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A.S.No.32 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2025
PRONOUNCED ON : 09.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

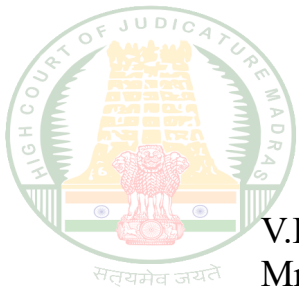
A.S. No. 32 of 2020
and
C.M.P. No. 142 of 2020

Mrs.Bhuvaneswari
W/o.Kumaresan, No.24, Maniyam Street,
Vavipalayam Extension, Thirupur 641 601.

..Appellant(s)

Vs

1. R.Maragatham
W/o.N.Ramraj, No.10, Akilmedu Street, Erode
638 001.
2. V.Tiyagarajan
S/o.V.L.Vaithiyalingam, Chettiar, Sarmiyam
Sahib Street, Thirupur 641 604.
3. V.Jayanthi
W/o.S.Visawanathan, Madhavi Street, Teachers
Colony, Erode 638 001.
4. Priya Alias Kalaimahal,
W/o.N.Venkatesan, No.10, Akilmedu 1st Street,
Erode 638 001.
5. V.Thilagavathy
W/o.Venkatesh, No.14, Bungalow Road
Extension, Tirupur 641 602.



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V.L.V.Sornam(died)
Mr.Udhayakumar(died)

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..Respondent(s)

PRAYER: Appeal suit filed praying to set aside the fair order and decretal order dated 21.04.2017 made in I.A.No.27 of 2013 in OS.No.21 of 2007 on the file of the III Additional District Judge, Dharapuram, Thirupur District.

For Appellant(s): M/s.S.Thanka Sivan
T.Uma Sivan
R.Sundara Kamesh Marthandan

For Respondent(s): Mr.V.S.Kesavan
B.Singaravelu For R1
Mr.A.Easwararao For R3 and R4
Mr.K.P.Gnanasambandam for
Mr.B.Thirumalai For R5
R-2 served – none appeared.

J U D G M E N T C

This appeal has been preferred by the second defendant in O.S. No. 21 of 2007, who was also the second respondent in I.A. No. 27 of 2013, challenging the final decree dated 21.04.2017 passed in I.A. No. 27 of 2013 on the file of the III Additional District Judge, Dharapuram, Tiruppur District, by which the final decree application came to be allowed.



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2. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court.

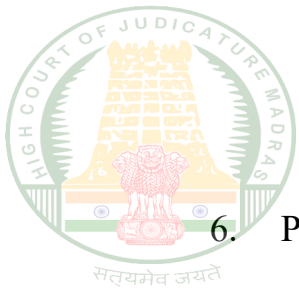
3. The brief facts necessary for the disposal of this appeal are as follows: the first and fifth respondents herein, as plaintiffs, instituted O.S. No. 21 of 2007 against the deceased V.L.V. Sornam, (arrayed as the first defendant), the present appellant (as the second defendant), the second respondent herein (as the third defendant), the deceased Udaya Kumar (as the fourth defendant), and respondents 3 and 4 herein (as defendants 5 and 6).

4. The second defendant (appellant), the plaintiffs (respondents 1 and 5), and the deceased Sornam are sisters born to V.L. Venkatasubramaniam Chettiar and V. Saraswathi. The other defendants are the children of V.L. Vaidhyalingam Chettiar, the brother of V.L. Venkatasubramaniam.

5. The plaintiffs claimed:

- (i) 1/4th share each in Item Nos. 1 and 3 of the suit properties,
- (ii) 1/6th share each in Item No. 2 property,
- (iii) 1/8th share each in Item No. 4 property.

By judgment dated 18.12.2007, the Trial Court decreed the suit and passed a preliminary decree accordingly.



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6. Pursuant to the preliminary decree, the plaintiffs filed I.A. No. 27 of 2013 for passing of the final decree. During the pendency of the said application, the first defendant died on 27.09.2013. Thereafter, the plaintiffs filed a memo and I.A. No. 61 of 2014 seeking amendment of the shares in the preliminary decree. In the said application, it was stated that, since the first defendant had died as a spinster, her share in the suit properties devolved equally upon the plaintiffs and the second defendant .

