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SA No. 436 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	28.08.2026
DELIVERED ON	28.09.2026

CORAM

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

SA No. 436 of 2008

Lingappan (died)

Rukmani (died)

1.Maheswari

2.Latha

3.Vijayalakshmi

..Appellant(s)

Vs

1.M.Krishnasamy (died)

2.Saraswathi

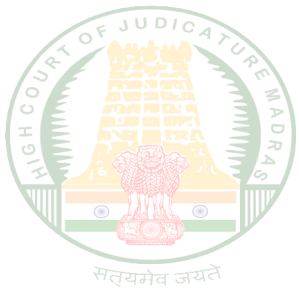
3.Santhamani

4.Uma Maheswari

(R1 died, RR2 to 4 are brought on record as LR's of the deceased R1 vide court order dated 17/02/2025 made in CMP.Nos.1368 to 1370 of 2017 in S.A.No.436 of 2008 by SSRJ)

..Respondent(s)

Prayer: This Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Appellate Authority & I Additional Subordinate Judge, Coimbatore dated 9.10.2006 in A.S.No.110 of 2005, confirming the judgment and decree of the I Additional District Munsif Court, Coimbatore, dated 5.7.2004 in O.S.No.248 of 1989.



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SA No. 436 of 2



Order QR

For Appellant(s):

Mr.S.Mukunth, Senior Counsel for
Mr.N.Krishnakumar

For Respondent(s):

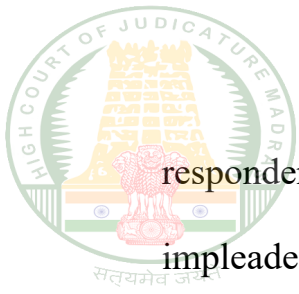
No appearance despite being on vakalat

JUDGMENT

The unsuccessful plaintiff is the appellant herein. The appellant/plaintiff has filed the suit in O.S.No.248 of 1989 for possession, damages and costs. The first respondent/defendant has contested the same.

2. Prior to the filing of the suit in O.S.No.248 of 1989, the first respondent had filed a suit in O.S.No.320 of 1999 (prior to renumbering the suit was O.S.No.679 of 1988). This was a suit for specific performance based on an unregistered sale agreement, Ex.A18. The suit was filed by the first respondent herein against his vendors. After the filing of the suit in O.S.No.248 of 1989, the appellant herein was subsequently impleaded as the third respondent in O.S.No.320 of 1999.

3. Both the suits were tried together and a common judgment and decree dated 5.7.2004 came to be passed, wherein the suit in O.S.No.248 of 1989 filed by the appellant herein against the first respondent, in which the appellant prayed for possession of the suit property came to be dismissed. The other suit in O.S.No.320 of 1999 for specific performance filed by the first



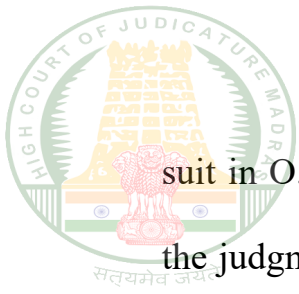
respondent herein against his vendors wherein the appellant was subsequently impleaded was decreed.

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4. As regards the said common judgment and decree dated 5.7.2004, three first appeals came to be filed. A.S.No.32 of 2005 was filed by the first respondent's vendor challenging the judgment and decree in O.S.No.320 of 1999 granting specific performance. A.S.No.110 of 2004 came to be filed by the appellant's legal heirs who are the present appellants in the second appeal challenging the dismissal of the suit in O.S.No.248 of 1989, refusing to grant possession. A.S.No.207 of 2005 came to be filed by the appellant's Lrs i.e., the present appellants, challenging the judgment and decree in O.S.No.320 of 1999 granting specific performance.

5. The first appeal in A.S.Nos.32 of 2005 and 207 of 2005 came to be allowed whereby the judgment and decree in O.S.No.320 of 1999 dated 5.7.2004 granting specific performance was set aside and the suit was dismissed. While, the first appeal in A.S.No.110 of 2004 preferred against the judgment and decree dated 5.7.2004 dismissing the suit in O.S.No.248 of 1989 was dismissed.

