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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:
27.05.2026

Pronounced On:
15.07.2026

CORAM

**THE HONOURABLE MR JUSTICE G. R. SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN**

**AS No. 535 of 2026
and C.M.P.No.12823 of 2026**

1. D.Paramasivam,
S/o.Devaraj, No.89/24, First Street,
Sirupooluvapatti, No.15, Velampalayam
Village, Tirupur Taluk and District.

Appellant(s)

Vs

1. P.Arunachalam,
S/o. Palanisamy Gounder, Door No.55A,
Poonthottam College Road, Tirupur,
Thirupur District.

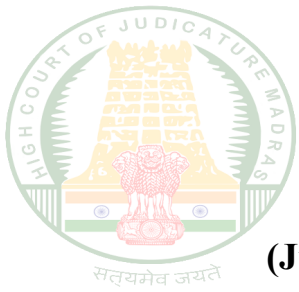
2.N.Ganesh,
S/o. Nachimuthu Gounder, Door No.551,
Periyakkadu Thottam, Azhagendra Exports,
Sirupooluvapatti, No.15, Velampalayam
Village, Tirupur Taluk and District.

Respondent(s)

PRAYER

To allow the present appeal and set aside the judgment and decree dated 25.11.2024 made in O.S.No.50 of 2019 on the file of the II Additional District and Sessions Judge, Tirupur, and pass such further or other orders as this Honble Court may deem fit and proper in the interest of justice.

For Appellant(s): Mr.S.Vinoth Kumar
 for Mr.G.C.Nelson Britto



J U D G M E N T

(Judgment of the Court was made by V.Lakshminarayanan J.)

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This appeal has been filed against the judgment and decree dated 25.11.2024 made in O.S.No.50 of 2019 on the file of the learned II Additional District and Sessions Judge, Tiruppur.

2.The 1st defendant in O.S.No.50 of 2019 on the file of the learned II Additional District and Sessions Judge, Tiruppur, is the appellant herein. O.S.No.50 of 2019 is a suit for recovery of a sum of Rs.25,00,000/- together with subsequent interest at the rate of 24% per annum.

3.For the sake of convenience, the parties will be referred to as per their ranks in the suit.

Averments as per plaint:

4.The suit schedule mentioned property belongs to the 1st defendant. He purchased the same on 15.06.2011. The plaintiff was interested in purchasing the said property from the 1st defendant. The 1st defendant also reciprocated this intention. An agreement between them was entered into on 30.06.2016. The sale consideration was fixed at Rs.50,27,809/-. On that date, a sum of Rs.5,00,000/- was paid as advance. Subsequently, on 10.07.2016 and 07.09.2016, the plaintiff paid further sum of Rs.5,00,000/- and Rs.10,00,000/- respectively. On



11.10.2016, the plaintiff paid a further sum of Rs.5,00,000/-. In all, the plaintiff had paid a sum of Rs.25,00,000/- to the 1st defendant.

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5.The plaintiff claimed that on 23.06.2017, 28.09.2017 and 26.12.2017, he had paid additional sum of Rs.3,50,000/-, Rs.1,50,000/- and Rs.9,00,000/- respectively. Though the payments were made to the 1st defendant, he had not endorsed the receipt of the said payments.

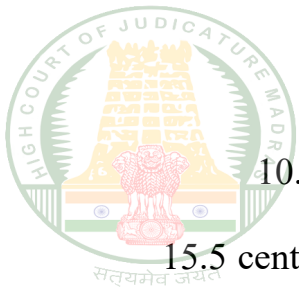
6.Thereafter, the plaintiff claimed that he came to know that the 1st defendant had alienated the suit schedule mentioned property in favour of the 2nd defendant on 03.10.2018. On coming to know of this fact, he made a demand from the 1st defendant to refund the advance amounts. The 1st defendant did not honour the demand. Therefore, he issued a notice on 19.01.2019. The 1st defendant received the notice, but did not issue any reply. As the plaintiff's demand for refund remained unsatisfied, he came forth with the suit for the aforesaid reliefs.

7.Summons were served on the defendants. The 2nd defendant, did not enter appearance. Therefore, he was called absent and set exparte. The 1st defendant alone filed a written statement.



