# Lakshmi Ammal(Died) vs Mari Ammal on 5 March, 2020

## Equivalent citations: AIR 2020 (NOC) 844 (MAD.), AIRONLINE 2020 MAD 324

## Author: G.K.Ilanthiraiyan

## Bench: G.K.Ilanthiraiyan

S.A.No.4

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2020

Date of Verdict : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.470 of 2005 and
CMP.No.7519 of 2005

1.Lakshmi Ammal(died)
2.Thara Bai
(2nd Appellant brought on record as LR
of the deceased sole appellant vide
court order dated 16.11.2018 made
in CMP.No.10714 to 10716 of 2016
in SA.No.470 of 2005) ...Ap

Vs.

1.Mari Ammal
2.B.Muthu ...Respo

Prayer :- This Second Appeal is filed under Section 100 of Civil Pro

Code against the judgment and decree dated 11.12.2003, in A.S.No.18

2000 on the file of I Additional Judge, City Civil Court, Chennai co

decree and judgment dated 27.10.1998 in O.S.No.4992 of 1993 on the f

III Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.G.Ilangovan

For Respondents
For R1 : Mr.S.Sundaresan
for Mr.C.Pattabiraman

R2 : Notice served





S.A.No

JUDGMENT

This second appeal is directed as against the judgment and decree dated 11.12.2003, in A.S.No.18 of 2000 on the file of I Additional Judge, City Civil Court, Chennai confirming the decree and judgment dated 27.10.1998 in O.S.No.4992 of 1993 on the file of III Assistant Judge, City Civil Court, Chennai.

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

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

> 3.1. The suit is filed for declaration and permanent injunction with the alternative prayer for recovery of possession. The suit property was originally purchased by the plaintiff's husband, the first defendant herein from one, Thiyagarajan by registered sale deed dated 27.08.1980.

Thereafter he settled the suit property in favour of the plaintiff by the registered settlement deed dated 17.10.1984. The plaintiff took possession and was enjoying the suit property as absolute owner. While being so, there was misunderstanding between the plaintiff and the first http://www.judis.nic.in defendant and as such she was driven out from the suit property. The first defendant filed petition for divorce in MOP.No.331 of 1987 on the file of the VII Assistant Civil Civil Judge, Chennai and the same was dismissed. The first defendant without knowledge of the plaintiff created fraudulent cancellation deed dated 28.09.1987, thereby cancelled the settlement deed executed in favour of the plaintiff. The plaintiff after came to knowledge about the same, caused public notice in tamil dailies on 10.11.1987, thereby put on notice to prospective purchaser and to general public at large to ascertain her title over the suit property. Therefore, the first defendant did not retain any right over the suit property after the settlement deed dated 17.10.1984 to alienate the same. Thereafter, the first defendant did not care to pay any maintenance as ordered by the City Civil Court in IA.No.22350 of 1987 in MOP.No.331 of 1987, the plaintiff filed execution petition in EP.No.1878 of 1988 and she was able to realise a sum of Rs.1000/- alone. As such again the plaintiff filed suit for recovery of arrears of maintenance in O.S.No.19 of 1990 on the file of the Family Court, Chennai and the same was also decreed in her favour.

3.2 Further she stated that while being so, the plaintiff came to understand that the first defendant executed sale deed in favour of the second defendant in respect of the suit property by the registered sale http://www.judis.nic.in deed dated 01.11.1989. In fact, the said sale deed was executed by the first defendant as though the plaintiff has also joined with him in the said conveyance. The plaintiff was impersonated in the said transaction and the first defendant committed very serious offence of forgery and impersonation. In fact, the first defendant categorically stated in the divorce petition

that the plaintiff deserted the first defendant on 31.10.1985 itself and as such there is absolutely no possibility for the plaintiff to join with the first defendant in conveying the suit property in favour of the second defendant. The plaintiff was impersonated and her signature was forged by the first defendant and executed sale deed in favour of the second defendant and as such the sale deed itself is void ab initio and it is not binding on the plaintiff. Hence, the suit for declaration declaring that the plaintiff is having absolute right, title, interest over the suit property and also prayed for permanent injunction with alternative prayer of recovery of possession.

4. Resisting the plaintiff's case, the second defendant alone filed written statement stating that the suit itself is not maintainable either in law or on facts and it is barred by limitation and without jurisdiction. The suit was filed with collusion of the first defendant to nullify the sale deed executed in favour of the second defendant. She further submitted that http://www.judis.nic.in she is the bonafide purchaser for valuable sale consideration. She did not know about the fraud played on her till receipt of summon from the suit. When the first defendant offered to sell the suit property, she approached him and verified all the original documents. While verifying those documents, she also found that the first defendant already executed settlement deed in favour of the plaintiff by the settlement deed dated 17.10.1984 and thereafter it was cancelled by the cancellation of settlement deed dated 28.09.1987 and it was duly registered. It is also reflected in the encumbrance certificate. While receipt of the legal opinion to purchase the suit property, she was advised to get a sale deed to be executed by settlee also, in which the first defendant also agreed. Thereafter she agreed to buy the suit property for the sale consideration of Rs.59,000/- and also paid a sum of Rs.10,000/- as advance.