6. However, this second appeal came to be filed only as against the dismissal of the appeal in A.S.No.110 of 2004 confirming the dismissal of the



suit in O.S.No.248 of 1989. No second appeals have been preferred as regards the judgment and decree passed in A.S.No.32 of 2005 and A.S.No.207 of 2005 whereby the judgment and decree passed in O.S.No.320 of 1999 granting specific performance to the first respondent herein was set aside and the suit dismissed. Therefore, in this regard, the claim of the first respondent under Ex.A18, the unregistered sale agreement stands dismissed and the same has attained finality.

7.In this second appeal, the following substantial questions of law were framed by this Court upon admission;

(i) Whether the Courts below are right in holding that the identification of the property differs on account of the fact that the Door No.6 is changed as Door No.5 overlooking boundaries mentioned in the suit property as per Ex.B6 (title deed) of the appellant when the settled principle of law that property description would prevail over survey number as is also established in Exs.C1 and C2 (in this case door no)?

(ii) Whether the Courts below are correct in dismissing the suit on the ground that the appellant had only filed the suit for recovery of possession without praying for declaration of title on the basis of his title deed (Ex.B6) overlooking the fact that the respondent herein have admitted the title of the appellant's father, Lingappan when Ex.B6, Sale deed was not in challenge?



8. The learned Senior Counsel appearing for the appellant made submissions in this second appeal with regard to the substantial questions of law so framed. There was no representation for the respondents, as their counsel was consecutively absent for the last three hearings viz., on 12.08.2026, 21.08.2026, and 28.08.2026, despite the name of the counsel being printed in the cause list.

Brief facts of the case:

9. The case of the appellant herein is that he had purchased the suit property which is a dwelling house bearing door No.8/5 in Vellakinaru Village, Coimbatore Taluk under Ex.B6 and that the first respondent who was the tenant of his vendors was occupying the neighbouring premises bearing door No.8/6 situated on the northern side of the suit property bearing Door No.8/5 and that the first respondent had illegally trespassed into the suit property of the appellant which the appellant had directly purchased under Ex.B6 from his vendors.

10. On the other hand, the case of the first respondent as evident from his pleadings is that the vendors of the appellant had contracted to sell the suit property to him under an unregistered sale agreement, Ex.A18 and that he is in possession of the suit property for more than 20 years i.e., even prior to Ex.A18. It is the further case of the first respondent that the appellant and his vendors

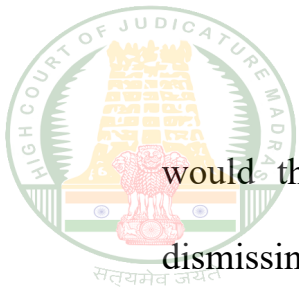


changed the door number of the suit property from 5 to 6, so as to defraud the first respondent. It is the further case of the first respondent that the suit in O.S.No.248 of 1989 had been filed by the appellant as a counter blast to the specific performance suit filed by him in O.S.No.679 of 1988 against the vendors of the appellant.

11. From the material on record and the arguments advanced, this Court proceeds to address the substantial questions of law so framed.

Submissions of Counsel:

12. The Learned Senior Counsel appearing for the appellants while addressing the arguments on the substantial questions of law would submit that both the Courts erred in law in not appreciating the evidence on record properly, thus leading to perverse interpretation of the evidence which led to the incorrect finding of fact and law. He would therefore contend that both the Courts below have not considered the Commissioner's report and plan, being Exs.C1 and C2 respectively in arriving at their findings. He would further submit that considering Exs.A18 and B6 in the light of Exs.C1 and C2 would reveal that the suit property bears Door No.5 while Door No.6 was the adjoining property of which the first respondent was in possession, which is even evident from his written statement. He would therefore submit that Door No.4 also adjoins Door No.5. In other words, Door Nos.3, 4 and 5 are contiguous, being row houses. He

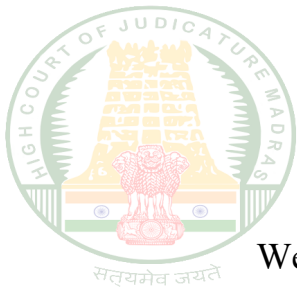


would therefore contend that this has led to the Trial Court erroneously dismissing the suit in O.S.No.248 of 1999 and the Appellate Court also erroneously dismissed the appeal on the ground that the suit for mere possession in the absence of a relief of declaration is not maintainable. The learned Senior Counsel for the appellant would further contend that contradiction in the oral evidence has been held against the appellant ignoring the cogent documentary evidence on record. This according to him has also led to the appellant's suit being erroneously dismissed. The Learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in *Anathula Sudhakar Vs. P.Buchi Reddy (dead) by Lrs and Others* reported in 2008 (4) SCC 594, in support of his contentions.

