

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.641 of 2012
and A.No.4348 of 2016

1. Mrs.E.Sathyavathamma (deceased)
2. E.S.Reddy
3. E.Anil Kumar Reddy
4. Mrs.Uma V.Chandru
5. Mrs.Asha Kiron Jitendra
6. Mrs.Usha Saxena

[Plaintiffs 2 to 6 are brought on record
as Legal Heirs of the deceased sole plaintiff
as per order dated 29.06.2015 in A.No.3667 to 3669 of 2015]

... Plaintiffs

Niranjan Reddy

- Vs -

... Defendant

Plaint filed under Order VII Rule 1 of Civil Procedure Code and r/w Order IV of the High Court Original Side Rules, praying (a) to partition the suit property by metes and bounds granting 2/3rd undivided right of share and interest in the suit property to the defendant morefully described in the Schedure hereunder and after passing a Preliminary decree after Appointment of an Advocate Commissioner who can measure and divide the

property by metes and bounds and file a report before this Hon'ble Court within the time as stipulated by this Hon'ble Court for passing Final Decree and failure to divide the property by metes and bounds, the property can be bought by either by the Plaintiff or Defendant and in case of such failure, the property should be sold through Public Auction and the Proceeds can be shared between the Plaintiff and Defendant according to their respective shares (b) for a Permanent Injunction restraining the defendant, his agents or servants or from any one in dealing with the suit property by the defendant in respect of the share of the Plaintiff in the Suit property and not to interfere with the possession of the Plaintiff in respect of her share (c) to grant costs of the suit and (d) to pass further or other suitable orders as this Hon'ble Court may deem fit and proper.

For Plaintiffs : Mr.Srikrishna Bhagavat
for Mr.P.Subba Reddy

For Defendant : Set exparte

JUDGMENT

This is a judgment in the main suit i.e., C.S.No.641 of 2012, which is a typical partition suit. To be noted A.No.4348 of 2016, is a final decree application made under Order XXXIV Rule 5(3) of 'The Code of Civil Procedure, 1908' ['CPC' for brevity].

2. There is only one item of suit property situate at Door No.1, Plot No.548, 4th Trust Link Street, Mandavelipakkam being a residential/house property wherein superstructure stands on land admeasuring 4800 sq.ft thereabouts [2 grounds or thereabouts] (hereinafter land and superstructure together shall be referred to as 'suit property').

3. In the instant suit, originally, there was a lone plaintiff and a sole defendant. To be noted, pending suit plaintiff E.Sathyavathamma died and her legal heirs were brought on record vide order dated 29.06.2015 in A.Nos.3667 to 3669 of 2015 as plaintiffs 2 to 6.

4. Case file reveals that defendant has already been set exparte by Hon'ble Predecessor Judge on 24.02.2014.

5. Being a typical partition suit, a preliminary judgment/decreed came to be passed by Hon'ble Predecessor Judge on 28.04.2016, which reads as follows:

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-04-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.641 of 2012

1.E.Sathyavathamma (deceased)
2.E.S.Reddy
3.E.Anil Kumar Reddy
4.Uma V.Chandru
5.Asha Kiron Jitendra
6.Usha Saxena
(plaintiffs 2 to 6 are brought on record as Legal Heirs of the deceased sole plaintiff as per order dated 29.6.2015, in A.Nos.3667 to 3669/2015)

Plaintiffs

VS

Niranjani Reddy

Defendant

Civil suit filed under Order VII Rule 1 of Code of Civil Procedure and Order IV of Original Side Rules praying for a judgment and decree partitioning the suit property by metes and bounds granting 2/3rd undivided right of share and interest in the suit property to the plaintiff and 1/3rd undivided right of share and interest in the suit property to the defendant more fully described in the Schedule hereunder and after passing a Preliminary decree after appointment of an Advocate Commissioner who can measure and divide the property by metes and bounds and file a report before this Court within the stipulated time, for passing final decree and

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failure to divide the property by metes and bounds the property can be bought by either by the plaintiff or defendant and in case of such failure, the property should be sold through public auction and the proceeds can be shared between the plaintiff and the defendant according to their respective shares and granting a permanent injunction restraining the defendant, his agents or servants or from any one in dealing with the suit property by the defendant in respect of the share of the plaintiff in the suit property and not to interfere with the possession of the plaintiff in respect of her share and for costs.

