



SA Nos.1605 and 1606 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	26/03/2025
Date of Pronounced	30/04/2025

CORAM

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

SA Nos.1605 and 1606 of 2003
and
CMP No.14765 of 2003

(1) SA No.1605 of 2003:-

- 1.Anandan (Died)
- 2.Manickam (Died)
- 3.Manoharan

: Appellants/Appellants in
AS No.89 of 2003 & Respondents
in Cross Appeal/Defendants

(Memo, dated 24/08/2024
in USR No.30794 is recorded
as Appellants 1 and 2 died
and 3rd Appellant who is
already on record, is recorded
as Legal Representative of the
deceased Appellants 1 and 2
and as such there is no need
to implead their LR.s, vide
court order, dated 29/08/2024
made in SA No.1605 of 2003)

Vs.

N.R.N.Pandiyan

: Respondent/Respondent in
AS No.89 of 2002 and
Appellant in Cross Appeal/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal District Judge, Trichy, dated 23/04/2003 in AS No.89 of 2002, confirming the judgment and decree of the District Munsif Court, Manapparai, dated 22/03/2002 in OS No.106 of 1996.



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For Appellants : Mr.K.Govindarajan
for M/s.Sarvabhauman
Associates

For Respondent : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.V.Karthikeyan

(2) SA No.1606 of 2003:-

Manoharan : Appellant/Appellant/
Plaintiff

Vs.

Pandiyan : Respondent/Respondent/
Defendant

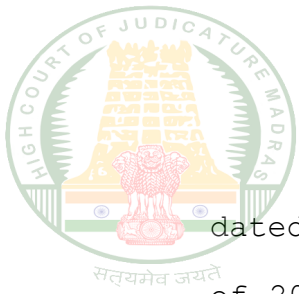
PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal District Judge, Trichy, dated 23/04/2003 in AS No.90 of 2002, confirming the judgment and decree of the District Munsif Court, Manapparai, dated 22/03/2002 in OS No.156 of 1995.

For Appellant : Mr.K.Govindarajan
for M/s.Sarvabhauman
Associates

For Respondent : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.V.Karthikeyan

COMMON JUDGMENT

SA No.1605 of 2003 is filed against the judgment and decree of the Principal District Judge, Trichy, dated 23/04/2003 in AS No.89 of 2002, confirming the judgment and decree of the District Munsif Court, Manapparai,



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dated 22/03/2002 in OS No.106 of 1996, whereas SA No.1606 of 2003 has been filed against the judgment and decree of the Principal District Judge, Trichy, dated 23/04/2003 in AS No.90 of 2002, confirming the judgment and decree of the District Munsif Court, Manapparai, dated 22/03/2002 in OS No.156 of 1995.

2.The plaint in OS No.156 of 1995:- The suit property originally belongs to the plaintiff's father by name Anandan and his brother Manickam ancestrally. Later, Manickam released his share in favour of the plaintiff's father, on 30/08/1993. The plaintiff's father was in possession and enjoyment and later, executed a settlement deed in favour of the plaintiff, on 01/09/1993. The plaintiff was in possession and enjoyment of the property by accepting the settlement deed by paying kist, etc. The defendant has no right over the property, is a neighbour on the west. The defendant requested the plaintiff to sell the suit property, for which the plaintiff did not agree. So, the defendant tried to encroach upon the property, on 15/05/1995. It was successfully prevented. The suit is laid for permanent injunction, costs.

3.The statement in OS No.156 of 1995:- It is denied that the suit property originally belongs to the



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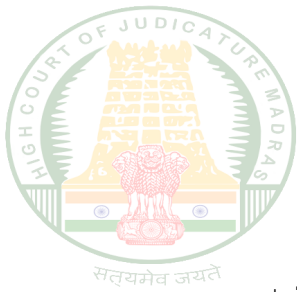
plaintiff's father and his brother ancestrally. The subsequent release deed, settlement deed are also disputed as fabricated document.

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(ii)The present survey number for the suit property is in Survey No.206/5, old Survey No.76/2. The total extent is 2 Acres 70 cents. Out of the total extent, a portion measuring 1 Acre 63 cents with specific boundaries belongs to one Palani. From the said Palani, one Alagan purchased the property, on 26/12/1960. From the said Alagan, the defendant purchased 1 Acre 63 acres, on 01/03/1972 for valid consideration. At that time, eastern portion belongs to the defendant. So, the entire property was in enjoyment of the defendant.

(iii)When the plaintiff's and his brother Manickam disturbed their possession, the suit in OS No.243 of 1995 was filed in the Sub Court, Trichy for the entire extent of 2.95 Acres in S.No.206/4.

