

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.395/2017

Meharaj

.. Appellant /Appellant/Plaintiff

Versus

1.Hurmathuh Nisha  
2.Jakirunisa  
3.Ashrafonisha

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 28.02.2017 made in A.S.No.13 of 2016 on the file of the learned Third Additional District and Sessions Court, Gobichettipalayam, confirming the judgment and decree dated 31.08.2015 made in I.A.No.342 of 2012 in O.S.No.47 of 2012 on the file of the learned Sub Court, Sathyamangalam.

For Appellant : Mr.N.Manokaran

JUDGMENT

The plaintiff in OS.No.47/2012 on the file of the Court of Subordinate Judge, Sathyamangalam, is the appellant herein.

2 The appellant/plaintiff filed the said suit praying for the relief of partition of the suit property along with the land and superstructure bearing new Door No.343, Kotuveerampalayam Village, Sathyamangalam Bazaar, Sathyamangalam, into three equal shares and to allot one such share to the plaintiff, declaring the alleged forged document of a Sale Deed bearing Document No.982/1973 dated 18.05.1973 as null and void and also to award cost.

3 The 3<sup>rd</sup> defendant has filed the written statement refuting the allegations and she also filed IA.No.342 of 2012 under Order 7 Rule 11(a) (b) and under Section 151 of the Code of Civil Procedure praying for rejection of the plaint and the said application, after contest, came to be ordered vide judgment and decree 31.08.2015. The plaintiff aggrieved by the judgment and decree, rejecting the plaint, filed an appeal in AS.No.13 of

2016 on the file of the Court of III Additional District and Sessions Judge, Gopichettipalayam, and the Lower Appellate Court, vide judgment and decree dated 28.02.2017, has dismissed the said appeal and challenging the concurrent findings rendered by the Courts below, the plaintiff is before this Court by filing this Second Appeal.

4 The appellant/plaintiff in the plaint would further aver among other things, that the suit property more fully described, originally belonged to her father and the defendants 1 and 2, by virtue of a registered Partition Deed dated 22.05.1962. The father of the plaintiff and defendants 1 and 2 as well as their mother, died leaving behind the plaintiff and the defendants 1 and 2 as their legal heirs and their father, during his life time, had created a usufructuary mortgage on 01.02.1967 in favour of Ahmed Ibrahim Sahib and Mohamed Abdul Khader Sahib. The plaintiff would further aver that her father used to be away from the native to eke out his livelihood and she was looked after by her father's brother, viz., Basheer Ahmed Khan Sahib, as caretaker and the 3<sup>rd</sup> defendant is his wife. It is further stated by the plaintiff that during the life time of her father, he also verified before the Sub Registrar office and found that a forged document was created and registered in the name of the 3<sup>rd</sup> defendant in respect of the suit property and it is a forged one and not all signed and executed by her father and as such, it will not bind the plaintiff and defendants 1 and 2, being the right over the property. The plaintiff, on coming to know of the same, has sent a legal notice dated 08.11.2010 to the 3<sup>rd</sup> defendant and her father, on becoming aware of the said fraud, also lodged a police complaint and the investigation is still

pending. In sum and substance, it is the case of the plaintiff that since the document created in favour of the 3<sup>rd</sup> defendant is wrong and forged and not at all executed by her father and her father died intestate, she along with the defendants 1 and 2 are entitled to 1/3<sup>rd</sup> share in the suit property and therefore, came forward to file the present suit for partition.

5 The 3<sup>rd</sup> defendant filed the written statement refuting the allegations and would contend that the father of the plaintiff and the defendants 1 and 2 had executed a registered Sale Deed dated 18.05.1973 in her favour and till the issuance of pre-suit notice on 08.11.2010, no steps have been taken to challenge the legality of the said Sale Deed. It is further contended by the 3<sup>rd</sup> defendant that a perusal of the Sale Deed dated 18.05.1973 executed in her favour would also disclose that the encumbrance in the form of mortgage has been cleared by her and she also filed a suit for recovery of possession also. The 3<sup>rd</sup> defendant would also contend that the suit has also not been

properly valued for the purpose of Court fees and in any event, the suit is hopelessly barred by limitation and prays for dismissal of the suit.

