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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 589 of 2012
and MP Nos.1 & 2 of 2012

CNR: {HCMA010394132012}

1. Murugesan (died)
   S/o Chinnathambi

2. Muniyammal (died)
   W/o. Chinnathambi

3. Rudrakumaran (died)
   S/o Chinnathambi

4. Sengadirselvi Alias Sundari
   W/o Palani.

5. Malathi
   D/opalani

6. Gowthami
   D/o Palani

7. Suba
   D/o Palani All Residing At Reddiyapalayam
   Vilalge, Chengam Taluk.

8. Dhandapani
   S/o Late Murugesan Door.No.91, Jayarama
   Nayakkar Street, Reddiyapalayam
   Village/town, Thandrampet Taluk,
   Tiruvannamalai District.

9. Parthipan
   S/o Late Murugesan, Door No.91, Jayarama
   Nayakkar Street, Reddiyapalayam
   Village/town, Thandrampet Taluk,
   Tiruvannamalai District.

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10.Sankar
S/o Late Murugesan, Door No.91, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

11.Ganga
D/o Late Murugesan Door No.91, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

(A1 Died. A8 to A11 are brought on record as LRs of the deceased A1 vide order of court dated 04/06/2024 made in CMPNos.5939, 5940, and 5942 of 2024 In S.A.No.589 of 2012)

12.Vijaya
W/o Late Rudrakumaran Door.No.69, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

13.Raja
S/o Late Rudrakumaran, Door No.69, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

14.Nagarajan
S/o Late Rudrakumaran, Door No.69, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

15.Moorthi
S/o Late Rudrakumaran, Door No.69, Jayarama
Nayakkar Street, Reddiyapalayam
Village/town, Thandrampet Taluk,
Thiruvannamalai District.

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(A3 Died. A12 To A15 Are Brought On Record As LRs Of The Deceased A3 Vide Order Of Court Dated 04/06/2024 Made In CMP Nos.5939, 5940, 5943, and 5942 of 2024 in S.A.No.589 of 2012)

..Appellant(s)

Vs

1. Gangai Ammal
   D/o Patturose Gounder.

2. Alamelu
   D/o Patturose Gounder

3. Bommi
   D/o Patturose Gounder

4. Tirupathi
   S/o Patturose Gounder

5. Mohan (Died)
   S/o. Chinnathambi Ll Residing At
   Reddiyapalayam Village, Chengam Taluk

..Respondent(s)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.11.2009 passed in A.S. No.9 of 2000, on the file of the District Court, Tiruvannamalai, reversing the decree and judgment dated 28.09.1999 passed in O.S.No.425 of 1996, on the file of the District Munsif cum Judicial Magistrate, Chengam.

For Appellant(s): Mr. S. Parthasarathy
Senior Counsel
Mr.J.Ramakrishnan

For Respondent(s): No Appearance

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JUDGMENT

This second appeal has been preferred as against the decree and judgment dated 30.11.2009 passed by the District Court, Tiruvannamalai, in A.S. No.9 of 2000. The appellants are the 1 to 3, 6 to 9 defendants. The plaintiffs, namely, Patturose Gounder and one Thangavel Gounder filed the suit in OS No.425 of 1996 on the file of the District Munsif cum Judicial Magistrate, Chengam, for the relief of declaration of title and consequential relief of permanent injunction. During the pendency of the suit, the second plaintiff died. The said suit was dismissed by the Trial Court. Aggrieved by the said decree and judgment, the plaintiffs have preferred an appeal in AS No.9 of 2000 on the file of the District Court, Tiruvannamalai. During the pendency of the suit, the first appellant, namely, Patturose Gounder died and his legal heirs are impleaded as parties. The First Appellate Court set aside the decree and judgment passed by the Trial Court and decreed the suit as prayed for. Thereby, the defendants 1 to 3, 6 to 9 have preferred this second appeal.

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.

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3. The case of the plaintiffs before the Trial Court is that originally the suit properties belonged to one Malayappa Gounder and he sold the properties to the plaintiff's father Gopal Gounder through sale deed dated 06.03.1926. Pursuant to the said sale deed, Gopal Gounder was in possession and enjoyment of the properties and also he obtained patta in his name and paid kist to the Government. The said Gopal Gounder died more than 35 years back. The said Gopal Gounder had three sons, namely, plaintiffs and one Narayana Gounder. Narayana Gounder died without any issues. Therefore, the plaintiffs 1 and 2 are entitled to the suit properties. In the suit properties, there is a Well in Item No.1. The plaintiffs also got electricity connection and paying electricity consumption charges. The plaintiffs and their predecessor in title are in open continuous and uninterrupted possession and enjoyment of the properties for more than 63 years, thereby, they prescribed the title by adverse possession. The defendants are strangers to the suit properties they have no right or title or interest over the suit properties. They are claiming the right of the property as if they are legal heirs of Narayanasamy and attempted to interfere with the plaintiffs possession and enjoyment of the property. Therefore, the plaintiffs filed the suit.