(iv)Suppressing the suit, the present suit was filed and temporary injunction was obtained. The plaintiff is not in possession of the suit property.



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4. Additional Statement:- The plaintiff has no right or title in the entire extent of 2.70 Acres in Survey No. 206/5.

5. On the basis of the pleading of the parties, the following issues were framed:-

(1) *Whether the partition deed, dated 30/08/1993 is acceptable one?*

(2) *Whether the settlement dated 01/09/1992 is acceptable one?*

(3) *Whether the defendant is in possession of the suit property?*

(4) *To what other relief?*

6. Additional issue was framed on 26/04/2001:-

(1) *Whether the plaintiff is entitled to the relief of injunction as prayed for?*

7. The plaint in OS No.106 of 1996:-

It is the repetition of the statement and additional statement filed in the previous suit, we need not repeat. For the reasons stated in the plaint, the suit is filed



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seeking the relief of declaration and for permanent injunction, costs.

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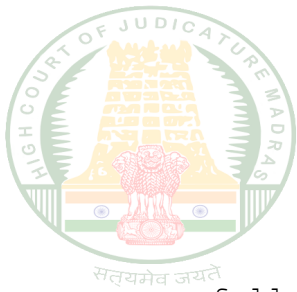
8.The second defendant filed the written statement which contains the following averments:-

The vendors in the sale deeds, dated 27/12/2006 and 01/03/1972 had no title over the properties. They were never in possession and enjoyment. As mentioned in the plaint, it belongs to them ancestrally. Patta for survey No.206/5 measuring about 2.70 Acres is standing in the name of their ancestor and subsequently in the name of the Alagan their father. Later, joint patta was issued in the name of Manickam and Anandan.

9.The other averments are the repetition of the plaint.

10.The third defendant filed written statement supporting the written statement filed by the second defendant.

11.Both the suits were tried jointed by the trial court.



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12.On the basis of the pleadings of the parties, the following issues were framed in **OS No.156 of 1995:-**

(1)Whether the vendor of the plaintiff had right in the suit property?

(2)Whether the predecessor-in-title of the plaintiff has got right to settle the property?

(3)Whether the plaintiff's purchase in respect of the suit property is valid?

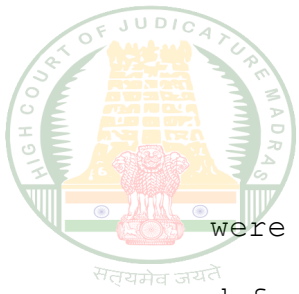
(4)Whether the suit property is the ancestral property of the defendant and he is in possession?

(5)To what other reliefs, the plaintiff is entitled to?

13.On 03/02/2001, the following Additional issue was framed:-

1.Whether the plaintiff is entitled to the relief of injunction as prayed for?

14.On the side of the plaintiff, one **Mahonaran and Shanmugam** were examined as PW1 and PW2 and 20 documents



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were marked as Exs.P1 to P20. On the side of the defendant **(N.R.N.Pandian)**, he himself examined as DW1 and 7 documents marked as Exs.B1 to B7.

15.At the conclusion of the trial process, the suit in **OS No.156 of 1995** was dismissed, decreeing the suit as prayed for in **OS No.106 of 1996**. Both parties were directed to bear their costs.

16.Against which, appeals were preferred by the unsuccessful party before the Principal District Judge, Trichy, in AS Nos.89 of 2000 and 90 of 2002. Cross Appeal was filed by other party.

17.The appellate court dismissed the appeals in AS Nos.89 of 2002 and 90 of 2002 confirming the judgment and decree of the trial court without any costs. But the cross appeal in AS No.89 of 2002 was allowed and the relief of permanent injunction was granted.

18.Against which, these two second appeals are preferred.

19.At the time of admission, the following substantial question of law was framed:-



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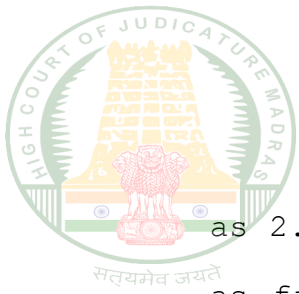
"Whether the reversing judgment of the lower court is valid for its failure to consider the entire evidence and apply to correct provisions of law?"

20.Heard both sides.

21.A suit and counter suit. OS No.156 of 1995 was filed by Manoharan against Pandian. The counter suit in OS No.106 of 1996 was filed by N.R.N Pandian against Anandan, Manickam and Manoharan.

