



S.A(MD)Nos.196 and 208 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.02.2026

DELIVERED ON :02.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).Nos.196 and 208 of 2018

and

C.M.P.(MD)Nos.5100 and 5438 of 2018

S.A.(MD)No.196 of 2018:

1.S.Murugan

2.M.Sevantheswari

: Appellants/Appellants/Defendants

Vs.

Rengammal(died)

: Respondent/Respondent/
Plaintiff

2.A.Muthukumar

3.Indira

4.A.Kannan

(Respondents 2 to 4 are brought on
record as LR's of the deceased sole
respondent vide order dated 11.08.2021
made in C.M.P.(MD)Nos.4322, 4323
and 4324 of 2021)



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 01.09.2017 in Cross Appeal in A.S.No.82 of 2014, on the file of the learned Subordinate Judge, Sivagangai, confirming the judgment and decree dated 05.02.2014, passed by the learned District Munsif, Sivagangai in the Counter Claim in O.S.No.149 of 2011.

For Appellants : Mr.J.Barathan
For Respondents : Mr.N.Rahamadullah
for Ms.P.Kalaiyarasi Bharathi
for R.2 to R.4

S.A.(MD)No.208 of 2018:

Rengammal (died) : Appellant/Appellant/Plaintiff

2.Alagu
3.A.Muthukumar
4.A.Chandrasekar
(Appellants 2 to 4 are brought on
record as LR's of the deceased sole
appellant vide order dated 09.07.2024
made in C.M.P.(MD)Nos.8202, 8204 and
8205 of 2024)

Vs.

1.S.Murugan
2.M.Sevantheswari : Respondents/Respondents/
Defendants



S.A(MD)Nos.196 and 208 of 2018

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 01.09.2017 in A.S.No.40 of 2014, on the file of the Subordinate Judge, Sivagangai, confirming the judgment and decree, dated 05.02.2014, passed in O.S.No.149 of 2011, on the file of the District Munsif Court, Sivagangai.

For Appellants : Mr.N.Rahamadullah
for Ms.P.Kalaiyarasi Bharathi

For Respondents : Mr.J.Barathan
for R.2 to R.4

COMMON JUDGMENT

These Second Appeals are directed against the common judgment passed in A.S.No.40 of 2014 and Cross Appeal in A.S.No.82 of 2014, dated 01.09.2017, on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree passed in O.S.No.149 of 2011 and the counter claim filed therein dated 05.02.2014, on the file of the Court of the District Munsif, Sivagangai.

2. The appellants in S.A.(MD)No.196 of 2018 are the defendants. Originally, the sole appellant in S.A.(MD)No.208 of 2018 is the plaintiff and pending Second Appeal, the appellant/plaintiff died and her legal representatives



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came on record as the appellants 2 to 5. The plaintiff filed a suit in O.S.No.149 of 2011 before the District Munsif, Sivagangai claiming permanent injunction restraining the defendants and their men from any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for mandatory injunction for removal of encroachments made by the defendants in the suit property.

3. The defendants have filed counter claim claiming declaration that a portion of the suit property is a common lane and for permanent injunction restraining the plaintiff from in any way interfering with the defendants' peaceful possession and enjoyment of the suit common lane.

4. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

5. The case of the plaintiff in brief is as follows:

(a) The suit property originally belonged to the plaintiff's father, one Karuppaiya Konar, by virtue of a sale deed dated 21.01.1935. In the said property, the plaintiff's father had constructed a tiled house, resided therein and obtained patta during the settlement period. He had also purchased another property



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situated on the west of the suit property under a sale deed dated 14.10.1942. The said Karuppaiya Konar died on 06.05.1975. After his demise, in an oral partition said to have taken place between the plaintiff and her sister in the year 1985, the suit property was allotted to the share of the plaintiff, whereas the property purchased under the sale deed dated 14.10.1942 was allotted to the share of her sister, namely, Sri Rengammal. Thereafter, the plaintiff demolished the tiled house and put up a concrete building consisting of two floors and has been in possession and enjoyment of the same with the entrance facing east. The plaintiff has also been using the vacant portion lying on the extreme eastern side of the property for the purpose of access to her house and the backyard portion situated further south of her house. It is her further case that she had erected a Peedam for their family deity, namely, Panaiyadi Amman, on the extreme eastern boundary and has been worshipping the same.

(b) According to the plaintiff, the defendants had demolished their house situated further east of the suit property and they have access to their property from the northern side through Manimakalai Street. Neither the defendants nor their predecessors-in-title had any right or entitlement of pathway over the suit property.

