

SA(MD). No.156 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

Reserved On : 17.03.2026

Delivered on : 30.03.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.156 of 2017
and
CMP(MD)No.9787 of 2024

1.Marakathan

2.Boominathan

3.Ramanathan

4.Vishwanathan

5.Johnsi Rani

... Appellants/ Respondents /Defendants 2 to 5

Vs.

Ambika

... Respondent / Appellant / Plaintiff

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the Sub Court, Paramakudi, passed in A.S.No.76 of 2014 dated 29.08.2016 reversing the decree and judgment of the District Munsif, Paramakudi, passed in O.S.No.107 of 2007 dated 14.10.2014.



SA(MD). No.156 of 2017

WEB COPY

For Appellants : Mr.G.Gomathi Sankar

For Respondent : Mr.J.Bharathan
for Mr.M.S.Jeyakarthick

JUDGMENT

The unsuccessful defendants, initially having succeeded before the trial Court and the findings of the trial Court having been reversed by the First Appellate Court, are the appellants.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The facts that are necessary for deciding the present second appeal, briefly:

Pleadings:

The Complaint in brief::

3.1. The suit property and adjacent northern side property measuring 20 feet by 60 feet originally belonged to Ramanatha Thevar.



SA(MD). No.156 of 2017

WEB COPY

After the demise of RamanathaThevar, his sons ChellaThevar and ArumugaThevar became entitled to the same. ChellaThevar had two wives, viz., Rakkammal (first wife) and Irulayee (second wife). Through the first wife, ChellaThevar was blessed with a son Samidurai and a daughter Lakshmi. Samidurai was in turn blessed with Ambika (first plaintiff), Porkodi, Chitra, Murugan and Karikalan. Murugan passed away in the year 2000 leaving behind his wife Muthunatchiyar and children Pookumar and Ajith.

3.2. After the demise of Ramanatha Thevar, his sons, Chella Thevar and Arumuga Thevar, partitioned the property into two equal $\frac{1}{2}$ and northern $\frac{1}{2}$ being allotted to ArumugaThevar and southern $\frac{1}{2}$ being allotted to ChellaThevar. The son of ChellaThevar, Samidurai filed a suit for partition in O.sSNo.42 of 1977 in respect of the southern $\frac{1}{2}$ allotted to Chella Thevar. A preliminary decree came to be passed on 28.02.1978 and subsequently a final decree was also passed. Chella Thevar executed a Will on 31.10.1988, bequeathing his properties to his daughter, Lakshmi and subsequent to the demise of Chella Thevar,



SA(MD). No.156 of 2017

WEB COPY

Lakshmi has been in peaceful possession and enjoyment of the property bequeathed to her. After the demise of Samidurai, in respect of the properties allotted to Samidurai in the partition in an by a Family arrangement, the legal heirs of Samidurai have amicably divided the property.

3.3. The plaintiff has purchased the share of Lakshmi as well as the share of Murugan from his legal heirs by registered sale deeds dated 25.01.2006 and 12.10.2007 respectively. There was a thatched house in the suit property, which collapsed due to heavy rains. When the plaintiff attempted to reconstruct the same, the defendant objected, contending that he was the owner of the property and that the plaintiff had no right over it. Hence, the suit.

4. Written statement filed by the defendant in brief:

The property measuring 60 feet and 30 feet was originally belonging to Ramanatha Thevar. Though there was a partition after the demise of Ramanatha Thevar, between his two sons, viz., ChellaThevar



SA(MD). No.156 of 2017

WEB COPY

and ArumugaThevar about 50 years back, in the said partition, the entire property was allotted to the share of the defendant ArumugaThevar and it is the defendant, who has been in possession of the same. The defendant denies the allegation that the plaintiff is in possession and also contended that in respect of survey No.608/2, the lands were assigned in favour of the defendant and patta was also issued wayback in the year 1992 and lands in survey No.608/1, alongwith survey No.608/2 have been in the absolute possession and enjoyment of the defendant for the past several decades. The defendant denies the entitlement of the plaintiff and contends that the sale deeds executed in favour of the plaintiff were not valid, and cannot rely upon the same to assert his title. The defendant therefore sought for dismissal of the suit.

