



S.A(MD).No.287 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	16.09.2025
Pronounced On	:	21 .01.2026

CORAM

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

S.A(MD)No.287 of 2022

and

C.M.P(MD)Nos.3735 and 9437 of 2022

1.T.S.Kannan

2.Minor.K.Ajaykumar

Rep.by his father and next friend T.S.Kannan

... Appellants/Appellants/
Defendants 3 and 4

Vs

1.V.Jeyalakshmi

Rep. through her Power Agent
Gunasekaran

... 1st respondent/
1st respondent/plaintiff

Subbammal (died)

2.S.Ellammal

3.M.Selvaraj

... Respondents 2 & 3/
Respondents 3 &4/Defendants 2 & 5

PRAYER: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Lower Appellate Court dated 28.09.2021 passed in A.S.No.99 of 2016 on the file of the learned Sub Judge, Tuticorin, confirming the judgment and decree of the Trial Court,



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dated 14.09.2016 passed in O.S.No.153 of 2012 on the file of the
Additional District Munsif Court, Tuticorin.

For Appellants : Mr.V.Balaji
For Respondents : Mr.R.Maheswaran for R1
Mr.K.Chengizkhan for R3
No appearance for R2

JUDGMENT

The defendants 3 and 4 have filed this second appeal challenging the judgement and decree passed against them in O.S.No.153 of 2012, on the file of the learned Additional District Munsif, Tuticorin, confirmed in A.S.No.99 of 2016 on the file of the learned Sub Judge, Tuticorin, by the impugned judgment and decree dated 28.09.2021.

2.The brief facts pleaded in the plaint are as follows:

The suit was filed by the power agent Gunasekaran on behalf of one Jeyalakshmi. The suit property was originally a Natham Poramboke. The plaintiff's husband namely, Venkatasamy (P.W.2) obtained patta in his name on the basis of his possession over the suit schedule property. The said patta was obtained in the year 1997 i.e., on 24.02.1997 and on the date of the patta, he was in possession of the property. Subsequently, he settled



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the said property in favour of his wife, namely, the plaintiff in the suit. The defendants 1 and 2, without any title over the suit schedule property, entered into a transaction of settlement deed dated 09.06.2010. On the basis of the settlement deed executed by the first defendant in favour of the second defendant, the second defendant executed two sale deeds in favour of fourth and fifth defendants. After coming to know the illegal execution of the settlement deed, the fifth defendant cancelled the said sale deed. Thereafter, the defendants 1 to 3 interfered with the plaintiff's peaceful possession and enjoyment over the suit schedule property. Hence, the plaintiff filed the suit for declaration of the settlement deed dated 09.06.2010 executed by the first defendant (Subbammal) in favour of the second defendant as null and void and consequentially declare the sale deed dated 12.08.2010 executed by the second defendant in favour of the fourth defendant as null and void and consequential permanent injunction restraining the defendants 1 to 4 from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule mentioned properties situated in Puthiamputhur Village, Ottapidaram Taluk, Thoothukudi District, measuring an extent of 16 cents in Survey No.178/52 comprised in Patta No.1147.



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3. Brief averments of the written statement of the defendants 1 to

4 before the Court below:

The defendants 1 to 4 filed the written statement denying the averments made in the plaint. The fourth defendant on the basis of the sale deed executed by the second defendant dated 12.08.2010, constructed a house measuring an extent of 5.18 cents and they are living in the said house. From the date of purchase, the fourth defendant is in enjoyment of the property and the defendants 1 and 2 specifically disputed the title of the plaintiff and stated that she has no right to seek the relief of setting aside the document mentioned in the plaint and the patta obtained by the plaintiff's husband is without notice to them and they are not in possession of the suit schedule property and there was a dispute relating to the title of the property. Hence, the suit relief is not maintainable and prayed for dismissal of the suit.

4. On the basis of the pleadings, the learned trial Judge framed the following issues:

1. Whether the plaintiff is entitled to get a decree that the settlement deed dated 09.06.2010 registered as document No.1094/2010 executed by the first defendant in



favour of second defendant as null and void and for consequential permanent injunction against the second defendant as prayed for?

2.Whether the plaintiff is entitled to get a decree to declare that the sale deed dated 12.08.2010 registered as Document No.1633/2010 executed by the second defendant in favour of the fourth defendant as null and void and for consequential permanent injunction against 3rd and 4th defendants as prayed for?

3.Whether the plaintiff is entitled to get a decree of permanent injunction against the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property in any manner?

4.What is the order regarding the cost of this suit?

5.Whether the plaintiff is entitled to get any other relief?