13. This Court finds that, in the present factual matrix, to address the issue on hand, it is necessary for this Court to look into Exs.A18 and B6 and the Commissioner's report and plan in Exs.C1 and C2 in particular.

Findings:

14. An examination of Ex.B6 shows that it is a sale deed executed by the appellant's vendors, one of whom is the second defendant in O.S.No.320 of 1999 in favour of the appellant. The schedule of property in Ex.B6 shows that it pertains to Door Nos.8/4, 5 Vellakinaru Village, Coimbatore Taluk, within the following boundaries:



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West of North South – Mettupalayam Road

North of East West – Subramaniyampalayam Main Road

East of the property belonging to Ramasamy and

West of the property belonging to the appellant's vendors

15. Upon a perusal of Ex.A18, the unregistered sale agreement claimed to be executed by the vendors of the appellant in favour of the first respondent, it is seen that the same appears to have been executed by the second defendant in O.S.No.320 of 1999 who is also a vendor of the appellant in favour of the first respondent herein for selling the dwelling house bearing Door No.6, Vellakinaru Village. The fact of this property under Ex.A18 being a dwelling house and the door number are also clearly mentioned in the recitals to this document, Ex.A18. The description of property in Ex.A18 states that it is a dwelling house at Vellakinaru Village within the following boundaries;

North of the appellant's tea shop

South of lineman's house

East of the remaining property of the vendors and

West of Mettupalayam Road

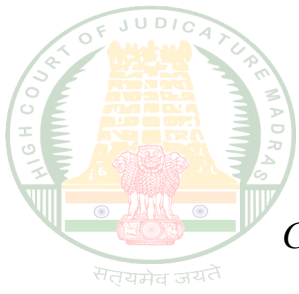
16. Upon a perusal of Exs.A18 and B6, it is clearly evident that Ex.B6, sale deed pertains to the sale of Door Nos.4 and 5 to the appellants while



Ex.A18 pertains to a sale agreement pertaining to Door No.6 in favour of the first respondent. Further a perusal of the Commissioner's report, Ex.C1, it is

seen that the properties bearing Door Nos.4, 5 and 6 are situated on the west of Coimbatore to Mettupalayam Road and north of Subramaniyampalayam Main Road. It is further evident from Ex.C1 that the entire premises with Door No.5 is the suit property. This has been so represented by the appellant and the first respondent and their respective counsels to the Advocate commissioner. This report will clearly establish that there was no difficulty for the Advocate Commissioner in identifying the suit property bearing Door No.5. The Commissioner's report further clearly locates the dwelling houses at Door Nos.4 and 6 also. Further, the Commissioner's report states that Door No.5 is painted at the top of the door within a black circle with No.5 written in white colour. The Commissioner's report further clearly mentions that on the north of the suit property bearing Door No.5, the counsels and the parties have both represented and pointed out to the Commissioner to note the house property with Door No.6, which the Commissioner did. The Commissioner also notes that Door No.6 is closed. These facts are evident from paragraph Nos.9, 15, 17 and 23 of the Commissioner's report, which are extracted hereunder;

“9.The entire properties of Door Nos.4, 5 and 6 are situated on the West of the Coimbatore to Mettupalayam Main Road and on the North of the Subramaniapalayam Road.



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15.The entire premises with Door No.5 is noted as, A, B, C, D, E, F, G, H, I, J, K, L, M, N. The entire portion is the suit property with D.No:5 , as represented by both the counsels and the parties presented, at the time.