22.The suit property in OS No.156 of 1995 is Survey No.206/5 measuring about 1.09.0 Hectare. So far as OS No.106 of 1996 is concerned, the suit property is mentioned as two items. The first item is situated in New survey No.206/4 (Old Survey No.76/2) measuring about 2.95 Acres. Second item is situated in survey No.206/5 measuring about 1.63 Acres, out of the total extent of 2.70 Acres.

23.At the outset, the description of the property in both the matters is mentioned for obvious reasons. The reason being that the disputed property is only 1.63 Acres, out of 2.70 Acres in Survey No.206/5, which is the subject matter of the suit in OS No.156 of 1995. So far



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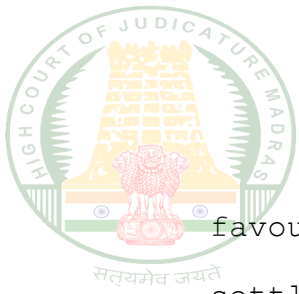
as 2.95 Acres situated in survey No.206/4, which is shown as first item in OS No.106 of 1996, the parties are not in dispute and issue. So, we can discard survey No.206/4 from our consideration at the outset.

24.The next point must be born in mind is the history of the sub-division. Originally, 4.58 Acres was the extent in old Survey No.76/2. It was later subdivided. As mentioned above, new Survey numbers were assigned as 206/4 measuring about or consisting about 2.93 Acres. 206/5 is consisting 2.70 Acres. Out of which, 1.63 Acres is the disputed property. This fact is admitted by both sides.

25.Now both sides claim title adverse against each other. It is the suit and counter suit. It is the duty of both parties to establish their title independent of the weakness of the other side. The question of burden of proof may not arise in strict sense here. With this preliminary point in mind, let us go to the issue.

26.The plaintiff in OS No.156 of 1995 Manoharan would say that the suit property was the ancestral property of his father Anandan and his brother Manickam. Later Manickam, released his share on 30/08/1993 in

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favour of his father. Later, his father executed a settlement deed on 01/09/1993. Ever-since, he is in possession. This is tracing of title of Manoharan.

27.Now coming to the case of Pandian, he would say that neither the plaintiff, nor his father and his brother had any right in the properties. An extent of 1.65 Acres in New Survey No.206/5 originally belongs to one Palani. Palani sold the property, on 26/12/1960, to one Alagan. From Alagan, Pandi purchased 1.65 Acres, on 01/03/1972. At the time of purchasing the suit property, western side property was owned by him. So, in the sale deed itself, four boundary is mentioned as the property of the defendant on the east. So, from the rival pleadings, it is clear that both are tracing their title through independent source.

28.Mahonaran says that it is ancestral property. Pandi says that it is his purchased property and the original owner is one Palani.

29.Now we will go to the documents. Among the documents produced by the parties, eldest document Ex.B1 sale deed executed by Palani in favour of Alagan, which is dated 27/12/1960. The other documents are only



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subsequent documents. Against this registered sale deed, no title deed is available for both sides. Since Manoharan says that it is the ancestral properties, no other documents can be expected.

30.Now we will go to the findings of the trial court. The trial court would say that except Ex.A12 the patta standing in the name of Arumugam Pariyari, the grand-father of the plaintiff, subsequent revenue records are only available. Revenue records will not create any title in favour of Manoharan and his forefathers. On the basis of the revenue records, title to the plaintiff's predecessor and forefathers cannot be conferred.

31.So far as the title of Pandian is concerned, the trial court relied upon Ex.B7, Land Register of the year 1958, wherein it is mentioned that the old survey No.76/2 was having total extent of 4.52 Acres in patta No.41. That patta No.41 was standing in the name of Irulan Pariyari during settlement proceedings at that time of sub division. Later, from Irulan Pariyari's son called 'Palani Pariyari' purchased the property, on 27/12/1960 under Ex.B1. By relying upon these document, the trial court decided both the suits, by dismissing the suit filed by Manoharan and decreeing the suit filed by Pandian.



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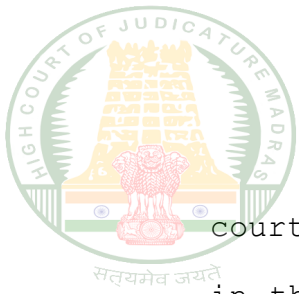
32. Against which, the appeal was taken to the appellate court namely the Principal District Judge, Trichy, in AS No.89 of 2002 by Anandhan, Manickam, Manoharan against N.R.N.Pandian, so also AS No.90 of 2002 was preferred by Manoharan against Pandian. Cross Appeal was preferred in AS No.89 of 2002 by Pandian against Anandhan, Manickam and Manoharan.