8. The 1st defendant admitted that he secured the suit schedule mentioned property by way of a partition deed dated 15.06.2011. He also accepted that he and the plaintiff had entered into an agreement of sale on 30.06.2016 and he had received an advance amount of Rs.5,00,000/-. The payment of Rs.5,00,000/- made on 10.07.2016, Rs.10,00,000/- paid on 07.09.2016 and Rs.5,00,000/- paid on 11.10.2016 were admitted. The 1st defendant denied that he received payments on 23.06.2017, 28.09.2017 and 26.12.2017.

9. The 1st defendant also stated that he had alienated the property to the 2nd defendant at the instance of the plaintiff. He urged that the plaintiff had attested the sale deed executed by the 1st defendant in favour of the 2nd defendant. The 1st defendant added the 2nd defendant was identified by the plaintiff himself. This was on account of the fact that the plaintiff was not in a position to complete the sale transaction entered into between the parties on 30.06.2016. He claimed that the 2nd defendant wanted some more extent of land than what was originally agreed upon on 30.06.2016. The plaintiff and the 1st defendant had agreed upon 15 ½ cents. The 2nd defendant wanted 22 cents. He urged that both the plaintiff and the 2nd defendant agreed to adjust the advance amount of Rs.25,00,000/- paid by the plaintiff to the 1st defendant towards the sale consideration to be paid by the 2nd defendant to the 1st defendant. Therefore, he urged that there was no liability from the 1st defendant to the plaintiff.



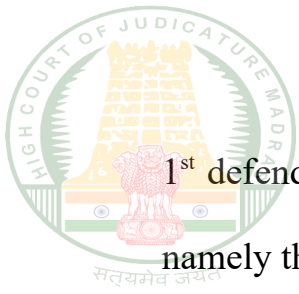
10.He pleaded that the property per cent was valued at Rs.3,25,000/- and 15.5 cents came to Rs.50,27,809/- and 22 cents came to Rs.71,50,000/-. On this Rs.71,50,000/-, Rs.25,00,000/-, that had been paid by the plaintiff was adjusted and a sum of Rs.40,48,000/- was paid under the sale deed. The balance amount which the 2nd defendant had to pay to the 1st defendant was paid by way of cash on 03.10.2018. In the light of this adjustment, the 1st defendant urged the agreement dated 30.06.2016 had been rendered infructuous and had been superseded by the sale deed dated 03.10.2018.

11.On the basis of these pleadings, the learned Trial Judge framed the following issues for consideration:-

“1.Whether the Plaintiff is entitled for Recovery of Amount Rs.25,00,000/- with interest from 1st Defendant?

2.What are other Reliefs?”

12.In support of his case, the plaintiff entered the witness box as PW1. He marked the sale agreement dated 30.06.2016 as Ex.A1. The acknowledgement for the payments made on 10.07.2016, 07.09.2016 and 11.10.2016 were exhibited as Ex.A2. The suit notice was marked as Ex.A3 and the acknowledgement cards as Ex.A4 and Ex.A5. On the side of the defendants, the



1st defendant entered the witness box as DW1. He marked only one document, namely the sale deed executed by the 1st defendant in favour of the 2nd defendant dated 03.10.2018. This document was marked as Ex.B1.

13. On a consideration of the oral and documentary evidence, the learned Trial Judge, came to the following conclusion:-

- (i) Entering into an agreement and the payments made thereunder are admitted by both sides.
- (ii) As the plaintiff is the attestor and the defendant the vendor under Ex.B1, parties are bound by the recitals made therein.
- (iii) Under Ex.B1, the sale consideration was fixed only at Rs.40,48,000/- and not Rs.71,50,000/- as pleaded by the 1st defendant.
- (iv) No documentary evidence or satisfactory oral evidence had been produced to show the agreement between the parties regarding the adjustment.

Having come to these conclusions, the learned Judge decreed the suit as prayed for with costs. Aggrieved by the same, the 1st defendant is on appeal.

