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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 803 of 2011

CNR: {HCMA010357562011}

Ekambaram
S/o Kollapurai Periakarambur Devampattu Post
Ponneri Tk

Case QR

..Appellant(s)

Vs

1. Palayam
   At Periakarambur Devampatti Post Ponneri Tk

2. Arumugam
   At Periakarambur Devampatti Post Ponneri Tk

3. Kandeepan
   At Periakarambur Devampatti Post Ponneri Tk

4. R.Balakrishnan (died)
   No.10 Manimegalai St Gandhi Nagar
   Oragadam Ambattur Chennai 600 053

5. Saradammal(died)
   No.230 4th St Sivakamaiyer Colony
   Chennai 600 039

6. Sundaram
   No.59 Balakrishna Mudali St Vysarpadi
   Chennai 600 039

7. Jothi
   No.59 Balakrishna Mudali St Vysarpadi
   Chennai 600 039

8. Nalini
   No.59 Balakrishna Mudali St Vysarpadi
   Chennai 600 039.

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9. K.Selvi
W/o Kumaravel, D/o Saradammal, No.4583, B-Type 5th Cross St, 1st Main Rd, MMDA, Mathur, Chennai 600068

10. Parthasarathy
S/o Saradammal No.228, 4th St, S.A.Colony, Sharma Nagar, Chennai 600 039

11. Saravanan
S/o Late Kannappan, No.461, Gomathi Ammal Nagar, Kammarpalayam, Sholavaram, Chennai 600 067

12. Lakshmi
W/o Sathish, No.461, Gomathi Ammal Nagar, Kammarpalayam, Sholavaram, Chennai 600 067

13. Damodharan
S/o Late Kannappan, No.461, Gomathi Ammal Nagar, Kammarpalayam, Sholavaram, Chennai 600 067.

14. Venkatesan
S/o.R.Balakrishnan, No.10/33, Gopal Street, Oragadam, Ambattur, Chennai - 600 067

15. Sivakumar
S/o.R.Balakrishnan, No.10/33, Gopal Street, Oragadam, Ambattur, Chennai - 600 067

16. Shanthi
D/o.R.Balakrishnan, Plot No.1, Periyandavar 2nd cross street, Oragadam, Ambattur, Chennai - 600 053
77

17. Jaya
W/o.Srinivasan, D/o.R.Balakrishnan, Plot No.1, Periyandavar 2nd cross street, Oragadam, Ambattur, Chennai - 600 053

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18. Vasanthi
W/o.Palani, D/o.R.Balakrishnan, Plot No.1,
Periyandavar 2nd cross street, Oragadam,
Ambattur, Chennai - 600 053 .

(R4 died, RR14 to 18 are brought on record as LRs of the deceased R4 vide court order dated 23/08/2023 made in CMP No.19057 and 19059 of 2023 in SA No.803 of 2011)

(R5 died, RR9 to 13 are brought on record as LRs of the deceased R5 vide court order dated 20/07/2023 made in CMP No.12497, 12499 & 12503 of 2023 in SA No.803 of 2011)

..Respondent(s)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.04.2010 passed in A.S. No.40 of 2006, on the file of the Subordinate Court, Ponneri, reversing against the decree and judgment dated 30.08.2005 passed in O.S.No.211 of 1991, on the file of the District Munsif Court, Ponneri.

For Appellant(s): Mr.J.Shanmuga Sundara Babu
for Mr.S.Ambigapathi

For Respondent(s): Mr.V.S. Venkatesh
for R1 to R3

JUDGMENT

This second appeal has been preferred as against the decree and judgment dated 16.04.2010 passed by the Subordinate Court, Ponneri in A.S.No.40 of 2006. The appellant is the plaintiff, who filed the suit in OS No.211 of 1991 on the file of the District Munsif Court, Ponneri, for the relief of declaration and

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consequential relief of permanent injunction and for costs. The said suit was decreed by the trial court. Aggrieved by the said decree and judgment, the defendants 1 to 4 and 6 have preferred an appeal in A.S.No.40 of 2006 on the file of the Subordinate Court, Ponneri. The First Appellate Court allowed the appeal by setting aside the decree and judgment passed by the Trial Court and dismissed the suit. Aggrieved over the said decree and judgment, the present second appeal has been filed by the plaintiff.