6 The 3<sup>rd</sup> defendant filed IA.No.342/2012, praying for rejection of plaint and stated the reasons as that of her plea in the written statement.

7 The respondent therein / plaintiff filed a counter statement, denying the averments and would content that the alleged Sale Deed though executed during the year 1973, the suit came to be filed on 10.06.2012 and it is not barred by limitation. The respondent / plaintiff would further contend that her father did not take any steps due to fruitful/convincing words expressed by his brother Basheer Ahmed - husband of the 3<sup>rd</sup> defendant and also due to inadvertence and further he was not keeping well and was also aged and as such, he could not take any steps to challenge the validity of the document dated 18.05.1973. It is also contended by the respondent / plaintiff that the suit has been properly valued for the purpose of Court fee and therefore, prayed for dismissal of the said application.

8 The petitioner therein / 3<sup>rd</sup> defendant in the said Interlocutory Application, has filed reply to the counter statement. During the course of enquiry, no witnesses were examined and on behalf of the 3<sup>rd</sup> defendant / petitioner therein, Exs.P1 to P14 were marked. The respondent therein / plaintiff did not mark any document.

9 The Trial Court, after taking into consideration the averments made in the affidavit filed in support of the said Interlocutory Application filed for rejection of plaint, counter statement and the reply to the counter statement, found that as per Ex.P.2 dated 18.05.1973, the father of the plaintiff and the defendants 1 and 2, had executed a registered Sale Deed dated 18.05.1973 in favour of the 3<sup>rd</sup> defendant and in the Sale Deed, the plaintiff has been shown as a minor. The Trial Court also observed that as per Ex.P3-Suit Register relating to OS.No.279/1980, the 3<sup>rd</sup> defendant has also taken steps for recovery of possession in pursuant to the clause in the Sale Deed and it was decreed and the appeal was dismissed and she has also taken possession of the suit property on 24.01.1983 and also mutated the revenue records in her favour. The Trial Court also found that though the Sale Deed was executed in favour of the 3<sup>rd</sup> defendant by the father of the plaintiff and the defendants 1 and 2 as early as on 18.05.1973, till the year 2010, no objection whatsoever has been raised and the plaintiff, on attaining the majority also did not take steps to challenge or set aside the said Sale Deed. Therefore, the Trial Court



found that the suit is barred by limitation under Article 56 and 61[b] of the Limitation Act. Insofar as the improper valuation of the suit is concerned, the Trial Court found that in the year 1983, the 3<sup>rd</sup> defendant had obtained possession through Court proceedings and since the Court fee has been paid under section 37[2] of the Tamil Nadu Court Fee and Suits Valuation Act, 1955, had observed that it is not proper to state that the suit is not properly valued for the purpose of Court Fee and further held that the Sale Deed dated 18.05.1973 was put to challenge nearly after forty years and as such, the suit is barred by limitation and therefore, rejected the plaint vide judgment and decree dated 31.08.2015.

10 In the appeal in AS.No.13/2016 filed by the appellant/ / plaintiff before the Lower Appellate Court, the Lower Appellate Court found that after execution of the Sale Deed in favour of the 3<sup>rd</sup> defendant on 18.05.1973, the 3<sup>rd</sup> defendant filed a suit and got a decree for recovery of possession and also obtained delivery of possession on 24.01.1983 and further found from that plaint averments that it is not clear as to even the plaintiff becoming aware of the forgery / fabrication of the Sale Deed dated 18.05.1973 and the said fact has not been specifically pleaded in the plaint. The Lower Appellate Court also dealt with the issue as to the improper valuation of the suit for the purpose of Court fee and found that the Court Fee has been paid under section 37[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and a sum of Rs.825.50p. has been paid and it is not correct for the reason that since the delivery of possession has already been given in favour of the 3<sup>rd</sup> defendant through the process of Court, the plea of the plaintiff that they are in joint possession of the suit property, cannot be sustained and as such, invocation of section 37[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is not proper.