5.To prove the case, the plaintiff examined P.W.1 to P.W.3 and marked Ex.A1 to Ex.A9 and on the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to B12 were marked.

6.The learned Trial Judge, after considering the entire evidence, decreed the suit as prayed for by the impugned judgement and decree in O.S.No.153 of 2012 dated 14.09.2016. Challenging the same, the



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appellants filed the appeal suit in A.S.No.99 of 2016, on the file of the learned Sub Judge, Thoothukudi. During the pendency of the appeal suit, the appellants filed I.A.No.1 of 2020 under Order 41, Rule 27 of CPC to receive two material documents, namely, the decree in O.S.No.60 of 2017 on the file of the learned Sub Judge, Thoothukudi and also the appeal proceedings pending before the Revenue Divisional Officer against the patta granted in favour of Venkatasamy, P.W.2, under the UDR Scheme. The learned Appellate Judge dismissed the application and also the appeal suit in A.S.No.99 of 2016 by impugned judgment and decree dated 28.09.2021. Challenging the concurrent findings, the appellants have filed this second appeal.

7. This Court admitted the second appeal on the following substantial questions of law, by order, dated 22.04.2022:-

(A) Whether the Courts below is wrong in decreeing the suit for bare injunction without a prayer for declaration of title when there is a cloud over the title of the plaintiff?

(B) Whether the Courts below is wrong in decreeing the suit solely on the basis of the patta in the name of plaintiff's husband as against the settled propositions of



law that patta neither creates nor extinguishes title or possession?

(C) Whether the Courts below is wrong in decreeing the suit for injunction when admittedly the plaintiff is not in possession and enjoyment of the suit property on the date of the plaint as per Ex.A8 dated 15.09.2011?

(D) Whether the Courts below is wrong in not drawing adverse inference as against the plaintiff for not entering into the witness box and not producing the cancellation of the sale deed dated 30.05.2011 in order to prove her title and possession?

8.At the time of admission, interim order also was granted in favour of the appellants. The first respondent/plaintiff has filed the vacate stay petition. Considering the pendency of the issue before the Courts below from 2012 onwards and also both the counsels made a joint request to dispose of the appeal on merits, this Court is inclined to take up the appeal for final disposal.

9.The learned counsel for the appellants sought to frame the following additional questions of law and both the appellants' counsel and the respondents' counsel argued on the above framed questions of law:



A) Is not the 1st appellate Court wrong in summarily dismissing I.A.No.1 of 2020 for receiving additional documents relating to pendency of revision before the Revenue Divisional Officer, Kovilpatti challenging Ex.A1 Patta in favour of the plaintiff's husband Venkatasamy?

B) Is not the 1st Appellate Court wrong in decreeing the suit solely on the basis of Ex.A1 patta during the pendency of revision proceedings before the Revenue Divisional Officer, Kovilpatti, challenging the wrong entries made in respect of S.No.178 during the UDR Scheme?

C) Is not the Courts below wrong in entertaining the suit and the evidence of P.W1 as the power of attorney of the plaintiff without any pleading as to his authority and by not marking the power of attorney in the suit proceedings?

D) Is not the Courts below wrong in declaring the title of the plaintiff on the strength of Ex.A4 gift settlement deed which required attestation under Section 123 of the Transfer of Property Act and proof in accordance with Section 68 of the Indian Evidence Act?

10. The learned counsel for the appellants would submit that the learned Appellate Judge in the judgment in para No.18 specifically held that P.W.2, namely, husband of the plaintiff has not produced any document to show their ancestral title to the suit schedule property and



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also held that no parent document was produced to prove the title. After giving the said findings, the learned Appellate Judge decreed the suit by confirming the judgment of the Trial Court on the ground that the defendants have not established the title to the suit schedule property. This approach of the learned Appellate Judge to grant decree on the basis of the weakness of the defendants' case, is against the principles laid down by the Hon'ble Supreme Court in various judgments and also the provisions of Sections 101 to 103 of the Indian Evidence Act. The learned counsel for the appellants, to substantiate the said contention, relied on the judgment of the Hon'ble Supreme Court reported in **2014 (4) CTC 471 (SC)** and **1998 (9) SCC 719** and the Judgments of this Court reported in **1999 (3) CTC 304** and also **2024 1 CTC 547(SC)**. The learned counsel for the appellants would further submit that the decree for declaration of the document executed by the first defendant in favour of the second defendant as null and void, could not have been granted on the basis of the revenue records, when the defendants 1 and 2's title deeds are anterior documents prior to the patta granted in favour of P.W.2.