4.1 Further stated that the first defendant also ensured that the settlement deed was not acted upon and also invited the second defendant along with her daughter to his house and when they visited the first defendant's house, she was introduced one lady as Mariammal and as such at no point of time, there was any suspicion raised over the minds of the second defendant as well as her daughter. Believing all these representations by the first defendant and also in good faith, the second http://www.judis.nic.in defendant purchased the suit property on 01.11.1989. In fact, the first defendant also assured that he will bring his wife Mariammal for registration. Accordingly, on 01.11.1989, the second defendant went to the Registrar Office along with her daughter and son in law. The first defendant along with his wife came to the Registrar's Office and after receipt of balance sale consideration, the first defendant and his wife executed sale deed in favour of the second defendant. Therefore, there is no question of fraudulent sale deed and fraudulent cancellation of settlement deed dated 28.09.1987. The second defendant was never aware of the fact that the plaintiff was impersonated and her signature was forged while executing the sale deed and as such the said sale deed cannot be void ab initio. The recital of the settlement deed shows that the said document is sham and nominal and which has not been acted upon by either of the parties at any point of time. Further the plaintiff was never in possession and she was never allowed to put in possession of the suit property. Even according to her, she was driven out from the suit property in the middle of the year 1985 itself. Therefore, the plaintiff approached the Court with unclean hands and she is not entitled for any relief as prayed for and prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were http://www.judis.nic.in examined and ten documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.9 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the judgment and decree of the trial Court, the second defendant preferred an appeal suit in A.S.No.18 of 2000 before the I Additional Judge, City Civil Court, Chennai. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the second defendant has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

> a) Whether the suit is barred by law of limitation especially under Article 59 of Limitation Act?
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> b) Whether the Exhibit B-2 the settlement deed is properly construed to arrive at a conclusion regarding validity?
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> c) Whether the Exhibit B-2 was acted upon and brought into existence?

http://www.judis.nic.in

d) Whether the Exhibit B-2 was cancelled properly and whether it is legal and sustainable in law?

e) Whether any cause of action arose for the suit to be filed?

f) Whether the Exhibit B-4 is valid document?

g) Whether the Exhibit B-2 is a document in presenti?

h) Whether the oral and documentary evidence were properly appreciated?

i) Whether the pleadings and oral evidence properly appreciated?

j) Whether Principles laid down in Sections 122 & 123 of Transfer of Property Act were properly applied?

k) Whether Section 43, 58 to 60 Indian Evidence Act are properly appreciated?

7. The learned counsel appearing for the second defendant has contended as follows:

> (a) The relief of permanent injunction and relief of recovery of possession are quite contradictory with each other and the same are destructive to one another. When the

plaintiff herself categorically averred in the plaint that the suit property was settled in her favour by the http://www.judis.nic.in first defendant by the settlement deed dated 17.10.1984 and immediately she took possession of the suit property. Thereafter in the middle of the year 1985, she was driven out from the suit property. When it being so, she cannot pray for both prayers injunction and also recovery of possession. Even then, she did not give up her stand, when she is not in possession of the property.

(b) He further submitted that the suit is hit by Section 34 of the Specific Relief Act as the plaintiff omitted to seek the relief of nullifying the cancellation of settlement deed and the sale deed by way of declaration.

She also knows about the cancellation of settlement deed and the sale deed executed in favour of the second defendant by the first defendant and as such she ought to have challenged those deeds in the manner known to law.

(c )It is also hit by Section 31 of Specific Relief Act as the plaintiff failed to seek cancellation of revocation of settlement deed and the sale deed which was marked as Ex.B.3 and Ex.B.4. When there is no plea in the plaint or issues framed by the trial court with regards to revocation of settlement deed Ex.B.3 and sale deed executed in favour of the second defendant Ex.B.4, the trial court erred in holding that Ex.B.3 is invalid. http://www.judis.nic.in

(d) The suit itself is barred by limitation under Articles 58 and 59 of the Limitation Act and even then the courts below held that Ex.B.3 and Ex.B.4 are void and not binding on the plaintiff. Since the plaintiff failed to challenge Ex.B.3 and Ex.B.4, because already time barred and even then the courts below hold that both the documents are void. Ex.B.2 settlement deed is not at all valid, since it was never acted upon. Admittedly, the plaintiff was driven out from the suit property by the first defendant in the middle of the year 1985 itself. Further she also failed to prove her possession and enjoyment of the suit property after the settlement deed executed in her favour. The settlement deed does not confer any right or title to the plaintiff. When it being so, without any right, title over the suit property, the plaintiff cannot ask for any prayer for declaration in respect of the suit property.

(e) Both the courts below failed to apply the provisions contemplated under Sections 122 and 126 of the Transfer of Property Act. Normally, the gift deed to be executed on love and affection. Whereas the recital of the Ex.B.3 revocation of settlement deed would show that the plaintiff did not render duties and did not show any love and affection as a wife to the first defendant. Therefore, the reason for revocation of http://www.judis.nic.in the gift deed is justified as the plaintiff has chosen to withdraw her conjugal duties and love and affection towards the first defendant. In view of Section 126 of Transfer of Property Act, the cancellation of settlement deed is valid and the first defendant did not require to get any consent from the plaintiff being the beneficiary.