11 The Lower Appellate Court, citing the said reasons, has dismissed the appeal filed by the plaintiff vide impugned judgment and decree dated 28.02.2017 and the plaintiff, aggrieved by the rejection of the plaint, has filed the present Second Appeal.

12 In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised for consideration:-

- Whether the Courts below have committed an error in rejecting the plaint on the ground of limitation, particularly, when the question of limitation involves a complicated question of law and facts?
- Whether the issue as to the court fees can be a ground for rejection of the plaint, especially when there is a bar to

raise such a plea as per section 12[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955?

- Whether the courts below are competent to traverse beyond the plaint averments and to receive the documents without examining the parties concerned, for deciding the application filed under Order 7 Rule 7 CPC?

13 Mr.N.Manokaran, learned counsel for the appellant / plaintiff would strenuously contend that the Trial Court has virtually conducted a trial of the suit itself at the time of considering the application for rejection of the plaint, by marking Exs.P1 to P14 and the same is impermissible in law for the reason that the Court, while considering the application for rejection of plaint, has to take into consideration the averments made in the plaint and not any other material and unfortunately, the Trial Court, in an elaborate exercise, has considered and analysed the documentary evidence let in on behalf of the 3<sup>rd</sup> defendant / applicant who filed the application for rejection of plaint. It is the further submission of the learned counsel for the appellant/plaintiff that the petition for rejection of plaint came to be ordered primarily on the plea of limitation and since it is a mixed question of law and fact, the rejection of plaint cannot be done.

14 Insofar as the improper valuation of the suit and court fee is concerned, it is the submission of the learned counsel for the appellant/plaintiff that as and when it is pointed out, it is open to the plaintiff to make good the deficit Court fee and the rejection of plaint on that ground is also improper and prays for interference.

15 This Court paid its anxious consideration and best attention to the submissions made by the learned counsel for the appellant/plaintiff and also perused the impugned judgments and decrees passed by the Courts below.

16 It is relevant to extract the following paragraphs in the plaint:-

"VIII During the life time of the plaintiff's father Mohamed Khan, the plaintiff father understands and verified before Sub Registrar Office and found forged document created and registered in the name of the 3<sup>rd</sup> defendant covering the suit property. It is submitted that the said document sale deed created in the name of the third defendant in respect of the suit property is a forged one and is not signed and executed by the plaintiff's father and the said document will not bind the plaintiff and the defendants 1 and 2 being the

right over the suit property. It is submitted that the said document is a created one null and void, bogus, forgery inadmissible and will not bind the plaintiff and the defendants 1 and 2.

IX The plaintiff submits that the plaintiff father after knowing the fact that the 3<sup>rd</sup> defendant created a forged document immediately gave advocate notice to the 3<sup>rd</sup> defendant. The office copy of the registered notice and acknowledgment filed herewith.

X The plaintiff smits that the said Basheer Ahmed Khan made a forged document in favour of his wife, the 3<sup>rd</sup> defendant that, which is illegal and against the law. The said S.R.Mohammed Khan Sahib also lodged a complaint against his brother Basheer Ahamed for his illegal act of transfer of the suit property in favour of 3<sup>rd</sup> defendant, who is his wife.

XI The third defendant after receipt of this notice, sent a false reply and the same is filed herewith produced.

