

**\* THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**+ A.S.No.64 OF 2024**

% 23.04.2024

# Between:

**Balsu Veerabhadra Rao and others**

**Appellants**

**Vs.**

**Yalamanchili Shivaramakrishna  
(died) per LRs and others**

**Respondents**

! Counsel for Appellants : Sri Mummaneni Srinivasa Rao

^ Counsel for Respondents : Sri Madiraju Prabhakar Rao

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? Cases referred :

1. (2008) 17 SCC 491
2. AIR 2011 SC 3258

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI****APPEAL SUIT No.64 OF 2024****JUDGMENT:**

Aggrieved by the judgment and decree dated 22.12.2023 in O.S.No.75 of 2017 (hereinafter will be referred as 'impugned judgment') passed by the learned Agent to Government (District Collector) at Mahaboobabad (hereinafter will be referred as 'trial Court'), the plaintiffs preferred the present appeal to set aside the impugned judgment.

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

3. The brief facts of the case, which necessitated the appellants to file the present appeal, are as follows:

a) The plaintiffs filed O.S.No.75 of 2017 against defendants seeking perpetual injunction in respect of path way in the agricultural land of the plaintiffs and defendants situated at Satyanarayanapuram Village, Bayyaram Mandal of Mahabubabad District. The brief averments of the plaint are as under:

i) Plaintiff Nos.1 to 7 are the absolute owners and

possessors of agricultural lands i.e., Ac.0.19 guntas in Sy.Nos.251/1-AA and 250/3-AA pertaining to plaintiff No.1, Ac.0.26 guntas in Sy.No.251/EE pertaining to the plaintiff No.2, Ac.0.19 guntas in Sy.No.250/3-EE pertaining to the plaintiff No.3, Ac.0.26 guntas in Sy.No.151/1-U pertaining to Plaintiff No.4, Ac.4.18 guntas in Sy.No.252/2/6 pertaining to the plaintiff No.5, Ac.4.18 guntas in Sy.No.252/2/AA pertaining to the plaintiff No.6 and Ac.3.27 guntas in Sy.No.255/2/A/1 pertaining to the plaintiff No.7.

ii) Defendant No.1 is the absolute owner and possessor of the agricultural land adjacent to the agricultural lands of plaintiffs. The lands of plaintiff and defendant came into their possession from their forefathers and the names of the plaintiffs and defendants are entered in the revenue records. Plaintiffs and defendants are paying the land revenue to the Government. Since about 70 years i.e., during the lifetime of the forefathers of the plaintiffs and the defendants, there is path way existing in between the land of plaintiff No.7 and defendant and the said pathway leads in between the lands and that ends in Aligeru Vagu. The pathway is being used by plaintiffs and other farmers to reach their lands in doing their agricultural operations by raising paddy and other commercial crops

without any interruption.

c) About two years back, the defendant obstructed the plaintiffs to enter into their lands to do their agricultural operations and constructed a gate closing the pathway. The plaintiffs reported the same to the elders in the village and they held a panchayath and advised the defendant not to obstruct the plaintiffs to go their agricultural fields in attending the agricultural operations through the existing pathway but the defendants did not list to the advises of the village elders and obstructing the plaintiffs in attending to their agricultural operations from the existing pathway. After the said panchayath, in the month of August, 2016, the defendants lodged a report against all the plaintiffs before SHO, Garla Police Station. After receiving the complaint, the SHO, Garla Police Station came to the disputed pathway and observed that the pathway is existing since long time and all the farmers are using the way in attending their agricultural operations and also to transport the agricultural material with the help of bullock carts, tractors and lorries. As per the advice of the SHO, PS Garla, the defendant allowed the plaintiffs in attending their agricultural operations. But in the agricultural season, the defendant again closed the gate and put a lock to the said

gate and did not allow the plaintiffs in attending to their agricultural operations.