(c) It is the further case of the plaintiff that the defendants commenced construction in their property from 15.07.2011 and attempted to erect a wall on



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the edge of their western boundary. When the plaintiff approached the defendants and requested them to leave some space while constructing the western wall, the defendants ignored the same and proceeded with the construction. Hence, the plaintiff took steps to survey the suit property and the same was surveyed on 25.07.2011. However, despite the objections raised by the plaintiff, the defendants proceeded with the construction and on 31.08.2011 put up sunshades and windows by allegedly encroaching upon the suit property. The plaintiff lodged a complaint before the police on 01.09.2011, pursuant to which the defendants were warned by the police. Nevertheless, according to the plaintiff, the defendants continued to claim right and entitlement over the suit property, interfered with her peaceful possession and enjoyment and also attempted to demolish the Peedam erected by her. Hence, the plaintiff was constrained to institute the suit seeking the reliefs of permanent injunction and mandatory injunction.

6. The defence of the defendants in short is as follows:

(a) The description of the suit property furnished by the plaintiff is wholly incorrect and confusing. According to the defendants, the plaintiff has not furnished the East-West and North-South measurements of her property, nor has she stated the exact measurements of the concrete building and the structure



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situated further east thereof. It is their specific contention that the plaintiff ought to have sought the relief of declaration with regard to the suit property and that the suit filed merely for permanent injunction and mandatory injunction is not maintainable. It is further contended that in the plaintiff's title deed, the western boundary has been described as a common lane, but the same has not been reflected in the rough sketch appended to the plaint. According to the defendants, the vacant portion situated on the eastern side of the plaintiff's house, lying between the houses of the plaintiff and the defendants, is a common lane and the same has been enjoyed as such by the defendants and their predecessors-in-title for over 60 years. The said lane, according to them, is not the exclusive property of the plaintiff, and the tiled house of the defendants had been constructed in such a manner that the eaves projection thereof extends into the said common lane. It is further stated that the defendants' old tiled house situated on the southern side of their latrine portion has its main entrance facing the common lane on the west and that the said house had two sunshades and two windows opening towards the suit lane. The plaintiff, according to the defendants, has deliberately suppressed the true physical features of the property. It is their further case that the plaintiff had never objected to the enjoyment of the lane by the defendants and that only when the defendants demolished their tiled house and commenced new construction, the plaintiff, under the guise that the suit lane is her exclusive



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property, raised objections. The defendants would contend that they have every right to enjoy the common lane while putting up construction in their property.

The police complaint lodged by the plaintiff is stated to be false and, according to the defendants, after perusing the documents of both parties, the police closed the complaint and directed the plaintiff to work out her remedy before the competent civil Court.

(b) It is the further case of the defendants that they purchased their property situated further east of the suit property from one Jeya under a sale deed dated 31.08.2009, who in turn had purchased the same from one Kuppammal under a sale deed dated 24.07.1971, and the said Kuppammal had purchased the property from one Angammal. The southern portion of the defendants' property was purchased by the father of the first defendant, namely, Sundaram Servai, under a sale deed dated 22.03.1960. According to the defendants, in all the above registered documents, the disputed portion has been referred to as a common lane. It is their case that the said property has been enjoyed as a common lane for a long period by the parties and their predecessors and that despite being fully aware of the same, the plaintiff has instituted the suit only with an oblique motive to extract money from the defendants. The defendants would further contend that since they and their predecessors have been enjoying the suit property as a common lane for over 60 years, and in any event for more than 43 years as



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evidenced by the registered documents, they have also perfected title to the same by adverse possession. Hence, according to them, the suit lane measuring 6 feet East-West and 108 feet North-South is liable to be declared as a common lane and the plaintiff is to be restrained from interfering with the defendants' enjoyment thereof. On the said basis, the defendants have filed the counter claim.

7. The learned trial Judge, upon considering the pleadings of both parties framed the following issues:

- (1) Whether the plaintiff is in lawful possession of the suit property?
- (2) Whether the plaintiff is entitled to perpetual injunction as prayed for?
- (3) Whether the plaintiff is entitled to mandatory injunction as prayed for?
- (4) Whether the defendants are entitled to counter claim as prayed for?
- (5) To what other reliefs?