On that basis, the plaintiffs claimed enhanced shares as follows:

- i. one-third share each in Item Nos. 1 and 3 properties,
- ii. 4/18th share each in Item No. 2 property,
- iii. 4/24th share each in Item No. 4 property.

7. I.A. No. 61 of 2014, filed for amendment, was allowed on 11.03.2015. Pursuant thereto, the preliminary decree was amended by enhancing the share of the plaintiffs. In the final decree proceedings, an Advocate Commissioner was appointed, who submitted a report on 21.03.2017. No objections were filed thereto. Thereafter, the final decree came to be passed on 21.04.2017.

8. Execution and Subsequent Litigation: Subsequent to the passing of the final decree, the second plaintiff filed Execution Petition No. 44 of 2017 seeking recovery of possession. It was at that stage the second

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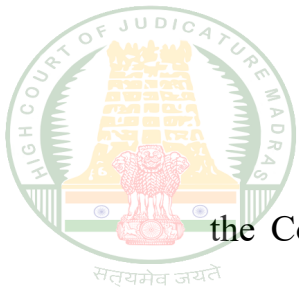
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defendant , for the first time, set up a plea based on a Will dated 25.08.2006. The application filed under Section 47 CPC questioning the executability of the final decree was rejected at the SR stage, and the Civil Revision Petition in C.R.P. No. 1328 of 2019 was also dismissed.

9. The second defendant filed a belated appeal against the preliminary decree along with C.M.P. No. 24425 of 2019 seeking condonation of a delay of 4162 days; the same was dismissed on 18.12.2019. Thereafter, the second defendant instituted Probate O.P. No. 180 of 2023 before the Principal District Court, Tiruppur, which also came to be dismissed on 17.08.2023. The order dismissing the probate original petition was not challenged further by the second defendant.

10. The second defendant also filed C.M.P. No. 9845 of 2023 in the present appeal under Order XLI Rule 27 CPC seeking permission to adduce additional evidence, and the said petition was allowed on 04.09.2023. Pursuant to the order passed by this Court, evidence of witnesses was recorded in relation to the Will dated 25.08.2006, which is said to have been executed by the first defendant in favour of second defendant.

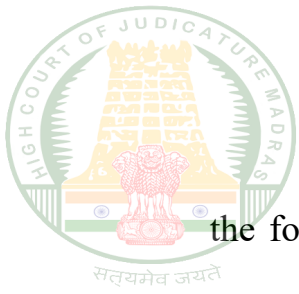
11. The learned counsel for the appellant/second defendant submitted that the impugned final decree dated 21.04.2017 is unsustainable in law, since



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the Court below proceeded to pass the same without first bringing the preliminary decree dated 18.12.2007 in tune with the subsequent events that had occurred during the pendency of the final decree proceedings. According to the learned counsel, the 1st defendant, namely V.L. Sornam, died on 27.09.2013 and the 4th defendant had died even earlier on 29.08.2009, and such deaths had a direct and material bearing on the shares of the parties. However, no amendment was made to the preliminary decree and no supplementary preliminary decree was passed declaring the altered shares.

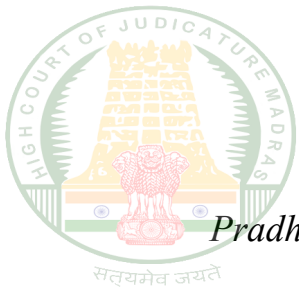
12. The learned counsel further submitted that the stand now sought to be taken by the respondents that there had already been an amended preliminary decree by virtue of I.A.No.61(a) of 2014 is itself highly doubtful and unsupported by the record. He would point out that when the appellant applied for certified copies, the trial Court registry returned the application stating that there was no such case number, and according to the appellant, the records also disclose suspicious corrections in the I.A. number. It was therefore argued that the alleged amendment of the preliminary decree is a later explanation put forth to cure the fundamental defect in the final decree proceedings. The learned counsel would submit that even the execution proceedings initiated in March 2017 proceeded on



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the footing of the original preliminary decree, which, according to him, clearly shows that no valid amendment had in fact been made till then.