iii) On 10.07.2017 when all the plaintiffs proceedings to their agricultural fields through the pathway, the defendant and their men obstructed the plaintiffs and not permitted them to allow in to the said pathway. However, at the inference of the surrounding land owners, the defendant permitted the plaintiffs to enter into their lands. Again on 14.10.2017 while the plaintiffs were going to attend their agricultural fields, the defendants again obstructed the plaintiffs to pass into the existing pathway. As it is a season of harvesting the crops, the plaintiffs are unable to attend their agricultural operations properly and facing much inconvenience and hardship. In fact, the defendant is having no right over the pathway and he intentionally obstructing the plaintiffs in allowing the plaintiffs to pass through the existing pathway. Hence, this suit.

b) In reply to the plaint averments, the defendant filed written statement, the brief averments of which are as under:

i) The land of the defendant is adjacent to the village i.e., Sy.No.250/2/AA and the same was given to his daughter i.e., V. Sridevi and the revenue department recorded her name in their

records as pattedar and possessor of the same and also issued pattedar passbook and title deed book in her favour and the defendant is cultivating the land of his daughter on lease basis. The plaintiffs did not make her as party to the suit, hence, the suit is not maintainable as non joinder of necessary party. There is no pathway at any point of time to reach the lands of the plaintiffs. There is a bund dividing the lands of V. Sridevi, Smt. V. Karunamma, V. Basuvaiaha, G. Srilakshmi, Y. Prasad Rao and the defendant. The bund is in the land of the defendant. The land owners used the bund to reach their land. The defendant never objected the plaintiffs to walk on the bund situated in between his land and lands of V. Sridevi, Smt. V. Karunamma, V. Basuvaiaha, G. Srilakshmi, Y. Prasad Rao at any point of time. The defendant constructed the wall and erected a gate to safeguard his crop from buffaloes, goats and sheep but not otherwise as alleged by the plaintiffs and he never closed the gate at any point of time. The plaintiffs are using the bund to reach their lands till today by walk. The bund was never used for transportation through bullock cards, tractors and lorries.

ii) No panchayath was held in connection with the way at any point of time and the elders never advised the defendant

not to obstruct the use of walkway i.e., the bund. The defendant filed a complaint before the Police, Garla as the plaintiffs damaged the land of his daughter V. Sridevi with tractors, but the police did not visit the damaged land and they supported the plaintiffs as they got money and political power. The plaintiffs influenced the police with the ruling party public representatives and the SHO, PS, Garla never visited the disputed bund at any point of time and never advised the defendant to allow the plaintiff to use the bund for bullock carts, tractors and lorries. There is no cause of action to file this suit, which is not maintainable. The bund is in the land of defendant and the plaintiffs and other land owners, who are adjacent to the bund are using the same to reach their agricultural lands by walk and they never used the bund for bullock cart, tractors, lorries at any point of time.

iii) The plaintiffs or adjacent land owners are not having any ownership, right over the bund. The Plaintiffs are having money and muscle power and damaged by the crop of the defendant adjacent to the bund through tractors and caused loss to the defendant. The defendant filed complaint to the SHO, PS. Garla regarding the said damage but the plaintiffs used their political influence and managed the Police in not

registering a case against plaintiffs. The plaintiffs, one day prior to filing of the suit, damaged the paddy crop of the defendant by tractors to show that there is a way for use of tractors and bullock carts and filed this suit for injunction against the defendant. The defendant is a senior citizen and he is not in a position to quarrel with the plaintiffs. The defendant also filed a rough sketch of the location map of the disputed land and video showing the damage caused to the defendant crop to create a road from the land of the defendant. The plaintiffs ought to have filed a suit for declaration but not for perpetual injunction, which is not at all maintainable

d) During the pendency of the suit, the sole defendant passed away and thereby his legal representatives were brought on record as defendant Nos.2 to 4.

e) As seen from the record, both the parties did not adduce either oral or documentary evidence to substantiate their contentions, however, written arguments were filed on behalf of both the sides.

f) The trial Court after considering the rival contentions, dismissed the suit of the plaintiffs. Aggrieved by the judgment and decree, the plaintiffs filed the present appeal to set aside



the impugned judgment.

