



*CRP(NPD)No.1250 of 2013 & S.A.Nos.116 & 117 of 2013
& Cros.Obj.No.65 of 2017*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.09.2023

Pronounced on : 29.09.2023

CORAM :

THE HONOURABLE MR.JUSTICEV. LAKSHMINARAYANAN

C.R.P.(NPD)No.1250 of 2013

and

S.A.Nos.116 & 117 of 2013

and

Cros.Obj.65 of 2017

CRP.(NPD)No.1250 of 2013

Sivalingam

.. Petitioner

VS

Vedavalli Ammal Arakattalai, Tindivanam,
Rep. by its President N.GuberaChettiyar,
Office at No.338, Jawaharlal Nehru Veedhi,
Tindivanam.

.. Respondent

Petition filed under Section 115 of the Code of Civil Procedure, against the Fair and Final orders dated 28.09.2012 and made in C.M.A.No.41 of 2008 on the file of Principal District Court, Villupuram confirming the Fair and Final Orders dated 30.07.2008 and made in I.A.No.604 of 2001 in O.S.No.224 of 2001 on the file of



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Principal Subordinate Judge, Tindivanam and prays to set aside the same in so far as they went against the Petitioner herein.

AND

S.A.Nos.116 & 117 of 2013

Sivalingam

.. Appellant in both S.A.s

vs

Vedavalli Ammal Arakattalai, Tindivanam,
Rep. by its President N.GuberaChettiyar,
Office at No.338, Jawaharlal Nehru Veedhi,
Tindivanam.

.. Respondent in both S.A.s

Appeals filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 28.09.2012 and made in A.S.Nos.30 and 31 of 2008 on the file of Principal District Court, Villupuram confirming the Judgment and Decree dated 30.07.2008 and made in O.S.No.224 of 2001 and O.S.No.43 of 2005 respectively on the file of Principal Subordinate Judge, Tindivanam and prays to set aside the same in so far as they went against the Appellant herein.

AND

Cros.Obj.No.65 of 2017

Vedavalli Ammal Arakattalai, Tindivanam,
Rep. by its President N.GuberaChettiyar,
Office at No.338, Jawaharlal Nehru Veedhi,
Tindivanam,
Villupuram District.

.. Cross Objector/Respondent



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VS

Sivalingam

.. Respondent/Appellant

Cross Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure, against the Judgment and Decree dated 28.09.2012 made in A.S.No.30 of 2008 on the file of Principal District Court, Villupuram confirming the Judgment and Decree dated 30.07.2008 and made in O.S.No.224 of 2001 on the file of Principal Subordinate Judge, Tindivanam and notice served on 01.03.2013, prays to set aside the same in so far as they went against the Appellant herein.

Case Nos.	For Petitioners/ Appellants	For Respondent
CRP(NPD)No.1250 of 2013	Mr.N.Jothi, Senior Counsel for Mr.N.Manokaran	Mr.N.L.Rajah, Senior Counsel for Mr.E.Jaya Sankar
SA.Nos.116 & 117 of 2013	Mr.N.Jothi, Senior Counsel for Mr.N.Manokaran	Mr.N.L.Rajah, Senior Counsel for Mr.E.Jaya Sankar
Cros. Obj.No.65 of 2017	Mr.N.L.Rajah, Senior Counsel for Mr.E.Jaya Sankar	Mr.N.Jothi, Senior Counsel for Mr.N.Manokaran



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COMMON ORDER

These batch of Second Appeals, Civil Revision Petition and Cross Objection are disposed by a common order.

2.O.S.No.224 of 2001 was presented by one Vedhavalli Ammal Arakattalai, Tindivanam. The suit was presented against Sivalingam, the appellant in S.A.Nos.116 and 117 of 2013 and petitioner in CRP(NPD)No.1250 of 2013. The suit being one for ejectment. A written statement was presented by the defendant wherein he claimed several reliefs including the relief that since he had put up the superstructure, ejectment suit should not be decreed.

3.Apart from that, he filed an independent application in I.A.No.604 of 2001 claiming the relief under Section 9 of the Madras City Tenants Protection Act (hereinafter referred to as the 'Act'). This application was stoutly opposed by the Trust.

4.During the time of trial, the following issues had been framed by the learned trial Judge in O.S.No.224 of 2001:

“1)Is it true that the deed of tenancy came to an end in 1998?



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2)Is it true that a separate tenancy agreement was made for the shop on

1.4.2001?

3)Whether the plaintiff is entitled for the relief sought for in the plaint?

4)To what relief the plaintiff is entitled to?”

5.The following issues were framed in O.S.No.43 of 2005:-

“1)Is it true that the plaintiff was only offered site alone for rent?

2)Whether the superstructure was built by the plaintiff?