13. The learned counsel also placed strong reliance on the subsequent events pleaded by the appellant, particularly the Will dated 25.08.2006 said to have been executed by the deceased 1st defendant in favour of the appellant. According to the learned counsel, though the appellant came to know of the said Will only on 24.02.2019, the same has thereafter been brought on record, this Court has permitted additional evidence under Order XLI Rule 27 CPC, and both the appellant and the attesting witness have been examined to prove the Will. It was contended that the evidence let in by the appellant is sufficient to establish the testamentary disposition and that there are no real suspicious circumstances surrounding the same. On that basis, the learned counsel submitted that the subsequent death of parties, coupled with the Will set up by the appellant, had the effect of materially altering the entitlement of the parties, and unless all such subsequent events were duly taken into account, the final decree could not have been validly passed. Hence, according to the learned counsel, the impugned final decree is liable to be set aside and the matter requires fresh consideration in accordance with law. In support of the above submissions, reliance was placed on *Meena*



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Pradhan and others v. Kamila Pradhan and another reported in (2023) 9

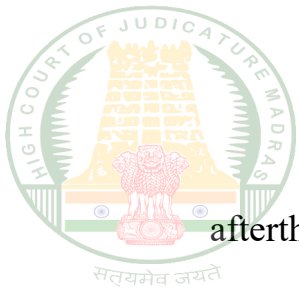
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SCC 734 , Ramesh Kumar v. Kesho Ram reported in 1992 supp (2) SCC 623 , Ghantesher Ghosh v. Madan Mohan Ghosh and others reported in (1996) 11 SCC 446 , Ganduri Koteshwaramma and another v. Chakiri Yanadi and another reported in (2011) 9 SCC 788, Alagammal v. Minor Manikandan in C.R.P.(NPD)No.966 of 2014 dated 21.11.2016.

14. The learned counsel for the 1st respondent/plaintiff submitted that the appellant, having remained ex parte and having failed to participate in the final decree proceedings, is not entitled to challenge the decree at this belated stage. According to the learned counsel, the appellant did not cross-examine any witness, did not file objections to the Advocate Commissioner's report and did not contest the proceedings in any manner, and therefore her conduct amounts to waiver and acquiescence. It was further submitted that, upon the death of Sornam, necessary steps were taken and the preliminary decree was amended in I.A.No.61 of 2014 on 08.09.2014, after notice to all parties, including the appellant, and that the final decree dated 21.04.2017 was thereafter passed in accordance with the amended preliminary decree.

15. The learned counsel further submitted that the alleged unregistered Will dated 25.08.2006, now relied upon by the appellant, is only an

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afterthought, since it was neither pleaded nor produced before the trial Court during the suit or final decree proceedings and surfaced only subsequently. It was contended that even in the enquiry conducted pursuant to the orders of this Court, the appellant and the attesting witness failed to prove the due execution and attestation of the Will, and that the probate proceedings in Prob.O.P.No.180 of 2023 also ended in dismissal. Hence, according to the learned counsel, the alleged Will cannot be relied upon to unsettle rights already worked out under the amended preliminary decree and the final decree, and the appeal is liable to be dismissed.

16. The learned counsel for the 5th respondent/ 2nd plaintiff submitted that the present appeal is confined to the correctness of the final decree dated 21.04.2017 and that the appellant cannot enlarge the scope of the appeal by relying upon the alleged Will dated 25.08.2006 or the probate proceedings arising therefrom. It was contended that, upon the death of Sornam during the pendency of the final decree proceedings, I.A.No.61 of 2014 was filed for amendment of the preliminary decree, the same was allowed, and the amendment was carried out on 11.03.2015. According to the learned counsel, the final decree was thereafter passed strictly in consonance with the preliminary decree as amended, and the reference to



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I.A.No.61(a) denotes only the amendment and not any interpolation.