4. Heard both sides and perused the record including the grounds of appeal.

5. It is the contention of the plaintiffs that the trial Court without framing the issues and without conducting trial, straight away dismissed the suit even without marking documents and dismissed the suit. Though the plaintiffs contended that the trial Court passed the impugned judgment without marking the documents, as can be seen from the plaint, the plaintiffs did not even submit the appendix of documents that are going to be filed along with the suit. When the plaintiffs fail to produce or submit the relevant documents upon which they are relying, the trial Court cannot insist the parties to produce the documents. In such circumstances, the trial Court has no other option except to pass the judgment with the available material on record. As seen from the impugned judgment, the learned trial Court Judge specifically observed at para No.12 of the judgment that no oral evidence was adduced on behalf of both sides, however, both counsel filed written arguments. When both the parties failed to adduce any oral evidence, as stated supra, the trial Court having no other option

except to pass the impugned judgment based on the material available before the Court. Moreover, the plaint does not disclose the schedule of property against which the reliefs are being sought.

6. It is further contention of the plaintiffs that during the year 2022 the Presiding Officer directed the plaintiffs as well as the defendants not to attend the Court and the Presiding Officer will pass the orders, accordingly, without giving any notice or without communicating the order either to the plaintiffs or the defendants, as such, the judgment under appeal is without following the procedure of law and dismissing the suit is totally nonest in eye of law. There is no material to substantiate that the Presiding Officer has directed both the parties not to attend the Court and that he would pass orders. It is not the case of the plaintiffs that the Presiding Officer has directed only the plaintiffs not to attend the Court. It is an admitted fact that during the year 2022 almost the whole world suffered with Covid-19 pandemic and it was very hard to run a public office or private institution and most of the proceedings before various forms were undertaken through online with the help of electronic media. Perhaps, in that connection, the learned Presiding Officer might have suggested the parties not to

approach the Court during the covid-19 pandemic. It is not the case of the plaintiffs that the suit was pronounced during the year 2022. Though the Presiding Officer alleged to have directed both the parties not to attend the court and that he would pass orders, it is pertinent to note that the judgment was pronounced in the month of December, 2023 i.e., very much after covid-19 pandemic days. Furthermore, it is evident that both the parties have filed written arguments on their behalf. If at all the learned Presiding Officer has passed the impugned judgment without issuing any notice to either of the parties, there can be no opportunity for either of the parties to file written arguments, as the written arguments will be filed at the penultimate stage of the case i.e., prior to passing of the judgment. In such circumstances, the plaintiffs ought to have requested the learned Presiding Officer of the Court to give them an opportunity to adduce oral and documentary evidence. It is the specific contention of the learned counsel for the defendants that as the plaintiffs did not adduce any evidence, either oral or documentary, the trial Court dismissed the suit. It is not the case of the plaintiffs that though they were ready to adduce oral evidence and also filed documentary evidence, the trial Court did not consider such evidence. Apart from that at paragraph

No.13 of the impugned judgment, it is specifically mentioned by the learned trial Court that arguments on behalf of learned counsel for the plaintiffs and defendants were heard at length. Though the suit was filed in the year 2017, the plaintiffs have not adduced any oral or documentary evidence before the trial Court until the date of passing the impugned judgment in the year 2023. The defendant filed his written statement on 07.10.2017. It is not the case of the plaintiffs that immediately after filing written statement, the learned Presiding Officer without giving any notice to either of the parties, has dismissed the suit. Thus, the trial Court after waiting for six long years, after filing written arguments and after hearing both sides, has passed the impugned judgment by considering all the relevant aspects. Hence, it cannot be said that the trial Court has dismissed the suit without giving opportunity to either of the parties.