14. We heard Mr.S.Vinoth Kumar for Mr.G.C.Nelson Britto for the appellant.



15.Mr.S.Vinoth Kumar, after narrating the facts of the case, took us through Ex.B1 and deposition of DW1 to urge that the agreed amount as per Ex.B1 was Rs.71,50,000/- and the amount received by the 1st defendant from the plaintiff had been adjusted at the time of entering into the sale transaction. He pleaded that the learned Trial Judge committed a serious error in not taking note of the adjustment between the parties and had granted the decree. He urged that the 1st defendant had done all that he had to pursuant to the understanding between the parties to the suit. Yet, the Trial Court did not appreciate the said facts at the time of rendering the judgment.

16.We have carefully considered the submissions of Mr.S.Vinoth Kumar and perused the entire materials on record.

17.The points for consideration in this appeal are as follows:-

“(i)Whether the discharge pleaded by the 1st defendant had been satisfactorily proved?

(ii)To what other reliefs?”

18.Before we proceed to the merits of the case, we were surprised to note that the Registry had listed the matter “*for admission*”. Perhaps, the months of April and May seem to play a very important role in the manner in which first



appeals have to be dealt with by this Court. It was in March 2025 that a single Judge in ***Karupuchetty @ Vaiyapuri (Died) -Vs- Papathi (A.S.No.148 of 2025 dated 07.03.2025)*** had taken a view that regular appeals under Section 96 also would have to be listed for “admission”. This view was reversed by a Division Bench at Madurai in ***V.S.Chandrasekaran -Vs- R.Uma (A.S.(MD)No. 5 of 2025 dated 25.04.2025)***. Even before the ink had dried in the second judgment, the learned Single Judge in ***Prema Vs. Nallasellam (A.S.No.586 of 2025 dated 29.04.2025)*** affirmed his view in ***Karupuchetty***’s case and held that the Division Bench judgment is *Per incuriam*. He directed the Registry to comply with his earlier directions and list the matters for admission. When an appeal was presented for admission before Justice G.R.Swaminathan, he referred the matter to the Division Bench.

19.Taking note of three judgments, the Division Bench consisting of both of us in ***P.R.Saravanan -vs- Dhanalakshmi, (2025) 4 CTC 569***, by a detailed judgment, came to a conclusion that the Registry shall continue to adhere to the practice of issuing notice on the appeals being presented and registered. It shall list the appeal under Order XLI Rule 11, only if the Court so directs. It transpires that on 30.04.2026, a Division Bench in ***Chennai Port Authority and Others -Vs- J.Chandrasekaran and Others, 2026-2-L.W.766*** held that,

(i) It would have a fresh look at the issue all over again.



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(ii) An amendment has been proposed by the Rule Committee substituting the words “*the Registrar shall issue notice forthwith*” with the following words “*the Registrar shall issue notice after obtaining orders from the Court.*”

(iii) Consequently, the Division Bench directed that since an amendment has been contemplated and approved by the Rule Committee, every appeal presented before the High Court shall be listed for “admission” before the appropriate Court and the Registry may await orders before issuing notice.

20. We have the greatest of respects to the author of the judgment. We are alive to the fact that his judicial experience is more than our judicial experience combined. Yet, even Homer nods.

21. The issue referred to the Division Bench in ***P.R.Saravanan -vs- Dhanalakshmi***, cited *supra*, was a very short one. The question being whether a regular appeal must be listed for admission. That had been answered by the Division Bench. Unless and until the said judgment is reversed by the Supreme Court or overruled by a larger Bench, it continues to hold the field.

22. With greatest respect to the Division Bench in ***Chennai Port Authority***’s case (cited *supra*), we have to point out that it is not open to one

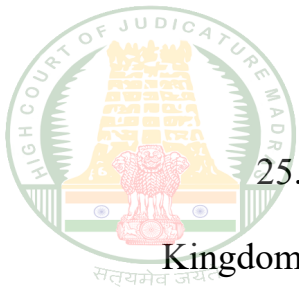


Division Bench to hold that they do not agree with the reasoning of another Division Bench and will take a fresh look at the matter or adopt a different view.