For Plaintiffs : Mrs.K.Aparnadevi
For Defendants :Set ex-parte on 24.2.2014

JUDGMENT

Originally, the suit was instituted by Tmt.E.Sathyavathamma and pendency of the suit, she died and her legal representatives were brought on record as plaintiffs 2 to 6.

2.The plaint averments are as follows:-

2(i) The original plaintiff purchased the suit schedule mentioned property from Tmt.Suhrulathamma, who had 2/3rd undivided right of share and interest in the

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said property, and her son viz. the defendant, is having 1/3rd of such a right and the property is a residential house. The defendant filed C.S.No.884/1992 on the file of this Court, praying for declaration and other consequential reliefs, against his mother, the original plaintiff and the tenant viz. Mr.K.B.Subramaniam. The said suit was transferred to the file of the City Civil Court, Chennai and renumbered as O.S.No.12671/1996 and it ended in dismissal on 16.6.2003. The appeal in A.S.No.363/2003 filed on the file of City Civil Court, also ended in dismissal and so also the second appeal in S.A.No.659 of 2007, on the file of this Court. Thus, the right, title and possession of the original plaintiff with regard to the 2/3rd share in respect of the suit property, has become final.

2(ii) The defendant in spite of request made, and notice sent, calling upon him to divide the suit property and give 2/3rd share, he has not done so and therefore, the plaintiff came forward to file the present suit for partition and separate possession and other consequential reliefs.

3. The defendant was served and he did not enter appearance and file the written statement. Therefore, he was called absent and set ex-parte on 24.2.2016. Subsequently, the original plaintiff died and as already

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stated, her legal representatives have been brought on record.

4.Thiru E.S.Reddy viz. the second plaintiff, had filed his proof affidavit in lieu of chief-examination, and also marked Exs.P1 to P8.

5.The learned Counsel appearing for the plaintiffs, has drawn the attention of this Court to the pleadings and oral and documentary evidences and would submit that a sale deed was executed under Ex.P2, by the mother of the defendant on 11.3.1991, conferring her 2/3rd right in respect of the schedule mentioned property, and the defendant has initially filed C.S.No.884 of 1992 on the file of this Court, praying for declaration declaring that the settlement deed dated 23.3.1982, is invalid, fraudulent, unenforceable and liable to be cancelled and set aside and not binding on the plaintiff and further declaring that the sale deeds dated 11.3.1991, (Document No.410 and 411 of 1991 - on the file of the Sub-Registrar of Assurances, Mysapore), executed by his mother in favour of the second defendant, are liable to be cancelled and set aside and also for permanent injunction restraining the defendants therein from interfering with the possession and it was transferred to the file of the City Civil Court and renumbered as O.S.No.12671/1996 and the said suit after contest, came to be dismissed on

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16.6.2003.

6.It is the further submission of the learned Counsel appearing for the plaintiffs, that the defendant aggrieved by the said judgment and decree, filed an appeal in A.S.No.363 of 2003, on the file of the Court of Additional District Judge, FTC No.2, and it was also dismissed on 9.3.2007, under Ex.P4, and the further challenge made by filing S.A.No.659 of 2008, also ended in failure as evidenced by Ex.P5, dated 7.3.2008, and therefore, it is not open to the defendant to challenge the right, title and possession of the plaintiffs.

7.The learned Counsel appearing for the plaintiffs, would contend that the original plaintiff in her capacity as the owner, has also instituted eviction proceedings against the tenant viz. K.B.Subramaniam, and was successful and the revision petitions filed by the tenant in C.R.P.(NPD) Nos.1429 and 1490 of 2003, were also dismissed on 7.3.2008, under Ex.P7, and prior to the institution of the suit, a legal notice was also issued under Ex.P6, dated 3/4/2012, and though it was acknowledged, the defendant did not choose to respond and hence, prays for decreeing the suit.

8.This Court has considered the submissions made

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by the learned Counsel appearing for the plaintiffs, and also perused the oral and documentary evidences.

