied upon Ex.B8 Will, has to prove the same. The propounder must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. It is the bound and duty of the propounder of the Will to remove suspicion and to prove the factor that the testator knew and apprised the contents of the Will. Only thereafter, the onus was shifted to the plaintiff, who opposed the same, to prove fraud or undue influence. It is settled principles that the Will has to be proved in terms of Section 63 of the Indian Succession Act 1925 and Section 68 of the Indian Evidence Act, 1872. Testamentary capacity of the propounder must be established. The execution of the Will by the testator has to be proved. At least, one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is also legal requirement that the Will has been signed by the testator with his free will and he was in sound disposing state of mind and understood the nature and effect of disposition. It is also made clear that he has signed the Will in the presence of two attesting witnesses, who attested his signature in his presence or in the presence of each other.

18.It is the case of the plaintiff that Late.Singaram Chettiar was in



AS.(MD)No.61 of 2015

the habit of signing in blank papers and relied upon Ex.A15 to Ex.A17.

D.W. 3, who is the only attesting witness, examined to prove the execution of the Will. D.W.1 in his cross examination, he has stated that he knew both attesting witnesses Anbalagan and D.W.3 Manimaran from the year 1993. Per contra, D.W.3 deposed that he knew Singaram Chettiar from 1993 and the first defendant was introduced by him only during 2000, before that he did not know about the first defendant. Both of their evidences are contrary to each other. According to the plaintiffs, one Sagunthala is a business partner of the first defendant and D.W.3 Manimaran and Anbalagan are close relatives. Anbalagan, who is none other than the brother of the said Sagunthala and D.W.3 Manimaran is the brother-in-law of the said Anbalagan. In the proof affidavit filed by D.W.3, he has stated his residential address as Gounder Street, Karur and in Ex.B8 Will, he has chosen to mention his residential address as Naicker Street Karur. During his cross-examination, he categorically admits that he was living in Gounder Street from 2007. D.W.3, in his proof affidavit, he has stated that the said Singaram Chettiar handed over his title deeds as well as Bank documents to Thiru.Vanangamudi, Advocate with an instruction to prepare Will. Thereafter, the said



AS.(MD)No.61 of 2015

WEB COPY

Advocate prepared the draft Will and the same was read over to Singaram Chettiar. D.W.3 also deposed that the contention of the Will was verified by the Singaram Chettiar and thereafter, he approved the same. Thereafter, he requested to prepared the Will. But, in his cross examination, he has deposed that he does not know what are all the documents handed over to the Advocate. D.W.3 in his chief examination has not stated anything about the corrections made by Singaram Chettiar in the draft, whereas, in his cross-examination, he has deposed that the draft Will was destroyed by Singaram Chettiar, even, the said Vanangamudi, Advocate requested him to keep the same. In his chief examination, it has been stated that the first draft was prepared by type writer and thereafter, it was prepared in the computer. But in his cross-examination, he has deposed Will was prepared only by type-writer. Though D.W.3 has deposed that the Will was prepared by the Advocate, there is no recitals found in the Will that the Advocate/Notary Public prepared the Will. A perusal of Ex.B8 shows that the Advocate/Notary Public had affixed seal in the Will and the photograph of the deceased Singaram Chettiar. There is no mention about the details of the Notary registration particulars. The person who typed the Will has not been



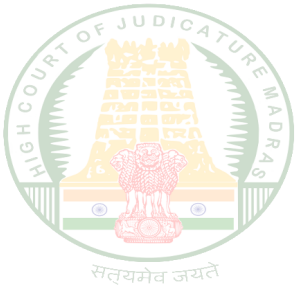
AS.(MD)No.61 of 2015

WEB COPY

mentioned. Hence, it is clear that there is no details in Ex.B8 Will as to who prepared the Will and who has typed the Will.

19.It is pertinent to mention that the appellant / first defendant filed a petition before this Court in CMP.(MD)No.2 of 2015 to compare the signatures available in Ex.B8 with the admitted signatures available in Ex.B7, registered power of attorney executed by Late.Singaram Chettiar. This Court vide order dated 26.04.2024, marked the Expert opinion as Ex.C1. As per the Expert's opinion, the signatures available in Ex.B8 do not tally with the signatures available in the admitted document Ex.B7 and opined that the signatures available in Ex.B8 and Ex.B7 are not made by the same person.

20.The evidence of D.W.3 not sufficient to prove that the Will has been properly proved by the propounder. Ex.B8 Will is surrounded by several suspicious circumstances. In the light of the above discussions, we are of the view that there is no reason to interfere with the judgement and decree passed by the trial Court. The points are answered, accordingly.



AS.(MD)No.61 of 2015

WEB COPY

21.In the result, the First Appeal is dismissed and the judgment and decree in O.S.No.175 of 2009 dated 09.10.2014 passed by the learned I Additional District Judge (PCR), Thiruchirapalli is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) & (M.J.R., J.)
20.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
gns

To

The I Additional District Judge (PCR),
Thiruchirapalli.



WEB COPY



AS.(MD)No.61 of 2015

G.R.SWAMINATHAN, J.
AND
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgment made in
A.S.(MD)No.61 of 2015

20.03.2025