5.Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1. வாதி சொல்வது போல் தாவா சொத்து வாதிக்கு பாத்தியப்பட்டு வாதியின் அனுபவத்தில் இருந்து வருகிறது என்பது உண்மையா?



SA(MD). No.156 of 2017

WEB COPY

2. வாதி கோரும் பரிகாரத்தை பெற வாதி தகுதி
படைத்தவரா,
3. வேறு என்ன பரிகாரம் வாதிக்கு கிடைக்கக்
கூடியது?

6.Trial:

At trial, on the side of the plaintiff, six witnesses were examined as P.W.1 to P.W.6 and 13 documents were marked Ex.A1 to Ex.A13. On the side of the defendant, three witnesses were examined as D.W.1 to D.W.3 and eight documents were marked as Ex.B1 to Ex.B8. Ex.C1 and Ex.C2 were marked as Court documents, apart from Ex.X1 and Ex.X2 were marked.

7.Decision of the trial Court:

The trial Court, on assessing oral and documentary evidence available on record, dismissed the suit, finding that the plaintiff had not established the oral partition between ArumugaThevar and ChinnaThevar and that the judgment and decree passed in the suit for partition filed by



SA(MD). No.156 of 2017

WEB COPY

the son of Chella Thevar, viz., Samidurai, was neither binding on Arumuga Thevar, as he was not a party to the said proceedings; nor are binding on the defendant, Chelladurai and held that the plaintiff or his predecessor in interest had not taken any steps to challenge the patta and ultimately found that the plaintiff was not entitled to the suit reliefs.

8.Decision of the First Appellate Court:

Challenging the judgment and decree of the trial Court, the plaintiff has filed an appeal in A.S.No.7 of 2014, before the Sub Court, Paramakudi. On appeal, the first Appellate Court, however, reversed the findings of the trial Court and held that, in view of the defendants' admission of the oral partition, the burden lay upon the defendants to establish that, under such partition, the entire property, including the suit property, had been allotted to them. Upon finding that the defendants had failed to discharge this burden, the Court allowed the appeal and consequently decreed the suit as prayed for.



SA(MD). No.156 of 2017

WEB COPY

9. Present appeals:

As against the reversal findings of the First Appellate Court, the defendants have filed the present second appeal. Along with the second appeal, an application has been taken out by the plaintiff under Order 41 Rule 27 CPC in CMP(MD)No.9787 of 2024, seeking to mark the order passed by the Sub Collector on 14.03.2018 as additional evidence, in and by which the assessment patta issued in Ex.B1 favouring the defendants, has been cancelled.

10. Substantial questions of law:

On 23.03.2017, this Court admitted the Second Appeal on the following substantial questions of law:

1. Whether the plaintiff's vendor having title to execute the sale deed in Ex.A5 and Ex.A6 in favour of plaintiff?
2. Whether the Will was proved as per Section 68 of the Evidence Act?



SA(MD). No.156 of 2017

WEB COPY

11. I have heard Mr.G.Gomathi Sankar, learned counsel for the appellants and Mr.J.Bharathan, for Mr.M.S.Jeyakarthick, learned counsel for the respondent.

12. Arguments of the learned counsel for the appellants:

12.1. Mr.G.Gomathi Sankar, learned counsle for the appellants would contend as follows:

1. The plaintiff cannot place any reliance on the suit for partition filed by Samidurai against his father Chelladurai as the defendant was not made a party to the said suit.

2. Even assuming that there was a preliminary decree and also final decree passed, the parties have not taken possession of the respective allotments in terms of the final decree

12.2. The plaintiff claimed to have purchased the share of Lakshmi, which she got under Will from her father ChellaThevar. However, the said Will has not been proved in a manner of known to law and none of the attesting witnesses were examined.



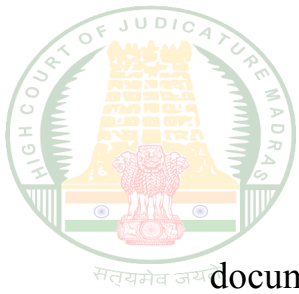
SA(MD). No.156 of 2017

WEB COPY

12.3. In fact, the learned counsel would further contend that the Will was not even marked by the plaintiff in her evidence, and that it was only much later, marked as Ex.X1. He would take me through the evidence of P.W.1 and P.W.2 especially, their cross examination, and point out to the various admissions of the said witnesses with regard to the possession of the suit property being with the defendants.