3)Whether the “B” schedule property was leased in favour of the plaintiff?

4)Whether the plaintiff continues to be a tenant in the status of “tenant holding over”?

5)Whether the suit has cause of action?

6)Whether the plaintiff is entitled to get the relief as prayed for?

7)To what other relief plaintiff is entitled to?”

After a detailed trial of both the suit as well as the application, the suit was decreed by a judgment dated 30.07.2008 and the application under Section 9 was dismissed on the very same date.



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6. Against the judgment and decree in O.S.No.224 of 2001, an appeal was preferred in A.S.No.30 of 2008. Against the order passed under Section 9 of the Act, a Civil Miscellaneous Appeal was filed in CMA.No.41 of 2008.

7. Mr. Sivalingam, the tenant, filed O.S.No.95 of 2001, on the file of the learned District Munsif Court, Tindivanam. The relief sought for in this suit was not to be evicted except otherwise through due process of law. The said suit stood transferred and was re-numbered as O.S.No.43 of 2005 and was tried along with O.S.No.224 of 2001 before the learned Subordinate Court, Tindivanam. The suits in O.S.No.43 of 2005 came to be dismissed and O.S.No.224 of 2001 came to be decreed by a common judgment delivered on 30.07.2008. Aggrieved by the said judgment and decree, A.S.No.31 of 2008 had been filed. The learned Judge clubbed A.S.No.30 of 2008, A.S.No.31 of 2008, CMA.No.41 of 2008 and dismissed the same by way of a judgment and decree on 28.09.2012.

8. There is one more proceeding which I have to narrate about, that is the proceeding relating to mesne profits. Since the trial Court denied mesne profits to the plaintiff and as the decree went in favour of the plaintiff in O.S.No.224 of 2001, the Trust filed a Cross Objection in A.S.No.30 of 2008. The said Cross Objection



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was also heard along with the two First Appeals and Civil Miscellaneous Appeal and was dismissed on 28.09.2012.

9.S.A.No.116 of 2013 has been preferred against the judgment and decree in A.S.No.30 of 2008 in confirming the judgment and decree in O.S.No.224 of 2001. S.A.No.117 of 2013 has been preferred against the judgment and decree in A.S.No.31 of 2008 in confirming the judgment and decree in O.S.No.43 of 2005 and CRP(NPD)No.1250 of 2013 has been preferred against CMA.No.41 of 2008. For the sake of convenience of the narration of the case, the parties will be referred to as landlord and tenant.

10. Oral evidence was recorded with O.S.No.95 of 2001 as the lead case. Mr.Sivalingam, the plaintiff in O.S.No.95 of 2001 entered the witness box and deposed as PW1. One Sampath Kumar, a former trustee of the defendant in the said suit entered the witness box as PW2. One Murugesan, a Mason, was examined as PW3. On the side of the tenant, Ex.A1 to Ex.A12 were marked and on the side of the landlord, Ex.B1 to Ex.B4 were marked.

11. According to the tenant, he is a timber merchant. He would plead that he had approached the landlord for the purpose of establishing a saw mill and a timber depot on its land and permission had been granted.



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12.The tenant would further allege that since he required electricity for running of machineries, he had obtained electricity connection for the same in his own name. The landlord would agree that a tenancy was created in favour of the tenant, but would plead that what was given was the land and building and not the land alone.

13.Second Appeal Nos.116 and 117 of 2013 were admitted on the following substantial questions of law:

“a. Whether the Courts below erred in entertaining the suit for eviction when the plaintiff's own case is that the tenancy was in respect of the site and building?

b. Whether the First Appellate Court is right in basing reliance entirely on Exhibit A-12 which is inadmissible in evidence?

c. Whether the Lower Appellate Court is right in relying upon inadmissible unregistered lease deed for deciding the crucial issue involved in the case namely whether the tenancy is in respect of site and building or site alone?

d. Whether the Courts below erred in throwing the burden of proof on the defendant in the main suit?”



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14. One aspect I have to deal with before entering upon the merits of the case is that the trial Court had tried O.S.No.43 of 2005, O.S.No.224 of 2001 and I.A.No.604 of 2001, altogether. It has been settled by a series of judgments of this Court that if a tenant files an application claiming the benefit under the provisions of the Madras City Tenants Protection Act, the said application will have to be dealt with first and depending upon the orders passed in the said application under the Act, the ejectment suit must be tried. This position has been succinctly laid down by this court in ***V.M. SubramaniaMudaliar & sons v. Sri Bhavasarakshriya Seva Samaj***, (1997) 1 LW 267 (Per P. Sathasivam J (as he then was)). However, this procedure has been given a go-by in the present case. I hasten to add that this point was not raised before the lower appellate court. In fact, even before this court, this was not suggested as a question of law in the grounds of second appeal nor was it framed by the court at the time of admission. Mr. N. Jyothi has raised this point at the time of the final hearing in the second appeal. This court cannot permit such a plea at this late stage since it would amount to taking the respondent by surprise. The rules of litigation cannot be changed after the play has started unless it is a pure question of law based on available facts. Furthermore, in light of the judgment that I



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am going to render, this procedural infraction does not affect the merits of the case nor does it prejudice the appellant.