11. The learned counsel for the appellants would further submit that both the Courts below failed to consider the material issue, namely,



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possession of the suit schedule property. As per the evidence, the suit schedule property is in possession and occupation of the defendants. But, the learned Trial Judge and the First Appellate Judge have not addressed the issue of the possession over the suit schedule property by the first respondent/plaintiff in the suit to get the decree for injunction. Without proof of the possession over the suit schedule property, decree for injunction could not have been granted and also if the possession is vested with the appellants, the first respondent/plaintiff has no right to file a suit for bare injunction and she has to file a suit for recovery of possession. In the document filed by the plaintiff, namely, the complaint given to the police officer, it is specifically stated that the appellants are in possession of the suit schedule property and also the appellants produced number of documents to prove their possession and the plaintiff has not produced any document to show their possession on the date of the plaint. In the said circumstances, both the Courts below have committed error in granting decree for injunction without proof of possession.

12. The learned counsel for the appellants would further submit that the appellants filed the application under Order 41, Rule 27 of CPC before the First Appellate Judge to receive the additional documents. The First



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Appellate Judge, without considering the relevancy of the said documents, dismissed the same without any reason. Therefore, the dismissal of the application without any reason, is not in accordance with law. The appellants have a remedy to raise a ground against the dismissal of the interlocutory application. Hence, they raised the additional questions of law before this Court against the dismissal of the application under Order 41, Rule 27 and the same is permissible. As per the additional documents, the second defendant filed a suit against the present plaintiff seeking the reliefs of declaration and injunction of the suit schedule property and the same was decreed in O.S.No.60 of 2017 on the file of the Sub Court, Thoothukudi. In view of the above circumstances, the learned Trial Judge and the First Appellate Judge ought to have allowed the application by following the procedure stated under Order 41, Rule 28 of CPC. The learned First Appellate Judge committed an error in dismissing the application to receive the additional documents without any reason. There was no discussion in the judgment about the relevancy and the same are material documents to substantiate the claim of the appellants in the suit. The learned counsel for the appellants would further submit that both the Courts below committed an error in appreciation of the facts and also rendered a perverse finding and they have not considered the law on the



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subject of burden of proof and erroneously decreed the suit and hence, this is a fit case to exercise the power under Section 100 CPC and to interfere with the concurrent findings. He also filed a detailed written submission apart from the above oral submissions.

13. In the written statement, it is specifically disputed that the boundaries are not correct and without proper boundaries, the suit was decreed. Apart from that, the boundaries mentioned in the settlement deed executed by P.W.2 in favour of the plaintiff, are not tallying with the alleged patta obtained by P.W.2. The Tahsildar was examined on the side the plaintiff as P.W.3 and he deposed that in the settlement deed, there was mentioning of more extent than in the patta, Ex.A1. Therefore, in the case, the said dispute, is material, and the appellants claimed the title to a small extent and the same was not properly considered by both the learned Trial Judge and the First Appellate Judge.

14. The learned counsel for the first respondent would submit that the dispute relating to the boundaries was addressed by both the Courts below on appreciation of the evidence on record and held that the plaintiff established the case for title to the suit schedule property. Since the



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concurrent findings are on the appreciation of facts, this Court has no power to interfere with the said concurrent findings under Section 100 CPC. The learned counsel for the first respondent would further submit that when both the Courts below considered the oral and documentary evidence and gave a finding that the plaintiff established title and the defendants made the fraudulent transaction, it is proper to declare the document as null and void and the contention of the learned counsel for the appellants that without seeking declaration, injunction decree could not have been granted, is not legally correct, when the plaintiff established the title to the suit schedule property through Ex.A1. The learned counsel for the first respondent would further submit that the discrepancy made in the settlement deed and the patta, is immaterial, when the document showed a larger extent. Even though, P.W.2 deposed that they are ancestral properties, no document was produced to prove the ancestral title, which is not a ground to disbelieve Ex.A1, more particularly, P.W.3 was examined to substantiate the issuance of the said patta. The suit schedule property is admittedly a natham property, which is meant for the construction of the houses and the Government on the basis of the prolonged possession, granted patta in favour of P.W.2 and he executed the settlement deed in favour of her wife and both are in possession of the properties before and



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after execution of settlement. In the said circumstances, the plaintiff clearly established her title to the suit property through patta and the settlement deed executed by P.W.2 in favour of the plaintiff. Both the Courts below correctly decreed the suit. According to P.W.1 and P.W.2, the suit schedule properties are vacant land and hence, the possession follows title and there is no necessity to prove possession only on the basis of the revenue records.