33. Now the appellate court concurred with the findings of the trial court, dismissed both the appeals. The Cross Appeal filed in AS No.89 of 2002 was allowed. Against the dismissal of the appeals, these two second appeals are preferred by Manoharan, Manickam and Anandhan.

34. Now reading of the judgment of the trial court as well as the appellate court shows that the document of title produced by Pandian will prevail over the revenue records produced by Manoharan. The title document prevailed over the revenue records.

35. Now the arguments:-

The learned counsel appearing for the appellants would submit that Settlement Land Register ought to have been accepted by the trial court as well as the appellate



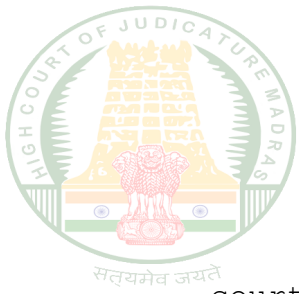
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court as a document of title; The description of boundary in the document is not disputed in the written statement; There is no issue with regard to the identity of the property; Patta produced by Pandian is not an Inam Patta; Exs.B1 and B2 were created for claiming title over the property just two years prior to the suit; At the time of filing counter suit, a plea of adverse possession was not set up; Only in the written statement, such a plea was raised by Pandian; The identity of Arumugam Pariyari was not established by the respondents.

36.Per contra, the learned counsel appearing for the respondent would submit that counter suit was filed on 17/02/1995; The suit was filed by Manoharan, on 25/05/1995; The suit was filed in 1995 claiming adverse possession. So, according to the respondent, the title of Pandian is admitted by Manoharan.

37.In reply, it is stated that Manoharan claimed right over the property ancestrally and no plea of adverse possession was set up; Arumugam Pariyari is the grand-father of Pandian; Boundary recitals will clearly show that Pandian was having property on the east; The trial court ought to have granted a limited prayer in respect of the remaining portion, except the disputed portion of 1.63 Acres.



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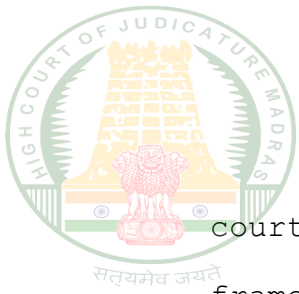


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38. Meaning of the reply argument is that the trial court ought to have granted the limited decree in respect of non-disputed portion, for which the learned Senior counsel appearing for the respondent would submit that there is no clear four boundaries mentioned in the document pertaining to 1.63 Acres; Since the boundary recitals are not correct in the document, even the limited decree cannot be granted.

39. In the light of the rival submissions, let us go to the the substantial question of law framed. Only one substantial question of law is framed to the effect that ***"whether reversing the judgment of the lower Appellate Court is valid for its failure to consider the entire evidence and apply to correct provisions of law?"***

40. The appellate court did not reverse the finding of the trial court, but only cross objection was allowed on the ground that the trial court, while granting decree of declaration, omitted to grant the decree of permanent injunction for Pandian. Why the permanent injunction was refused by the trial court is mentioned as if Pandian is not in possession of the property. The above said finding was recorded by the trial court on the basis of the revenue records, which was reversed by the appellate



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court. But finding that the substantial question of law framed on 17/10/2003 is insufficient. By order, dated 26/03/2025, additional substantial questions of law were framed:-

(1).Whether the lower appellate court is correct in law in holding that Exs.B1 & B2 by themselves prove the title of the respondent without there being any proof of anterior title is sustainable in law?

(2).Have not the Courts below erred in law in not drawing an adverse inference against the respondent for the non-production of patta under which the vendor under Ex.B1 claim title?

(3)Whether the lower appellate court is correct in law in drawing a presumption under section 90 of the Evidence Act as available for title in respect of the property conveyed under the documents Exs.B1 & B2?