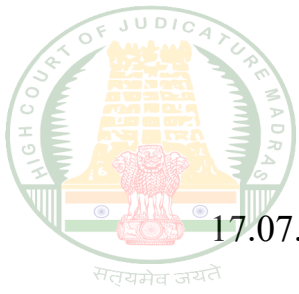
Hence, it was submitted that there is no infirmity in the impugned final decree and the appeal is liable to be dismissed.

17. The following points arise for consideration in this appeal:

1. Whether the final decree is not in consonance with the preliminary decree?
2. Whether the enhancement of shares is valid in law?
3. Whether the amendment made to the preliminary decree is binding on the parties?
4. Whether the dismissal of the probate proceedings operates as res judicata in relation to the Will?

18. **Points 1 to 3:** In O.S. No. 21 of 2007, a preliminary decree came to be passed on 18.12.2007, whereby the shares of the plaintiffs were determined, declaring $\frac{1}{4}$ share each in Item No. 1 property, $\frac{1}{6}$ th share each in Item No. 2 property, $\frac{1}{4}$ share each in Item No. 3 property, and $\frac{1}{8}$ th share each in Item No. 4 property. Thereafter, on 25.03.2013, the plaintiffs filed I.A. No. 27 of 2013 seeking passing of a final decree, claiming the very same shares as declared under the preliminary decree.

19. Upon the death of the first defendant, L.V. Sornam, on 27.09.2013, the first petitioner in the final decree proceedings filed a memo on 10/19



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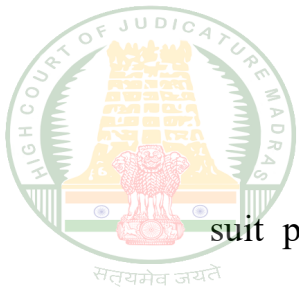
17.07.2014 informing the Court of the said death. Thereafter, the plaintiffs/petitioners in the final decree application filed I.A. No. 61 of

2014 seeking amendment of the preliminary decree. In the affidavit filed in support of the said application, the plaintiffs stated that, since the first defendant had died as a spinster, her share in all the four items of the suit properties devolved equally upon the plaintiffs and the second defendant/second defendant . On that basis, the shares originally declared in favour of the plaintiffs under the preliminary decree stood enhanced. Accordingly, the plaintiffs sought amendment of the preliminary decree to allot to each of them 1/3rd share in Item No. 1 property, 4/18 share in Item No. 2 property, 1/3rd share in Item No. 3 property, and 4/24 share in Item No. 4 property.

20. I.A. No. 61 of 2014, filed for amendment, was taken on file on 09.10.2014. Notice was ordered and time was granted by 29.10.2014 for the respondents to file their counter. As no counter was filed, the petition was allowed on 11.03.2015, and the amendment was permitted. Pursuant thereto, the preliminary decree was amended by enhancing the share ratio of the plaintiffs.

21. In the final decree proceedings, an Advocate Commissioner was appointed by order dated 17.07.2014. The Commissioner inspected the

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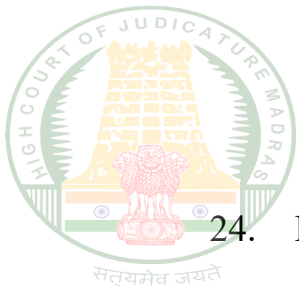
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suit properties in the presence of both sides, in accordance with the amended preliminary decree, and submitted his report on 21.03.2017.

Time was granted for filing objections; however, it appears that neither the appellant nor the other respondents filed any objection to the Commissioner's report. Thereafter, by order dated 21.04.2017, the final decree application was allowed and shares were allotted to the plaintiffs in terms of the amended preliminary decree.

22. Thus, in the present case, the preliminary decree exists in dual character: one being the original preliminary decree dated 18.12.2007 and the other being the amended preliminary decree brought about pursuant to the order dated 11.03.2015 passed in I.A. No. 61 of 2014.