15. The learned counsel for the first respondent would further submit that the boundaries disputed by the appellants, is not correct. All the aspects were considered by the learned Trial Judge and the learned First Appellate Judge. The additional document in O.S.No.60 of 2017 is not relating to the suit schedule property and there can not be any reliance on the said decree. So far as the revenue record is concerned, appeal proceeding is pending and no further adjudication order was passed and that is not also a relevant document to decide the issue in the present case. When the concurrent findings have been rendered relating to the title and possession without any perversity, this Court has no power to interfere with concurrent findings. Hence, he seeks to confirm the concurrent findings rendered by both the Courts below.



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16. This Court considered the rival submissions and the detailed written submissions and oral arguments made by both the counsel and also perused the materials available on record.

17. Both the plaintiff and the defendants claimed title over the property situated in Survey No.178/52. The plaintiff claimed the title on the basis of Ex.A1. Ex.A1 is the natham patta, which was granted in favour of the plaintiff's husband in the year 1997. On the basis of patta, P.W.2 executed a settlement deed in favour of the plaintiff. According to P.W.3 Tahsildar, the patta was granted only in respect of 621 square metre, but in the settlement deed, Ex.A.4, 647.19 square metre was shown, through which, the power agent filed the suit for injunction and declaration of the document executed by the second defendant in favour of fourth defendant as null and void. The fourth defendant obtained the sale deed only to an extent of 5.18 cents on 12.08.2010, vide Ex.B4. After obtaining sale deed, the third respondent had applied for building plan permission from the local authority, namely, D.W.2 and he obtained plan approval and constructed the house and they are in possession of the suit schedule property till date.



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18. The plaintiff's specific pleading is that the suit schedule property is the natham land and P.W.2 obtained patta by stating that they are in possession of the suit schedule property. It is the specific case of the defendants 1 and 2 that the patta was obtained behind their back and the suit was filed without any right and title over the property and also the patta was granted only to the extent 621 square metre and the document Ex.A.4, settlement deed executed by P.W.2 in favour of the first respondent is more than the extent covered under Ex.A1. According to the Tashildar, who is the highest officer in the Revenue Department at the Taluk level, specifically deposed that the patta was issued behind the back and the entire patta proceedings were not legally valid. When there was a serious allegation about the non-compliance of the principles of natural justice, the learned Trial Judge and the First Appellate Judge erroneously granted a decree holding that the plaintiff has proved the title through Ex.A2. In the considered opinion of this Court, when Ex.A1 only covers 621 square metre extent of the land, the plaintiff has no authority to execute any document to alienate the land more than the extent mentioned in Ex.A1. She is not entitled to claim more than the extent mentioned in Ex.A1 without any document. In view of the above, this Court is unable to concur with the findings of both the Courts below that the plaintiff



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established her case for cancellation of the document executed by the second defendant in favour of fifth defendant. When the patta only covers an extent of 621 square metre and the claim was made on the basis of the settlement deed, which did not tally with the extent mentioned in the patta, the Courts below ought to have dismissed the suit, without considering the defects in the defendants' document, namely, the appellants. The said approach is erroneous and perverse. It is the plaintiff who has to prove her case on the basis of her own evidence and the undisputed documents. Hence, this Court is inclined to interfere with the erroneous and perverse findings rendered by both the Courts below and the same has been fortified by the decision of the Hon'ble Supreme Court. There was no explanation on the side of the first respondent/plaintiff relating to the above said admitted question. As rightly argued by the learned counsel for the appellants, the plaintiff has not produced any document to show their ancestral right over the suit schedule property, except patta issued in the year 1997. P.W.2 admitted that he has not produced any document to show their possession also.

19. According to the learned counsel for the first respondent, when the title is established, possession also follows. This Court is unable to



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accept the said contention. The difference in measurements in Ex.A4 and Ex.A1, creates a doubt in the mind of this Court as to whether they are entitled for the suit claimed relief. Once the learned First Appellate Judge gave a finding that there was no document produced to prove the title and possession of the property, the first appellate Court ought to have dismissed the appeal without going into the contention of the defendants. The Hon'ble Supreme Court repeatedly reiterated the principle that the plaintiff must stand on his own legs and cannot rely on the weakness of the defendants' case. According to both the Courts below, there was a lacuna in the defendants' title and hence, the first respondent is entitled to the relief claimed in the plaint. As per Sections 101 to 103 of Indian Evidence Act, it is the duty of the plaintiff to prove the case independently and cannot rely on the weakness in the defendants' case and the same was emphasized by the Hon'ble Three Judges Bench of the Supreme Court in the case of **Jeet Mohinder Singh v. Harminder Singh Jassi**, reported in **(1999) 9 SCC 386** which reads as follows:

26... If the appellant has failed in discharging his own onus, he cannot bank upon the plea of non-examination of a witness by the respondent which witness was essentially a witness to be examined by the appellant in the facts and circumstances of the case. The appellant cannot be permitted to derive strength from the weakness, if any, of the respondent.