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23. We only recollect the advice given by Justice Benjamin N. Cardozo in his seminal works, **The Paradoxes of Legal Science** – “*what has once been settled by a precedent will not be unsettled overnight, for certainty and uniformity are gains not lightly sacrificed*” [Ref:- Benjamin N. Cardozo, **The Paradoxes of Legal Science** 29-30 (1928)] and in **The Nature of Judicial Process** – “*The situation would, however, be intolerable if the weekly changes in the composition of the Court were accompanied by changes in its rulings. In such circumstances there is nothing to do except to stand by the errors of our brethren of the week before, whether we relish them or not*” [Ref:- Benjamin N. Cardozo, **The Nature of Judicial Process** 150 (1921)].

24. Lord Greene M.R. in **Young -vs- Bristol Aeroplane Company Limited (1944 (1) KB 718)** commented that the Court of appeal cannot alter a precedent based on its current composition as it would create intolerable legal uncertainty. This view has been solidified in 1966 Practice Statement of Judicial Precedents. It has been pithily captured therein that a change in the personnel of the Court is not a ground for change in law.



25. The law that prevails in Cardozo's USA and Lord Greene's United Kingdom, applies with greater force in India. Justice Vikram Nath, speaking for himself and Justice Rajesh Bindal, in *Mary Pushpam Vs. Telvi Curusumary and others, 2024 INSC 8* pointed out, when a decision of a co-ordinate Bench of the same High Court is brought to the notice of a subsequent Bench, it is to be respected and is binding subject to the right of the Bench of the later co-equal coram to take a different view and refer a question to a larger Bench. He opined, it is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with the same strength. As much as not being argumentative is the role of a Judge, judicial discipline too is an essential element when it comes to judging. In *State of Punjab and another Vs. Devans Modern Breweries Ltd., 2003 INSC 653*, a Constitution Bench, approving the practice in United Kingdom, pointed out that judicial discipline envisages a Co-ordinate Bench should follow the decision of the other Co-ordinate Bench. If the Co-ordinate Bench does not agree with the principles of law enunciated by the other Bench, the only option is to refer the area of disagreement to a larger Bench. (Also see, *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra, (2005) 2 SCC 673*).

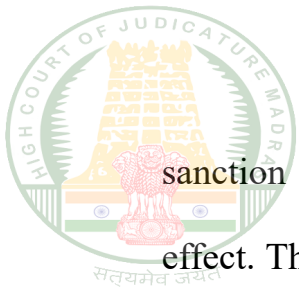
26. Therefore, while dealing with an issue which is already covered by a binding pronouncement, a subsequent Division Bench cannot address the issue



afresh, but it is expected of a Judge that he / she raises above a perceived wrong reasoning in the earlier judgment and follow the precedent. Such is the nature of life that at all times it throws situations which leaves one wonderstruck. That does not make the slate a fresh one, to lay lines and draw upon. We should also point out that the judgments in all the four cases did not deal with Section 13(1A) of the Commercial Courts Act which was the subject matter in **Chennai Port Authority's** case, but dealt with the scope of Section 96 read with Order XLI. In an appeal arising under the Commercial Courts Act, views expressed on non-commercial regular appeals are but *obiter dicta*.

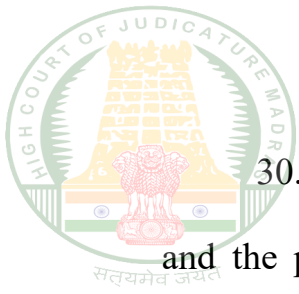
27. Apart from this, we must respectfully point out that the Division Bench has taken a view that if the Rules Committee proposes and approves an amendment, it automatically gets notified. The position of law seems otherwise.

28. The role of the Rules Committee is advisory. It takes into consideration the administrative or practical needs and drafts a proposal. Thereafter, the Committee sends the draft to the Full Court consisting of all the Judges of the High Court. The Full Court has the power to evaluate the proposal, modify or amend the proposal so made. Thereafter, it passes a resolution. This resolution also is not law. It has to be sent to the Government as required under Section 126 of the Code of Civil Procedure, for it to receive the



sanction of the State Government, before the proposed amendment can take effect. The sanction of the Government must be reflected in the official Gazette issued by the State Government under Section 127 of the Code. The rules proposed by the Rules Committee, approved by the Full Court and sanctioned by the Government acquire legal authority, either on the date of its publication or on a future date specified in the notification. Hence, the conclusion that the mere proposal and approval by the Rules Committee has brought the proposal into force is one contrary to Sections 122 to 127 of the Code of Civil Procedure. Therefore, the direction given by the Division Bench on the basis of the Draft Rules approved by the Rules Committee cannot be held to be a correct one.