(f) The sale deed executed in favour of the second defendant by the first defendant which was marked as Ex.B.4 is a valid one, since the second defendant is a bonafide purchaser for valid sale consideration. The sale deed was executed by the first defendant as well as the plaintiff and as such

it is valid under law. The plaintiff made bald allegations that she was impersonated and her signature was forged while executing the sale deed, when she did not even plead the same and she failed to prove the said allegations before the trial court. Therefore, Ex.B.4 sale deed is a valid document and the second defendant is the bonafide purchaser. Both the courts below erred in holding that Ex.B.4 is void without applying the principles contemplated under Section 73 of the Indian Evidence Act. Section 73 of the Indian Evidence Act mandates the procedure to be followed in comparison of signatures in a case of forgery or disputing the signature. The signatures shall not be compared by the court itself with the disputed signature without sending the same for expert opinion. http://www.judis.nic.in Unfortunately the trial court without complying the said principles contemplated under Section 73 of the Evidence Act, erroneously found that the sale deed was forged only for the reason that the judgment rendered by the criminal court, which was marked as Ex.A.11. On the complaint lodged by the plaintiff, a case has been registered as against the first defendant and during trial, the trial court without even taking specimen signature from the plaintiff and with the photos of signatures of the plaintiff taken from the court records, conducted trial. Therefore, the procedure contemplated under Section 73 of the Indian Evidence Act is totally violated. In fact, both the courts below compared the signatures of the plaintiff with the plaint and vakalat nama with the disputed signatures appeared in the sale deed executed and concluded the same as forged one. Both the courts below considered the findings of the criminal court, which was marked as Ex.A.11 and concluded that the plaintiff has not signed the sale deed Ex.B.4 and she was impersonated. The judgment or findings of the criminal court shall not be admissible in a civil case. The civil court can decide the case only on the basis of evidence adduced before the civil court and prayed to allow the second appeal.

7.1 The learned counsel for the second defendant, in support of his contention, relied upon the following judgments:

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(i) C.R.Umapathy and others Vs. D.Sathyanarayana Chettiar and others reported in 2015 (1) CTC 398

(ii) Arundhati Mishra Vs. Sri Ram Charita Pandey reported in 1994 (2) SCC 29

(iii) Suhrid Singh alias Sardool singh Vs. Randhir Singh and others reported in (2010) 12 SCC 112

(iv) MD.Noorul Hoda Vs. Bibi Raifunnisa and Others reported in (1996) 7 SCC 767,

(v) State of Orissa Vs. Rajendra Prasad Bharadia reported in 1994 SCC (5) 146

(iv) Latif Estate Line India Ltd., rep by its Managing Director, Mr.Habib Abdul Latif Vs. Hadeeja Ammal and two others reported in 2011 (2) CTC 1

(v) Seth Ramdayal Jat Vs. Laxmi Prasad reported in (2009) 11 SCC 545

(vi) Vishnu Dutt Sharma Vs. Daya Sapra (SMT) reported in (2009) 13 SCC 729

(vii) Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Administration) and another http://www.judis.nic.in reported in (2009) 5 SCC 528

(viii) Ammasai Gounder Vs. Pavayammal and others reporte in 2020 (1) CTC 205

8. Per contra, the learned counsel for the plaintiff submitted as follows:

(a) Both the courts concurrently held in favour of the plaintiff and as such this Court should not interfere with the findings of the courts below and it is against the power under Section 100 of CPC. The substantial questions of law formulated by this Court while admitting the second appeal and the additional substantial questions of law raised during the course of arguments by the second defendant did not support the case of the appellant and as such the second appeal fails and liable to be dismissed.

(b) He further contended that on perusal of the settlement deed dated 17.10.1984 clearly discarded the case of the second defendant, since she was put in possession and enjoyment of the suit property immediately after execution of the settlement deed. Though under the settlement deed, life estate alone has been given to the plaintiff, the entire right of sale has not been completely taken away and it is restricted http://www.judis.nic.in to the extent that in the event of any necessity she should join with the first defendant. The first defendant has no right to revoke the settlement deed since there is no right reserved to revoke the settlement deed as enunciated under Section 126 of the Transfer of Property Act.

(c). He further submitted that the second defendant cannot question the same, since she is the subsequent purchaser and she is not competent to speak about the same. In fact, the first defendant did not come forward to defend his case or the second defendant's case and he remained ex parte. Though the second defendant filed written statement, she did not come forward to depose before the trial court. Therefore, evidence of DW1 and DW2 are not at all useful to the pleadings of the second defendant. The settlement deed cannot be cancelled immediately after and in the absence of any power for revocation reserved and the deed itself is against public policy to register the cancellation of such settlement deed.

(d) He further submitted that this Court as well as the Hon'ble Supreme Court of India repeatedly saying that the person who is seeking to cancel the settlement deed has to approach the civil court to have the settlement deed set aside and not by unilateral cancellation. It is no http://www.judis.nic.in longer res integra and the courts have categorically held that unilateral cancellation is bad. Ex.B.4 was executed by the first defendant and one, Mariammal witnessed by two witnesses identified before the Sub Registrar the person who executed the sale deed. The plaintiff was driven out from the suit property by the first defendant in the year 1985, which

resulted in matrimonial proceedings. Thereafter she also caused public notice on tamil daily, wherein she ascertained her right, title and possession over the property. Therefore, the sale deed executed in favour of the second defendant is not at all valid one and both the courts rightly held that it is void.

(e) Further, the first defendant had no title over the property to execute any sale deed in favour of the second defendant. That apart, the plaintiff was impersonated and her signatures were forged and executed sale deed in favour of the second defendant and as such it is void ab initio and the same is not binding on the plaintiff. In fact, the second defendant, after verification of encumbrance certificate, purchased the suit property and in the encumbrance certificate she found already there was a settlement deed dated 17.10.1984 and also cancellation of settlement deed dated 28.09.1987. Therefore, she was advised to have execution by the settlee namely the plaintiff herein. Accordingly, she also executed sale http://www.judis.nic.in deed in her favour. When it was legally barred to cancel the settlement deed, that too unilaterally the second defendant ought not to have purchased the same, when the settlement deed was not cancelled by the civil court.