7. Coming to the aspect of non framing of issues before passing the judgment, there is absolutely no doubt that proper and appropriate issues shall be framed by the Court because issues guide the parties as to how to proceed ahead while adducing evidence. A party will not be allowed to adduce evidence which does not go on proving or disproving the

issues framed and such evidence will be irrelevant and hence inadmissible. Hence, framing of issues is very important as it would assist the Courts to save time and costs for hearing matters which are irrelevant to the case. Apart from guiding the parties as to how to proceed ahead in adducing evidence, the framing of issues assists the Court to concentrate on the specific issues and in fact these issues confines the court to specific areas in which the issues have been framed. If the case goes to appeal, the appellate Court has to confine it to issues framed in the trial court but cannot determine issues which were not framed during the trial but it shall deal with issues of law though they were not framed or were abandoned during the trial. The failure or omission of framing issues may have two consequences i.e., procedural irregularity which is not necessarily fatal to the proceedings and on the other hand if the court is of the opinion that the failure or omission of framing issues prejudices the parties, such omission will be fatal. In the case on hand, the plaintiffs though contended that issues were not framed, they have not explained as to what kind of prejudice that was caused to them in non framing of issues. The court will not hold that the omission or failure to frame issues was prejudicial to the parties if it is of the opinion that despite the

fact that no issues were framed, the parties knew what was at issue and produce evidence in what they knew was at issue. Even otherwise, as can be seen from the impugned judgment, though specific issues were not framed, the trial Court has answered all the relevant issues under issue No.1 and Issue No.2 and then arrived to a conclusion that the suit is liable for dismissal. Moreover, the trial Court has confined itself to the relevant issues involved in the dispute. As can be seen from paragraph No.11 of the impugned judgment, the trial Court has framed the point, which is detrimental in deciding the dispute between the parties. In such circumstances, it cannot be said that non framing of issues is prejudicial to the plaintiffs. Even if the trial Court has not framed issues as contended by the plaintiffs, it can be considered as procedural irregularity but cannot be said that it is prejudicial to the interests of the plaintiffs, more particularly, when the plaintiffs have not pleaded specifically as to what kind of prejudice they have suffered in view of non framing of issues.

8. It is submitted by the learned counsel for the appellant that after filing of the suit, at the instance of Collector and Police, the Tahsildar cum Executive Magistrate, Garla issued police protection orders on 01.02.2021 as against the said

orders, the second defendant filed W.P. No.2941 of 2021, which was dismissed on 08.02.2021. Thereafter, the second defendant approached the Bhadrachalam Mobile Court by filing a suit against the appellants herein by filing O.S.No.167 of 2021 and also filed I.A.No.179 of 2021. The plaintiffs filed W.P.No.21595 of 2021 as against the said orders and the said Writ Petition is disposed of on 08.09.2021 directing the trial Court to hear the matter and pass appropriate orders with a within a period of 8 weeks. Accordingly, the trial Court vacated the injunction orders on 30.12.2021 and thereby the plaintiffs filed W.P.No.13123 of 2022 against the defendants, wherein this Court passed interim orders directing the respondents not to obstruct the plaintiffs vide order dated 08.12.2022. The defendant filed Crl.R.C.No.298 of 2021 before the Court challenging the orders passed by the Tahsildar dated 01.02.2021. Thus, the Registry was directed to post W.P.No.13123 of 2022 along with Crl.R. C. No.298 of 2021 and an interim order was passed directing that the standing crop available on the schedule property. The plaintiffs filed C.C.No.477 of 2023, wherein this Court ordered notice to the second respondent. In the said proceedings, the District Collector is also a party as respondent No.2 and despite

knowing the same, the District Collector passed the impugned judgment. The trial court failed to notice the fact that there is no way to the plaintiffs to go to their agricultural lands except through the lands of the defendants. Defendant Nos.2 and 4 are not raising any objections against the plaintiffs and it is only the third defendant, who is facing contempt, is obstructing the plaintiffs.

