



A.S.(MD)No.60 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S(MD)No.60 of 2009
and
M.P.(MD)No.2 of 2009**

- 1.Parvadammal (died)
- 2.Kanthalakshmi
- 3.Balamurugan
- 4.Muruga Boopathi (died)
- 5.Pankajam (died)
- 6.Bharathi (died)
- 7.Pasumpon
- 8.Subbuthai (died)
- 9.Lalitha (died)
- 10.Rajeswari
- 11.Kala
- 12.Vijaya
- 13.Vanaja
- 14.Dharmagovindan
- 15.Ramakrishnan (died)
- 16.Lakshmi
- 17.Rajeswari
- 18.Pushpavalli



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19.Reetha

20.Filomina

21.Susila

22.Minor Karthik

23.Minor Rama

24.Minor Latha

25.Rajamani (died)

26.Mahalakshmi

27.Balasubramanian

28.Muthukrishnan

29.Subbulakshmi

30.Gandhiraj

31.Manonmani

32.Jeyakhandan

33.Balamuralikrishna

34.Rajagopal @ Gopi

.... Appellants / Plaintiffs 1,4,5,6,7,
8, 10,11,14,15,19,20,22,27,28,29,30
32,33,34,35,36,37,38,39,40,41,
43,44,45,46,47,48 & 51

35.Mani Devi

***[35th Appellant is brought on record
as LR of the deceased 1st appellant]***

36.Mariyammal

37.Gopalkrishnan

***[36th & 37th appellants are brought on record as LRs of the
deceased 4th Appellant]***



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38.Raj Ganesh

***[38th Appellant is brought on record as
LR of the deceased 5th appellant]***

39.Mariappan

40.Muthumari

***[39th & 40th appellants are brought on record as LRs of the
deceased 6th appellant]***

41.M.Tamilselvi

42.M.Saravana Devi

43.M.Annadurai

44.M.Kasikumar

45.M.Muthuraj

46.M.Siva

***[Appellants 41 to 46 are brought on record as LRs of the deceased
8th appellant]***

47.Daisy Rani

48.Xavier Jagathesh

***[47th & 48th appellants are brought on record as LRs of the deceased
15th appellant]***

49.Rajasekar Kannayiram

50.Rajeswari Sendilvel

51.Tamilselvam

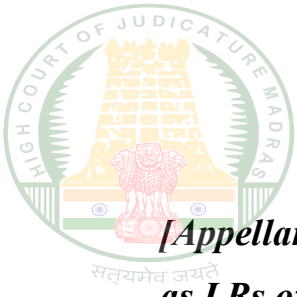
52.Tamilselvi Karthikeyan

53.K.Rajkumar

54.R.Santhi

55.Ganga

56.R.Sanjai



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***[Appellants 49 to 56 are brought on record
as LR's of the deceased 9th Appellant]***

57.R.Shamugathai

58.R.Mathanraja

59.Durga

.... Appellants

***[Appellants 57 to 59 are brought on record as LR's
of the deceased 25th Appellant]***

Vide common order dated 13.02.2025

made in C.M.P.(MD)Nos.894, 835, 838, 839, 841 to 843, 845 to 847,

848, 850, 853, 855 to 860, 861, 864, 865, 867 to 869, 873, 874

and 876 of 2024 in AS(MD)No.60 of 2009 respectively

by ***GRSJ and MJRJ***

Vs.

1.Kasipandi Devi

2.Sai Ram

3.Rajkumar

4.Karpagaraj

5.Chandra Mohan (died)

6.Sathyamoorthy (died)

7.Alagulakshmi

8.Muthala Rajalakshmi Ammal

9.Muthu Parasakthi Devi Kannappan

... Respondents 1 to 9 /

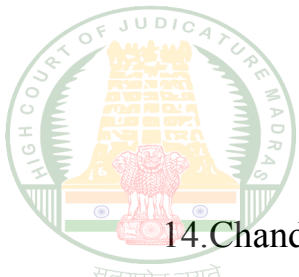
Defendants 2 to 8, 10 & 11

10.Marakatham

11.Balamurugan

12.Alamelu

13.Anandam



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14.Chandra

15.Manjula

16.Jegannathan

17.Gurusamy

18.Muthu Karunakaran

19.Jothilakshmi

20.R.Dhanapal

21.Sathyababu

... Respondents 10 to 22/

Plaintiffs 9,16,17,18,21,23, 24, 31,
42,49,50 & 52.