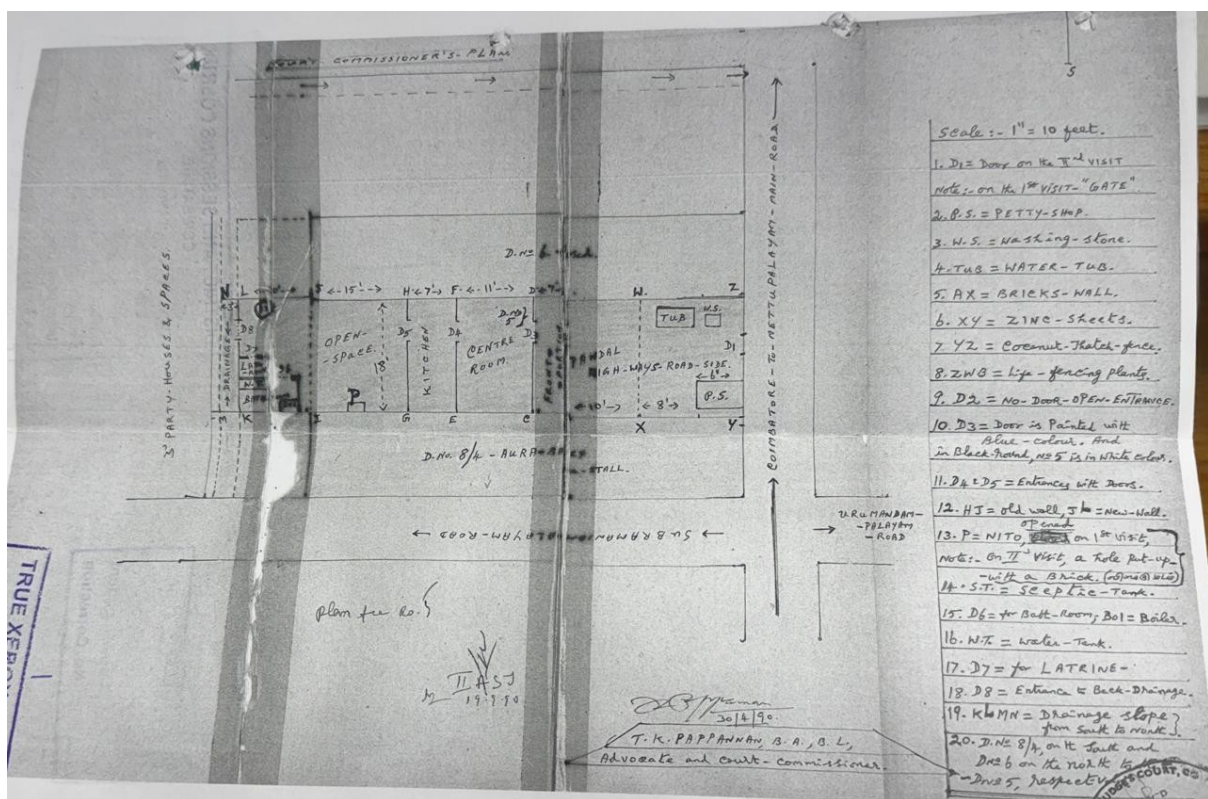
17.However, at the entrance to the centre room the door at D.No:5 is painted with blue colour. And on the door, at the top in black round, No:5 is written in white colour. The centre room is covered with old walls on four sides and the roofing is also with wooden, thickly wooden materials called vittam and sattam and also with reapers and calicut tiles. The condition of the roofing, the floorings and the walls are also not good. There is also a wooden top fitted with the roofing, that is called attale. This is for the purpose of keeping some light materials also.

23.On the north of the suit property with Door No:5, the counsels and the parties represented on both the visits and pointed to the Commissioner to note the house property with Door No:6 is situated. At the time, of the visits of the Commissioner on both occasions, the Commissioner found it and observed, that Door No:6 is closed. And it seemed, that it was not in proper use, as pointed out by the counsels and also as observed by the Commissioner during his visits.”

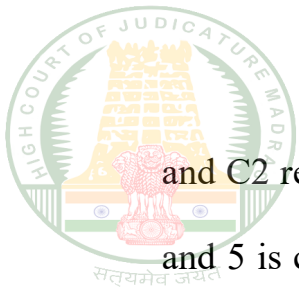
17. A further identification of the house properties with Door Nos.5 and 6 can be found in paragraph No.27 of the Commissioner's report where it is stated that the roof starts from the house with Door No.5 and leads north

through the house with Door No.6. Therefore, the Commissioner's report clearly identifies Door Nos.5 and 6 as specific and separate dwelling houses.