(f) He further submitted that when the plaintiff categorically stated that she was impersonated and her signatures were forged and executed sale deed in favour of the second defendant, she has to enter into box and let in evidence that the plaintiff was very much present before the Registrar Office and executed sale deed in her favour. But the second defendant never entered into box and deposed. The Registrar has to enquire before registration under Rules 54 and 55 of Registration Act and there is no such certificate found in the document. The Registrar also not endorsed that the sale consideration was passed and the first defendant and the plaintiff were present. Impersonation and forgery were proved by the criminal court against the first defendant and he was convicted and sentenced to imprisonment. Therefore, it is categorically proved that the sale deed itself is void and the suit property is liable to be declared in favour of the plaintiff and prayed for dismissal of the second appeal.



9. The learned counsel for the plaintiff, in support of his contentions, relied upon the following judgments:

(i) B.K.Rangachari and Ors. Vs. L.V.Mohan reported in 2015 (2) CTC 465.

(ii) K.A.Shanmugam and Ors. Vs. Tamilarasi and Ors. reported in 2011 (6) CTC 42, and

(iii) Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Ors. reported in AIR 1999 SC 2213.

10. Heard Mr.G.Ilangovan, learned counsel appearing for the second defendant, and Mr.S.Sundaresan, learned counsel appearing for the plaintiff.

11. This Court considered the rival submissions made by the learned counsel on either side, and the principles of law outlined in the above said positions are taken into consideration and followed as applicable to the case on hand.

12. The plaintiff got married the first defendant. The first defendant purchased the suit property by the registered sale deed dated 27.08.1980 from one, Thiyagarajan and thereafter the said property was http://www.judis.nic.in settled in favour of the plaintiff by the registered settlement deed dated 17.10.1984. There was misunderstanding between the plaintiff and the first defendant and as such she was driven out from the matrimonial home. The first defendant filed divorce petition in MOP.No.331 of 1987, in which the plaintiff filed I.A.No.22350 of 1987 seeking interim maintenance and ordered maintenance. Due to non compliance of the order passed in I.A.No.22350 of 1987, the divorce petition was dismissed. Therefore, the first defendant cancelled the settlement deed by the deed dated 28.09.1987. Thereafter, the first defendant offered to sell the suit property which was settled in favour of the plaintiff and subsequently cancelled the settlement deed. The second defendant agreed to purchase the suit property for total sale consideration of Rs.59,000/- and paid a sum of Rs.10,000/- as advance to the first defendant. After verification of document including encumbrance certificate in respect of the suit property found that there was a settlement deed dated 17.10.1984 and subsequently it was cancelled by the cancellation of settlement deed dated 28.09.1987. Therefore, the second defendant insisted the settlee, namely the plaintiff herein also to execute sale deed in her favour. The first defendant agreed for the said request and his wife Mariammal also came to the Registrar Office and executed sale deed in favour of the second defendant by the registered sale deed dated 01.11.1989. According to the http://www.judis.nic.in second defendant, she does not know whether the first defendant impersonated his wife, namely the plaintiff herein by another person and forged her signature by the impersonated person. However, the first defendant and another one Mariammal executed sale deed in her favour witnessed by two witnesses.

13. According to the plaintiff, she never executed sale deed in favour of the second defendant and she was impersonated and her signatures were forged before the Registrar Office. In spite of her public notice with regards to the ownership of the suit property that the suit property was originally settled in her favour and without her consent and without her knowledge, the settlement deed was cancelled unilaterally by the first defendant. In spite of that, the sale deed was executed in favour of the second defendant and as such both the documents are void ab initio and it never binds the plaintiff. Therefore, she sought for declaration of the suit property in her favour. After hearing the arguments, this Court formulated the following additional substantial questions of law.

(a) Whether the suit is hit by Section 42 of the Specific Relief Act as the Plaintiff omitted to seek further relief of cancellation of Ex-B3 and Ex-B4?

(b) Whether the suit is hit by Section 31 of the http://www.judis.nic.in Specific Relief Act as the Plaintiff failed to seek cancellation of the same?

14. Both the courts below held that Ex.B3 revocation of settlement deed and Ex.B.4 sale deed executed in favour of the second defendant are void. The plaintiff is entitled for decree for declaration declaring that the suit property belongs to the plaintiff by virtue of the settlement deed executed in favour of the plaintiff Ex.B.2. Admittedly, the plaintiff got married the first defendant and the first defendant executed settlement deed in favour of the plaintiff, which was marked as Ex.B.2. Due to family dispute between them, the first defendant cancelled settlement deed by way of registered cancellation of settlement deed on 28.09.1987, which was marked as Ex.B.3. Thereafter the first defendant sold out the suit property in favour of the second defendant by the registered sale deed dated 01.11.1989. The said sale deed was also executed by his wife Mariammal along with the first defendant. Subsequently, it was disputed by the plaintiff and lodged complaint as against the first defendant and the same was registered for the offences of impersonation and forgery. The first defendant was convicted by the trial court in C.C.No.11197 of 1992 and the first appellate court also confirmed the same in the appeal. However, the second defendant http://www.judis.nic.in purchased the suit property after verification of all the documents including the encumbrance certificate and insisted the first defendant to execute sale deed along with the settlee his wife Mariammal. The second defendant did not know about the identity of the first defendant's wife. Therefore, she was under impression that the person who executed sale deed in her favour along with the first defendant is the wife of the first defendant. The second defendant purchased the suit property for valid sale consideration and as such she is a bonafide purchaser of the suit property under Ex.B.4.

