

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 27.11.2019

Judgment Delivered on : 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A.Nos.430 and 433 of 2018
and
C.M.P.Nos.19638 and 19644 of 2018

Shantilal Kothari ... Appellant in both O.S.As.

Vs.

Sathrasala Venkatram (since deceased)
Shatrasala Sharathbabu ... Respondent in both O.S.As.

Original Side Appeal No.430 of 2018 filed under Order XXXVI Rule 1 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, against the fair and decretal order dated 17.07.2018 passed by the Single Judge, in A.No.1469 of 2011 in E.P.No.511 of 2008 in C.S.No.770 of 1997 on the file of this Court.

Original Side Appeal No.433 of 2018 filed under Order XXXVI Rule 1 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, against the fair and decretal order dated 17.07.2018 passed by the Single Judge, in A.No.1470 of 2011 in E.P.No.511 of 2008 in C.S.No.770 of 1997 on the file of this Court.

For appellant : Mr.R.Thiagarajan
For respondent : Mr.T.S.Baskaran

COMMON JUDGMENT

R.SUBBIAH, J

Both these Original Side Appeals (OSAs) have been filed as against the common order dated 17.07.2018 passed by the learned Single Judge in A.Nos.1469 and 1470 of 2011 in E.P.No.511 of 2008 in C.S.No.770 of 1997, whereby the learned Single Judge had set aside the order dated 25.02.2011 passed by the learned Master in the application filed by the appellant herein in A.No.1213 of 2009 in E.P.No.511 of 2008 in C.S.No.770 of 1997,

declaring that the decree dated 06.07.2006 passed by this Court in C.S.No.770 of 1997 is non-est in the eye of law and the same is inexecutable and the learned Single Judge had also set aside the consequential order dated 25.02.2011 passed by the learned Master dismissing E.P.No.511 of 2008 in C.S.No770 of 1997 filed under Section 47 of the Civil Procedure Code (CPC) by Shatrasala Sharat Babu, the respondent herein.

2. Brief facts which are necessary to decide the issue involved in these appeals are as follows:

(a) One Sathrasala Venkatram (since deceased) had filed a suit before this Court in C.S.No.770 of 1997 as against the appellant herein and six others. It is the case of the said Sathrasala Venkatram in the plaint that he is the owner of the land and building at Door No.140, Govindappa Naicken Street, Chennai and the said property was allotted to him in a family partition deed, dated 31.08.1958, registered as Document No.1796 of 1958 in the Office of the Sub-Registrar, Mylapore, Chennai. He was a widower. The building consists of ground floor and two upper floors. He had let out the ground floor of the building to two tenants and had been running a lodge and letting out rooms in the first and second floors of the building and was residing in a portion of the second floor.

(b) The third defendant in the said suit, namely M.Selvi, continued as the only servant of the plaintiff-Sathrasala Venkatram. By reason of her good behaviour, she developed considerable trust and confidence in the mind of the plaintiff and she was given a free hand in almost all the matters. The said Selvi (third defendant) not only attended to the cooking and other domestic needs of the plaintiff, but also slowly started attending to the other activities of the plaintiff like going to the Bank, encashing cheques, collecting rents, etc. In due course of time, she had developed close friendship with the first defendant (Shantilal Kothari) in the suit, who is the appellant herein, who is in occupation of a portion in the ground floor of the suit building. By reason of trust and confidence which the plaintiff had on the third defendant in the suit, she had taken possession of several documents and records of the plaintiff including bank cheque books, pass-books and other papers and she was virtually in-charge of every aspect of the plaintiff's activities. She used to collect rents and deposit the same in the Bank and also draw out cash from the Bank for meeting the expenses of the plaintiff. On the suggestion of the third defendant, the plaintiff has signed blank cheques and receipts and the third defendant-Selvi was keeping them with herself. Thus, the third defendant had virtually taken charge of all the affairs of the plaintiff. By her prompt attention to all the matters, she made the plaintiff

not only to trust her implicitly, but also to depend on her totally.