9.The following issues are framed for consideration:

- (i) Whether the mother of the defendant has conveyed her 2/3rd share in the suit schedule property, in favour of the original plaintiff under Exs.P2 and P8?
- (ii) Whether the defendant by virtue of dismissal of the suit, first appeal and the second appeal under Exs.P3, P4 and P5 respectively, can challenge the right, title and possession of the plaintiffs?
- (iii) To what relief the plaintiffs are entitled to?

10.ISSUE No.(i):- The mother of the defendant has conveyed 2/3rd right in the suit schedule property, in favour of the original plaintiff under Exs.P2 and P8. The defendant also filed a suit in C.S.No.884/1992 on the file of this Court, and it was transferred to the file of the City Civil Court and renumbered as O.S.No.12671/1996, wherein, he prayed for declaratory and other consequential reliefs. It is to be pointed out at this

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juncture, that the mother of the defendant was arrayed as first defendant; the original plaintiff was arrayed as second defendant and the tenant in respect of the premises, was arrayed as third defendant. The said suit after contest, came to be dismissed on 16.6.2003, under Ex.P3, and the challenge made to the said judgment and decree before the first appellate Court, had also ended in dismissal as evidenced under Ex.P4. The defendant made a further challenge to the judgment and decree passed by the first appellate Court, by filing S.A.No.659/2008, which was also dismissed under Ex.P5, dated 7.3.2008, and no further appeal has been preferred to the Hon'ble Supreme Court of India and therefore, the judgment and decree have become final. It is also to be pertinent to point out at this juncture, that the original plaintiff in her capacity as landlady, has instituted eviction proceedings against the tenant, and was successful as evidenced under Ex.P7 - the fair and decretal orders dated 7.3.2008, in CRP (NPD) Nos.1489 and 1490 of 2003. In view of the above, the right, title and possession of the original plaintiff are not in serious dispute. Therefore, issue No.(i) is answered in affirmative and in favour of the plaintiffs.

11. ISSUE No.(ii):- This Court in respect of issue No.(i), has given a finding that the original

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plaintiff was the absolute owner of the suit property. The original plaintiff is no more and her legal representatives came on record and they are having right, title and possession in respect of the suit schedule property. A pre-suit notice was also issued, for which the defendant did not respond. Therefore, issue No.(ii) is answered in negative and in favour of the plaintiff.

12. ISSUE No.(iii):- In the light of the findings given in respect of issue Nos.(i) and (ii), the plaintiff is entitled to succeed in the suit.

13. In the result, the civil suit is decreed with costs and there shall be a judgment and preliminary decree granting (a) partition of the suit property by metes and bounds granting the original plaintiff's $2/3^{rd}$ undivided right of share and interest in the suit property to the plaintiffs 2 to 6 and $1/3^{rd}$ undivided right of share and interest in the suit property to the defendant more fully described in the Schedule, and (b) permanent injunction restraining the defendant, his agents or servants or from any one in dealing with the suit property by the defendant in respect of the share of the plaintiffs 2 to 6 in the suit property and not to interfere with the possession of the plaintiffs 2 to 6 in respect of their share.

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PLAINTIFFS' SIDE WITNESSES AND EXHIBITS:-

- P.W.1 Mr. E.S.Reddy
- Ex.P1 21.3.2007 Photocopy of the Power of Attorney executed by the first plaintiff
- Ex.P2 11.3.1991 Photocopy of the sale deed dated 11.3.1991, registered as Document No.410/1991 before the SRO, Mylapore
- Ex.P3 16.6.2003 Photocopy of the judgment and decree passed in O.S.No.12671/96 by the VIII Assistant City Civil Court, Chennai
- Ex.P4 9.3.2007 Photocopy of the judgment and decree passed in A.S.No.363 of 2003 by the Additional District Judge, RTC No.2.
- Ex.P5 7.3.2008 Certified copy of the order passed in SA No.659 of 2007
- Ex.P6 3.4.2012 Legal notice sent by the plaintiff's Counsel to the defendant
- Ex.P7 7.3.2008 Certified copy of the order passed in CRP (WPD) Nos.1489 and 1490 of 2003
- Ex.P8 Photocopy of the sale deed executed in favour of the first plaintiff in respect of the suit schedule property

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sd/.M.S.N.J
28.04.2016

//Certified to be a true copy//
Dated this the 15th day of July 2016.