8. During trial, the plaintiff examined herself as P.W.1 and two other witnesses as P.W.2 and P.W.3 respectively and exhibited seven documents as Exs.A.1 to A.7. The defendants examined the first defendant as D.W.1 and one other witness as D.W.2 and exhibited ten documents as Exs.B.1 to B.10. An Advocate Commissioner appointed before the trial Court came to be examined as Court witness – C.W.1 and three documents came to be exhibited through him as



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Exs.C.1 to C.3. Seven witness documents came to be exhibited as Exs.X.1 to

X.7. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree dated 05.02.2014, dismissing the suit as well as the counter claim. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal in A.S.No.40 of 2014, challenging the dismissal of the suit and the defendants filed a cross appeal in Cross Appeal No.82 of 2014, challenging the dismissal of the counter claim and the learned Subordinate Judge, Sivagangai, upon considering the materials available on record and on hearing the arguments of both sides, passed a common judgment dated 01.09.2017, dismissing the appeal as well as the cross appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal as well as the cross appeal, the plaintiff and the defendants have preferred the present Second Appeals.

9. At the time of admission of the Second Appeal in S.A.(MD)No.196 of 2018, the following Substantial Questions of Law came to be formulated:

“ 1. Whether the Courts below failed to see that in the absence of any specific defence to counter claim in the form of written



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statement or rejoinder, the counter claim stands proved in view of

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Order VIII Rule 6E of Civil Procedure Code?

2. Whether the Courts below erred in dismissing the counter claim to declare the suit property as public lane, especially where the Courts below have given findings that the plaintiff has failed to prove his title to the suit property and where both parties are found to be not exclusive owners of the suit property?

3. Whether the Courts below failed to see that admission is the best piece of evidence in view of Section 58 of the Indian Evidence Act, where P.W.1 admits that the suit property is a public lane?”

10. At the time of admission of the Second Appeal in S.A.(MD)No.208 of 2018, the following Substantial Questions of Law came to be formulated:

“1. Whether the Courts below are correct in dismissing the suit on the basis of erroneous view that the appellant did not prove the case especially when the same was proved by the appellant under Ex.A.2 and under Exs.X.1 to X.4 which shows that the lane is exclusively belongs to the appellant?

2. When the Courts below are correct in dismissing the suit on the basis that the appellant did not prove the land belongs to her, when



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the same was admitted by the respondent as D.W.1 that he did not left the space on the western side of his property?”

11. Sivagangai District, Sivagangai Town, Ward No.46, measuring 0.025.0 sqmt of site and the terraced house facing North and East therein bearing Door Nos.10 and 10A and also the pathway leading to their backyard is the suit property. It is not in dispute that Menimekalai street runs East West and the properties of the plaintiff and the defendants are situated on the south of the said Manimakalai street. As already pointed out, it is the specific case of the plaintiff that the entire suit property is owned by her and while constructing a terrace building in the suit property, she had left out vacant space for reaching her backyard portions. But according to the defendants, the alleged vacant site situated on the east of the plaintiff's buildings and on the west of the defendants' property is a common lane and the defendants and their predecessors had been using the said common lane for more than 60 years.

12. It is clearly evident from the documents produced by both parties and also the Commissioner's report and plan and also admission made by the plaintiff herself that there existed a lane portion in between the properties of the plaintiff and the defendants. To put it in short, the plaintiff has claimed exclusive



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ownership over the disputed lane portion, whereas the defendants have claimed that it is a common lane for both parties to reach their respective backyard portions. Hence, the core issue that arises for consideration is not merely one to interference, but relates to the very character and the legal status of the stripe of the lane lying between the properties of both parties. While the plaintiff claimed that the said portion forms part of her property, the defendants contended that it is a common lane pathway for use by both sides.

13. It is pertinent to note that under Ex.A.2 sale deed, the plaintiff is shown to be owning land measuring East-West 35 காலடி and North-South 105 காலடி and, on conversion into feet, the East-West measurement of the plaintiff's property would come to 26.25 feet. As rightly pointed out by the learned Counsel for the defendants, the plaintiff has nowhere stated either in the plaint or in the rough sketch appended thereto about the East-West measurement of the building put up by her. It is also pertinent to mention that the learned Advocate Commissioner, who inspected the property, has likewise not noted the East-West measurement of the plaintiff's building.