9. The contentions raised by the learned counsel for the plaintiffs in the above paragraph are not being found in the plaint averments. It appears that for the purpose of filing the appeal, the plaintiffs have raised these contentions at this stage. It is settled law that new pleadings cannot be raised before the appellate Court and only in exceptional cases that the appellate court may, in its discretion allow a new point to be raised before it, provided there are good grounds for allowing it to be raised and no prejudice is caused to the opponent. Moreover, it is settled law that without pleadings, any amount of evidence is inadmissible. In **Bachaj Nahar v. Nilima Mandal and another**<sup>1</sup>, the Honourable Supreme Court observed as under:

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<sup>1</sup> (2008) 17 SCC 491



*“9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.*

*10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”*

10. In view of the principle laid down in the above said

decision, it is amply clear that omission to plead and omission to frame issues is a prejudice that can be caused to the defendant but not the plaintiff. The intention hidden in the above principle is that the defendant shall not be surprised all of a sudden in bringing new facts and the defendant shall be given an opportunity to opponent/defendant either to admit or refute such pleadings. In the case on hand, it is the plaintiff, who has approached the Court aggrieved by the dismissal of his suit. If at all the issues were not framed and certain reliefs are granted in favour of plaintiff, it is the defendant, who is going to suffer prejudice and miscarriage of justice.

11. As seen from the grounds of appeal, it is contended that there is no other way to the appellants to go to their agricultural lands except through the lands of the defendants. Even as per this statement, it is evidently clear that the pathway through which the appellants are intending to approach their agricultural lands of the defendants. Thus, the plaintiffs / appellants are admitting that the land, which is alleged to have been used by them as pathway, belongs to defendants. Furthermore, as can be seen from the plaint averments, it is contended by the plaintiffs that there is a pathway existing in between the land of plaintiff No.7 and the defendants. But

contrary to the said statement, the plaintiffs are contending that the land, which is alleged to have been used by them as pathway, belongs to defendants. At paragraph No.5 of the plaint, it is clearly mentioned that the defendant is having no right over the path way and he intentionally obstructing the plaintiffs in allowing the plaintiffs to pas through the existing path way. As rightly observed by the trial Court in the impugned judgment, since the plaintiffs are claiming easementary right of pathway over the land of the defendants, then the plaintiffs cannot deny the ownership of the defendants. Thus, there is dispute with regard to the ownership of the land in dispute i.e., either it belongs to the defendant or is a public pathway. The conduct of the plaintiffs in blowing hot and cold at the same time i.e., denying the ownership of the defendant and claiming easementary right over the land in dispute, is creating any amount of ambiguity in the mind of the Court.

12. Now coming to the alleged easementary right of the plaintiffs over the land in dispute, it is specific contention of the plaintiffs that they are using the land in dispute as pathway for more than 70 years. It is also the contention of the plaintiffs that apart from them other farmers are also utilizing the land in dispute as pathway. But surprisingly, there is no oral or

documentary evidence on behalf of the plaintiffs to substantiate the above said contention. The plaintiffs ought to have examined one of the farmers, who alleged to have been using the said land in dispute as pathway for more than 70 years. At Paragraph No.30 of the impugned judgment, it was clearly mentioned that survey conducted by the Surveyor of the Revenue Department discloses that it is a patta land of the defendant and there is no proof that there is cart track or pathway existing. As can be seen from the pleadings in the plaint, there is no averment that except the land in dispute, there is no other way to the plaintiffs or other farmers to reach their respective lands. In order to seek customary easement the plaintiffs need to establish that (a) the usage is ancient or from time immemorial; (b) the usage is regular and continuous; (c) the usage is certain and not varied; and (d) the usage is reasonable as held by the Honourable Apex Court in **Ramkanya Bai v. Jagdish**<sup>2</sup>. As per the contention of the defendants, there is another old pathway but the plaintiffs taking advantage of the absence of defendant Nos.2 and 3 as well as the old age of defendant No.1, are trying to grab the land in dispute.