22.C.Dhanavathy

23.Indhu Mukhi Varshini Devi

24.Hari Bala Krishnammal

[Respondents 22 to 24 are brought on record as

LRs of the deceased 5th respondent]

25.Jeyanthi

26.S.V.L.Nimeshika Devi

27.S.S.L.Hari Kamini Devi

[Respondents 25 to 27 are brought on record

as LRs of the deceased 6th respondent]

[vide common order dated 13.02.2025 made in

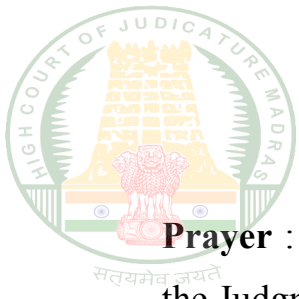
C.M.P.(MD)Nos.894, 835, 838, 839, 841 to 843, 845 to 847,

848, 850, 853, 855 to 860, 861, 864, 865, 867 to 869, 873, 874

and 876 of 2024 in AS(MD)No.60 of 2009 respectively

by ***GRSJ and MJRJ]***

... Respondents



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Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the Judgment and decree made in O.S.No.105 of 2004, dated 12.10.2007 on the file of the Principal District Judge, Tuticorin.

For Appellants : Mr.T.Mariappan

For Respondents : Mr.S.Ramesh for R1
: Mr.Babu Rajendran
for Mr.R.Murugesan for R2 to R4, R9

: R5,R6, R7-died

: R8, R10, R12 to R17, R20, R21
dismissed vide order dated 30.11.2016,
30.11.2017, 09.08.2019

: No appearance for R11, R18 & R19
: R22 to R27- batta due.

JUDGEMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

The plaintiffs / LR's of the plaintiffs in O.S No.105 of 2004 on the file of the Principal District Judge, Thoothukudi are the appellants herein. The suit was for partition.

2.The plaintiffs projected their case as follows :

The suit properties belonged to R.V.Appasamy who was the Kattukuthagaidar of Ilayarasanenthall-Part II. The plaintiffs have given him the



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grand title of Zamindar. He had three wives, namely, Muthulakshmi, Kanagavallikambal and Alamelu. Muthulakshmi had two sons and two daughters (Chinnasamy @ Dharmaraj, Chinnasamy @ Govindan, Gandhimathi & Muthumari). The plaintiffs herein trace their lineage to the aforesaid Muthulakshmi through one of her children. Muthulakshmi was the first wife of R.V.Appasamy. The suit schedule properties were managed by the defendants 1 & 2 on behalf of the plaintiffs and other defendants. Since the defendants 1 & 2 declined to share the proceeds arising from the suit properties, plaintiffs issued notice claiming their 1/3rd share. Since the defendants 1 & 2 were not amenable for peaceful partition, the suit came to be laid.

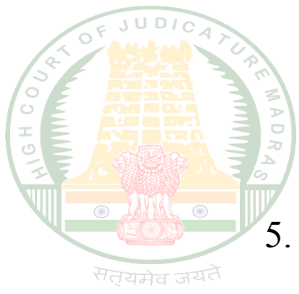
3.The first defendant filed written statement contesting the plaint averments. The 9th defendant passed away during the pendency of the suit. His legal heir, namely, 10th defendant was brought on record. But she chose to remain exparte. Based on the rival pleadings, as many as 10 issues were framed. The primary issue was whether Muthulakshmi from whom the plaintiffs claim their lineage was the first wife of R.V.Appasamy and whether the plaintiffs can be considered as the legal heirs of late R.V.Appasamy. On the side of the plaintiffs, as many as 6 persons were examined as witnesses. Ex.A1 to Ex.A17 were marked. The third defendant was examined as D.W.1. Ex.B1



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to Ex.B52 were marked. After considering the evidence on record, the learned trial Judge dismissed the suit on 12.10.2007. Aggrieved by the same, this first appeal has been filed.