15. The plaintiff filed suit for declaration declaring that the plaintiff is having absolute right, title and interest over the suit property and permanent injunction with the alternative prayer of recovery of possession of the suit property. The learned counsel for the second defendant contended that the relief of permanent injunction and the relief of recovery of possession are quite contradictory with each other and the same is destructive to one another. Admittedly, the settlement deed was executed in favour of the plaintiff on 17.10.1984. In the middle of the year 1985, due to family dispute between the plaintiff and the first defendant, she was driven out from the matrimonial home, namely the suit property. Thereafter, the first defendant filed divorce petition, in http://www.judis.nic.in which the plaintiff also filed petition for maintenance. Subsequently she also lodged a complaint against the first defendant for impersonating her and also forging her signatures in the sale deed executed in favour of the second defendant. Therefore, she was not in possession of the suit property even from the year 1985 onwards. In this regard, the learned counsel for the second defendant relied upon the following judgments:

> (i) C.R.Umapathy and others Vs. D.Sathyanarayana Chettiar and others reported in 2015 (1) CTC 398, wherein it is held as follows:
>
> “12. A perusal of the said application filed by the plaintiffs before the trial Court would show that they wanted to add the relief of possession alone in the plaint prayer and nothing else. As rightly pointed out by the learned counsel appearing for the respondents 3 and 4, the plaintiffs are not seeking to delete the prayer for injunction. On the other hand, by retaining such a prayer, they seek to introduce the prayer for possession as well. It is needless to say that both the prayers, namely injunction and

possession, do not go together, as they are mutually opposite prayers. While considering the pleadings of the parties, it is settled principle that though the defendants can take contradictory pleas, the plaintiffs should be clear in their plea and prayer in the main suit. It is not the case of the plaintiffs that they are in possession and so they seek injunction and in case the Court comes to the conclusion that they are not in possession, alternatively, they are entitled for the relief of possession. On the other hand, it is their case that they have omitted to seek the relief of possession by over-sight. Therefore, the question of considering the relief of possession as http://www.judis.nic.in an alternative relief also does not arise. "

(ii) Arundhati Mishra Vs. Sri Ram Charita Pandey reported in 1994 (2) SCC 29, wherein it is held as follows:

"4. The question in this case is whether the plea of adverse possession sought to be set up by the respondent could be permitted to be raised. The pleas based on title and adverse possession are mutually inconsistent and tile latter does not begin to operate until the former is renounced. It is his own case that he came into possession of the suit house in his own right and remained in possession as an owner. The appellant is only benamidar. Therefore, his plea is based on his own title. He never denounced his title nor admitted the title of the appellant. He never renounced his character as an owner asserting adverse possession openly to the knowledge of the appellant and the appellant's acquiescence to it."

16. This Court and the Hon'ble Supreme Court of India held that the plaintiff should be clear in the plea and the prayer in the suit. The prayer namely injunction and possession do not go together as they are mutually opposite prayers. Therefore, the question of considering the relief of possession as alternative relief of possession does not arise. The plea of injunction and possession are undoubtedly destructive plea to each other. In the case on hand, the plaintiff sought for relief of declaration and injunction with the alternative prayer of recovery of possession. On http://www.judis.nic.in perusal of the pleadings, she categorically pleaded that after dismantling the thatches in the suit property, she has expanded and renovated the suit house. After renovation when she was about to move into house, she was prevented to enter into the said house, namely on 10.10.1992. Whereas in the earlier paragraphs, it was stated that she was driven out from the suit house in the middle of the year 1985 and since then, she has been residing with her parents. Thereafter, the first defendant filed divorce petition in MOP.No.331 of 1987 in the year 1987. As such, admittedly she was not in possession and enjoyment of the suit property at the time of filing the suit. When it being so, the plaintiff should not have prayed for two destructive prayers, namely injunction and recovery of possession and the above judgments squarely apply to the case on hand.

17. The plaintiff filed suit for declaration declaring that she is the owner of the suit property without asking for nullifying the cancellation of settlement deed Ex.B.3 and the sale deed executed in favour of the second defendant Ex.B.4. She categorically pleaded that the settlement deed executed in favour of her was cancelled by Ex.B.3 and subsequently, the first defendant executed sale deed in favour of the second defendant by Ex.B.4, that too by impersonating her and forging her signatures.

She cannot be declared without setting aside the cancellation of settlement deed and the sale deed executed in favour of the second defendant. http://www.judis.nic.in Under Section 34 of Specific Relief Act, it is imperative on the part of the plaintiff on the basis of her pleadings in the plaint, for avoidance of cancellation of settlement deed and the sale deed, and its nullity as further relief as per Section 34 of the Specific Relief Act. Therefore, without seeking such relief, the title cannot be decreed in favour of the plaintiff. It is relevant to extract Section 34 of the Specific Relief Act as follows:

> "34. Discretion of court as to declaration of status or right.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

18. In this regard, the learned counsel for the second defendant relied upon the judgment in the case of Suhrid Singh alias Sardool singh Vs. Randhir Singh and others reported in (2010) 12 SCC 112, wherein it is held as follows:

> "6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in http://www.judis.nic.in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' -- two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If `A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If `B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if `B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act."