The Commissioner's plan, Ex.C2 which also specifies the boundaries also reinforces the above facts as found in the Commissioner's report. The Commissioner's plan is reproduced herein;



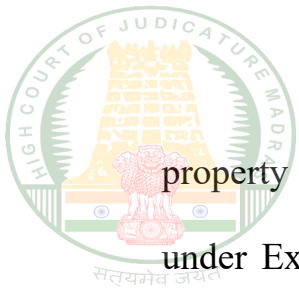
18. A comparative analysis of the schedule of properties in Exs.B6, A18 in the light of Exs.C1 and C2 would clearly reveal that Door Nos.4, 5 and 6 are adjacent properties in a row and there is no discrepancy or inconsistency as regards the property description mentioned in the schedules under Ex.A18 and B6 and the property descriptions in the Commissioner's report and plan, Exs.C1



and C2 reinforce this. Therefore, it is clear that the property bearing door Nos.4 and 5 is covered under Ex.B6, while the property bearing door No.6 is covered under Ex.A18. This establishes that the suit property is the one mentioned in Ex.B6. So, the issue of changing in door numbers does not arise.

19. In such circumstances, I find that both the Courts below have grossly erred in not considering the Commissioner's Report and Commissioner's Plan, Exs.C1 & C2 at all and also in not considering Exs.A18, B6, in the light of Exs.C1 and C2, i.e., in their proper perspective. This has led to perverse consideration of the documents Ex.B6 and A18 in identifying the properties with respect to door number and boundary description, warranting interference in this second appeal. Further, both the Courts below have grossly erred in ignoring Exs.C1 & C2 and not considering Exs.C1 and C2 particularly with reference to Exs.B6 and A18. This has led to non-consideration of material documents which has led to incorrect and perverse findings being rendered by both the Courts below.

20. It is settled law that when clear and cogent documentary evidence is available, the Court should prefer to go by it and ignore minor inconsistencies in the oral testimony of the witnesses. In this instant case, both the Courts below have proceeded only on the basis of the oral testimony of the witnesses considering the discrepancies therein without appreciating the description of the



property with boundary details as clearly mentioned in documentary evidence under Exs.B6 and A18 in the light of the Commissioner's report and plan in Exs.C1 and C2. Thus, both the Courts below have grossly erred in law in preferring oral evidence disregarding the valid documentary evidence and not appreciating the documentary evidence, viz, Exs.B6, A18, C1 and C2 inter se so as to decide the issues on hand. All of these has lead to perverse appreciation of evidence warranting interference in this second appeal.

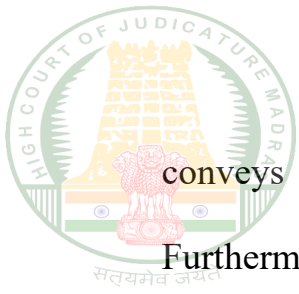
21. Therefore, from Ex.B6, it is clear that it pertains to the suit property bearing Door No.5 while Ex.A18 pertains to the adjacent property bearing Door No.6. The Commissioner's plan and report reinforce these facts. Therefore, the first substantial question of law is answered in the affirmative holding that both the courts below have erred in holding that the identification of the property differs on account of a change in the door numbers whereby they have overlooked boundaries as mentioned in as Exs.B6 and A18 in the light of Exs.C1 and C2.

22. This Court also finds that Ex.B6, Sale deed in favour of the appellant has not been challenged by the first respondent. On the contrary, its execution is not in dispute. The only grievance of the first respondent as regards Ex.B6 is that the same has been executed so as to by pass his right to the suit property to which he is entitled under the unregistered sale agreement, Ex.A18.



From the analysis in the proceeding paragraphs, it is evident that from Exs.B6 and A18 looked at in the light of the Commissioner's report and plan in Exs.C1 and C2, Door Nos.4, 5 and 6 are separate dwelling houses. Ex.B6 pertains to Door No.5 and Ex.A18 pertains to Door No.6. As already held, the Commissioner's plan and report only confirm these facts. In such circumstances, it was totally unnecessary for the first respondent to lay any claim over the suit property in O.S.No.248 of 1989. The Courts below erred in law in rejecting the relief or possession on the ground that declaratory relief was not sought for. In this instant case, it is seen that the execution of Ex.B6 is not in dispute, only the reason for its execution was disputed as being to by pass Ex.A18.