12.4. He further contends that though the defendant was issued an assessment of patta Ex.B1 wayback in the year 1992, the predecessor in interest of the plaintiff, they did not take steps to cancel the said patta despite having said knowledge.

12.5. As regards the application for adducing evidence, the learned counsel would contend that document which is sought to be produced is pertaining to survey No.608/2, which is not the subject matter of suit property and it is only a natham poromboke land which is occupied by the father of the defendants and therefore, it was not even a necessary



SA(MD). No.156 of 2017

document to decide the second appeal which revolves around survey No. 608/1. The learned counsel would pray for the appeal being allowed and CMP being dismissed.

13.Arguments of the learned counsel for the contesting respondent:

13.1. Per contra, Mr. J.Bharathan, learned counsel for the contesting respondent would invite my attention to the schedule in the plaint, viz., the suit property to re-enforce the case of the plaintiff that the dispute was only pertaining to the share allotted to ChellaThevar in an oral partition between himself and his brother Arumuga Thevar, viz., the first defendant in the suit. He would further contend that the Will, purportedly bequeathing a portion of the property to the daughter Lakshmi, does not constitute a relevant circumstance in the facts of the present case and insofar as the legal heirs of Chinna Thevar, according to Mr.J.Bharatan, there is no dispute and none of them questioned the entitlement of the respondent / plaintiff.



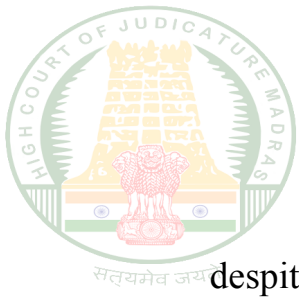
SA(MD). No.156 of 2017

WEB COPY

13.2. Taking me through the evidence of P.W.1, the defendants' cross examination, Mr.J.Bharathan would state that in the written statement as well as the proof affidavit the defendants have categorically admitted the factum of the entitlement of Arumuga Thevar, S/o.Ramanatha Thevar and the defendant had admitted to an oral partition. When the defendant claims that in the said oral partition. The entire property was allotted to him and not in two equal halves, the burden would certainly be on the defendant to establish the said allotment. He would therefore stated that the first Appellate Court had rightly placed the burden on the defendant, which the trial court has erroneously placed on the plaintiff.

13.3. The learned counsel would further rely on the decision of this Court in ***Ponniammal @ Ponnammal V. Kuppusamy and others*** reported in ***2011-4-CTC-74***.

14.1. Though patta viz.,Ex.B1 had been issued in favour of the defendants as early as in 1995, the plaintiff's predecessor-in-interest,



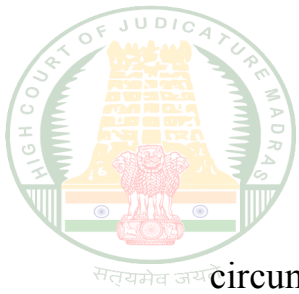
SA(MD). No.156 of 2017

WEB COPY

despite having knowledge of the same, the same has not been challenged and no steps have been taken to cancel the said patta.

14.2. As regards the application for adducing additional evidence, the learned counsel would contend that the document sought to be produced relates to Survey No.608/2, which is not the subject matter of the suit property. It is further submitted that the said land is only a natham poramboke, allegedly occupied by the father of the fourth defendant. Therefore, the document is neither relevant nor necessary for deciding the second appeal, which pertains to Survey No.608/1. Hence, the application in CMP(MD)No.9787 of 2024 filed by the plaintiff deserves to be dismissed.

14. Referring to the Advocate Commissioner's report and the sketch filed in Ex.C1 and Ex.C2, Mr.J.Bharathan, learned counsel would *prima facie* find that there has been a division of the total extent into two halves, namely the southern and northern portions in Survey No.608/1, and the same is established on a preponderance of probabilities. In such



SA(MD). No.156 of 2017

WEB COPY

circumstances, the learned counsel would contend that when the plaintiff failed to establish his claim of having been allotted the entire property, then the first Appellate Court had rightly dismissed the suit.