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<sup>2</sup> AIR 2011 SC 3258

Furthermore, as can be seen from the impugned judgment, at paragraph No.42, it is observed that as per the report of the Inspector of Survey and Land Records, Mahabubabad vide RC No.A1/259/2022 and as per the Village map and tippon, there is no pathway. At paragraph No.43 of the impugned judgment, the trial Court observed that plaintiffs are having alternative way, as such, plaintiffs cannot claim easementary right of pathway over the land of the defendants. In the same paragraph, it was further held that as per the report submitted by the Deputy Surveyor, Dornakal, there is no pathway in Sy.Nos.250 to 254 and 258 and whereas, the plaintiffs total extent of land in Sy.Nos.250/P, 251/P and 252/P is Ac.10.27 guntas and they have way in Sy.Nos.259, 245 and 249. Even as per the defendants' version, the plaintiffs are having alternative old pathway. It is specifically admitted by the defendant in the written statement that there is a bund dividing the lands of V. Sridevi, Smt. V. Karunamma, V. Basuvaiaha, G. Srilakshmi, Y. Prasad Rao and the defendant. It is also the specific case of the defendants that the plaintiffs are claiming pathway in the middle of land of the defendants.

13. It is the contention of the plaintiffs that the case may be remanded back to the trial Court for reconsideration, as the trial

Court without conducting trial, without marking documents, straight away dismissed the suit in a technical manner. As can be seen from the impugned judgment, the trial court while considering all the relevant aspects has passed well reasoned judgment consisting of sixteen pages and there is no doubt even to suspect that the trial Court has committed any illegality or irregularity while passing the judgment. The trial Court has not dismissed the suit on mere technical grounds and in fact, due to inconsistent versions of the plaintiffs without any cogent and convincing evidence, the suit of the plaintiffs was dismissed. It is settled law that on mere asking by the learned counsel, the matter cannot be remanded back to the trial Court.

14. It is to be seen that the suit was filed in the year 2017 and during the pendency of the suit, the plaintiffs have approached the Tahsildar, Garla, Mahabubabad District, who has initiated proceedings under Section 145 of Cr.P.C., wherein the defendants were directed to open the gate without lock and make it feasible to pass through with bullock carts and tractors and make it easy to access the un-official respondents as well as inhabitants to pass and re-pass through the said passage to attend their agricultural operations. But it is to be seen that the revenue authorities ought not to have entered into dispute and decided title of ownership which

is to be done only by the competent civil court, more particularly, when already a civil suit is pending between the parties. However, the defendant aggrieved by the order passed by the Tahdilsar, has already filed Crl.R.C.No.298 of 2021, which is still pending. Though few cases pertaining to the land in dispute are pending before this Court, they are nothing to do with the cause of action shown in the plaint. The plaintiffs need to succeed in their case by establishing prima facie case and balance of convenience in their favour. The plaintiffs are not claiming ownership over the land in dispute and in fact, they are claiming rights to use the said land in dispute as a pathway to proceed to their agricultural lands as they are using the said land as pathway for the past more than 70 years. But the plaintiffs failed to establish the cause of action shown in the plaint by adducing cogent and convincing evidence. As it is settled law that proceedings for grant of injunction are always discretionary and a court of law shall not grant perpetual injunction in favour of the plaintiff against the right owner if he is a mere trespasser. The plaintiffs must establish their legal right and also their exclusive possession to have the relief of perpetual injunction. But in the case on hand, the plaintiffs failed to establish their legal right in claiming equitable relief of injunction. As stated supra, on one hand, the plaintiffs contend that the pathway is in the land of defendants and

on the other hand, the defendants contend that the defendants have no right in the pathway. Even the survey reports disclose that there is no such pathway as contended by the plaintiffs in the disputed land. When the plaintiffs have alternative pathway to proceed to their agricultural lands, they cannot use the land of the defendants as pathway.

15. In view of the above facts and circumstances, this Court do not find any merits in the appeal to set aside the impugned judgment and in fact, the trial Court has elaborately discussed all the aspects and arrived to a proper conclusion.

16. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

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**JUSTICE M.G. PRIYADARSINI**

Date: 22.04.2024

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