14. It is the specific case of the defendants that the East-West measurement of the plaintiff's house is 24.5 feet, the East-West measurement of the defendants'



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house is 19 feet and the width of the disputed common pathway is 6 feet; and that the total of the plaintiff's house measurement and the disputed pathway would come to 30.5 feet, whereas the plaintiff is entitled only to 26.25 feet under Ex.A.2. It is their further case that though D.W.1 was cross-examined at length, no suggestion was put disputing the said measurements. It is also the specific case of the defendants that in their title deed, Ex.B.2 dated 31.08.2009, in the parent title deeds under Exs.B.3 to B.5 and also in the mortgage deeds under Exs.B.8 to B.10, the right of the defendants to use the disputed lane has been specifically referred to and, more particularly, in the mortgage deeds Exs.B.8 to B.10, the disputed pathway has been clearly described as a common lane. It is relevant to extract the following recital found in the schedule of property in Ex.B.2:

“ எ: கந்தரம் வீட்டுக்கு மல்புரமும் கருப்பையாகுகானார் வீட்டுக்கு கீழ்புரமும் உள்ள வோதுப்பாதை புழக்கிக்கொள்ளும் பரத்தியம் உட்பட.”

It is pertinent to mention that similar recitals are found in Exs.B.3 dated 24.08.1978 and Ex.B.4 dated 24.02.1968 and Ex.B.5 dated 23.02.1960, which read as follows:

“ எ: கந்தரம் ஸர்வை வீட்டுக்கு மல்புரமும் கருப்பையாகுகானார் வீட்டுக்கு கீழ்புரமும் உள்ள வோதுச்சந்து பாதை பரத்தியம்.”

Likewise in Exs.B.8 and B.9 mortgage deeds dated 08.09.1950 and 27.04.1953, it



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has been mentioned as follows:

“கருப்பய்யா வீட்டுக்கும் பொதுச்சந்துக்கும் (கிழக்கு) ”

and in Ex.B.10 dated 04.05.1960, it has been stated as

“மல்புரம் பொதுச்சந்துப்பாத்தியம்”

15. According to the defendants, the tiled house situated further south of their newly constructed building has its doorway facing the suit lane and the eaves projection thereof also extends into the suit lane. As rightly pointed out by the learned Counsel for the defendants, the plaintiff, while deposing as P.W.1, has admitted in her cross-examination that the doorway of the tiled house situated on the further south of the defendants' new construction is facing the suit lane and that the eaves projection also extends into the suit lane. Considering the above, the learned trial Judge has specifically observed that the overwhelming documentary evidence relied on by the defendants would clearly establish that they have been enjoying a right of user over the suit lane for more than 60 years.

16. The learned Counsel for the plaintiff would contend that the survey sketches marked under Exs.X.1 to X.4 do not separately classify the disputed pathway as a common lane. However, as rightly pointed out by the learned Counsel for the defendants, P.W.3, through whom Exs.X.1 to X.4 were marked,



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has categorically admitted that the said sketches were neither notified nor published in the Government Gazette. Therefore, much evidentiary value cannot be attached to the said documents for deciding the nature and character of the disputed pathway.

17. As already pointed out, since the learned Advocate Commissioner has not measured the East-West extent of the plaintiff's building with reference to the dimensions found in the title deed, the Commissioner's report can only establish the physical existence of a lane measuring about 5½ feet on the northern side and 8 feet on the southern side. The said report cannot conclusively determine whether the disputed lane falls wholly within the plaintiff's total extent or whether it exists as a common strip between the properties. As rightly held by the Courts below, the plaintiff has failed to establish by acceptable evidence that the disputed lane forms part of her property. In the absence of clear proof regarding the identity and extent of the property, the plaintiff cannot succeed in seeking a decree for permanent or mandatory injunction.

18. As already pointed out, the defendants have taken a stand that the suit for permanent and mandatory injunction without seeking declaratory relief is not legally maintainable. The governing principle on maintainability is settled by



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the Hon'ble Supreme Court in *Anathula Sudhakar Vs. P.Buchi Reddy (dead)* by

LRs., and others reported in **(2008)4 SCC 594** relied on by the learned Counsel for the defendants, where the plaintiff is in possession and the dispute is merely about the interference, a bare injunction suit may lie, but where title is under cloud, or the defendant asserts a rival right over the very property, the proper remedy is a suit for declaration with consequential injunction.

19. In the present case, the dispute was not a simple case of obstruction or minor encroachment. The defendants specifically pleaded that the lane lying between the two properties was a common lane, referred to in their sale deed under Ex.B.2 and also in earlier parent and mortgage deeds dating back to 1950, 1953, 1960, 1969, 1968, 1978. Once such a rival claim was raised and the very character of the disputed lane became contentious, the plaintiff could not succeed merely by asking for permanent and mandatory injunction, unless she first established in a declaratory form, that the lane formed part of her property. In view of the above, the contention that the plaintiff ought to have sought for declaratory relief is legally substantial and sustainable.