4. The case of the defendants is that the suit is not maintainable. The allegations made in the plaint are false. The purchase of the property by plaintiffs' father Gopal Gounder through sale deed dated 06.03.1926 is true. The

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original sale deed was deposited in Thanipadi Co-operative Society by Gopal Gounder itself by mortgaging the properties. Gopal Gounder had only two sons, namely, Rajamanickam and Thangavelu and had no son at all by name Narayana Gounder. There are two Wells situated in Item 1 of the suit property. The defendants' grandfather Narayana Gounder had paid electricity bills and after his demise, the defendants 1 to 3 & 5 are paying electricity charges. In fact, the properties belonged to Gopal Gounder by sale deed dated 06.03.1926. The said Gopal Gounder had brother, namely, Narayana Gounder. The said Gopal Gounder mortgaged the properties to Thanipadi Co-operative Society and he failed to redeem the mortgage and thereby the property was brought for public auction and the same was purchased by Mottaiya Mudaliyar on 14.01.1937 and thereafter, he was in possession and enjoyment of the property and then conveyed the same to one Narayana, through registered sale deed dated 08.09.1940. The said Narayana through registered sale deed dated 26.02.1944 convey the undivided 1/2 share to one Narayana Gounder, son of Rama Gounder, who is the maternal grandfather of the defendants. Subsequently, the grandfather of the defendants Narayana Gounder purchased the remaining 1/2 share from the said Narayana under registered sale deed dated 06.08.1987 in the name of Perumal Gounder. Subsequently, Narayana Gounder maternal grandfather of the defendants established his title through court proceedings against the benamidar Perumal Gounder. Therefore, Narayana Gounder became the absolute owner of the suit properties and the properties

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were under the possession and enjoyment of the said Narayana Gounder. The patta and adangal stands in the name of Narayana Gounder. The said Narayana Gounder while he was in sound and disposing state of mind bequeathed all the properties in favour of the first defendant and the defendants 3 to 5 through registered Will dated 14.09.1981. The said Narayana Gounder died in the year 1988. Thereafter, the Will came into effect. Further, the registered settlement deed was executed on 18.04.1980, thereby the first defendant along with the defendants 3 to 5 became the absolute owners of the suit properties. Therefore, the plaintiffs have no any right over the suit properties. The suit is liable to be dismissed.

5. 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 sale deed dated 06.03.1926 is the last sale deed as alleged in the plaint?*

ii. Whether Gopal Gounder was in possession of the suit property till his death?

iii. Whether the plaintiffs have got one Narayana Gounder as their brother ?

iv. Whether the plaintiffs or the plaintiff's brother are entitled to the suit property ?

v. Whether the plaintiff has perfected his title by adverse possession ?

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vi. Whether the relationship alleged in the plaint is true ?

vii. Whether Mottaiya Mudali has purchased the suit property on 14.01.1937 is true ?

viii. Whether the sale deeds dated 08.09.1940 and 28.02.1940 are true ?

ix. Whether the declaration of title to the suit property to Narayana Gounder through court proceedings is proved ?

x. Whether it is true that the plaintiff's title is barred by the principles of resjudcata ?

xi. Whether the partition deed, dated 18.04.1980 is true and valid?

xii.Whether the Will dated 18.04.1940 is true and valid ?

xiii.Whether Narayana Gounder and the defendants 1, 3 to 5 have prescribed title by adverse possession?

xiv. Whether the plaintiffs are in possession of the suit properties ?

6. In order to prove the case, before the Trial Court, on the side of plaintiffs, PW1 & PW2 were examined and marked Ex.A1 to Ex.A25. On the side of the defendants, DW1 was examined and marked Ex.B1 to Ex.B137.

7. After analysing the evidence on both sides, the Trial Court dismissed the suit. Aggrieved by the said decree and judgment, the plaintiffs have

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preferred an appeal in A.S.No.9 of 2000 on the file of the District Court, Tiruvannamalai, on various grounds.