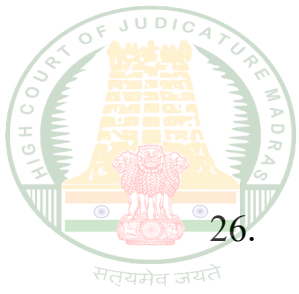
23. On the side of the second defendant, reliance was placed on the unamended preliminary decree with the contention that the final decree is not in consonance with the preliminary decree. However, the final decree dated 21.04.2017 is in consonance with the amended preliminary decree. Once the amendment is ordered and the decree is amended accordingly, the original preliminary decree ceases to exist independently and stands eclipsed by the amended decree.



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24. In a partition suit, if events occurring subsequent to the passing of the preliminary decree have the effect of altering the shares of the parties, the usual procedure is to pass a further preliminary decree determining the revised shares after taking into account such subsequent events. It is well settled that, in a partition suit, more than one preliminary decree may be passed before the final decree is drawn up. In the present case, instead of passing a further preliminary decree, the existing preliminary decree was amended. That, amounts to a procedural irregularity and does not, by itself, render the proceedings illegal.

25. The amendment petition was allowed after affording adequate opportunity to the respondents. Thereafter, the Advocate Commissioner inspected the suit properties and effected division in terms of the amended preliminary decree. Even after the Commissioner's report was filed, time was granted for filing objections; however, the appellant /second defendant did not choose to file any objection. Thus, the amendment came to be ordered only after sufficient opportunity had been afforded to the second defendant . Significantly, the second defendant did not challenge the order passed in I.A. No. 61 of 2014 by way of revision. The said order has, therefore, attained finality and is binding on the second defendant .



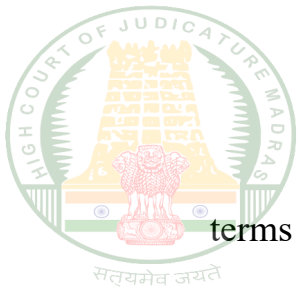
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26. Though the Trial Court, instead of passing a further preliminary decree, chose to permit amendment of the earlier preliminary decree, such course, at the highest, amounts only to a procedural irregularity. In a partition suit, the proceedings continue until the passing of the final decree, and the Court is bound to take note of subsequent events having a bearing on the shares of the parties. In the present case, the alteration of shares from $1/4^{\text{th}}$ to $1/3^{\text{rd}}$, $1/6^{\text{th}}$ to $4/18^{\text{th}}$, $1/4^{\text{th}}$ to $1/3^{\text{rd}}$, and $1/8^{\text{th}}$ to $4/24^{\text{th}}$, consequent upon the death of one of the co-sharers, is legally justified and does not cause prejudice to any party.

27. In the circumstances, it is held that the final decree is in consonance with the amended preliminary decree and that the amendment is binding on the second defendant/ appellant .

28. Though, in the ordinary course, a further preliminary decree ought to have been passed, the amendment of the existing preliminary decree constitutes only a procedural irregularity and not an illegality. The amendment was ordered after notice to the parties; no counter was filed opposing the same, and the order allowing the amendment was not challenged before any higher forum. It has, therefore, attained finality and is binding on the second defendant . Further, the Commissioner's report was accepted without objection, and the final decree was rightly passed in

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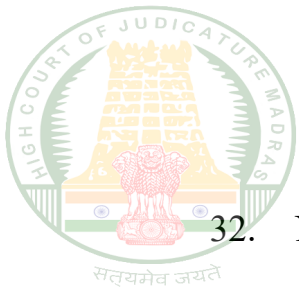
terms of the amended preliminary decree. Accordingly, Points 1 to 3 are answered against the second defendant/ appellant.

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29. **Point No. 4:** The second defendant , for the first time at the stage of execution, raised a plea that the deceased first defendant had executed an unregistered Will dated 25.08.2006, bequeathing her share in the suit properties in favour of the second defendant. Admittedly, there was no pleading whatsoever with regard to the said Will either in the suit proceedings or in the final decree proceedings. It is the specific case of the second defendant herself that she came to know of the alleged Will only in 24.02.2019, long after the passing of the final decree.