Submissions of the learned counsel for the tenant

15.Mr.N. Jothi, Learned Senior Counsel on behalf of the appellant,would place the following submissions : -

(i)the trial Court as well as the lower Appellate Court had miserably failed to take note of Madras City Tenants Protection (Amendment Act 2 of 1980) Act and therefore, the judgments have to be set aside. He would rely upon the judgment in **AundiappaNadar vs. Gnanambal Ammal and others (1998) 6 SCC 753** in particular paragraph No.21 to plead that his client being a tenant prior to 09.01.1974 is entitled to the benefit of the Act,

(ii)that the burden of proof is on the landlord to prove what had been let out was only the land and not the building,

(iii)the lease deed under Ex.A12 is inadmissible as the same is unregistered,

(iv)DW1 had admitted in his evidence that what had been let out was the land and not the building alone and this was supported by the evidence of PW2,

(v)the tenant had discharged his evidence about putting up the construction by examination of PW3,



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(vi)the Lower Appellate Court had miserably erred in holding the plaintiff to be a public religious trust, when no evidence was let in before it,

(vii)the Advocate Commissioner's report filed during the pendency of suit would substantiate the case that it was the tenant, who had put up the superstructure and,

(viii)the procedure followed by the Courts below is erroneous as the Section 9 application had been tried along with the suit and had not been tried separately.

Submissions of the learned counsel for the landlord

16.Mr.N.L.Rajah, learned Senior Counsel appearing for the Landlord would submit that

(i)Madras City Tenants Protection Act does not apply to the present case as the property that was let out to the tenant was both the land and building and not the land alone,

(ii)since the Madras City Tenants Protection Act does not apply to the facts of the case, the fact that an application under Section 9 as well as the suit were tried together did not vitiate the trial,



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(iii)the Advocate Commissioner need not be examined as he cannot give proof as to who had put up the construction, which is an essential decision that has to be taken by the Court alone on the basis of marshalling of evidence,

(iv)Ex.A12 had been produced by the plaintiff and therefore, he cannot plead against it,

(v)In any event, Ex.A12 can be looked into for collateral purposes,

(vi)PW2 being a former trustee and acted against the interests of the trust and had deposed against the specific terms of Ex.A12, he is an unreliable witness.

17. I heard Mr.N.Jothi, learned Senior Counsel appearing for Mr.N.Manokaran, learned counsel on record for the tenant/appellant and Mr.N.L.Rajah, learned Senior Counsel appearing for Mr.E.Jaya Sankar, learned counsel on record for the landlord/respondent. I am answering the substantial questions of law that have been framed together but in the form of sub topics.

Whether the tenant is entitled to the benefit of Madras City Tenants Protection Act?

18.The dispute that I have to resolve is whether the tenant had taken tenancy of the land alone or whether he had been given tenancy of both land and building. This issue arises because, if I conclude that what was taken was only the land, then



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the tenant will be entitled to the benefits of the Madras City Tenants Protection Act.

If I were to conclude that both land and building was taken, then the landlord being a public trust is exempted under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and therefore, can maintain an ejectment suit.

19.This fine point arises because as per Section 1(3)(b) of the Madras City Tenants Protection Act, the Act will apply only to tenancies of land created before the date from which the Madras City Tenants Protection Act was extended to such areas. Though the tenant pleaded that there were several documents to show that he had entered into a lease prior to the cut off date as per G.O.Ms.No.1285 Revenue, dated 31.05.1975, apart from Ex.A12, no other document had been filed in order to prove the tenancy.

20.Ex.A12 is extracted for ready reference:

'1976ம் வருடம் ஏப்ரல் மாதம் 1ம் தேதி திண்டிவனம் தாலுக்கா கஸ்பா திண்டிவனம் வேதவல்லி சத்திர டிரஸ்ட்டு போர்டு காரியதரிசி V. சம்பத்குமார் அவர்களுக்கு மேற்படி திண்டிவனம் பஜனை கோயில் வீதியில் இருக்கும் கணபதி முதலியார் குமாரர் G. சிவலிங்க முதலியார் எழுதிக் கொடுத்த குடக்கூலி வாடகை பத்திரம். இதன் அடியில் கண்ட தங்கள் டிரஸ்ட்டு போர்டுக்கு சொந்தமான கல்கட்டிட தகர கொட்டாவை மரவாடி வைத்து வியாபாரம் செய்ய வாடகைக்கு