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

i. Whether the appellants have title to the suit properties?

ii. Whether the appellants have prescribed their title to the suit properties by adverse possession as claimed in the plaint?

iii. Whether the respondents have title to the suit properties?

iv. Whether the respondents have prescribed title to the suit properties by way of adverse possession as claimed in the written statement?

v. Whether the appellants are entitled to obtain the reliefs of declaration and permanent injunction as claimed in the suit?

vi. To what relief, the appellants are entitled to ?

9. After hearing both sides and perusing the records, the First Appellate Court allowed the appeal by setting aside the decree and judgment of the Trial Court and decreed the suit in favour of the plaintiffs. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the defendants 1 to 3, 6 to 9.

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10. Heard Mr. S. Parthasarathy, learned senior counsel appearing for the appellants and perused the materials.

11. The learned senior counsel appearing for the appellants would submit that the appellants are the 1 to 3, 6 to 9 defendants. The respondents 1 to 5 are the legal heirs of the plaintiffs, who filed the suit for the relief of declaration of title and for permanent injunction alleging that the property originally belonged to his father Gopal Gounder, through registered sale deed dated 06.03.1926. The said Gopal Gounder had three sons, namely, the plaintiffs and one Narayana Gounder. Narayana Gounder died issueless. The plaintiffs are in possession and enjoyment of the suit properties. The defendants resisted the suit by contending that the suit properties originally belonged to Gopal Gounder. The said Gopal Gounder had only two sons, namely, Rajamanickam and Thangavelu. Narayana Gounder is not the son of Gopal Gounder. The said Gopal Gounder mortgaged the property with Thanipadi Co-operative Society. Due to non-payment, the said properties were brought for sale through public auction. One Mottaiya Mudaliyar purchased the property on 14.01.1937 and thereafter, Mottaiya Mudaliyar sold the property to one Narayana, through sale deed dated 08.09.1940. The said Narayana sold the property to Narayana Gounder, son of Rama Gounder through sale deed dated 26.02.1944. Again this Narayana Gounder purchased the 1/2 share of the remaining property from the said

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Narayana through sale deed dated 06.08.1987 in the name of Perumal Gounder. The defendants are the legal heirs of Narayana Gounder. Patta also stands in the name of Narayana Gounder. Therefore, the defendants are the original owners. The said Narayana Gounder executed a Will dated 14.09.1981 in favour of the defendants 1, 3 to 5. The said Narayana Gounder died in the year 1988. Thereby, the Will came into effect and the defendants are entitled to the suit properties. The Trial court, after considering the evidence in a proper perspective correctly dismissed the suit filed by the plaintiffs. However, the First Appellate Court, without considering the evidence in proper perspective set aside the decree and judgment of the Trial Court and decreed the suit. The First Appellate Court failed to consider that the plaintiffs are tracing title from his father Gopal Gounder but the said Gopal Gounder borrowed a loan and thereby the properties were brought for public auction and through auction Mottaiya Mudaliyar purchased the property. Therefore, the said Mottaiya Mudaliyar is the original owner of the properties and thereafter, the properties were sold by Mottaiya Mudaliyar and lastly the defendants' father Narayana Gounder purchased the property. The above said facts have not been considered by the First Appellate Court. The First Appellate Court failed to consider the documents Ex.B3 to Ex.B127, Ex.132 to Ex.B137 and the First Appellate Court has totally misconstrued the scope of Section 27 and Article 65 & 136 of Limitation Act. Through the oral and documentary evidences, the defendants have proved their possession and their predecessor possession and the plaintiffs

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have not proved the ingredients of the adverse possession. Therefore, the injunction cannot be granted as against the true owners. Therefore, the decree and judgment passed by the First Appellate Court are liable to be set aside.

12. Despite ample chance given to the respondents, they have not appeared and argued the matter. Therefore, this Court, after hearing the appellants side and based on the available evidence, is inclined to pass judgment.

13. This Court framed the following substantial questions of law :

i. "Whether in law the Ex.B3 to Ex.B127, Ex.B132 to Ex.B137 are not sufficient enough to prove the possession of the auction purchaser namely the predecessors in title of the defendants and as such the adverse findings of the learned first appellate judge is sustainable in law, more particularly the suit properties were vacant site?

ii. Whether in law, is not the learned First Appellate Judge totally misconstrued the scope of Section 27, Article 65 and 136 of the Limitation Act?

iii. When the basic ingredients for claim of adverse possession have not been satisfied by the plaintiffs, whether the learned Appellate Judge justified in decreeing the plaintiff's suit based on alleged adverse possession?"

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14. This Court heard the appellant side and perused the records.