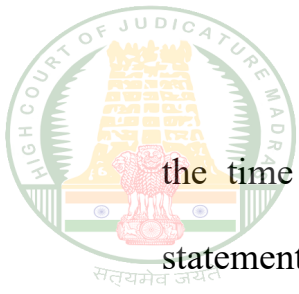
29. We have come to this conclusion despite the advice that has been given by the Division Bench in *Chennai Port Authority and Others -vs- J.Chandrasekaran and Others*, (2026) 2 Law Weekly 766 in Paragraph 15. The gown donned by a Judge and the gown that is donned by an advocate are of the same colour. It is the nature of process discharged by them which differs. It is in terms of this advice that we were constrained to analyse if a Rule proposed by the Rules Committee becomes law. The conclusion we arrive at is that it is not so. Therefore, the Registry shall follow the law laid down in *P.R.Saravanan's* case.



30. Now we shall turn to the merits of the present appeal. The agreement and the payments have been admitted. Since the plea of discharge has been taken, the burden of proof lies on the 1st defendant to substantiate the same. Apart from Ex.B1 and examining himself, the 1st defendant has not examined any other person to substantiate his case. The plea is that the parties to the suit had entered into an agreement for adjustment and the result of the agreement is Ex.B1. The 2nd defendant having remained ex parte, nothing prevented the 1st defendant from summoning him to tender evidence on his behalf.

31. While one party cannot summon the adversary to depose on his side, nothing prevented the 1st defendant from summoning the 2nd defendant in order to prove that the agreement is said to have been entered into between the parties regarding the adjustment of Rs.25,00,000/- and the sum is being subsumed in the sale deed under Ex.B1. Apart from the plaintiff, who was the first attesting witness, another person had attested the sale deed under Ex.B1, namely one G.Balasubramaniyan. The 1st defendant could have examined the said G.Balasubramaniyan in order to substantiate his plea. He failed to do so.

32. Ex.B1 had been prepared by an Advocate practising in Tiruppur. The 1st defendant could have taken summons to the said Lawyer in order to prove that an amount of Rs.6,02,000/- had been paid in cash by the 2nd defendant at



the time of registration as per his plea in paragraph No.11 of his written statement. He did not do so.

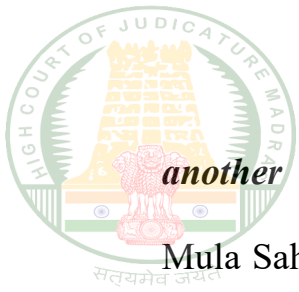
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33. Therefore, the plea of Mr.S.Vinoth Kumar that the 1st defendant had done everything that he could in order to prove the discharge, has to be rejected in the light of the aforesaid facts.

34. On the plea of Mr.S.Vinoth Kumar that the sale consideration was only Rs.71,50,000/- and not Rs.40,48,000/- is concerned, we are afraid that no oral evidence can be permitted to prove that the actual consideration was higher than what was stated in the registered sale deed. This is by virtue of Sections 91 and 92 of the Indian Evidence Act. Once the terms of a contract are reduced to writing, the aforesaid Sections bar any evidence of oral agreement or statement to contradict, vary, add or subtract from those terms.

35. The exception to this Rule is carved out in the first proviso to Section 92. It permits a party to introduce oral evidence to prove fraud, coercion or want or failure of consideration. This proviso cannot be enlarged to take a plea that what was agreed is Rs.71,50,000/- and not Rs.40,48,000/-.

36. We would usefully refer to the judgment in *State Bank of India and*



another Vs. Mula Sahakari Sakhar Karkhana Limited, AIR 2007 SC 2361.

Mula Sahakari Sakhar Karkhana Limited is a cooperative sugar mill. It entered into a contract with M/s.Pentagon Engineering Private Limited to install a paper plant, so as to utilise the waste material “bagasse”, a bye product in manufacturing of sugar. The value of contract was Rs.3,40,00,000/-. As a part of this contract, 10% performance guarantee of the contract price was necessary. A guarantee was offered by the State Bank of India.