2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff before the Trial Court is that the suit property was originally belonged to one Balakrishnan and he sold the property to the plaintiff through a sale deed dated 16.03.1990 and has been in possession and enjoyment of the property. Even after the sale, the fourth defendant has demanded some more amount from the plaintiff and he has not accepted, hence the fourth defendant had chosen to set up the defendants 1 to 3 and issued a notice subsequent to the sale. In fact the defendants 1 to 3 along with their sister, issued a legal notice to the fourth defendant on 26.03.1990. Immediately after the said notice, the plaintiff informed the defendants 1 to 3 that he has

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already purchased the property. The defendants attempted to trespass into the property. Therefore, the plaintiff sent a legal notice dated 17.12.1990. The defendants 1 to 3 sent a reply on 24.12.1990 with false averments and also they relied upon the sale by the third defendant from the defendants 4 to 6, which is only subsequent to the sale in favour of the plaintiff and the same is not at all valid and binding upon the plaintiff. Since the defendants prevented the plaintiff from enjoying the property and therefore, the plaintiff filed the suit.

4. The case of the defendants 1 to 3 is that the defendants denied the averments made in the plaint. In fact, the defendants' father, namely, Govindan was in possession and enjoyment of the property on 01.05.1972, the fourth defendant and his wife entered into sale agreement with regard to the suit property and from that date onwards, these defendants' father has been in possession and enjoyment of the property. After the demise of Govindan, the father of the defendants, the third defendant paid the balance sale consideration and obtained a sale letter dated 10.02.1979. Thereafter, the plaintiff purchased the property from the defendants 4 to 6 and one Rajeswari, wife of the fourth defendant, knowing fully well that the defendants are in possession and enjoyment of the property. Subsequently, there was a mediation wherein the plaintiff agreed the fact of the purchase of the defendants and also executed a letter that he will not disturb the possession of these defendants and he has

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received the amount. Now again, in order to harass these defendants, he filed the suit. Therefore, the plaintiff is not entitled to any relief and the suit is liable to be dismissed.

5. The case of the defendants 4 to 6 are as follows :

These defendants have sold the property to the third defendant through a registered sale deed. Prior to that there are sale agreement in favour of the third defendant as well as his father. The fourth defendant executed the sale deed in favour of the plaintiff, subsequently, there was a village mediation wherein the fourth defendant has paid the sale consideration given by the plaintiff and in turn the plaintiff has executed a letter dated 02.11.1990 in the presence of village mediators and also undertakes that he will not give any problem to the defendants 1 to 3 with regard to cultivating the suit property. Only to harass the defendants, the plaintiff has filed the suit and the plaintiff has compelled the fourth defendant to execute the sale in favour of him and in fact, the other defendants 5 & 6 have also right in the same and hence, they have executed the sale deed in favour of the third defendant. Therefore, prayed to dismiss the suit.

6. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court framed the following issues

"(i) Whether the plaintiff is entitled to declaration of title in respect of the

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suit property as prayed for ?

(ii) Whether the plaintiff is entitled to consequential relief of permanent injunction or recovery of possession ?

(iii) To what relief is the plaintiff entitled to?"

7. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 was examined and marked Ex.A1 to Ex.A10. On the side of the defendants, DW1 was examined and marked Ex.B1 to Ex.B12.

8. After analysing the evidence on both sides, the Trial Court decreed the suit, vide decree and judgment dated 30.08.2005. Aggrieved by the said decree and judgment, the defendants 1 to 4 and 6 have preferred an appeal in A.S.No.40 of 2006 before the Subordinate Court, Ponneri, on various grounds.

9. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

(i) Whether these appeals to be allowed or not ?

10. After hearing both sides and perusing the records, the First Appellate Court allowed the appeal by setting aside the decree and judgment passed by the

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Trial Court vide its judgment dated 16.04.2010. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the plaintiff.

11. This Court, at the time of admitting the second appeal, framed the following substantial questions of law :

i. *"Whether the Lower Appellate Court was right in law in placing reliance on Ex.B-1 even though the time for performance of the agreement has clearly lapsed ?*

ii. Whether the Lower Appellate Court could overlook Ex.A-1 without any action taken to set aside the same in a manner known to law ?

iii. Whether the Lower Appellate Court could rely on Ex.B-2 the sale agreement dated 10.02.1979 which is not referred in the legal notices, Ex.B-5 and Ex.B-7?

iv. Whether the Lower Appellate Court could rely on Ex.B-11, the sale deed dated 19.12.1990 allegedly executed by D4 to D6 in favour of D3 after the execution of the sale deed dated 16.03.1990 executed by D4 in favour of the plaintiff ?

12. Heard Mr.J.Shanmuga Sundara Babu, learned counsel appearing for the appellant and Mr.V.S. Venkatesh, learned counsel appearing for the

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respondents 1 to 3.