S.S/14.07.2016

[Signature]
COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
THURSDAY, THE 28TH DAY OF APRIL, 2016
THE HON'BLE MR. JUSTICE M. SATHYANARAYANAN
C.S.No.641 of 2012

1 E.SATHYAVATHAMMA (DECEASED.)
W/O.SRI.E.S.REDDY
REPRESENTED BY HER POWER AGENT
SRI E.S.REDDY RESIDING AT
NO.1/2 IV TRUST LINK STREET,
MANDAVELIPPAKKAM
CHENNAI 600 028

2 (*) E.S. REDDY
S/O. LATE E.V.NARASA REDDY,
NO.1/2 IV TRUST LINK STREET,
MANDAVELIPPAKKAM
CHENNAI 6000 028

3 (*) E.ANIT KUMAR REDDY
S/O.E.S.REDDY
NO.003 PAYS OF LIGHT
35 MILLERS ROAD CROSS
BANGALORE 560 046

4 (*) MRS.UMA V CHANDRU
D/O.E.S.REDDY,
NO.591 3RD MAIN ROAD
SASSHIVANAGAR
BANGALORE 560 080

5 (*) MRS.ASHA KIRON JITENDRA
D/O.E.S.REDDY
NO.837 RIVER NEW COURT
MINNEAPOLIS MN, USA

6 (*) MRS.USHA SAXENA
D/O.E.S.REDDY,
NO.6 TIMBER TRAIL
ROE NEW YORK 10580
UNITED STATES OF AMERICA

(*) (FOR S.NO. 3 TO 6 REPRESENTED BY THEIR
POWER AGENT, SRI E.S.REDDY,
RESIDING AT NO.1/2, IV TRUST
LINK STREET, MANDAVELIPPAKKAM,
CHENNAI 600028

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(*) (PLAINTIFF 2 TO 6 ARE BROUGHT ON
RECORD AS LEGAL HEIRS OF THE
DECEASED SOLE PLAINTIFF AS PER
ORDER DATED 29.6.15 IN
A.NO.3667 TO 3669 OF 2015)

NIRANJAN REDDY
NO.1/2 IV TRUST LINK STREET
MANDAVELIPAKKAM
CHENNAI 600 028

VS.

...PLAINTIFF

...DEFENDANT

Civil Suit praying that this Hon'ble Court be pleased
to pass a judgment and decree on the following:-

a) To Partition the suit property by metes and bounds
granting 2/3rd undivided right of share and interest in the
suit property to the Plaintiff and 1/3rd undivided right of
share and interest in the suit property to the defendant
morefully described in the Schedule hereunder and after
passing a Preliminary decree after Appointment of an
Advocate Commissioner who can measure and divide the
property by Metes and Bounds and file a report before this
Hon'ble Court within the time as stipulated by this
Hon'ble Court for passing Final decree and failure to
divide the property by metes and bounds, the Property can
be bought by either by the Plaintiff or Defendant and in
case of such failure, the property should be sold through
Public Auction and the Proceeds can be shared between the
Plaintiff and Defendant according to their respective
shares.

b) For a Permanent Injunction restraining the
defendant, his agents or servants or from any one in
dealing with the suit property by the defendant in respect

of the share of the Plaintiff in the Suit property and not to interfere with the possession of the Plaintiff in respect of her share;

c) To grant costs of the suit;

This suit coming on this day before this Court for hearing in the presence of Mr.K.Aparnadevi advocate for the plaintiffs herein and the defendant herein not appearing in person or by advocate and the said defendant herein having been set ex parte and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein,

It is ordered and decreed as follows:-

That (1) E.S.Reddy (2) M.Anil Kumar Reddy (3) Uma V.Chandru (4) Asha Kiran Jitendra and (5) Usha Saxena, the plaintiff 2 to 6 herein shall be entitled to the Original plaintiff's 2/3rd undivided right of share and interest in the suit property morefully setout in the schedule hereunder.

2. That Niranjan Reddy the defendant herein, shall be entitled to 1/3rd undivided right of share and interest in the suit property morefully setout in the schedule hereunder.