4.The learned counsel appearing for the appellants submitted that the trial Court failed to appreciate the evidence adduced by the plaintiffs properly. R.V.Appasamy, the zamindar, passed away in 1929 itself. During that period, it was not illegal for Hindus to have more than one wife. Muthulakshmi was the first wife of R.V.Appasamy, while Kanagavallikambal and Alamelu were the second and third wife respectively. The properties of the late zamindar were never partitioned. Therefore, the estate must be deemed to retain its joint character. After the demise of R.V.Appasamy, R.V.R.N.Appasamy, the son born through Kanagavallikambal was managing the properties. R.V.R.N.Appasamy died a bachelor. During his lifetime, he executed Ex.A9 dated 25.02.1971 (Document No.279 of 1971) gifting certain properties. In the said document, Chinnasamy @ Dharmarj, S/o.Muthu Lakshmi was described as “brother”. This description is sufficient to clinch the blood relationship asserted by the plaintiffs.



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5. The learned counsel for the appellants submitted that Ex.B16, Ex.B17, Ex.B18, Ex.B19 & Ex.B20, all dated 30.10.1952 cannot affect the rights of the plaintiffs because the signatures of the legal heirs born through Muthulakshmi were not taken. He placed considerable emphasis on the release deed dated 11.10.1954 (Ex.B11) executed in favour of R.V.R.N.Appasamy. The learned counsel underlined the fact that unless the executants had pre-existing rights and interests in the estate properties, such a release deed would not have been taken from the sons of Muthulakshmi.

6. Our attention was also drawn to Ex.A11 dated 03.12.1926 - School Admission Register pertaining to Chinnsamy @ Dharmaraj wherein he had been described as the son of R.V.Appasamy. The learned counsel would contend that the correctness of the entries in the school admission register cannot be doubted at this point of time. He also took us through the testimony of PW.6 to substantiate his claim that Muthulakshmi was very much the first wife of R.V.Appasamy. Detailed written arguments were filed and we were taken through its contents. The learned counsel called upon this Court to set aside the impugned Judgment and decree and grant preliminary decree as prayed for.



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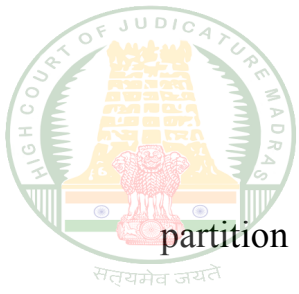
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7.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment is well reasoned and that it does not call for interference.

8.We carefully considered the rival contentions and went through the evidence on record.

9.The entire case of the plaintiffs is anchored on the claim that their grandmother / great-grandmother Muthulakshmi was the first wife of R.V.Appasamy. We need not labour on the rank of Muthulakshmi. It would be sufficient if it is proved that Muthulakshmi was the legally wedded wife of R.V.Appasamy. This is the primary point for determination in this appeal. Only if this point is answered in favour of the appellants, the other issues such as limitation need to be gone into.