13. The learned counsel appearing for the appellant would submit that the plaintiff purchased property through a sale deed dated 16.03.1990 for valuable consideration from the fourth defendant, one Balakrishan, who is the fourth defendant in the suit, has been in possession and enjoyment of the property. Thereafter, the said vendor of the plaintiff, Balakrishnan and others have sold the property to the third defendant through a sale deed dated 26.03.1990. Once the property was alienated in favour of the plaintiff through sale deed dated 16.03.1990, for the same property there cannot be a subsequent sale deed by the said Balakrishnan and his sisters. Therefore, the sale in favour of the third defendant will not bind upon the plaintiff and the plaintiff subsequent to the sale has been in possession and enjoyment of the property. After purchase of the property by the third defendant, all the defendants attempted to interfere with possession of the plaintiff and thereby filed the suit for declaration and permanent injunction. In order to prove the case of the plaintiff, PW1 was examined and marked Ex.A1 to Ex.A10. On the side of the defendants, DW1 was examined and marked Ex.B1 to Ex.B12. Through those documents, the plaintiff established his case and thereby, the Trial Court decreed the suit. However, the first appellate court without considering the evidence in proper perspective, set aside the decree and judgment passed by the Trial Court and dismissed the suit. The First appellate court placed reliance upon Ex.B1, even

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though time for performance of the agreement has virtually lapsed. The First appellate court overlooked Ex.A1, without any action taken to set aside the same in the manner known to law. The first appellate court could not rely upon Ex.B2 / sale letter dated 10.02.1979 which is not referred in the legal notices Ex.B5 to Ex.B7. The lower appellate court relied on Ex.B11/original sale deed dated 19.12.1990 allegedly the defendants also rely on Ex.B2 in favour of the third defendant after execution of the sale deed dated 16.03.1990 executed by the fourth defendant in favour of the plaintiff. Therefore, the first appellate court without considering the evidence of the plaintiff's side, dismissed the suit by setting aside the decree and judgment passed by the trial court. Therefore, the decree and judgment passed by the first appellate court are liable to be set aside.

14. The learned counsel for the respondents would submit that originally the suit property belonged to one Poongavanammal. The said Poongavanammal had one son and two daughters. The fourth defendant is the son of Poongavanammal sold the entire property belonged to his mother to the plaintiff through sale deed dated 16.03.1990. The fourth defendant had no right to execute the sale deed in respect of the entire property of Poongavanammal. Whereas the third defendant purchased the property from all the legal heirs of Poongavanammal, namely, the fourth defendant and his two sisters, namely, the defendants 5 & 6, subsequently in the year 1973, the said fourth defendant,

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Balakrishnan along with his wife executed an agreement for sale of the property in favour of the father of the third defendant and also possession granted through an agreement (Ex.B1). Thereafter, the other legal heirs of Poongavanammal executed the sale letter dated 10.02.1979. Therefore, the father of the third defendant was in possession and enjoyment of the property from the year 1973 onwards and he had been in possession and enjoyment of the property. Therefore, the plaintiff suppressing the above said fact had filed the suit. The plaintiff objected the sale deed only from Balakrishnan, who has no right over the property. After the demise of Poongavanammal, his son, the fourth defendant and her two daughters, the defendants 5 & 6 who are having share over the property sold the property. Therefore, the third defendant purchased the property from all the legal heirs of Poongavanammal. Whereas the sale deed in favour of the plaintiff is by one of the legal heirs excluding the other legal heir of Poongavanammal is not valid in the eye of law. However, the trial court without considering the evidence on the side of the defendants in a proper perspective, decreed the suit. The first appellate court after analysing the oral and documentary evidence adduced on the side of the defendants, correctly set aside the judgment and dismissed the suit, as the said vendor of the plaintiff has no right to execute the sale deed for the entire property. Therefore, the second appeal is liable to be dismissed.

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15. This Court heard both sides and perused the records.

16. In this case, there is no dispute that the property originally belonged to Poongavanammal and the defendants 4 to 6 are the legal heirs of Poongavanammal. While so, the plaintiff purchased the property from the fourth defendant, who is one of the legal heirs of Poongavanammal and her two daughters are not parties in the sale deed in favour of the plaintiff. Whereas the third defendant purchased the property through a sale deed dated 19.12.1990 from the defendants 4 to 6, who are the legal heirs of the deceased Poongavanammal. Therefore, the fourth defendant, who is the vendor of the plaintiff has only 1/3 share over the property cannot execute the sale deed for the entire property, at the maximum he can execute only in respect of his 1/3 share. Whereas the third defendant purchased the property from all the legal heirs of Poongavanammal, namely, the defendants 4 to 6. Since the fourth defendant already executed the sale deed in favour of the plaintiff in respect of his 1/3 share, once again he cannot execute the sale deed for the same property in favour of the third defendant. Therefore, the sale deed executed by the fourth defendant in favour of the third defendant in respect of his share is not valid as already he executed the sale deed in favour of the plaintiff. Since the plaintiff has not obtained the sale deed from other legal heirs of Poongavanammal, namely, the defendants 5 & 6 in respect of their 2/3 shares, the sale is not valid.