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ஏற்றுக்கொண்டு மாதம் 1க்கு வாடகை ரூ.200/- இருநூறு வீதம் மாதாமாதம் 1ம் தேதி வாடகை தவறாமல் செலுத்திவிடுகிறேன். மேற்படி இடத்துக்கு உண்டான முனுசிபல் வரியை நானே என் சொந்த செலவில் டிரஸ்ட்டு போர்டு பெயரில் செலுத்தி ரசீது வாங்கிக் கொடுக்கிறேன். இன்று முதல் 5 ஐந்து வருஷ கெடுவிற்கு மாதம் 1க்கு வாடகை 200/- வீதம் அதன் பிறகு மாதம் 1க்கு வாடகை 250/- (இருநூற்றி ஐம்பது) வீதமும் கொடுக்க சம்மதித்து 10 பத்து வருஷ கெடுவிற்கு மேற்படி இடத்தை வாடகைக்கு ஏத்துக் கொண்டு இருக்கிறேன். மாதாமாதம் வாடகை கொடுக்கத் தவறினால் என் அனுமதி இல்லாமலே தாங்களே என் கடையை காலி செய்து டிரஸ்ட்டு போர்டு ஏத்துக் கொள்வதில் எனக்கு எவ்வித ஆட்சேபனையும் இல்லை. நான் ஏற்கனவே 20.8.75ல் ரூ.5000.00 (ஐயாயிரம்) அட்வான்ஸ் கொடுத்து இருக்கிறேன். மேற்படி இடத்தில் என் சொந்த வியாபாரம் தவிர கீழ் வாடகைக்கு விடுவதில்லை என்று உறுதி கூறுகிறேன். மேற்படி 10 பத்து வருஷ கெடுவு முடிந்ததும் நானே மேற்படி இடத்தை காலி செய்து தங்களுக்கு ஒப்படைத்து விடுகிறேன். இந்தப்படிக்கு நான் சம்மதித்து எழுதிக் கொடுத்த கடை வாடகை பத்திரம்.

சொத்து விவரம்

தென்னார்காடு ஜில்லா திண்டிவனம் தாலுக்கா கஸ்பா திண்டிவனம் ஜவகர்லால் நேரு தெரு 329A நெம்பர் உள்ள மேற்படி டிரஸ்ட்டு போர்டுக்கு சொந்தமான கல் கட்டிட தகரா கொட்டா கி.மெ அடி 20ம் தெ.வ அடி 40ம் பின்புறம் சீமை



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ஓடு போட்ட கொட்டா கி.மெ 40 அடியும் தெ.வ 180 அடியும்
ஆன சுற்றி உள்ள காம்பவுண்டு சுவர் உள்படவும்.'

21.A reading of this document goes to show two aspects,

(i) a Door Number had been given to the property namely, Door No.329A,
Jawaharlal Nehru Street,

(ii) there was a tin shed situated in the premises on the date on which the
document had been executed. This comes within the scope of an existing building

22.Apart from these two aspects, I notice the word 'குடைகூலி' mentioned in
the document. The word “குடை” itself means a shelter. “கூலி” implies the amount
paid towards grant of a shelter. 'குடைகூலி' means the rent that is paid for the
purpose of occupation of a building. Therefore, Ex.A.12 is sufficient to reject the
case of the tenant that what he had taken was only the land.

23.Furthermore, a reading of the schedule of the property as found in the
document states that what has been let out is both shed and the land. In fine, the
tenancy that was created in favour of the tenant was both for land and building.

24.Apart from Ex.A12, the other documents are the rental receipts that had
been issued by the landlord in favour of the tenant. The rental receipts also speak
only about rent and not about rent for the land. In fact, the receipts issued under



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Ex.A6 and Ex.A9 states that it is for 'கடை வாடகை' & 'மார்ச் மாத கடை வாடகை' respectively. This translates to “SHOP RENT”. If, in fact, what had been given was only the land and not the building, the tenant would have immediately protested against denominating his tenancy as a “shop rent”. However, there does not seem to be any objection on record. In addition, the rental receipts were filed by the appellant tenant and not by the respondent landlord. The tenant having accepted that the tenancy is for the land and building through the lease deed and rental receipts, cannot now turn around and plead that it is for the land.