30. It is well settled that, in the absence of necessary pleadings, no amount of evidence can be looked into. Therefore, the attempt on the part of the second defendant to introduce the Will at the appellate stage is, on that ground alone, legally unsustainable.

31. Be that as it may, in an attempt to establish the Will, the second defendant instituted Probate O.P. No. 180 of 2023 before the Principal District Court, Tiruppur. The said original petition was dismissed on 17.08.2023. Admittedly, the second defendant has not challenged the said order before any higher forum, and it has thus attained finality.



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32. Nature and Effect of Probate Proceedings: A proceeding for grant of probate under the Indian Succession Act, 1925 is one in rem, and the judgment rendered therein binds not merely the parties to the proceeding but the whole world. The Probate Court, being a Court of exclusive jurisdiction in respect of the proof and genuineness of the Will, its determination on that issue cannot be reopened or re-agitated in collateral proceedings.

33. Application of Res Judicata: Though Section 11 of the Code of Civil Procedure, 1908, in terms, applies to suits, it is well settled that the doctrine of res judicata is of wider application and extends to proceedings of a different nature, so long as the essential requirements thereof are satisfied. In *Hope Plantations Ltd. v. Taluk Land Board*, reported in **1999 (5) SCC 590** the Supreme Court held that the principle of res judicata is founded on public policy and applies even at different stages of the same proceeding. In, *Satyadhyan Ghosal v. Deorajin Debi* reported in **1960 AIR 941** it was further reiterated that the doctrine is attracted even to decisions rendered in proceedings which are not strictly in the nature of suits.

34. Applying the above principles to the present case, it is clear that the Probate Court was competent to adjudicate upon the validity and

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genuineness of the Will. The parties to the present proceedings were also parties to the probate proceedings, and the issue relating to the genuineness of the Will was directly and substantially in issue therein. The probate petition came to be dismissed on merits, and the said order has attained finality. Consequently, all the essential ingredients necessary for attracting the doctrine of res judicata stand satisfied.

35. Effect of Finality of the Probate Order: Even assuming that the reasoning of the Probate Court, particularly with reference to Section 213 of the Indian Succession Act, may not be wholly correct, the fact remains that the said order was not challenged in the manner known to law. It is well settled that even an erroneous judgment, so long as it remains unassailed, continues to bind the parties.

36. Permitting the second defendant to establish the very same Will in the present appeal by invoking Order XLI Rule 27 CPC would amount to circumventing the finality attached to the probate order and, in effect, indirectly setting aside a judgment in rem, which is impermissible in law.

37. In view of the foregoing discussion, this Court holds that the order dated 17.08.2023 passed in Probate O.P. No. 180 of 2023 operates as res judicata on the question of the validity of the Will dated 25.08.2006. The



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second defendant is, therefore, precluded from re-agitating the said issue in the present appeal. Accordingly, Point No. 4 is answered against the second defendant/ appellant .

38. In the result, the appeal is dismissed with costs, and the order and decretal order dated 21.04.2017 passed by the III Additional District Judge, Dharapuram, Tiruppur District, in I.A. No. 27 of 2013 in O.S. No. 21 of 2007 are hereby confirmed. The stay granted in the execution proceedings stands vacated, and the Execution Court is directed to dispose of the execution petition expeditiously. Consequently, the connected miscellaneous petitions, if any, shall stand closed.

09.04.2026

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Speaking Order /Non-speaking order

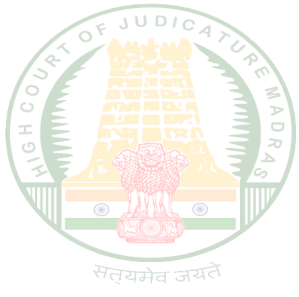
Neutral citation:Yes/No

To

1.The III Additional District Judge, Dharapuram, Thirupur District.

2. The Section Officer,
V.R.Records,
Madras High Court.

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DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
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