37.Disputes and differences arose between the parties. Mula Sahakari Sakhar Karkhana Limited invoked the guarantee issued by the State Bank of India treating it as an unconditional Bank guarantee. State Bank of India refused to honour the payment on the ground it was a contract of indemnity and without proof of actual loss / damages, the Bank would not honour the same. The parties went to Court.

38.An application was filed by Mula Sahakari Sakhar Karkhana Limited for a direction to the State Bank of India to deposit Rs.34,00,000/-. The interim order came on appeal to the High Court. The High Court directed the amount of Rs.34,00,000/- to be retained by the State Bank of India, subject to the condition that in the event of the suit being decreed, the same will be paid to Mula Sahakari Sakhar Karkhana Limited together with interest at the rate of 12% per



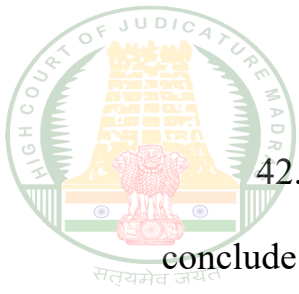
annum. Thereafter, the parties went for trial. The suit was dismissed.

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39. An appeal was preferred to the High Court. The High Court held that the agreement between Mula Sahakari Sakhar Karkhana Limited and the Bank was a bank guarantee and directed the State Bank of India to deposit the sum of Rs.34,00,000/- together with interest at the rate of 14% per annum. Hence, the appeal before the Supreme Court.

40. S.B. Sinha, J. speaking for himself and for Justice P.K. Balasubramanyam, J., held that the High Court committed a manifest error in not construing the bar under Sections 91 & 92 of the Indian Evidence Act. The Court held that the testimony of witnesses should not derogate from the written contract. It declared that no evidence de-hors the evidence, whether oral or documentary, can be let in by parties to get out of the express terms thereof.

41. This judgment is a precedent for the proposition that when the language of the document is clear, plain and unambiguous, the Court must give effect to its literal meaning and that once the contract terms are reduced to the form of a document, parties to the document are barred from letting oral evidence or referring to outside negotiations to claim that the financial terms were different from what was written therein.



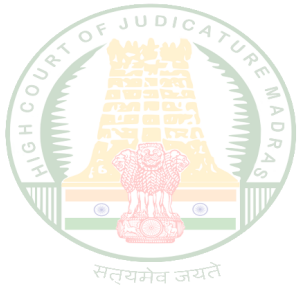
42. Applying this precedent to the facts of the present case, we have to conclude that, when the sale deed holds that the value is only Rs.40,48,000/-, then this Court will only have to look at those words in the sale deed and cannot permit the defendant to introduce side claims to prove the consideration was higher than what was agreed upon. The written document displaces any oral agreements.

43. Having reached the conclusion that as the defendant has not proved the agreement between the parties to the suit and consequently the discharge, the appeal deserves only one order and that is of dismissal.

44. In the result, A.S.No.535 of 2026 is dismissed. The judgment and decree dated 25.11.2024 passed in O.S.No.50 of 2019 by the learned II Additional District and Sessions Judge, Tirupur, is confirmed. As we have invoked Order XLI Rule 11 in determining the appeal, the question of imposition of costs does not arise. No costs. Consequently, the connected miscellaneous petition is closed.

(G.R.S.,J.) (V.L.N.,J.)
15.07.2026

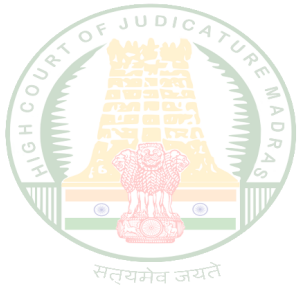
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Speaking/Non-speaking order : Yes / No
Internet : Yes
Neutral Citation : Yes / No



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1.The learned II Additional District and Sessions Judge,
II Additional District and Sessions Court,
Tirupur.

2.The Section Officer,
VR Section,
High Court of Madras, Chennai.



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Case Citation: (2026) ibclaw.in 3928 HC

AS No.535 of 2026



G.R.SWAMINATHAN J.

and

V.LAKSHMINARAYANAN J.

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