25. It is here that I can usefully refer to the judgment of Mr.JusticeM.Srinivasan (as he then was) in ***T.K.Subramania Pillai vs. The Pennington Committee through its Secretary, Srivilliputhur (1987) 2 MLJ 39***. He held as follows:-

'16.The Tamil Nadu City Tenants' Protection Act is applicable only to tenancies of land. Section 1(3) of the Act reads that the Act shall apply 'only to tenancies of land'. The emphasis is on the word 'only', and if the lease comprises something other than the land, the Act will not be applicable. That is the view taken by the Supreme Court in SalayMohd. Sait v. JMS Charity reported in (1969) 1 MLJ (S.C.) 16. As there is sufficient evidence in this case to prove that what was leased out to the defendant was not merely a land but it comprised as a building also, the defendant cannot invoke the benefits of the Madras City Tenants' Protection Act.'



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26.As was the case before Justice Mr.M.Srinivasan, in the present case also what had been let out was **not** the land alone. The fact that the municipality had given a door number shows that there was a building that was existing on the date of the lease on the land. Therefore, from Ex.A12, I am able to perceive that what was given in tenancy was a shed together with the land appurtenant to it.

27.Applying the aforesaid law to the facts of the present case, I have to come to the conclusion that the tenancy that was created in favour of the tenant was for both land and building and was not for the land alone. Consequently, the provisions of the Madras City Tenants Protection Act do not apply to the case at hand.

Whether a suit for ejectment is maintainable?

28.There is no dispute that the plaintiff is a public charitable trust. The only dispute is whether it is a religious charitable trust. In case, a trust is a public charitable trust, the exemption granted by the State of Tamil Nadu to such institutions operates. The relevant portion of the G.O.Ms. No. 2000, Home, 16th August, 1976, reads :

“..... in supersession of the Home; Department Notification No. II(2)/HO/3811/74, dated the 12th August 1974, published at page 444 of Part II - Section 2 of the Tamil Nadu Government Gazette, dated the 21st August; 1974, the Governor of



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Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christain and Muslim religions public trusts and public charitable trusts from all the provisions of the said Act.”

29. Therefore by virtue of Section 29 of Tamil Nadu Buildings (lease and Rent Control) Act, 1960 read with G.O. Ms.No. 2000, the landlord need not have filed a petition for eviction under the provisions of the Act. A suit for ejectment is maintainable.

30. Having come to the conclusion that the Madras City Tenants Protection Act does not apply, I do not have to trouble myself with the submissions of Mr.N.Jothi, learned Senior Counsel that the trial Court as well as the lower Appellate Court had failed to take into consideration the Madras City Tenants Protection (Amendment) Act of 1980. By the said Legislation, it was declared by the Legislature that the provisions of the Madras City Tenants Protection Act would have deemed to have come into force on and from 09.01.1974. This amendment Act would have to be read along with Section 1(3) of the Act. Therefore, unless and until, the land alone had been leased out, the question of the amendment Act being applicable would not arise. It would have been difficult to reach this conclusion, if the tenant had proved that what he had taken was only the land and not the building.



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The tenant miserably having failed to prove the same and contra evidence being available on record under Ex.A6, Ex.A9 and Ex.A.12, I am saved of that botheration.

31.Mr.N.Jothi further argued that no notice under Section 11 of the Act had been issued before the institution of the suit. Again, we have to read Sections 1(3), 2(3) and 2(4) along with Section 11. A notice under Section 11 would be necessary only if the tenant is a tenant of the land alone and not of the building. Only if the tenant is able to prove that the Madras City Tenants Protection Act would apply to him, the plea of failure to issue a notice under Section 11 would apply. That not being the case at hand, I have to reject the said argument.

Should the lease deed under Ex. A12 be held to be inadmissible?

32.Realising that the contents of this document is not in his favour, Mr.N.Jothi would argue that the same is inadmissible and should not have been received in evidence. This argument is a double edged sword. If I were to exclude Ex.A 12, the tenant would still be bound by the rental receipts showing that it was towards SHOP RENT. However, this issue having been raised as a question of law, I am bound to answer it.



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33.Perhaps, this is the first time that a party who has filed a document pleads that the same is inadmissible and should not be looked into. I have to point out here that Ex.A12 was filed by the plaintiff himself during the chief examination of PW2. The tenant is bound by this document which states that the tenancy was given both for a shed which was standing in the premises as well as the land.

34.Mr.N.Jothi would contend that Ex.A12 being an unregistered document, it is inadmissible in evidence and cannot be used for any purpose. He would very vehemently contend that as the tenant has not signed in Ex.A12, the same is inadmissible.Ex.A12 was not produced by the defendant at the time of cross examination of the plaintiff, but by way of proof affidavit filed by the plaintiff's witness PW2. He adds as the appellant has not signed the document, he is not bound by it.

35.It is too fundamental to state, yet, I have to restate it, an agreement does not require the signature of two parties for the purpose of coming into force. For an agreement to come into force, the signature of the person who accepts the offer is essential. In the present case, the tenant had offered to take the suit schedule property on lease and it was accepted by the landlord. Therefore, what is necessary



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is the acceptance of the landlord. Accepting the offer, the landlord has signed the document. This is what is seen from Ex.A.12.