(c) While so, the plaintiff was admitted in hospital by the third defendant for some ailment. The plaintiff was discharged from the hospital and he was confined to his bed room by the third defendant in the second floor and thus, the plaintiff was totally isolated. Due to old age infirmity and helplessness, the plaintiff has to accept every suggestion of the third defendant without realising that the first defendant and the third defendant had been conspiring to knock away the property belonging to him. In January 1997, the appellant herein (first defendant) and the third defendant came along with some other persons to the room where the plaintiff was confined, and the third defendant informed the plaintiff that she had made arrangements for creation of a Trust as decided by the plaintiff and that the document/Trust Deed had also been got ready and that the above persons had come there for due execution of the Deed. Since the plaintiff was sick and had been confined in a room for a long time, he was not in a position to comprehend as to what was happening around him. Trusting the words of the third defendant, he signed the documents typed on some stamp papers and other papers.

(d) Soon after the execution of the above document, the attitude of the third defendant underwent a total change instead of being a submissive and an obedient servant, she became a domineering and commanding person and started abusing him. Though the plaintiff was surprised and shocked at her behaviour, there was little that he could do. About three months later, once again, the first defendant and the third defendant came to the room of the plaintiff and told him that he should sign some papers later in the day in the presence of others and they threatened him that they would kill him if he refuses to sign. Hence, the plaintiff had signed the documents. Due to bad physical condition of the plaintiff, he was straight-away admitted in a private hospital at T.Nagar and after discharge from the hospital, he was taken to the residence of his nephew Sathrasala Sugunakar and had been staying there. When he requested the respondent-Sathrasala Sharathbabu (son of Sathrasala Sugunakar) to make enquiries with regard to the documents executed by him, and upon such enquiries being made to ascertain the facts, he came to understand that he was alleged to have accepted the following documents:

(i) An agreement dated 22.01.1997 alleged to have been executed by the plaintiff in favour of the first defendant, the appellant herein, by which the plaintiff was alleged to have leased out the suit building to the appellant herein for a period of 51 years, with liberty to the first defendant to demolish and re-construct the property.

(ii) A deed of declaration of Trust dated 24.03.1997 alleged to have been executed by the plaintiff creating a Trust consisting of defendants 2, 3, 5 and 6 as Trustees along with himself as Founder on various terms as "Sathrasala Venkataram Trust".

(iii) A further deed of declaration dated 26.06.1997 alleged to have been executed by the plaintiff amending the deed of declaration dated 24.03.1997, by which he was said to have dropped some parties and added the defendants 6 and 7 as Trustees of the said Trust.

(e) On coming to know of the above documents, the plaintiff has filed the suit for the following prayer:

(i) for a declaration that the plaintiff continues to be the owner of the property set out in schedule-A of the plaint and consequently to direct the first defendant to put the plaintiff in possession of the said property;

(ii) for a permanent injunction restraining the defendants, their agents or servants or anyone of them from in any manner dealing with the property described in Schedule-A to the plaint, including the demolition and reconstruction of the said property;

(iii) to direct the first defendant to pay a sum of Rs.15 lakhs as damages to the plaintiff together with interest at 12% per annum from the date of plaint to the date of payment;

(iv) to direct the third defendant to render a true and proper account of all monies drawn by her and her nominees from the Bank Account No.15063 of the plaintiff of Lakshmi Vilas Bank, Sowcarpet Branch, Chennai and to pay the balance to the plaintiff with interest at 12% p.a. from the date of plaint to the date of payment;

(v) to direct the third defendant to return the articles set out in Schedule-B to the plaint to the plaintiff or in the alternative, to direct the third defendant to pay a sum of Rs.1 lakh to the plaintiff together with interest at 12% per annum from the date of plaint till date of payment, and

(vi) for costs of the suit.

3. Pending suit, the sole plaintiff Sathrasala Venkatram died on 21.01.1998. It had been stated that during his lifetime, the said Sathrasala Venkatram had executed a Will on 05.12.1997 appointing Sathrasala Sharath Babu, the respondent herein as executor of the Will and the said Will was probated by this Court in O.P.No.792 of 1998. By virtue of the Will, the said Sathrasala Sharath Babu impleaded himself in the suit filed by Sathrasala Venkatram.