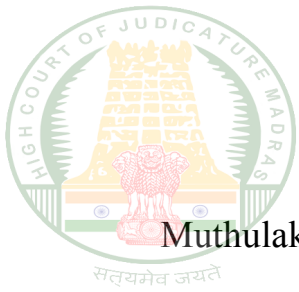
10.Though as many as 17 documents were marked on the side of the plaintiffs, Muthulakshmi has not been described as the wife of R.V.Appasamy even in a single document. In maintenance proceeding under Section 125 of Cr.P.C., strict proof of marriage is not necessary. But in suits involving



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partition or succession or even in matrimonial proceedings, where the question of marriage is contested, Courts will insist on strict proof. Of course, in civil proceedings, the standard of proof will be preponderance of probability. Where a man and woman cohabit continuously for a number of years, the law presumes in favour of marriage and against concubinage (Vide ***Rajnesh Vs. Neha (2021) 2 SCC 324***). But this presumption cannot be invoked when the person has had more than one sexual partner.

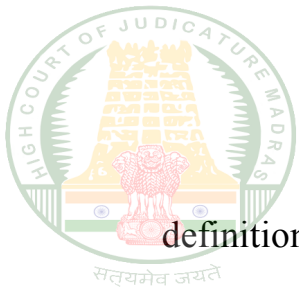
11.Since the plaintiffs / appellants have claimed that Muthulakshmi had married R.V.Appasamy and this claim had been contested by the defendants, by virtue of Section 101 of the Evidence Act, 1872, the burden lay entirely on the plaintiffs / appellants herein to prove the claim. It is true that in Ex.A9 - gift deed executed by R.V.R.N.Appasamy, Chinnaamy @ Dharmaraj had been described as “brother”. R.V.R.N.Appasamy, the executant of Ex.A9 was the eldest son of Kanagavallikambal. R.S.Appasamy, the first defendant in the suit was the other son of Kanagavallikambal and he was not a party to the said document. During the pendency of the suit, he passed away and his legal heirs have come on record. None of the defendants are parties to Ex.A9. Though Ex.A9 is a relevant piece of evidence, it is only indicative of how R.V.R.N.Appasamy considered Chinnaamy @ Dharmaraj, the son of



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Muthulakshmi. That by itself cannot determine the issue raised before us. In any event, the description found in Ex.A9 cannot bind the defendants.

12. On the other hand, in Ex.B11 (Document No.1978 of 1954) executed by the sons of Muthulakshmi, Muthulakshmi was described as the “Abhimana Stri” of R.V.Appasamy. The word “Abhimana Stri” was considered in quite a few decisions of the Madras High Court [(33 I.C 858) (**1993 1 MLJ 339 (Indhirani Ammal vs. E.Chandra)**, 1989 2 L.W 197 (**Mohan vs. Santha Bai Ammal**))]. The word “Abhimana” means “beloved”. The word “Bariyal” means “wife”. But the word “Abhimana Bariyal” was not construed as referring to one's wife. “Stri” means “woman”. “Abhimana Stri” means “beloved woman”. When “beloved wife” is not taken to refer to the real wife, we fail to understand as to how “beloved woman” would refer to a legally wedded wife. “Abhimana Stri” has always been understood as referring to someone other than the real wife. It refers to a concubine. We are conscious that the Hon'ble Supreme Court has come out with a “Handbook” on “Combating Gender Stereotypes”. The word “concubine” is now a forbidden expression. Judges are encouraged to adopt the alternative language ie, “Woman with whom a man has had romantic or sexual relationship outside of marriage”. With respect, we may observe that this is a description and not a



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definitional term. In Section 18(2)(e) of the Hindu Adoptions and Maintenance Act, 1956, this expression is found. In ***Rajesh Vs. Neha (2021) 2 SCC 324***, ***Mehboob Vs State of Maharastra (2019) 15 SCC 677*** and in several other decisions of the Supreme Court, this expression has been employed. Since an appropriate alternative expression has not been given in the Handbook, we have to reluctantly use that word. The Hon'ble Supreme Court in the decision reported in ***2024 SCC Online SC 3853 (Dechamma Vs. State of Karnataka)*** had to consider the question if a woman with whom a man has had romantic or sexual relations outside of marriage would be a “relative of the husband” for the purpose of prosecution under Section 498A of IPC. While answering the question, the learned Judges quoted an earlier precedent wherein the word “concubine” had been defined. We need definitions for descriptions. May be the next edition of the Handbook would be more helpful.