36.In addition, Ex.A12 is a document of the year 1975 and no objection had been taken by the tenant until he found out that the contents of the document goes against him.

37.I am constrained to reject this argument, because it is the plaintiff who had produced the document under Ex.A12. Having produced the document, it does not lie in his mouth to state that the document is inadmissible.

38.Apart from the fact of production of the document, which shows the willingness of the plaintiff to place reliance on it, I have to take note of another circumstance. From the document itself I am able to notice that the plaintiff placing reliance upon Ex.A12 had submitted it for payment of deficit stamp duty. The stamp affixed on the document is only Rs.2.50 paise. Noticing the deficit, the Court had adjudicated upon the deficit stamp duty that is payable. It found that the stamp that has to be affixed under Section 5 read with Article 33 and Article 23 of the Stamp Act is Rs.30/- and what was actually affixed was only Rs.2.50 paise. Therefore, the tenant was called upon to pay the deficit stamp duty of Rs.27.50 paise together with penalty of Rs.275/- for the purpose of receiving the document. It is on record that



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the deficit stamp duty of Rs.302.50 paise was paid and only thereafter the document had been received in evidence. Therefore, the tenant not only filed the document before the court but had paid deficit stamp duty to ensure that the document does not fall within the teeth of Section 35 of Stamp Act. This shows the intention of the tenant to rely upon the document.

39.I have already noted that the plaintiff not only filed the document on his side, but had also paid deficit stamp duty implying that he wanted the Court to look into the contents of the documents. Therefore, the objection of Mr.Jothi cannot be considered as a serious one.

40.Another fact I have to notice is that the Court has not relied upon the document for any other purpose other than the collateral purpose. Collateral purpose means, a purpose which is not the main purpose. The main purpose would have been proof of the lease. That has not been done in the present case. The Court below has only referred to it for the purpose of concluding the nature of possession and the manner in which possession was taken by the tenant. The law permitting receipt of such a document, I am constrained to reject the argument of Mr.N.Jothi that the document ought not to have been received in evidence.



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On whom does the burden of proof lies in a case where the tenant claims the benefit of Madras City Tenants Protection Act?

41.Law requires a person to tender positive proof. It does not place an impossibility on a person to prove the negative. The tenant is the applicant under the provisions of the Madras City Tenants Protection Act. It is for the tenant to prove that the Act, which is an exception to the Transfer of Property Act, applies to him. Therefore, the courts below rightly placed the burden on him to prove that he is entitled to the benefits of the Act.

42.In order to gain such benefits, the burden is on the tenant to prove that what he had taken on lease was the land and not the building. Once the tenant provides positive proof, then the onus will shift on the landlord to show that what was let out was land and building. In this case, the tenant had not discharged his onus on the basic proof that is essential. The positive proof that he took only the land alone and not the building and land is dolefully absent.

43.As pointed out from above, Ex.A1 to Ex.A11 are only series of receipts stating rent and in some cases, shop rent and then we have Ex.A12, which is specific that what was leased out was a tin shed and land (குடைகூலி). The burden



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on the tenant to prove that what he had taken on lease was only the land and not the building, not having been discharged, I am constrained to hold against the tenant.

44. There is yet another aspect that I have to take notice of. During the course of evidence, PW1 has categorically stated that he has in his possession other lease deeds entered into with the defendant, but he has not produced the same before the Court. The best evidence that should have been produced are the series of lease deeds that the tenant claims to have been entered into between him and the landlord. Those documents not having been filed before the Court, I necessarily have to draw an adverse inference that the tenant knew had he produced the documents, it would go against him and that is why he had not produced the same.

Should a stray sentence be treated as admission?

45.Mr.N.Jothi would then contend from the evidence of DW1 that the landlord had admitted that what was let out by him was only the land. The relevant portion of DW1 evidence dated 18.03.2008 is as follows:-

'..... எனவே 1990 க்கு முன்பு அறக்கட்டளையின் என்ன நடந்தது என்று நேரடியாக தெரியாது என்றால் சரிதான்.