3. That Niranjan Reddy the defendant herein, his agents or servants or any one be and are hereby restrained by an order of permanent injunction from dealing with the suit property morefully setout in the schedule hereunder in respect of the share of the plaintiffs 2 to 6 herein and from interfering with the possession of the plaintiffs 2 to 6 in respect o their share.

4. That the defendant herein do pay to the plaintiffs

2 to 6 herein the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

Schedule of Property

Entire premises of Land and Building bearing Door No.1, Plot No.548, 4th Trust Link Street, Mandavelipakkam, Chennai 600 028, comprised in R.S.No.4503 Part, 4504 Part and 4491/4 Part, Mylapore, within the Sub Registration District of Mylapore and Registration District of South Madras. The Boundaries are as follows:-

On the North by : Plot No.544

On the South by : Road

On the East by : Plot No.548

On the West by : Road

The total extent of the property is 2 Grounds i.e., 4800 Sq.ft.,

WITNESS THE HON'BLE THIRU.SANJAY KISHAN KAUL, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 28TH DAY OF APRIL, 2016

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ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the 1st day of July 2016.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

6. The preliminary judgment/decreed captures facts comprehensively and therefore, it is not necessary to dilate on the same again.

7. Post preliminary decree, third plaintiff E.Anil Kumar Reddy deposed as PW-1 on 13.02.2020 and the Engineer's report together with photographs, a compact disk (CD) containing photographs of suit property appended with a plan dated 20.06.2019 and the Advocate Commissioner's report were marked as Exs.C1 and C2 respectively.

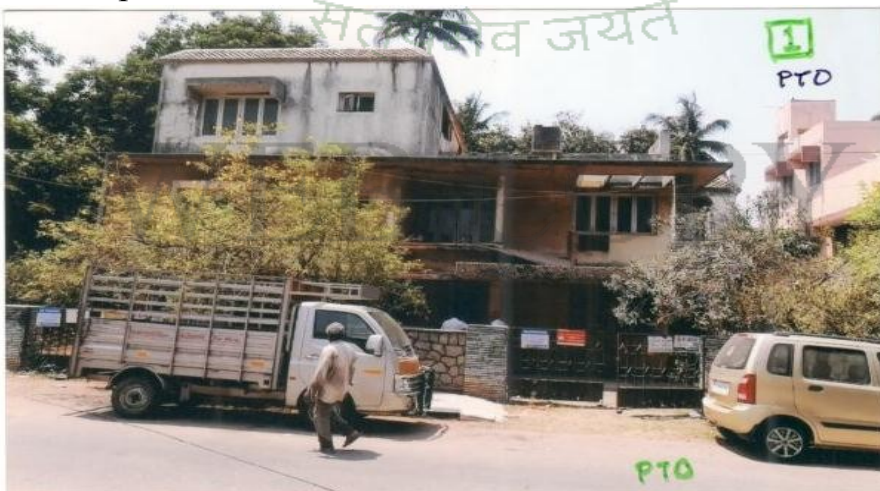
8. A perusal of evidence of PW-1, which obviously remains unchallenged as the sole defendant has been set exparte reveals that it is cogent, coherent and it compliments the pleadings. A perusal of Exs.C1 and C2 reveal that the suit property is such that the superstructure is dilapidated. This Court is informed by Mr.Srikrishna Bhagavat, learned counsel appearing on behalf of the counsel on record for plaintiffs that the suit property is dilapidated.

9. A further perusal of Ex.C2-Commissioner's report reveals that the suit property is not capable of division into metes and bounds qua shares of

parties to the lis. Therefore, it has become imperative that a final decree directing sale of suit property in public auction with a further direction to share the proceeds proportionately (as in preliminary judgment/decreed) between plaintiffs and the defendant has to be passed.

10. To be noted, preliminary judgment/decreed [scanned and reproduced supra] came to be passed after plaint documents were marked as Exs.P1 to P8. To be noted, a list of witnesses and exhibits is set out in the last page of preliminary judgment/decreed [scanned and reproduced supra].