15. Mr.J.Bharathan, learned counsel would also refer to the final decree in the earlier suit marked as Ex.A4 where there is a clear reference to the property on the northern side being allotted to Arumuga Thevar. In this context, it is his argument that the said suit was wayback in the year 1977 and therefore, the appellants cannot even allege that the suit was filed as a collusive *lis* to knock off the property in favour of the appellants/defendants. Referring to Ex.B1, Mr.J.Bharathan, learned counsel would state that the assessment patta was issued to the defendants, no doubt in the year 1992. However, subsequently, it has been cancelled pending this appeal and therefore, it is sought to be adduced as additional evidence. Further, Mr.J.Bharathan, learned counsel contend that the said patta, in any event, does not pertain to the suit property, which lies in Survey No.608/1 alone. He would further contend that the trial Court has erroneously placed reliance on Ex.B1 to non-suit



SA(MD). No.156 of 2017

the plaintiff, which error has been corrected by the first Appellate Court.

WEB COPY

Mr.J.Bharathan, learned counsel would state that the plaintiff has also exhibited the property tax receipts and EB receipts to evidence possession of the suit property. Further he would invite my attention to Ex.B4 patta, which has been issued in the name of the defendant mentioning new survey No.608/1. However, it is the submission of Mr.J.Bharathan, that the said document was only obtained in the year 2014, pending the suit and therefore, no weightage can be attached to the said document. Lastly, Mr.J.Bharathan, would invite my attention to cross of P.W.1 by the learned counsel for the defendants, where a suggestion has been put with regard to the division of the property into two halves viz., northern half and southern half each, between the two sons Chella Thevar and Arumuga Thevar. He would therefore state that suggestion put by the defendants to the plaintiff is fatal and he would therefore state that the first appellate Court has not committed any error in reversing the erroneous findings arrived at by the trial Court.



SA(MD). No.156 of 2017

WEB COPY

16. I have carefully considered the submissions of the learned counsel for the parties.

17. Discussion:

17.1. With regard to CMP(MD)No.9787 of 2024, which has been filed for adducing additional evidence, the order of the Sub Collector dated 14.03.2018, pending the present second appeal cancelling Ex.B1 assessment patta issued in the name of the defendant is sought to be adduced as additional evidence.

17.2. As rightly contended by Mr.G.Gomathi Sankar, learned counsel, the suit property is admittedly situated in survey No.608/1 and does not pertain to survey No.608/2 and therefore, there is no necessity for receiving the additional document.

18. On the contrary, it is the case of Mr.J.Bharathan, learned counsel for the respondent / plaintiff that the trial Court had non-suited



SA(MD). No.156 of 2017

WEB COPY

the plaintiff solely on the strength of Ex.B1 patta and therefore, it became necessary for the respondents/defendants to bring to the notice of this Court the subsequent material, viz., the cancellation of Ex.B1 patta.

19. Order 41 Rule 27 CPC, no doubt, is open to all parties to the appeal to permission of the first Appellate Court to produce additional documents. There is no difficulty with regard to the document not being filed earlier, since the order of the Sub Collector was passed only pending the second appeal. Therefore, the only point needs to be considered as to whether the said document is required for adjudicating the dispute between the parties.

20. The case of the plaintiff is that the plaintiff has purchased the property from the legal heir of ChinnaThevar in survey No.608/1. The said claim was no doubt resisted by the defendants, relying on Ex.B1 – assessment patta, which now admittedly stands cancelled. However, the first Appellate Court has rightly discarded Ex.B1 – patta on the ground that it is pertaining to survey No.608/1 and not 608/2.

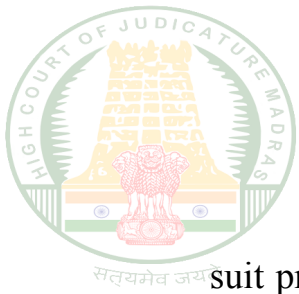


SA(MD). No.156 of 2017

WEB COPY

21. In such circumstances, I do not find it necessary for the respondents/defendants to adduce additional evidence, especially, when the document is not a necessary document to decide the second appeal. Hence, I do not find any requirement from this Court to permit the respondents / defendants to mark the order of the Sub Collector dated 14.03.2018, as a document on the side of the respondents / defendants. Accordingly, **this Civil Miscellaneous Petition is dismissed.**