..... சிவலிங்கம் உள்ள இடத்திற்கு வடக்கால், அறக்கட்டளை கட்டிடத்திற்கு தெற்கால் வீதியாக அமைந்துள்ள இடம் சிவலிங்கம் கட்டிய பிறகுதான் அவ்வாறு



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எற்படுத்தப்பட்டது என்றால் சரிதான். முனிசிபாலிட்டியில் அந்த இடத்தை சிவலிங்கத்திடம்தான் போக்குக்கொடுத்துள்ளார்கள் என்றால் சரிதான். சந்துக்கு மேற்கால் உள்ள இடம் எவ்வளவு உள்ளது என்று நான் பார்த்துள்ளேன். அதில் ஆக்கிரமிப்பு எதுவும் கிடையாது. ராஜமாணிக்கம் என்பவர் அறக்கட்டளை கட்டிடத்தை ஒரு பகுதியை இடித்துவிட்டு புதிய கட்டிடம் கட்டியுள்ளார் என்றால் சரியல்ல. பழைய கட்டிடத்தை புதுப்பித்துள்ளார். அதில் பழைய தன்மையை மாற்றியுள்ளார்.

.....வாதி காலியிடத்தில் தான் தன்னுடைய செலவில் கட்டிடம் கட்டிக்கொண்டார் என்றால் சரியல்ல.'

46.The first underlined sentence is a stray sentence and I am not able to read too much into the same. In order to be read as an admission, the so called statement must go to the full extent. As the plaintiff has not discharged his burden by way of evidence, I am not willing to read this as an admission for the purpose of stating that the landlord had admitted that what was given to the tenant was only the land and not the building. This is especially so, since he has denied the same specifically (2nd underlined sentence).

47.Furthermore, as per Sections 91 and 92 of the Indian Evidence Act, 1872, where the nature of relationship entered into is by way of a document, oral evidence to the contra is impermissible. The evidence in this case is available in the form of



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Ex.A12 which speaks about tenancy of the building and therefore, I am not convinced with the argument that the stray statement of DW1 would amount to an admission as regards the building.

48.In addition, one another aspect I have to take note of is that DW1 was aged about 46 years when he gave evidence in the year 2008, which means he would have been born in and around 1962. Therefore, at the time the lease deed and Ex.A12 had been executed, he would have been aged about 12 years and therefore, is incompetent to speak about the same.

49.At this stage, Mr.Jothi will turn to the evidence of PW3 Murugesan. PW3 is a mere contractor. There is no evidence on record to show that the building contractor had in fact entered into a contract with the tenant for the purpose of putting up a superstructure. No bills or receipts had been produced before the Court. In fact, even a blue print of the so called superstructure put up by the tenant had not been produced. There is not a single shred of evidence to link PW 3 to the alleged constructions. I am not convinced with the *ipse dixit* of PW3 in order to come to the conclusion that he was the contractor who had put up the superstructure on behalf of the tenant.



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50.Mr.Jothi would then point out that an Advocate Commissioner had been appointed by the Court and he had visited the suit property and submitted a report regarding the present status of the land and building. He would state that this would be in his favour. I am not able to agree with this submission. Appointment of an Advocate Commissioner is only to note down the physical features of the property. The factum that the property was being used for a timber depot or a saw mill is not in dispute. The dispute that the Court had to resolve is whether the tenant had taken the land or the land and the building on lease. For the said purpose, the report of an Advocate Commissioner would not be helpful at all.

51.Therefore, I would answer all the substantial questions of law against the appellant.

Is the Trust a public religious trust?

52.Mr.Jothi would then point out that the lower Appellate Court was wrong in holding that the plaintiff is a public religious trust and therefore, exempted from the provisions of the Madras City Tenants Protection Act. I have to agree with Mr.Jothi here because the finding of the lower Appellate Court is based on Ex.B5 and Ex.B6. An examination of the trial court judgment shows that only Ex.B1 to



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Ex.B 4 had been exhibited by the trust. Ex.B.5 &Ex.B6 are not before the Court.

The trustees have not even filed the original of the trust deed.

53.This however does not make a difference to the case because the question of application of Tamil Nadu Act 2 of 1996 would arise only if the tenant had taken the land and not the land and building. That not being the case in the present situation, whether the plaintiff was a public religious trust or a mere public trust need not be decided in the present case.

54.Insofar as the argument that the tenancy was created prior to 09.01.1974, there is no evidence at all and therefore, there is no evidence on record. The only evidence on record is Ex.A12 and that evidence also points out what was given to the tenant was both the land and building and not the land alone. Therefore, I am not agreeing with the submission of Mr.Jothi.

55.Suffice it to say, both parties would agree that the plaintiff is a public trust and therefore, it could not have maintained a Rent Control Original Petition by virtue of the exemption granted by the Government under G.O.Ms.No.2000. The suit being maintainable, the tenant not having proved that he is entitled to the benefits of the Madras City Tenants Protection Act, the appeal has to fail and



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consequently, S.A.No.116 of 201, S.A. 117 of 2013 and C.R.P. (NPD) 1250 of 2017 are dismissed.

Whether the landlord is entitled for mesne profits?