XVI The cause of action arose on the suit property when the said S.R.Mohammed Khan Sahib has acquired the property by partition deed dated 22.05.1962 and on 01.02.1967 he has executed usufructuary mortgage in favour of his brother and on 29.10.2010 the said S.R.Mohamed Khan Sahib has caused legal notice claiming his right over the suit property and on 17.03.2011, the said S.R.Mohammed Khan Sahib died leaving the plaintiff and defendants 1 and 2 are his legal heirs and on subsequent days the defendants 1 and 2 and the 3<sup>rd</sup> defendant were colluded to grab the plaintiff right over the suit property and the plaintiff comes to knowledge of illegal gain made by the defendants are within the jurisdiction of Sathyamangalam, which is within the jurisdiction of this Hon'ble Court."

17 The appellant / plaintiff before instituting the suit has sent a pre-suit lawyer's notice dated 08.11.2010, for which the 3<sup>rd</sup> defendant has sent a reply through her lawyer on 20.11.2010. Though the plaintiff / appellant in paragraph XI of the plaint has stated about the receipt of the reply to the



legal notice, there are no averments available as to the contents of the said notice. In the cause of action clause in paragraph XVI, nothing has been stated about the reply legal notice sent by the 3<sup>rd</sup> defendant on 20.11.2010.

18 It is to be pointed out at this juncture that it is the case of the plaintiff that the registered Sale Deed dated 18.05.1973 executed by her father in favour of her sister-in-law - 3<sup>rd</sup> defendant herein, is a forged document and has been created. It is also the further case of the plaintiff / appellant that immediately on coming to know of the fact that she has sent a pre-suit notice dated 08.11.2010, the 3<sup>rd</sup> defendant has sent her reply dated 20.11.2010.

19 It is the case of the 3<sup>rd</sup> defendant that in her application filed for rejection of the plaint, the registered Sale Deed dated 18.05.1973 was executed in her favour by her brother-in-law - father of the plaintiff and the defendants 1 and 2 on 18.05.1973 and as per the terms of the Sale Deed, she has to redeem mortgage the loan and also take necessary steps for recovery of possession and accordingly she has filed a suit in OS.No.279/1980 and through the process of the Court, also took delivery of the property through Court on 24.01.1983. The plaintiff sought to bring the suit within the period of limitation by alleging fraud and the date of knowledge of the fraud said to have been committed by the 3<sup>rd</sup> defendant.

20 The reply to the pre-suit notice sent by the 3<sup>rd</sup> defendant dated 20.11.2010 says about the execution of the registered Sale Deed dated 18.05.1973 in her favour by the father of the plaintiff and the defendants 1 and 2 and though a reference to the same has been stated in paragraph XI of the plaint, nothing has been stated about the contents of the same.

21 The 3<sup>rd</sup> defendant has also pointed out that in the registered Sale Deed dated 18.05.1973 executed by the father of the plaintiff and the defendants 1 and 2, the plaintiff has been shown as a minor. The plaintiff after attainment of majority, did not take any steps to challenge the legality of the execution of the said Sale Deed and also not file a suit for declaration of title within a period of twelve years from the date of execution of the Sale Deed.

22 It is also the case of the plaintiff that her father, on coming to know of the same, has lodged a complaint on 17.03.2011 and 15.07.2011 and it was acknowledged on 17.03.2011 and the investigation is pending. As already pointed out, in paragraph XVI of the plaint - cause of action clause, nothing has been referred to about the reply notice dated 20.11.2010. It is also the submission of the learned counsel for the

appellant/plaintiff that the plaint being the bundle of facts cannot be dissected and should be read as a whole.

23 The attempt of the plaintiff to get over the limitation period, by alleging that on becoming aware of the fact, the suit has been instituted within the period of three years ; but unfortunately, necessary averments are lacking in the plaint.

24 The rejection of plaint and plea of limitation came up for consideration before a Division Bench of this Court reported in 2011-3-CTC-153 [N.Ravindran V. V.Ramachandran] and in paragraph 11 of the said judgment, reliance has also been placed upon the decision rendered by the Hon'ble Apex Court reported in 2004 [3] SCC 137 [Sopan Sukhdeo Sable V. Asst.Charity Commissioner] and it is relevant to reproduce the same:-

"11. The scope of Order VII Rule 7 C.P.C. has been elaborately considered in Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137, wherein the Supreme Court held as under:

10. In *In Saleem Bhai v. State of Maharashtra* ((2003) 1 SCC 557) it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* ((1998) 2 SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading



of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467).