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*That set view also reiterated by the hon'ble supreme court
in 2014 4 CTC 471*

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20.Right from the beginning, the appellants raised a plea that injunction could not have been granted in favour of the plaintiff on the basis that the possession was not with the first respondent/plaintiff and possession was admittedly with the defendants, more particularly, third defendant, namely, first appellant herein. The appellants, after purchase, constructed the house by obtaining the plan approval from the panchayat, for which, he examined D.W.2, Executive Officer of the said panchayat. He clearly deposed about the plan approval and the construction. In view of the above circumstances, the learned First Appellate Judge and the Trial Judge failed to consider the basic principle that the plaintiff have not established title to the suit schedule property. This Court perused all the records and finds that once the learned First Appellate Judge gave a finding that they have not produced the previous title deed to prove title to the suit schedule property, they are not entitled to seek for declaratory relief. Apart from that, the plaintiff has also not come forward with clean hands. According to them, they obtained patta, Ex.A1 and on the basis of the said patta, the settlement deed was executed in favour of the plaintiff and she claimed title through the settlement deed. It is well settled law that



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the claim of title on the basis of the patta is not legally valid. Patta is not a title. More particularly, in this case, the said patta was obtained without any basic ancestral title document and in violation of the principle of natural justice without giving notice to the appellant and hence, the same is not a valid document to confer title.

21. Thus, both the Courts below committed error in appreciating the evidence, failed to consider the material portions of the witnesses' testimonies, wrongly shifted the burden on the defendant and overlooked the evidence supporting the defendants' case that they are in possession of the property which warrants the interference under Section 100 of C.P.C., as per the law laid down by the Hon'ble Supreme Court Hon'ble Supreme Court reported in **2021 10 Scale 416** in the case of **K.N.Nagarajappa and others vs. H.Narasimha Reddy** which reads as follows:

14. Undoubtedly, the jurisdiction which a High Court derives under Section 100 is based upon its framing of a substantial question of law. As a matter of law, it is axiomatic that the findings of the first appellate court are final. However, the rule that sans a substantial question of law, the High Courts cannot interfere with findings of the lower Court or concurrent findings of fact, is subject to two important caveats. The first is



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that, if the findings of fact are palpably perverse or outrage the conscience of the court; in other words, it flies on the face of logic that given the facts on the record, interference would be justified. The other is where the findings of fact may call for examination and be upset, in the limited circumstances spelt out in Section 103 CPC.

21.1. In the case of ***Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board*** reported in (2010) 13 SCC 216 has held as follows:

27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts.

Therefore, this Court is inclined to set aside the judgments of the Courts below.

22. The learned counsel for the appellants submitted that the appellants filed I.A.No.1 of 2020 under Order 41, Rule 27 to receive the



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documents, i.e., the judgment and decree in O.S.No.60 of 2017 dated 05.07.2018 filed by the second defendant against the plaintiff seeking the comprehensive relief of declaration and injunction and also the revenue proceedings, wherein it is stated that there was an enquiry pending to cancel the deed executed by P.W.2 in favour of the plaintiff. Since this Court has held that the concurrent findings of both the Courts below conferring the title and possession of the suit schedule property, is perverse and without evidence, these additional documents are not necessary to substantiate the said conclusion. In view of the above circumstances, this Court finds force in the arguments of the learned counsel for the appellants and all the questions of law are answered in favour of the appellants and against the first respondent.

23.In view of the above discussion, the second appeal deserves to be allowed.

24.Accordingly, this Second Appeal is allowed in the following terms:

The Judgement and decree passed in O.S.No.153 of 2012 on the file of the Additional District Munsif Court, Tuticorin, dated 14.09.2016



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confirmed in A.S.No.99 of 2016 on the file of the learned Sub Judge, Tuticorin, dated 28.09.2021, are hereby set aside and consequently the plaintiff is not entitled to any relief as claimed in the O.S.No.153 of 2012 on the file of the Additional District Munsif Court, Tuticorin.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Sub Judge, Tuticorin.
- 2.The Additional District Munsif, Tuticorin.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

cp/sbn

PRE-DELIVERY JUDGMENT MADE IN
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