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It is valid only 1/3 share of the fourth defendant. These aspects have not been considered by the Courts below.

17. Though the third defendant claiming possession of the property through Ex.B1 and Ex.B2. The sale deed in favour of the plaintiff was dated 16.03.1990 and thereafter, only the third defendant purchased the property on 19.12.1990. Both the parties purchased the property from different persons in respect of the entire property and thereby both the sale deeds are not valid in respect of their respective shares i.e. 1/3 share; in respect of the sale deed in favour of the third defendant and 2/3 shares in respect of the sale deed in favour of the plaintiff. Therefore, the plaintiff who filed the suit for declaration and consequential for permanent injunction for the entire property is not entitled to relief and he is only entitled to 1/3rd share over the entire property. Since there is no partition between the parties over the suit property, it is not proper to grant declaration in respect of 1/3rd share of the plaintiff and the parties are at liberty to approach the appropriate forum for partition of their respective shares of the suit property. The Courts below have not considered these aspects. The first appellate court by relying upon Ex.B1 and Ex.B2 came to a conclusion that the third defendant is in possession and enjoyment of the property. Mainly based upon Ex.B1 and Ex.B2, which are the documents executed by the legal heirs of Poongavanammal, namely, the defendants 4 to 6, however, the property was

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already sold by the fourth defendant in favour of the plaintiff. It is well settled law that possession of one co-owner can be treated as possession of another co-owner. The third defendant purchased the property from all the legal heirs of Poongavanammal, whereas the plaintiff purchased the property from the fourth defendant who is one of the legal heirs of Poongavanammal, thereby the plaintiff cannot claim executive possession over the property. Therefore, the plaintiff is not entitled to the relief of declaration. Both the parties are at liberty to approach the appropriate forum for partition of their respective shares in the manner known to law.

18. As far as, the substantial questions of law formulated by this Court viz.,

The first and second substantial questions of law viz.,

(i) Whether the Lower Appellate Court was right in law in placing reliance on Ex.B-1 even though the time for performance of the agreement has clearly lapsed ?

(ii) Whether the Lower Appellate Court could overlook Ex.A-1 without any action taken to set aside the same in a manner known to law ? are concerned ;

The First appellate court placing reliance on Ex.B1 sale agreement dated 01.05.1973 and the sale deed in favour of the third defendant is 19.12.1990. Prior to the sale in favour of the third defendant, the plaintiff purchased the

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property through sale deed in respect of share of the fourth defendant, Balakrishnan. The said sale deed has been marked as Ex.A1 dated 16.03.1990. The third defendant relied on Ex.B1 sale agreement and Ex.B2 sale letter. Ex.B1 sale agreement is dated 01.05.1972. As per Ex.B1 time fixed is one year but within one year no any sale deed obtained by the third defendant. The agreement of Ex.B1 is from the fourth defendant and other legal heirs of Poongavanammal i.e. daughters are not parties to Ex.B1. Further, as per Ex.B2 sale letter all the legal heirs of Poongavanammal executed sale letter and possession was granted and thereafter the third defendant purchased the same property through Ex.B11 sale deed dated 19.12.1990. In the said sale deed the Ex.B1 and Ex.B2 were also referred. Therefore, from the said evidence it is clear that the possession of the property is with the third defendant. However, prior to the Ex.B11 sale deed in favour of the third defendant, the fourth defendant one of the vendor of the third defendant sold the property to the plaintiff through sale deed dated 16.03.1990. Therefore, through Ex.A1 title of the property has been passed to the plaintiff in respect of the share of the fourth defendant and thereafter again the same fourth defendant executed the sale deed along with his sisters who are legal heirs of Poongavanammal, original owner in favour of the third defendant. Therefore, through Ex.A1 the share of the fourth defendant i.e. 1/3 share was purchased by the plaintiff. Therefore, through Ex.B11 the third defendant could have purchased the property of 2/3 share from the legal heirs of Poongavanammal. Therefore, the plaintiff is

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entitled to 1/3 share and the third defendant is entitled to 2/3 share over the suit properties. Therefore, the first appellate court is right in law by placing reliance on Ex.B1, though the same was executed long back as same was referred in the sale deed, in favour of the third defendant.