19. The Hon'ble Supreme Court of India held that where the executant of a deed want it be an annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. In the case on hand, the plaintiff did not ask for any prayer to annul the cancellation of

settlement deed and the sale deed, namely Ex.B.3 and Ex.B.4. Section 34 of the Specific Relief Act, prima http://www.judis.nic.in facie says that no court shall make any such declaration where the plaintiff, being able to ask for other relief than a mere declaration of title, omits to do so. Therefore, mere declaration without consequential relief does not provide the needed relief in the suit, it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse to grant the declaratory relief. The plaintiff categorically pleaded that Ex.B.3 and Ex.B.4 were executed in prejudicial to the rights of the plaintiff and that she claimed the same as void documents.

20. As per the provision contemplated under Section 31 of the Specific Relief Act, when the plaintiff claims any instrument is void and affecting his rights, she must sue for adjudication of such document void and cancelled. In this regard, the learned counsel for the second defendant relied upon the judgment rendered by the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Ltd., rep by its Managing Director, Mr.Habib Abdul Latif Vs. Hadeeja Ammal and two others reported in 2011 (2) CTC 1, wherein it is held as follows:

> "19. On the issue of applicability of Section 31 of the Specific Relief Act, learned counsel relied on a Full Bench decision of the Madras High Court reported in AIR 1960 Madras 1 and AIR 2000 AP
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> 57. Learned counsel submitted that Section 31 is a discretionary remedy and any person can institute a suit and not necessarily a http://www.judis.nic.in party to the instrument. If a document is considered to be void or voidable anyone who has a legal apprehension that such instrument, if left outstanding may cause serious injury, may sue to get the document adjudged as void or voidable. A reading of the provision makes it clear that a document need not necessarily be set aside. It may be removed, if the person considers it as a source of possible mischief." The above case is squarely applicable to the case on hand and the plaintiff ought to have sue for adjudication of Ex.B.3 and Ex.B.4 is nullified.

21. The plaintiff caused public notice in tamil daily on 10.11.1987, thereby put on notice to prospective purchaser and the general public about her right, interest and title over the suit property. It was caused immediately after her knowledge. When it being so, Ex.B.3 stands as obstacle in her way. Though she was not a party to the said document, she necessary has to seek a declaration to get cancellation of settlement deed Ex.B.3 as nullified. Whereas the plaintiff filed suit only in the year 1993, namely after period of six years from the date of her knowledge, namely 10.11.1987 challenging the cancellation of settlement deed in the form of declaration of her rights over the suit property. Therefore, the suit for declaration of right, in other words to challenge as void of Ex.B.3 is clearly barred by limitation. In this regard, the learned counsel for the http://www.judis.nic.in second defendant relied upon the judgment in the case of MD.Noorul Hoda Vs. Bibi Raifunnisa and Others reported in (1996) 7 SCC 767, wherein it is held as follows:

> "The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the fads in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtain by

fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground, it is true that Art. 59 would be applicable if a person affected is a party to a decree or instrument :or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff http://www.judis.nic.in necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, .1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him." The above case squarely applies to the case on hand, since the plaintiff filed the suit after six years from the date of her knowledge about the cancellation of settlement deed, which was marked as Ex.B.3.

22. The first defendant executed settlement deed in respect of the suit property in favour of the plaintiff, which was marked as Ex.A.1. Thereafter, it was cancelled by the cancellation of settlement deed, which was marked as Ex.B.3. The recital of the cancellation of settlement deed shows that the plaintiff did not render duties, love and affection as wife to http://www.judis.nic.in the first defendant. Therefore, the reason of revocation of gift is justified as the plaintiff has chosen to withdraw his conjugal rights and love and affection towards the first defendant. It is relevant to rely upon the provisions under Sections 122 and 126 of the Transfer of Property Act, which read as follows:

"122. "Gift" defined.—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person,

called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice." From the above provisions, the settlement deed Ex.A.1 is a gift deed under Section 122 of the Transfer of Property Act. Section 126 of the http://www.judis.nic.in Transfer of Property Act is a special provision dealing with the power of the donor to revoke a gift deed in certain circumstances such kind of revocation does not require the consent of the beneficiary of the gift.

In this regard, the learned counsel for the second defendant relied upon the judgment rendered by the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Ltd., rep by its Managing Director, Mr.Habib Abdul Latif Vs. Hadeeja Ammal and two others reported in 2011 (2) CTC 1, wherein it is held as follows:

"44. The Bench further disagreed with the view taken by the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari and others Vs. Ananthula Sayamma and others, (2007) 1 CTC 97 and held as under:- (para 21) 21. With respect, I am unable to subscribe myself to the said view taken by the majority for the reasons which follow. Though in para 54 of the judgment, a reference has been made to Section 32-A of the Indian Registration Act, which was recently introduced, the learned Judge had not dealt with the same elaborately. Nobody can have any quarrel over the legal position that a deed of cancellation of a sale of immovable property of value Rs.100/- and upwards, is a document which needs compulsory registration. But the learned Judge has taken the view that to revoke a sale or to cancel the same, the consent or knowledge of the purchaser is not at all required. In my considered opinion, as I have already stated, a sale being a bilateral contract, http://www.judis.nic.in more particularly in view of Section 32-A of the Indian Registration Act, if to be cancelled, it should be done bilaterally by both the parties to the sale. The learned Judge has expressed the apprehension that if the law is so interpreted so as to hold that the Registering Officer has power to refuse to register a cancellation deed, then, it would render Section 126 of the Transfer of Property Act, which enables the donor of a gift to cancel it or revoke the same, ineffective. With respect, I am of the view, that such apprehension has no basis. Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to