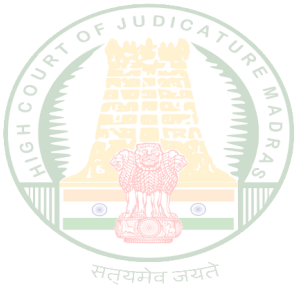


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Additional Substantial Question of Law No.3:-

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41.A plea was raised by Manoharan that Exs.B1 and B2 the sale deeds were not established by examining any of the witnesses to the document. Ex.B1 is dated 27/12/1960 and Ex.B2 is dated 18/03/1972. The suits were filed in 1995. On the date of the suit, Ex.B1 is more than 30 years document. So, naturally presumption under section 90 is available. Ex.B2 is concerned, it is not 30 years old document. But, as mentioned above, when both the parties are claiming rival title over the property, in the absence of any earlier document, the earliest document of registered is Ex.B1. On that account, Ex.B1 will prevail over the revenue records produced by Manoharan. Non-examination of any witnesses under Exs.B1 and B2 may not assume any importance at all. Because the sale deed is not legally required to be attested and proved by examining any one of the attesting witnesses. Ex.B2 is related to Ex.B1, naturally it requires no corroborative evidence. So, I find that no illegality was committed by the trial court or the appellate court in replying upon Exs.B1 and B2.



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Additional Substantial question of Law No.2:

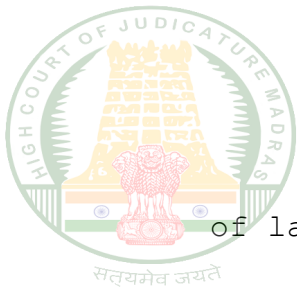
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42.Now the appellants says that patta standing in favour of Alagan is not produced by Pandian. Non-production of patta standing in the name of Alagan Paraiyari has no impact at all. Because Ex.B7 clearly indicates the possession of Illuran Paraiyari, no other document, which is capable of prevailing against Ex.B7 is produced by Manoharan. So, the additional substantial question of law No.2 has no relevancy and does not arise.

Additional Substantial Question of Law No.1:-

43.The learned counsel appearing for the appellants would rely upon the judgment of this court reported in K.N.Srinivasa Gopalan Vs. V.Siva Sankara Sivasamy (2002)2 MLJ 210; and Angammal and two others Vs. Komara Gounder and two others [2002(1)CTC 472] for the purpose of argument that in the absence of any title document to show the ancestral nature of the properties, the extract of the settlement register can be relied upon.

44.Per contra, the learned Senior counsel appearing for the respondent would submit that mutation of revenue records will not create any right. For that proposition



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of law, they would rely upon the following judgments;--

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(1) *Sawarni (SMT) Vs. Inder Kaur (SMT) and others [(1996) 6 SCC 223];*

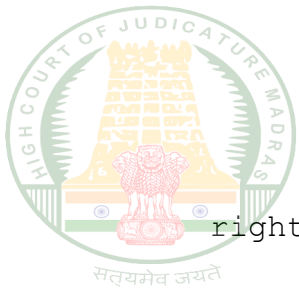
(2) *Jitendra Singh Vs. State of Madhya Pradesh (2021 SCC OnLine SC 802); and*

(3) *P.Kishore Kumar Vs. Vittal K.Patkar [2024(1) CTC 547]*

45.No doubt that when the parties claim right over the disputed properties as ancestral, no other document in the form of title nature, then the revenue records can be relied. But at the same time, when the prior or oldest revenue records does indicate that the disputed property was not in possession of the Manoharan's ancestor, but on the contrary in the possession of the defendant's predecessor-in-title, so, only the oldest document will prevail. So, the judgments cited by the appellants will not have any effect upon the ultimate decision made by the trial court as well as the appellate court.

46.So, I find that no error of law or facts were committed, either by the trial court or by the appellate court in relying upon Exs.B1 and B2, which were tracing title from 1958 onwards. As mentioned above, the revenue records produced by Manoharan will not prevail over this document. On any account, Manoharan cannot claim any

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right over the disputed property of 1.63 Acres.

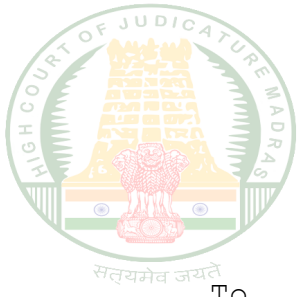
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47. So far as the limited relief sought at the time of argument, I find that absolutely it is not necessary because Pandian does not dispute the remaining extent in survey No.206/5. When there is no cause of action for the remaining extent in Survey No.206/5, no relief need be granted. So, I find that simply for the sake of asking, no relief can be granted when there is no dispute or issue with regard to the remaining extent in Survey No.206/5. So, this request also does not appeal to me. So, the Additional Substantial Question of Law No.1 is answered accordingly.

48. In the result, both second appeals fail and the same are **dismissed**, confirming the judgement and decree passed by the appellate court. Considering the nature of the dispute, the parties are directed to bear their own costs. Consequently, connected CMP is closed.

30/04/2025

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To,
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- 1.The Principal District Judge,
Trichy.
- 2.The District Munsf,
Trichy.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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