13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* (1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

14. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* ((1998) 7 SCC 184) it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same

time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

25 It is also relevant to extract paragraphs No.19. 23 of the said judgment which reads thus:-

"19 Order VII Rule 11 clause (d) applies only when the suit appears from the statement in the plaint to be barred by any law. The learned Senior Counsel for appellant mainly contended that the question of limitation is a mixed question of fact and law and therefore the plaint cannot be rejected on the ground of limitation. It was further submitted that the question of limitation is connected with the merit of the suit and therefore the plaint cannot be rejected under Order VII Rule 11 (d) as barred by limitation and the learned single Judge committed an error in rejecting the plaint under Order VII Rule 11(d) C.P.C. as barred by limitation. In support of his contention, the learned Senior Counsel placed reliance upon a decision of the Supreme Court in *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183 and other decisions.

.....

23 As held by the Supreme Court in *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183, the limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In the case on hand, the plaint averments would clearly show that there has been a clear and unequivocal threat to the right claimed by the plaintiff. As pointed out earlier, in paragraph No.10 of the plaint, the plaintiff has categorically averred that in November 2002, one Mohan Kumar claiming to be a builder called upon the plaintiff and threatened him to vacate the suit premises as he (Mohan Kumar) proposed to purchase the property to put up several flats. It is also averred in the plaint that the plaintiff lodged a police complaint on 2.12.2002. In paragraph No.12 of the plaint, the plaintiff has averred that following several telephone calls threatening him he filed suit O.S.No.6514 of 2002. Before filing the suit, the plaintiff issued legal notice on 18.11.2002 calling upon the defendant to receive the balance consideration of

Rs.13,00,000/- and to execute the sale deed. Stating that the defendant has not come forward to execute the sale deed, in December 2002, plaintiff has filed the suit O.S.No.6514 of 2002 for bare permanent injunction. In the plaint averments in C.S.No.264 of 2007, there is a repeated reference to the threats by the defendant in November/December 2002 and also his refusal to fulfil his obligation. Suit for specific performance should have been filed atleast by 2.12.2005. Even though there was such clear and unequivocal threat to the alleged agreement of sale/undertaking, the plaintiff has not chosen to file the suit for specific performance; but filed the suit for specific performance -C.S.No.264 of 2007 only in the month of November 2006. The suit is clearly barred by limitation. Even though the question of limitation is a mixed question of facts and law, the facts are writ large on the face of it to hold that the suit for specific performance C.S.No.264 of 2007 is barred by limitation. On the factual matrix of this case the ratio of the decision of the Supreme Court in (2007) 14 SCC 183 is not applicable to the facts of the case on hand."

26 The endeavour of the appellant/plaintiff is to bring the suit within the period of limitation by alleging that the date of knowledge of fraud and however, necessary averments are lacking. It is also to be reiterated at this juncture that the registered Sale Deed dated 18.05.1973 executed by the father of the plaintiff and the defendants 1 and 2 in favour of the 3<sup>rd</sup> defendant - sister-in-law of the plaintiff sought to be set at knot nearly after 39 years and the 3<sup>rd</sup> defendant after becoming the owner of the property also got possession of the same, through process of the Court and that apart, the plaintiff who was shown as a party minor in the said Sale Deed, did not choose to make a challenge after attainment of majority and within the period of twelve years also did not make a challenge in the form of declaration.

27 In Popat Kotecha Property Vs. State Bank of India Staff Association reported in 2005 [7] SCC 510, it is held that "the real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible suits." This Court is, prima facie, of the view that the suit is abuse of process of Court since it is a bogus and irresponsible litigation and Order 7 Rule 11 cannot be exercised.