revoke a gift deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the Indian Contract Act, since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a since-qua-non. Therefore, revocation of a gift deed cannot be equated to cancellation of a sale deed. Both operate on different spheres. A reference has also been made in the judgment to Section 23-A of the Registration Act." In the case on hand, admittedly after execution of the settlement deed in favour of the plaintiff by her husband the first defendant, there was a misunderstanding between them due to their family dispute. Therefore, they got separated and in fact, the plaintiff was driven out from the matrimonial home by the first defendant. Only for the said reason, the first defendant cancelled the settlement deed executed in favour of the http://www.judis.nic.in plaintiff. Therefore, the cancellation of settlement deed Ex.B.3 is valid in law in view of the provision under Section 126 of the Transfer of Property Act as the first defendant did not require to get any consent from the plaintiff, when she failed to render duties, love and affection as wife to the first defendant.

23. The plaintiff contended that she never executed any sale deed in favour of the second defendant and she was impersonated and her signatures were forged by the first defendant and executed sale deed in favour of the second defendant Ex.B.4. She also lodged complaint and it culminated in conviction and sentenced the first defendant for impersonation. On perusal of Ex.B.5, it is relevant to extract the provision under Section 73 of the Indian Evidence Act as follows:

"73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by http://www.judis.nic.in such person." It mandates the procedures to be followed in comparison of signatures in a case of forgery or disputing the signatures. The courts below concluded by considering the findings of the judgment passed by the criminal court, which was marked as Ex.A.11, that the plaintiff was impersonated and also the plaintiff's signatures were forged, without following the procedures as contemplated under Section 73 of the Indian Evidence Act. The courts below without sending the disputed signatures along with the admitted signatures for scientific comparison and obtain opinion of experts and only thereafter can form an opinion with regards to the issue of signatures. On perusal of Ex.A.11, the criminal court also did not follow the procedures as contemplated under Section 73 of the Indian Evidence Act. The criminal court did

not obtain any specific signature from the plaintiff and had taken only photographs of the signatures of the plaintiff taken by the Investigation Officer from the court records and sent it for expert opinion. In this regard, the learned counsel for the second defendant relied upon the judgment in the case of State of Orissa Vs. Rajendra Prasad Bharadia reported in 1994 SCC (5) 146, wherein it is held as follows:

19.A subsequent writing of an accused taken under the http://www.judis.nic.in direction of the court is in substance a specimen writing obtained for comparison of the disputed writing with it. Though, Section 73 does not specifically say as to who could make such a comparison but reading Section 73 as a whole, it is obvious that it is the Court which has to make the comparison and it may form the opinion itself by comparing the disputed and the admitted writings or seek the assistance of an expert, to put before the Court all the material, together with reasons, which induce the expert to come to a conclusion that the disputed and the admitted writings are of one and the same author so that the court may form its own opinion by its own assessment of the report of the expert based on the data furnished by the expert. The function of a handwriting expert is to opine after a scientific comparison of the disputed writing with the admitted (specimen) writing with regard to the points of similarity and dissimilarity in the two sets of writings.

20.The second paragraph of Section 73 (supra) enables the court to direct any person present before it to give his specimen writing "for the purpose of enabling the court to compare" such writings with writings alleged to have been written by such person.

The obvious implication of the words "for the purpose of enabling the court to compare" is that there is some proceeding pending before the court in which or as a consequence of which it is necessary for the court to compare such writings. The direction is therefore required to be given for the purpose of "enabling the court to compare" and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. Where the case is still under investigation and no proceedings are pending in any court in which it might be necessary to compare the two writings, the person http://www.judis.nic.in (accused) cannot be compelled to give his specimen writings. The language of Section 73 does not permit any court to give a direction to an accused to give his specimen writing for comparison in a proceeding which may subsequently be instituted in some other competent court. Section 73 of the Evidence Act in our opinion cannot be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the enquiry or the trial court before which proceedings are pending requires the writing for the purpose of 'enabling it to compare' the same. A court holding an enquiry under the Code of Criminal Procedure is indeed entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the court by which he may be subsequently tried to compare it with the disputed writings. Therefore, in our opinion the court which can issue a direction to the person to give his specimen writing can either by the court holding the enquiry under the Code of Criminal Procedure or the court trying the accused person with a view to enable it to compare the specimen writings with the writings alleged to have been written by such

a person. A court which is not holding an enquiry under the Code of Criminal Procedure or conducting the trial is not permitted, on the plain language of Section 73 of the Evidence Act, to issue any direction of the nature contained in the second paragraph of Section 73 of the Evidence Act. The words "any person present in the court" in Section 73 has a reference only to such persons who are parties to a cause pending before the court and in a given case may even include the witnesses in the said cause but where there is no cause pending before the court for its determination, the question of obtaining for the purposes of comparison of the handwriting of a person may not arise at all and therefore, the provisions of Section http://www.judis.nic.in 73 of the Evidence Act would have no application.