13. When in the eyes of Chinnasamy @ Dharmaraj and Chinnasamy @ Govindhan, their mother Muhulakshmi was not related to R.V.Appasamy in the capacity of wife, it is not for this Court to confer such a status in the absence of any other evidence. Interestingly, in the said document, their caste had been described as “Maravar”. Admittedly, R.V.Appasamy belonged to Naidu community. In the said release deed, Chinnasamy @ Dharmaraj and



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Chinnasamy @ Govindan, sons of Muthu Lakshmi, declared that during his life time, R.V.Appasamy had orally allotted the properties covered in Ex.B11 and since they wanted a written assurance, the said document came to be executed. The two sons of Muthulakshmi further declared that since the items covered in Ex.B11 have been given to them, they would not have any claim on the remaining items of the Zamindari estate. In other words, in lieu of taking 3 acres and 45 cents of land in Survey No.383 in Thirumalapuram Village, they had given up their rights on the other properties belonging to R.V.R.N.Appasamy. The genuineness of Ex.B11 is beyond dispute. When the two sons of Muthulakshmi themselves have described their mother as “Abhimana Stri” of R.V.Appasamy, it is not open to their legal heirs to elevate her status as the legally wedded wife of R.V.Appasamy.

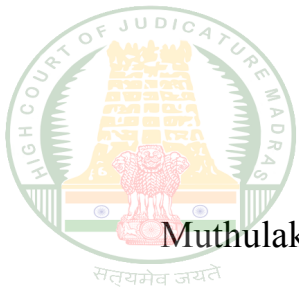
14.Our attention has also been drawn to Ex.B14 dated 03.03.1930 - application submitted by Kanakavallikambal, mother of R.V.R.N.Appasamy and R.S.Appasamy. In this letter addressed to the District Collector, after stating that R.V.Appasamy, Zamindar of Ilyarasanendal Part II passed away on 25.09.1929 and after referring to the proceedings No.43 dated 29.01.1930 issued by the Court of Wards, Kanakavallikambal describes herself as the senior widow and the mother and guardian of R.V.R.N.Appasamy who as the



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eldest son was entitled to succeed by right of primogeniture. She prayed that the estate may be handed over to her in her capacity as the guardian of Minor R.V.R.N.Appasamy. If Muthulakshmi was the first wife of R.V.Appasamy, certainly, she would have been the senior widow and she would have petitioned the authorities. That Muthulakshmi had not done anything of that sort is a clear indication that she was certainly not the first wife as claimed by the plaintiffs.

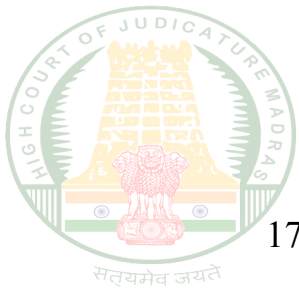
15.Ex.B15 is an order passed by the District Judge, Tirunelveli in I.A.No.412 of 1930 in O.P.No.46 of 1930. The said petition was filed by Chellathayammal @ Alamelammal against Kanakavallikambal, mother of R.V.R.N.Appasamy and R.S.Appasamy. A definite finding was given that the Kattukuthagaidar of Ilayarasanendal Part II died in September 1929 leaving two widows and some children by each and that two widows were fighting over the management. While the senior widow was claiming that her elder son would succeed to the estate by primogeniture, the junior widow was denying the alleged impartibility and right of primogeniture and setting up the rights on behalf of her son. The learned District Judge dismissed the IA on the ground that a proper civil suit must be instituted and that the issues cannot be decided in the original petition. In that view of the matter, the IA suffered dismissal. The finding set out in the said order is highly significant. If really



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Muthulakshmi was also one of the widows, she too would have figured in the picture. The dispute was only between Chellathayammal @ Alamelammal and Kanakavallikambal. The irresistible inference is that R.V.Appasamy died in 1929 leaving behind only two widows and Muthulakshmi was not one of them. That is why, we reject the oral testimony adduced in this behalf by the plaintiffs.