56.Turning to the cross objection, the Court has denied the mesne profits to the landlord. The plaintiff has admitted in his deposition recorded on 13.12.2006 that the area in which the tenant is under occupation would fetch above Rs.2,500/- per month. The tenant has also admitted that from May 2001 onwards he has not been paying the rents.

57.Law does not permit a tenant to enjoy the property in which he is in occupation free of cost. It is the duty of the tenant to pay the rents month on month. Mesne profits means the profit that a person, who is in wrongful possession of such property actually received or might with the ordinary diligence have received therefrom, but it does not include the profits due to the improvement made. This is clear from Section 2(12) of the Code of Civil Procedure.

58.The tenant having admitted that he had not paid rents from May 2001 onwards and also to the fact that the rent would have been Rs.2,500/- per month shows that the tenant was profiting by his wrongful occupation of the property from



May 2001 onwards. It is wrongful, since he did not handover possession as demanded in the Section 106 notice (Ex.B.1).

59.The Courts below by dismissing the cross objection have denied the landlord of its rightful income from the property. The Court below ought to have proceeded under Order 20 Rule 12 of the CPC for the purpose of fixation of mesne profits. Hence, I am exercising the powers vested in this Court under Order 41 Rule 33 CPC. Therefore, the cross objection is accepted. The dismissal of the mesne profits is set aside.

60.The trial Court shall conduct an enquiry as per Order 20 of the CPC and fix the mesne profits for the property. It is here that the authority cited by Mr. N.L. Rajah comes into application. The Supreme Court in ***Gopalakrishna Pillai and others v. Meenakshi Ayal and others reported in AIR 1967 SC 155*** held as follows:

8.Order 20, Rule 12 enables the Court to pass a decree for both past and future mesne profits but there are important distinctions in the procedure for the enforcement of the two claims. With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of Order 7 Rules 1 and 2 and Order 7 Rule 7 of the Code of Civil Procedure and Section 7(1) of the Court Fees Act, the plaintiff must plead this cause of action, specifically claim a decree for the past mesne profits, value the claim approximately and pay court- fees thereon. With regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause.



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of action or to value it or to pay court-fees thereon at the time of the institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of Order 20 Rule 12 apply. But in a suit to which the provisions of Order 20 Rule 12 apply, the Court has a discretionary power to pass a decree directing an enquiry into the future mesne profits, and the Court may grant this general relief, though it is not specifically asked for in the plaint, see Basavayya v. Guruvayya. In Fakharuddin Mahomed Ahsan v. Official Trustee of Bengal Sir R.P.Collier observed:

"The plaint has been already read in the first case, and Their Lordships are of opinion that it is at all events open to the construction that the plaintiff intended to claim wasilat up to the time of delivery of possession, although, for the purpose of valuation only, so much was valued as was then due; but be that as it may, they are of opinion that, under Section 196 of Act 8 of 1859, it was in the power of the Court, if it thought fit, to make a decree which should give the plaintiff wasilat up to the date of obtaining possession."

Section 196 of Act 8 of 1859 empowered the Court in a suit for land or other property paying rent to pass a decree for mesne profits from the date of the suit until the date of delivery of possession to the decree-holder. The observations of the Privy Council suggest that in a suit to which Section 196 of Act 8 of 1859 applied, the Court had jurisdiction to pass a decree for mesne profits though there was no specific claim in the plaint for future mesne profits. The Court has the like power to pass a decree directing an enquiry into future mesne profits in a suit to which the provisions of Order 20 Rule 12 of the Code of Civil Procedure, 1908 apply.'

61.By setting aside the order, I have not come to a conclusion on the amount of mesne profits. That will have to be fixed by the Court below after due enquiry



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and after receipt of oral and documentary evidence from both sides. This question is answered accordingly.

Result

62. The judgment and decree of the Court of the learned Principal District Judge at Villupuram in A.S.No.30 of 2008 dated 28.09.2012, in confirming the judgment and decree of the learned Principal Subordinate Judge, Tindivanam in O.S.No.43 of 2005 dated 30.07.2008, is confirmed. The suit shall stand decreed as prayed for with costs throughout.

63.The order in cross objection in A.S.No.30 of 2008 and CMA.No.41 of 2008 dated 28.09.2012 is set aside. Cross objection No.65 of 2017 is accepted. The learned Principal Subordinate Judge, Tindivanam shall proceed under Order 20 Rule 12(1)(b) of the CPC. The plaintiff in O.S.No.224 of 2001 will not be entitled for past mesne profits as it had not been sought for nor had Court fee been paid. No costs. Connected miscellaneous petitions if any, are closed.

29.09.2023

Index:Yes/No
Speaking order/Non-speaking order
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To

- 1.The Principal District Court,
Villupuram.
- 2.The Principal Subordinate Court,
Tindivanam.



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