28 In the ratio laid down in T.Arivanandham Vs. T.V.Satyapal reported in AIR 1977 SC 2421 : 1977 [4] SCC 467, which was again reiterated in the decision reported in 1990 [2] SCC 17 [ITC Limited V. Debts Recovery Tribunal], the Hon'ble Supreme Court has observed that "by holding that clever drafting, creatig illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the plaint can certainly by unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11[a]".

29 The appellant / plaintiff through her pleadings made every attempts to bring the suit within the period of limitation. In the considered opinion of the Court, she has miserably failed to do so, even as per the averments in the plaint. This Court is also of the considered view that the suit has been brought forth very belatedly by challenging the legality of the registered Sale Deed, which came into being as early as on 18.05.1973 and it is nothing but an abuse of process of law.

30 The Courts below, on a thorough consideration of the factual aspects and correct application of law, had correctly rejected the plaint. This Court, on an independent application of mind to the entire materials, is of the considered opinion that there is no error apparent or perversity to the reasons assigned by the Courts below and finds no merit in the Second Appeal.

31 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgments and decrees passed by the Courts below. Consequently, the connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To

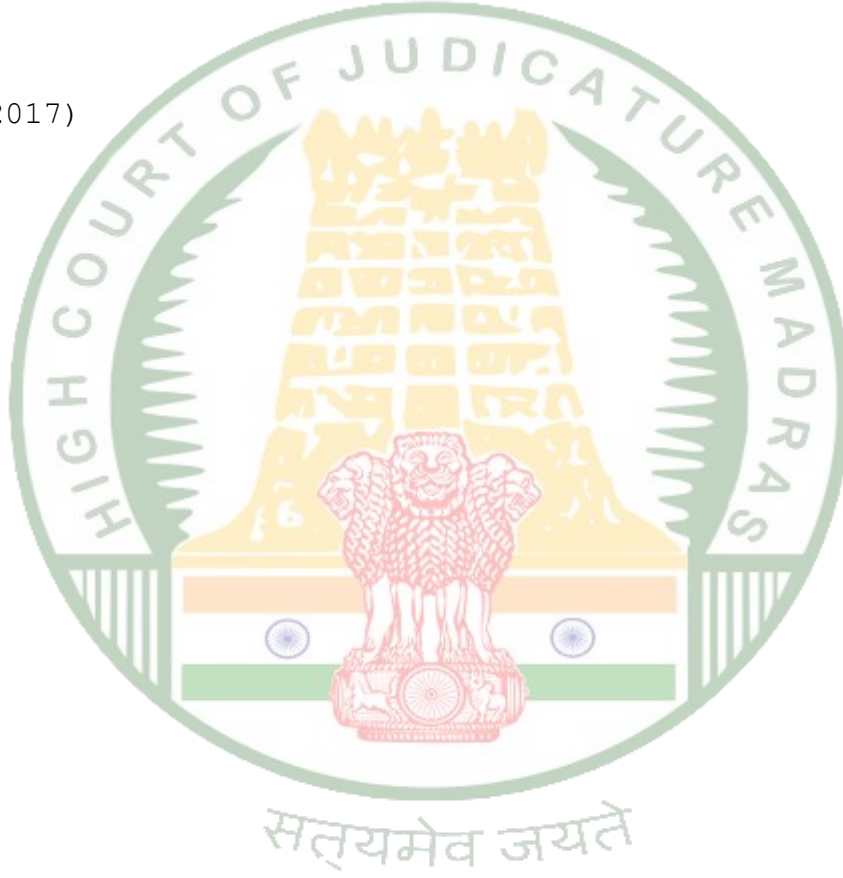
1. The III Additional District and Sessions Court,  
Gobichettipalayam,

2. The Sub Court,  
Sathyamangalam.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.46036

SA.No.395/2017

RSK(CO)  
CU(21/07/2017)



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