16. There is yet another circumstance to disprove the claim of the plaintiffs. Ex.B25 is the order dated 21.01.1953 made in O.P.No.1077 of 1952 on the file of the Estates Abolition Tribunal, Madurai. The said petition was filed by R.V.R.N.Appasamy for payment of his share from and out of the compensation of Rs.16,560/- deposited with the tribunal in respect of the inam estate, Elayarasanendal Part II, Tirunelveli District. In this OP also, the litigating parties were the two sons born to Kanakavallikambal, Alamelu Ammal and the son born to her. The two sons born to Muthulakshmi were nowhere in the picture. The compensation payable on account of the abolition of inam estate was paid only to R.V.R.N.Appasamy and R.S.Appasamy and the son born to Alamelu Ammal.



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17.Ex.B26 is another order dated 11.03.1963 made in O.P.No.40 of 1963 on the file of the Estate Abolition Tribunal, Tirunelveli. A sum of Rs.24,527 was ordered to be paid to R.V.R.N.Appasamy. Again, the sons of Muthulakshmi were nowhere in the picture. Later, when proceedings were initiated under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, and compensation was paid, R.S.Appasamy / first defendant herein alone was shown as the land holder.

18.Ex.B28 is the copy of the notification issued under Section 18(1) of of the Act. A.Chandramohan was shown as the land holder in respect of the Survey Nos.806-1, 16-2, 167-2, 55-1. This further confirms the assertion made by the defendants that the zamindari estate was divided between the legal heirs of Kanakavallikambal and Alamelu Ammal and that is why, the communications issued by the authorities under the Land Reforms Act were received only by them.

19. A careful perusal of the various exhibits marked on the side of the defendants would clearly demonstrate that R.V.Appasamy, Zamindar of Ilayarasanenthal had only two legally wedded wives, namely, Kanakavallikambal and Alamelu Ammal. Muthulakshmi's relationship with



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R.V.Appasamy was not a marital relationship. Of course, there was physical intimacy between R.V.Appasamy and Muthulakshmi. It is highly probable that R.V.Appasamy had begotten four children through Muthulakshmi. That is why, in recognition of the same, R.V.R.N.Appasamy who succeeded to the estate following his father's demise, gave them some gifts. That will not confer any legal right on Muthulakshmi's descendants. It is relevant to note that during their life time, the sons of Muthulakshmi did not make any claim or file any suit. It is only after their demise, the demand for partition came to be made. Section 16 of the Hindu Marriage Act, 1955 has done away with the distinction between legitimacy or illegitimacy of children. But such a measure of social reform came decades later. Admittedly, R.V.Appasamy passed away in 1929. Assuming that he was the father of four children born to Muthulakshmi, they still could not have filed any partition suit. Partition is all about dividing pre-existing rights and shares. The descendants of Muthulakshmi cannot take advantage of Section 16 of the Act which came later.

20. Admittedly, R.V.Appasamy passed away in 1929. Thereafter, R.V.R.N.Appasamy was recognized as the land holder. The legal heirs of Kanakavallikambal / senior widow of R.V.Appasamy have been enjoying the suit schedule properties as their exclusive properties. But we need not go into



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the question of ouster which will arise only if the rival claimants have pre-existing right and title. In this case, the legal descendants of Muthulakshmi never had any pre-existing right. Therefore, the court below rightly non-suited them. The point for determination is accordingly answered. This Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
04.03.2025

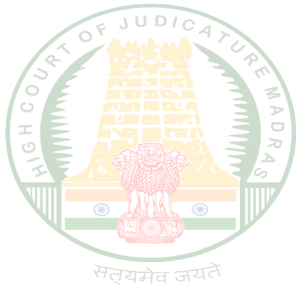
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G.R.SWAMINATHAN, J

and

M.JOTHIRAMAN, J.

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