20. No doubt, as rightly pointed out by the learned Counsel for the



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plaintiff, the defendants in the written statement have claimed that the disputed lane is a common lane and in the very same written statement, they have alleged that they have perfected their title to the disputed lane by adverse possession. They have also now claimed right on the basis of quasi easement. No doubt, a right of way can be claimed either as an easement of necessity / quasi easement under Section 13 or as an easement acquired by prescription under Section 15 of Easements Act. Section 13 contemplates such rights when one property is severed from another by transfer or partition and an apparent and continuous or necessary easement is required for beneficial enjoyment. Section 15 requires open, peaceful, as of right enjoyment without interruption for 20 years ending within two years before the institution of the suit.

21. In the case on hand, as already pointed out, though the defendants have alleged that it is a common lane, they have neither pleaded nor shown the source of that common right. Mere long use does not by itself prove that the title in the lane is common. Regarding quasi easement, the defendants must establish the foundational facts contemplated under Section 13 viz., the unity of ownership at an earlier point severance by transfer or partition and the existence of an apparent / necessary right of user at the time of severance. If the defendants rely on prescription, they must plead and prove continuous, open, as of right enjoyment



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for the statutory period. The defendants have neither laid a proper foundation for claiming an easement by prescription nor established the requirements of a quasi easement. Mere long user, however, cannot by itself result in a declaration of common ownership and therefore, the Courts below were justified in declining the declaratory relief sought in the counter claim.

22. However the matter does not rest therein. The materials available on record, including the documentary evidence relied upon by the defendants and the Advocate Commissioner's report, clearly establish the existence of a lane between the properties and the long, continuous and uninterrupted user thereof by the defendants and their predecessors for 60 years. The width of the lane as noted by the Advocate Commissioner also probablise its existence as a passage. In civil cases, the rights of parties are to be adjudged on the touchstone of preponderance of probabilities and the evidence on record tilts in favour of the existence of such a passage and its user by the defendants.

23. At the same time, the plaintiff has failed to establish that the disputed portion exclusively forms part of her property so as to entitle her to completely exclude the defendants from its use. If both the appeals are dismissed and thereby confirming the dismissal of both the suit as well as the counter claim, it



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would result in uncertainty and would inevitably give rise to further litigation between the parties. More importantly, such an approach would enable the plaintiff, who has not established her title over the disputed portion, to obstruct a long standing user of the defendants.

24. It is settled law that even in the absence of proof of title, long and settled possession or user is entitled to protection against unlawful interference. It is pertinent to note that the Courts are not powerless in such situations and are empowered to moved the relief in order to do complete justice between the parties. No doubt, the relief sought for in a counter claim need not be granted in its entirety, it can be suitably tailored to balance the equities and preserve the existing state of affairs.

25. In the case on hand, though the defendants are not entitled to a declaration that the lane is a common lane by title, the ends of justice would be met by protecting their existing user of the said lane as a passage. Such projection would neither convert title nor create any easementary right in their favour, but would merely preserve the status quo and prevent obstruction of a long standing usage. At this juncture it is also necessary to record the submission



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made by the learned Counsel for the defendants in the form of undertaking that the defendants will not encroach into the disputed common pathway by putting up any construction over the same and that they would use the same only without causing any disturbance or nuisance to the plaintiff. Accordingly, while confirming the dismissal of the plaintiff's suit and also the rejection of the declaratory relief sought in the counter claim, this Court is inclined to modify the decree to the limited extent of granting an injunction restraining the plaintiff from interfering with the defendants' existing use of the suit lane as a passage.

26. In the result, the Second Appeal filed by the plaintiff in S.A.(MD)No. 208 of 2018 is dismissed. The Second Appeal filed by the defendants in S.A. (MD)No.196 of 2018 is partly allowed. The judgment and decree of the Courts below are confirmed, insofar as they related to the dismissal of the plaintiff's suit and the rejection of the declaratory relief sought in the counter claim. However, the judgment and decree are modified to the limited extent that there shall be a permanent injunction restraining the plaintiff from in any manner interfering with the defendants' existence use of the suit lane as a passage. It is made clear that the above direction is confined to protect all the existing usage of the suit lane as established on record and shall not to be construed as recognising any title in favour of either party. Consequently, the connected Miscellaneous Petitions are



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closed. The parties are directed to bear their own costs.

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02.04.2026

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

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To:

- 1.The Subordinate Court, Sivagangai.
2. The District Munsif Court, Sivagangai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**PRE-DELIVERY JUDGMENT MADE IN
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02.04.2026