The fourth defendant executed the sale deed in favour of the plaintiff under Ex.A1 dated 16.03.1990 and thereafter, the third defendant purchased the property including the share of the fourth defendant. However, no relief sought for in respect of Ex.A1 which was already sold in favour of the plaintiff. Once the property was sold by the fourth defendant in favour of the plaintiff, thereafter the same fourth defendant cannot sell the same property to the third defendant. Therefore, the third defendant ought to have challenged the sale in favour of the plaintiff by the fourth defendant, in respect of his share. Therefore, the first appellate court cannot overlook Ex.A1 without any action taken to set aside the same in the manner know to law.

Thus, substantial questions of law 1 & 2 are answered.

The third substantial question of law viz.,

(iii) Whether the Lower Appellate Court could rely on Ex.B-2 the sale agreement dated 10.02.1979 which is not referred in the legal notices, Ex.B-5 and Ex.B-7? is concerned ;

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Ex.B2/sale letter was executed on 10.02.1979 by all the legal heirs of Poongavanammal. The plaintiff denied the said sale letter and the defendants also have not referred the said letter in the legal notices Ex.B5 to Ex.B7. The defendants relying upon the said documents only for the possession of the property. Even though the Ex.B2 was not referred in Ex.B5 and Ex.B7 the said letter and agreement Ex.B1 and Ex.B2 were referred in the sale deed in favour of the third defendant dated 19.12.1990. However, this Court in the previous point decided that though the third defendant is in possession and enjoyment of the property, though Ex.B2 and the plaintiff purchased the property through sale deed from the fourth defendant and thereafter for the same property, the third defendant also purchased the property from the legal heirs of Poongavanammal including the share of the fourth defendant. Once the property was sold by the fourth defendant in favour of the plaintiff, wherein the fourth defendant is entitled only 1/3 share. The sale deed in favour of the plaintiff is valid in respect of his 1/3 share and remaining 2/3 shares alone can be sold by the remaining two legal heirs (daughters) of Poongavanammal. Therefore, Ex.B2 through which only possession alone was granted, the same no way affect the right of Balakrishnan and thereby the plaintiff is entitled to 1/3 share of Balakrishnan. Though the third defendant was in possession and enjoyment of the property, he purchased the property only after purchase by the plaintiff from the fourth defendant, thereby, the third defendant is entitled to 2/3 share. It is well settled law that the possession of one co-owner is deemed to be possession of another

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co-owner. As the plaintiff purchased 1/3 share of the fourth defendant through sale deed Ex.A1 he is co-owner. Thereafter, the third defendant purchased the remaining 2/3 share of the same property. Therefore, the possession of the third defendant is deemed to be in constructive possession of the plaintiff.

Thus, third substantial question of law is answered.

The fourth substantial question of law viz.,

(iv) Whether the Lower Appellate Court could rely on Ex.B-11, the sale deed dated 19.12.1990 allegedly executed by D4 to D6 in favour of D3 after the execution of the sale deed dated 16.03.1990 executed by D4 in favour of the plaintiff ? is concerned ;

The plaintiff purchased the property from the fourth defendant on 16.03.1990 through Ex.A1. It is admitted fact that the fourth defendant alone is not the legal heir of original owner Poongavanammal and the defendants 5 & 6 are also legal heir of Poongavanammal. Therefore, through Ex.A1 the fourth defendant cannot sell the entire property and he is entitled to 1/3 share in respect of that extent alone he is entitled to execute the sale deed. Therefore, through Ex.A1 only 1/3 share alone title of the property passed in favour of the plaintiff. The third defendant also purchased the property through Ex.B11 dated 19.12.1990 in respect of remaining 2/3 share of the suit property and the possession of the plaintiff is constructive possession as co-owner.

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Since the third defendant purchased the property through sale deed subsequent to the sale deed in favour of the plaintiff, the sale deed purchased by the third defendant in respect of share of Balakrishnan is not binding on the plaintiff. Therefore, the first appellate court ought to have relied upon the sale deed Ex.B11 excluding the portion already sold by the fourth defendant in favour of the plaintiff.

Thus, fourth substantial question of law is answered.

19. In view of the above said discussions and the answers to the substantial questions of law, the plaintiff is not entitled to declaration of title in the entire suit property as he is only entitled to 1/3 share and remaining share belongs to the third defendant. Therefore, both the parties are at liberty to approach appropriate forum for partition of their share over the suit property in accordance with law.

20. With the above said observations and discussions, this Second Appeal is disposed of. No costs.

12-11-2026

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

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To

1. The Subordinate Court, Ponneri.

2. The District Munsif Court, Ponneri.

3. The Section Officer, VR Section, High Court, Madras.

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P.DHANABAL, J.

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