23. That apart, from the description of the properties already discussed at length above, it is clear that the property mentioned in Ex.B6, is different from that in Ex.A18. So, there was no necessity for the first respondent to seek any claim over the suit property covered under Ex.B6. Further, in view of the non-filing of the second appeal by the first respondent challenging the judgment and decree in A.S.Nos.32 and 207 of 2005 whereby the decree for specific performance granted in his favour was set aside, removes any remote challenge to Ex.B6. In view of this, the doctrine of lis pendens which had effected under Ex.B6 during the proceedings before the Courts below also ceases to apply. Therefore, the title deed, Ex.B6 is an undisputed document which already



conveys title to the appellants and hence the same can be safely relied on.

Furthermore, Exs.B6 and A18 pertain to different properties viz., Door Nos.5 and 6 respectively, so the first respondent can have no grievance over the same.

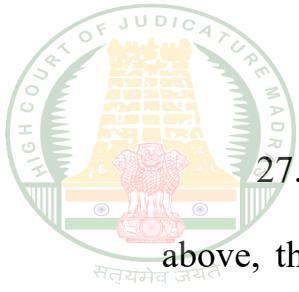
The law in this regard is also well settled that a prayer for declaration is necessary only if there is a denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. In this instant case, there is no dispute as regards the execution of Ex.B6, the cloud if any caused in view of the doctrine of lis pendens being attracted, as Ex.B6 was executed during the pendency of the earlier suit in O.S.No.320 of 1999 also stands removed in view of non challenge of the judgment and decree in A.S.Nos.32 and 270 of 2005 by the first respondent herein by preferring a second appeal. Whereby the dismissal and claim of the first respondent based of Ex.A18 stands rejected. Furthermore, there can be no cloud cast on title as from the above discussions and the proper interpretation of the description of the properties as mentioned in the property schedule of Exs.B6 and A18 would only reveal that the suit property in O.S.No.248 of 1989 is distinct and different from the property mentioned in Ex.A18 which is the subject matter of the other suit in O.S.No.320 of 1999. Exs.C1 and C2, the Commissioner's report and plan reinforce these facts. Therefore, in such circumstances, it cannot be said that there is a denial of title by the first respondent over the suit schedule property of the appellant claiming under Ex.B6 or that a cloud has been cast on its title.



24. In the light of the above observations, the second substantial question of law is also answered in the affirmative holding that both the Courts below have erred in dismissing the suit on the ground that the appellant had only filed the suit for recovery of possession without praying for the relief of declaration of title on the basis of his title deed, Ex.B6. overlooking the fact that Ex.B6 is an admitted document, not in dispute and the respondent having admitted the same.

25. Therefore, in the facts and circumstances of this case, this Court finds that though the appellants have sought for possession along with damages and costs, this Court is granting relief only for possession and costs. As regards the relief of damages, it is seen that no issue was framed for determination by the Trial Court. Nor was this a subject of contest before the First Appellate Court or before this Court. Further, there is no material evidence to establish any actual damages suffered by the appellants. Hence, the relief of damages alone is not granted.

26. In view of the above, the judgment and decree in O.S.No.248 of 1989 as confirmed in appeal in A.S.No.110 of 2004, dismissing the suit are set aside and the suit is partly decreed with regard to the relief of possession and costs alone.



27. In the facts and circumstances of the case, for the reasons mentioned above, the costs is to be awarded to the appellant throughout. Consequently, connected Miscellaneous Petitions are closed.

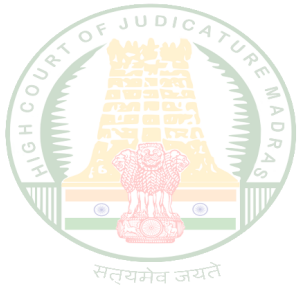
28-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VKR

To

- 1.The Appellate Authority & I Additional Subordinate Judge,
Coimbatore.
- 2.The I Additional District Munsif,
Coimbatore.



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SA No. 436 of 2



Order QR

GK.MUTHUKUMAAR, J.

VKR

A Pre-delivery Judgment in
SA No. 436 of 2008

28.09.2026