11. For appreciating the suit property, this Court deems it appropriate to scan and reproduce one of the photographs i.e., photo No.1 forming part of Ex.C1. That photo is:



12. The aforesaid photograph, which is part of Ex.C1, makes it clear that the suit property is an independent house. Land area as mentioned above is two grounds or thereabouts and considering the number of shares, there is no difficulty in accepting Commissioner's report-Ex.C2 that it is not capable of division into metes and bounds.

13. Before passing a final decree, this Court deems it appropriate to appoint Mr.D.Sampath Kumar, Advocate at 320 New Law Chambers, 2nd Floor, High Court, Chennai-104 Mobile: 63801 03849, 63811 27941 as Advocate Commissioner for bringing suit property to sale by public auction. Plaintiffs shall pay initial remuneration of Rs.50,000/- (Rupees Fifty Thousand only) to the Advocate Commissioner besides meeting/defraying his out of pocket expenses. It is made clear that all the plaintiffs as well as the sole defendant [notwithstanding defendant having been set exparte in instant suit] can participate in the public auction, make their bid and they would be entitled to purchase the suit property subject of course to they being able to match the highest price when the hammer goes down.

14. As the suit property has been held to be incapable of division into metes and bounds, suit is decreed directing sale of suit property through public auction by aforementioned Advocate Commissioner with a further direction to distribute the sale proceeds to the parties to the suit proportionate to their shares as concluded in the preliminary decree.

15. With regard to other limbs of the suit prayer viz., sub paragraphs b) and c) the same are decreed as prayed for and the appointment of Advocate Commissioner for public auction and sale has been made *inter alia* under the residuary limb of prayer.

16. Suit is decreed with costs on aforesaid terms. Consequently, connected application is closed.

Index: Yes/No
Speaking/Non-speaking Order

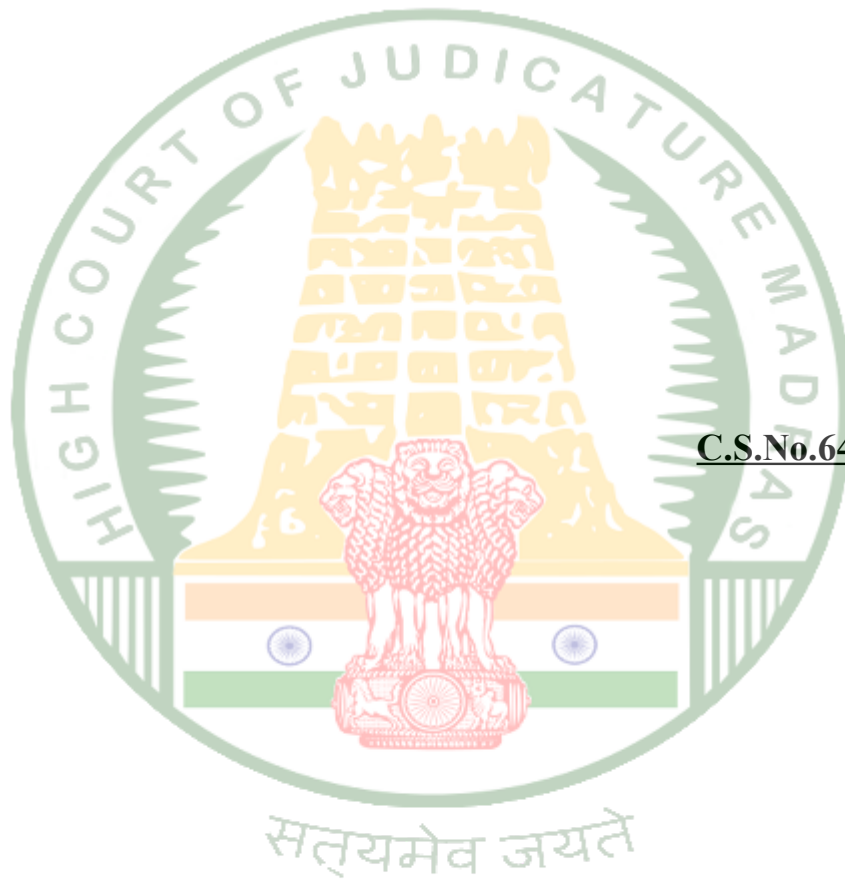
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To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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