22. The very short and narrow compass on which the second appeal hinges is as to whether there was a partition between the two sons of RamanathaThevar, viz., ChellaThevar and ArumugaThevar. Straightaway considering the admission made by the defendants in the written statement as well as during the course of evidence, in chief as well as cross examination, there is actually no dispute that there was a partition between two sons of RamanaThevar, viz., ChellaThevar and Arumuga Thevar. The actual question is whether, in the said oral partition, Arumuga Thevar was allotted the entire extent, including the



SA(MD). No.156 of 2017

WEB COPY

suit property, or whether, as contended by the plaintiff, the northern half was allotted to the defendants and the southern half was allotted to the plaintiff's predecessor-in-interest, viz., ChellaThevar. Insofar as the title, the plaintiff has relied on Ex.A1 to Ex.A6, which are the judgment and decree in the suit for partition in O.S.No.42 of 1977 and final decree passed in the said suit and the sale deeds in favour of the plaintiff; Through Ex.A7 to Ex.A9, the plaintiff has exhibited tax receipts, to establish physical possession of the suit property. On the side of the defendants, Ex.,B1 assessment patta has been marked and however, as already discussed, the said assessment patta was pertaining to survey No. 608/2 is not concerning the suit; Ex.B4 is the patta which is issued in respect of survey No.608/1.

23. As rightly contended by Mr.J.Bharathan, learned counsel, the said patta has been obtained pending the suit that too in the year 2014 and hence, the said document cannot be taken into consideration. Ex.C1 and Ex.C2 are the report and plan of the Advocate Commissioner. Will of Chella Thevar has been marked as Ex.X1. No doubt, at the outset, the



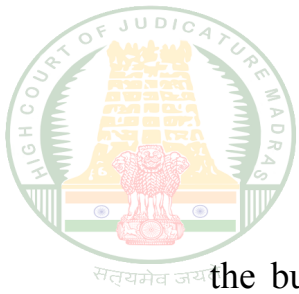
SA(MD). No.156 of 2017

WEB COPY

attesting witness to the said Will have not been examined to prove the same in terms of Section 68 of the Evidence Act, read with Section 63 (c) of the Indian Succession Act, 1925. However, in my considered opinion, the Will executed by ChinnaThevar in favour of his daughter Lakshmi is not germane to the present lis, for the simple reason that the only issue that requires determination is whether, in the oral partition between the two brothers, ChinnaThevar and ArumugaThevar, the entire property was allotted to ArumugaThevar as contended by him, or whether it was divided into two equal halves, as contended by the plaintiff.

24. The manner in which the share of ChinnaThevar has been dealt with would pale into insignificance if the question of oral partition, as set out hereinabove, is decided.

25. As already set out the defendants categorically admitted an oral partition between himself and his brother ChellaThevar. It is the further contention of the defendants that in the oral partition, the entire property including the suit property was allotted to him. In such circumstances,



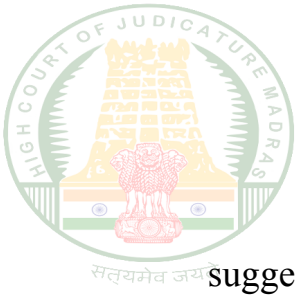
SA(MD). No.156 of 2017

WEB COPY

the burden of proof to establish such contention lay on the defendants and not on the plaintiff. In this regard, the trial Court committed an error in placing the burden of proof in respect of the alleged oral partition. However, the first Appellate Court rightly placed the burden on the defendants and proceeded to find that the same had not been satisfactorily discharged and thereby, the plaintiff's case was to be accepted.

26. The following relevant circumstances would clinch the issue in favour of the plaintiff:

(i). A fatal suggestion was put to P.W.1 on behalf of the defendants in cross-examination, to the effect that the property had been divided into two equal halves, viz., the southern half allotted to Chella Thevar and the northern half to the defendants. Putting suggestions in cross-examination is not an empty formality and carries great evidentiary value. A party is required to put his case to the opposite side's witness by making suggestions. Therefore, when such a suggestion was put to P.W.1, admitting the oral partition as contended by the plaintiff, the said



SA(MD). No.156 of 2017

WEB COPY

suggestion can only be construed as suicidal and fatal to the case of the appellants/defendants.