15. In this case, the plaintiffs have filed the suit for the relief of declaration and permanent injunction. According to the plaintiffs, his father Gopal Gounder purchased the suit property through sale deed dated 06.03.1926 and these plaintiffs and one Narayana Gounder are the sons of Gopal Gounder. The said Narayana Gounder died issueless and thereby after the demise of Gopal Gounder, the plaintiffs are entitled to the suit properties and they are in possession and enjoyment of the suit properties. The defendants claiming right over the suit properties through Narayana Gounder. Therefore, filed the suit. According to the defendants, they admitted the purchase of the suit property by the plaintiffs' father Gopal Gounder and according to the defendants after purchase, the said Gopal Gounder mortgaged the property to Thanipaid Co-operative Society and due to non-payment of loan, the suit properties were brought for public auction and in the auction, one Mottaiya Mudaliyar purchased the property on 14.01.1937. Thereafter, the said property was sold to one Narayana, through registered sale deed dated 08.09.1940. The said Narayana sold 1/2 of the property to one Narayana Gounder, son of Rama Gounder through sale deed dated 26.02.1944. Again remaining portion of 1/2 share was purchased by Narayana Gounder through sale deed dated 06.08.1987

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in the name of Perumal Gounder as a Benami. There are two Wells in the suit properties and patta & adangal also stands in the name of the defendants' father. Therefore, Naryana Gounder executed the Will in favour of the defendants 1, 3 to 5 dated 14.09.1981. Thereafter, Narayana Gounder died and thereby, the defendants are in possession and enjoyment of the properties and they resisted the suit.

16. To prove the case of the plaintiffs, PW1 & PW2 were examined and marked Ex.A1 to Ex.A25. On the side of the defendants, DW1 was examined and marked Ex.B1 to Ex.B137. Once the defendants admitted that the purchase of the properties by the plaintiffs' father Gopal Gounder, it is for the defendants to prove that the properties of the plaintiffs' father was mortgaged with Thanipadi Co-operative Society and the same was brought for auction and through auction one Mottaiya Mudaliyar purchased the property. The defendants side evidences shows that Gopal Gounder mortgaged the property with Thanipadi Co-operative Society through Ex.B130 dated 14.02.1928. The said documents has not been denied by the plaintiffs. Therefore, from Ex.B137 it could be seen that Mottaiya Mudaliar had purchased the properties through court auction in the execution proceedings of OS No.74 of 1932. The sale certificate was issued in favour of Mottaiya Mudaliyar and the same was marked as Ex.B13. Therefore, from the above said evidences, it is clear that

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Mottaiya Mudaliyar purchased the suit properties by way of court auction sale in EP No.79 of 1935 in OS No.74 of 1932. The certified copy of the suit registrar in OS No.74 of 1932 has been marked as Ex.B132.

17. On perusal of Ex.B137, it reveals that Mottaiya Mudaliyar purchased the suit properties in the court auction and the same was confirmed on 10.12.1936. Further, Mottaiya Mudaliyar filed the suit in OS No.261 of 1939 as against Gopal Gounder and another, father of the plaintiffs. The said suit registrar has been marked as Ex.B132. As per the suit registrar extract, the possession has been granted on 13.02.1937 through process of court and the defendants in that suit trespassed into the suit properties in the month of April 1937 and they are in illegal possession. The suit filed by Mottaiya Mudaliyar in OS No.261 of 1939 was decreed as prayed for through its judgment dated 17.07.1940. As per Ex.B133, Mottaiya Mudaliyar had sold the property to one Narayana Pillai. Thereafter, the said Narayana Pillai sold the properties to Narayana Gounder through sale deed dated 26.02.1944 in respect of his 1/2 share. Therefore, from the above said evidences, it is clear that Gopal Gounder purchased the property and thereafter, it was mortgaged and due to failure on payment of mortgage amount, the property was brought on public auction. In that auction, Mottaiya Mudaliyar had purchased the property and thereafter, Mottaiya Mudaliyar has sold the property to Narayana Pillai and the said

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Narayana Pillai sold the property to Narayana Gounder. Therefore from the above evidence, it is clear that the properties purchased by Gopal Gounder was sold through court auction.