21.The specimen writings in the instant case of appellant Sukhdev Paul were taken under the directions of Shri S.P. Garg, Tehsildar-Executive Magistrate, PW 13. No enquiry or trial was admittedly pending in the Court of the Tehsildar-Executive Magistrate. The enquiry and trial in this case were pending under TADA before the Designated Court only. The direction given by the Tehsildar-Executive Magistrate Shri S.P. Garg to the appellant Sukhdev Paul to give his specimen writing was clearly unwarranted and not contemplated or envisaged by Section 73 of the Evidence Act. The prosecution has not disclosed as to at what stage of investigation or enquiry or trial was Sukhdev Paul appellant produced before the Executive Magistrate PW 13 to take the specimen writings of the appellant and why the specimen writings were obtained under directions of PW 13 and not of the Designated Court. It is a mystery as to how the specimen writings required to be used at the trial against the appellant were directed to be taken by PW 13, who was not enquiring or trying the case. To a specific question during his cross- examination, PW 13 admitted at the trial, that when he had issued the direction to the appellant there was no document on his file which could go to show as to under whose orders the appellant had been sent to him for taking his specimen handwriting. The manner in which the specimen writing of Sukhdev Paul was taken is totally objectionable and against the provisions of Section 73 of the Evidence Act. The Executive Magistrate PW 13 appears to have been too obliging and did not even care to examine the provisions of law before issuing the direction to the appellant. The argument of the learned counsel for the State that since no objection was raised by the appellant when he was called http://www.judis.nic.in upon to give his specimen writing by PW 13 therefore he cannot be permitted to make a grievance now is only an argument of despair and the silence of the appellant, who admittedly on that day, was not even represented by an advocate, cannot certainly clothe PW 13 with any jurisdiction to issue the directions as envisaged by Section 73 of the Evidence Act. The specimen writing of Sukhdev Paul could not, therefore, be made use of during the trial and the report of the handwriting expert, when considered in the light of the foregoing discussion, is rendered of no consequence at all and cannot be used against Sukhdev Paul appellant to connect him with the crime.

Further the courts below in comparing the signatures by themselves, are also totally violation of the mandatory procedures contemplated under Indian Evidence Act and the rules laid down by the Hon'ble Supreme Court of India. Both the courts below have done the comparison of signatures by themselves only with the signatures of the plaintiff available in the plaint, vakalatnama and the disputed signatures appear in the sale deed, namely Ex.B.4. It is completely against the principles of law laid down under Section 73 of the Indian Evidence Act.

24. The courts below considered the findings of the criminal court judgment, which was marked as Ex.A.11 and decided that the plaintiff did not sign Ex.B.4 sale deed and she was impersonated by the first http://www.judis.nic.in defendant. In this regard, the learned counsel for the second defendant relied upon the following judgments:

> (i) Seth Ramdayal Jat Vs. Laxmi Prasad reported in (2009) 11 SCC 545, wherein it is held that civil proceedings cannot be determined on the basis of a judgment of Criminal Court.
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> (ii) Vishnu Dutt Sharma Vs. Daya Sapra (SMT) reported in (2009) 13 SCC 729, Wherein it is held that the judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings.

(iii) Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Administration) and another reported in (2009) 5 SCC 528, where it is held that axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court In the above judgments, the Hon'ble Supreme Court of India repeatedly held that the findings given in a criminal proceedings will not be binding in civil proceedings. The judgment and finding of a criminal court shall not be admissible in a civil case. The civil court can decide the case only on the basis of the evidences adduced before the civil court. This principle is http://www.judis.nic.in well settled in the above judgments by the Hon'ble Supreme Court of India. In the case on hand, as discussed above, the courts below concluded that Ex.B.4 was not executed by the plaintiff and she was impersonated and her signatures were forged by the first defendant. Only based on the criminal court judgment, which was marked as Ex.A.11, both the courts below without considering the above settled principles of law, decreed the suit in favour of the plaintiff.

25. Though, both the courts below concurrently held against the second defendant, there are exceptions to interfere with the concurrent findings. In this regard, it is relevant to rely upon the judgment in the case of Ammasai Gounder Vs. Pavayammal and others reported in 2020 (1) CTC 205, wherein it is held as follows:

> "... The general rule is that the High Court will not interfere with the concurrent findings of the Courts below. Some of the well- recognised exceptions are, where,-
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> (1) the Courts below have ignored material evidence or acted on to evidence;
>
> (2) the Courts have drawn wrong inferences from the proved facts by applying the law erroneously; or (3) the Courts have wrongly cast the burden of proof." In view of the above discussion, it is found that both the courts below did not apply law on the settled principles related thereto and also ignored http://www.judis.nic.in material evidences and testimonies adduced by the second defendant.

Therefore, this court constrains to interfere with the findings of the courts below, since the findings of the courts below are perverse and against the evidence on record. Accordingly, the substantial questions of law and the additional substantial questions of law formulated by this Court are answered against the plaintiff and in favour of the second defendant.

26. In fine, the second appeal is allowed and the judgment and decree of both the courts below are set aside, and resultanty, the suit filed by the plaintiff in O.S.No.4992 of 1993 on the file of III Assistant Judge, City Civil Court, Chennai is dismissed, with costs. Consequently, connected miscellaneous petition is closed.

05.03.2020 Index : Yes/No Internet : Yes/No Speaking order/Non-speaking order lok http://www.judis.nic.in G.K.ILANTHIRAIYAN, J.

lok To

1. The I Additional Judge, City Civil Court, Chennai

2. The III Assistant Judge, City Civil Court, Chennai.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.

05.03.2020 http://www.judis.nic.in