(ii) Though there was an earlier round of litigation, namely a suit for partition amongst the branch of ChinnaThevar, it is, however, to be noted that the said suit was filed wayback in the year 1977. The suit was filed on the premise that the southern $\frac{1}{2}$ was allotted to Chinna Thevar and from the rough plan, sketches included along with the decree, in the earlier suit, it is clear that the northern portion, which forms part of the suit property, was specifically described as the property of ArumugaThevar. I find force in the argument of Mr.J.Bharathan, learned counsel the said suit was filed in the year 1977 and the present suit came to be filed only in the year 2007, ie. 30 years later and therefore, there was no necessity for the predecessors in title of the plaintiff to file such a suit for partition and actually the entitlement of Arumuga Thevar to the norther half.

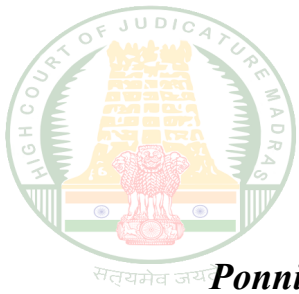


SA(MD). No.156 of 2017

WEB COPY

(iii) Keeping in mind the effect of the suit for partition as discussed herein above, in point (ii) supra, yet another relevant and material factor is that the oral partition between the two brothers was in respect of several items of properties and all these properties were divided equally, that is half share and half between two brothers. In such circumstances, it is unnatural for the defendants to contend that in respect of this property alone, the entire property was allotted to the defendant, I can understand that if Chinna Thevar was allotted a larger extent in some other item and in order to compensate the same, the entire property including the suit property was allotted to the defendant. That is not the case, as the defendants themselves admitted that in respect of several other properties that were available for partition, partition was done equally.

27. In the light of the above, I do not find that the defendants have been able to discharge the burden of proof that under the admitted oral partition, the entire property, including the suit property, was allotted to them. The burden was on the defendants and erroneously pleaded on the plaintiff by the trial Court. In this regard, the decision of this Court in



SA(MD). No.156 of 2017

WEB COPY

Ponniammal's case, referred herein above has been strongly relied on. In almost identical circumstances, this Court held that though a presumption can be raised in respect of inheritance, the same presumption cannot be raised in respect of a partition. On facts, when the sons inherited the property, it was held that they must have inherited the property equally and therefore, they must be in enjoyment of the property in equal shares. When one of the sons pleaded that he was allotted more extent than the others, the burden is on him to prove and in this case, the Defendants contended that their vendors were allotted more extent on the ground that he had undertaken to discharge loans. However, that was not proved by the Defendants.

28. The ratio laid down in this case would squarely apply to the facts of the present case. No reliance can be placed on Ex.B1 - assessment patta, which pertains only to Survey No.608/2 and not to Survey No.608/1. In any event, the said patta has subsequently been cancelled for various reasons, which need not be gone into in the present second appeal.



SA(MD). No.156 of 2017

WEB COPY

29. In the light of the above, once the defendants failed to establish that the entire property including the suit property viz., southern half was allotted to the defendants in the oral partition, which took place 50 years back, then the case of the plaintiff taking into account the suit filed for partition acknowledging the entitlement of the defendants in the northern side preliminary and final decree passed in the said suit and the various documents exhibited to evidence physical possession would clearly go to show that the plaintiff's vendors had valid title to convey in favour of the plaintiff and Ex.A5 and Ex.A6 are valid and binding conveyance deeds.

30. I have already discussed the effect of the Will and held that there is no necessity to prove the same in the facts of the present case, especially since the oral partition itself has been admitted by the defendants. The only defence raised, namely that the entire property was allotted to the defendants, is also liable to be negatived.



SA(MD). No.156 of 2017

WEB COPY

31. In the light of the above, I hold that there is no necessity for the Will to be proved. In fact, the plaintiff did not even mark or exhibit the said Will during the course of her examination, and it was only later marked as Ex.B1.

32. Result:

In the light of the above, the questions of law are answered against the appellants / defendants. I do not see any merit in the second appeal. In fine, the second appeal is dismissed. However, there shall be no order as to costs.

30.03.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
LS



SA(MD). No.156 of 2017

WEB COPY

TO

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



WEB COPY



SA(MD). No.156 of 2017

P.B.BALAJI,J.

LS

**Pre-delivery Judgment made in
SA(MD) No.156 of 2017**

30.03.2026