18. It is well settled law that the plaintiffs, who filed the suit for declaration of title and permanent injunction, have to prove the case through sufficient evidence. In this case, available evidence shows that the properties were brought for sale and the title was passed to Mottaiya Mudaliyar through sale deed. The plaintiffs suppressed the above said facts and filed the suit as if the properties belonged to their father. After the demise of their father, they are entitled to properties. While so, the Trial Court has correctly analysed the evidence in a proper perspective and dismissed the suit. However, the First Appellate Court decreed the suit by setting aside the decree and judgment passed by the Trial Court by holding that Mottaiya Mudaliyar who purchased through court auction had not taken over possession. In fact, there are no pleadings or evidences from the plaintiffs side to that regard. The First Appellate Court placed the burden on the defendants to prove that the properties belongs to them, by overlooking, the well settled of law that the plaintiffs who filed the suit for declaration and permanent injunction has to prove their case through sufficient evidence and the plaintiffs cannot take advantage of the weakness of the defendants. Therefore, the findings of the First Appellate Court

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in this regard are perverse. The First Appellate Court failed to consider the documents Ex.B3 to Ex.B127, Ex.B132 to Ex.B137 in a proper perspective and through those documents, the defendants probablised their defence and overlooked the judgments rendered by competent courts in the previous suits filed by respondents of the same property. As per defence evidence, Mottaiya Mudaliyar purchased the suit property through court auction and thereafter filed a suit for recovery of possession in OS No.261 of 1939 as against the plaintiffs' father and another and the same was decreed in favour of Mottaiya Mudaliyar. Without any record, without any pleadings and evidence the First Appellate Court held that the possession of the property was not granted to Mottaiya Mudaliyar. The First Appellate Court wrongly placed the burden on the defendants side, whereas the plaintiffs who filed the suit for declaration has to prove his title through sufficient evidence. But the plaintiffs suppressed the material facts and filed the suit and the same has not been considered by the First Appellate Court. Therefore, the available defendants side evidence are enough to prove the possession of the auction purchaser predecessor of the title of the defendants. Further the First Appellate Court rendered findings that the plaintiffs are entitled to the properties by way of adverse possession. There are no proper pleadings with regard to adverse possession and there is no evidence that the possession of the plaintiffs is *nec vi, nec clam, nec precario.* The plaintiffs themselves not proved the possession and enjoyment of the properties. Even according to the plaintiffs, revenue documents stands in the name of

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Narayana Gounder and Patturose Gounder. According to the plaintiffs, Narayana Gounder died long back without any issues. Once the properties were sold through court auction and the title also passed in favour of Mottaiya Mudaliyar, the plaintiffs have no right over the properties and thereby the revenue records are sufficient documents to prove the title of the properties. The defendants also produced lot of revenue records in their favour to prove their possession and they also produced the title deeds to the suit properties.

19. The First Appellate Court misconstrued the scope of Section 27, Article 65 of Limitation Act. Section 27, Article 65 of Limitation Act no way applicable to this case. Already the competent courts have granted sale certificate in favour of Mottaiya Mudaliyar and thereafter, Mottaiya Mudaliyar filed the suit in OS No.261 of 1939 that suit was also decreed in his favour. However, the First Appellate Court wrongly gone into the aspect of limitation and the First Appellate Court without any proper pleadings and evidences on the side of the plaintiffs need not resolve into the matters already disposed of by the competent courts and thereby the First Appellate Court is not correct in rendering the adverse findings in respect of the possession of the auction purchaser and without any proper pleadings and evidences for the possession decreed the suit erroneously. Further, the First Appellate Court after considering that Mottaiya Mudaliyar purchased the properties and thereafter, the properties

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were alienated to one Narayana Pillai and Narayana Pillia sold the properties to the defendants' father Narayana Gounder and the same has been proved through oral and documentary evidences, however, granted decree for declaration and permanent injunction. Therefore, the judgment and decree passed by the First Appellate Court are against the available evidence and by relying upon irrelevant material and against the settled proposition of law and therefore, the judgment and decree passed by the First Appellate Court are unsustainable.

20. In view of the above discussions, substantial questions of law are answered in favour of the appellants and the judgment and decree passed by the First Appellate Court are liable to be set aside.

21. In the result, the Second Appeal is Allowed; the decree and judgment dated 30.11.2009 passed by the First Appellate Court in A.S. No.9 of 2000, on the file of the District Court, Tiruvannamalai, are set aside and the decree and judgment dated 28.09.1999 passed by the Trial court in O.S.No.425 of 1996, on the file of the District Munsif cum Judicial Magistrate, Chengam, are restored. No costs. Consequently, connected Miscellaneous Petitions are closed.

18-11-2026

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

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To

1. The District Court, Tiruvannamalai.

2. The District Munsif cum Judicial Magistrate, Chengam.

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

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P.DHANABAL, J.

MTL

SA No. 589 of 2012
and MP Nos.1 & 2 of 2012

18-11-2026

https://www.mhc.tn.gov.in/judis