4. In the suit, the defendants including the appellant herein, did not file their written statement and therefore, they were set ex-parte on 19.04.2006. Hence, the appellant/first defendant had taken out application in A.No.3126 of 2006 to set aside the ex-parte order passed against the first defendant on 19.04.2006. A.No.3381 of 2006 has also been filed by the first defendant to condone the delay of 3729 days in filing the written statement. Both the applications were dismissed by the learned Single Judge by order dated 03.07.2006. An ex-parte decree was passed on 06.07.2006 in the suit. Aggrieved by the said order of dismissal of A.Nos.3126 and 3381 of 2006, dated 03.07.2006, and also the ex-parte decree dated 06.07.2006 passed in C.S.No.770 of 1997, the appellant/first defendant has filed O.S.A.No.236 to 238 of 2006. A Division Bench of this Court, by a common judgment dated 02.09.2008, had dismissed the said O.S.As., against which, S.L.P.(Civil). Nos.25807, 25808 and 25810 of 2008 were filed before the Supreme Court, which were dismissed on 07.11.2008. Thereafter, the respondent herein/decreed-holder filed E.P.No.511 of 2008 as against the appellant herein and others before this Court. The first respondent in the E.P., namely the appellant herein filed counter affidavit raising various objections with regard to the ex-parte decree and sought for dismissal of the Execution Petition. During the pendency of the Execution Petition, the appellant has filed application under Section 47 CPC in A.No.1213 of 2009 in E.P.No.511 of 2008 in C.S.No.770 of 1997 to declare that the decree in C.S.No.770 of 1997, dated 06.07.2006 is a nullity, non-est in the eye of law and inexecutable on account of the fraud perpetuated on the judgment debtor.

5. The contentions raised in the said A.No.1213 of 2009, in short, filed by the appellant are that originally, the plaintiff-Sathrasala Venkatram entered into lease agreement with the appellant on 02.10.1996 in respect of the suit premises at No.140, Govindappa Naicken Street, Chennai-600 001. The said Sathrasala Venkatram entered into a registered lease agreement with the appellant on 22.01.1997, in and by which, the plaintiff-Sathrasala Venkatram has leased out the suit schedule

property in favour of the appellant herein/judgment debtor for 51 years commencing from 22.01.1997. As per the terms of the lease, the appellant shall pay Rs.15,000/- p.m. for the first two years and thereafter, at the rate of Rs.45,000/- per month for the remaining 49 years. Pursuant to the lease, the appellant had also parted with a sum of Rs.5 lakhs as interest free security deposit refundable at the time of surrender of the premises after expiry of the lease. As per the terms of the lease, the appellant is entitled to pull down existing structure and erect a new building thereon, i.e. ground floor, first floor, second floor and third floor at his own cost and thereafter, the appellant/judgment debtor is entitled to let out the constructed areas to various third parties for rent. The said lease executed in the appellant/judgment-debtor's favour had been in force and the lease has not been terminated or determined in the manner known to law. However, by virtue of the powers conferred upon the appellant, he entered into a rental agreement with various tenants who are occupying and paying the rents to the appellant for the shop portions at No.140, Govindappa Naicken Street, Chennai-600 001. Hence, according to the appellant, the superstructure belongs to him and the property (land) belongs to the deceased Satrasala Venkatram.

6. While so, Sathrasala Venkatram, without any valid cause of action, filed C.S.No.770 of 1997 claiming various reliefs and the main relief is for declaration of his title to the property and the consequential relief of delivery of possession of the suit property. The appellant is in occupation of the property in his capacity as a contractual lessee pursuant to a valid lease agreement dated 22.01.1997. The said lease agreement is valid upto 21.01.2047. Neither the original plaintiff Shathrasala Venkatram nor Shathrasala Sharath Babu had questioned or challenged the execution or validity of the registered lease deed, dated 22.01.1997 executed in favour of the appellant. In such circumstances, the suit filed by the plaintiff as against the appellant for declaration and recovery of possession for damages and other reliefs, is untenable in law and on facts. Thus, he sought to declare the decree in C.S.No.770 of 1997, dated 06.07.2006 as nullity and non-est in the eye of law, by filing A.No.1213 of 2009.

7. The above application in A.No.1213 of 2009 was opposed by the respondent herein by filing detailed counter, followed by reply and rejoinder. The said A.No.1213 of 2009 was allowed on 25.02.2011 by the learned Master, thereby it was declared that the decree is incapable of execution, and the consequential order was passed in the Execution Petition in E.P.No.511 of 2008. Aggrieved by the same, the impleaded plaintiff -

Shatrasala Shrath Babu has filed A.Nos.1469 and 1470 of 2011 in E.P.No.511 of 2008 under Order 14 Rule 12 of the Original Side Rules of this Court against the order dated 25.02.2011 passed in A.No.1213 of 2009 by the learned Master. The learned Single Judge, by the impugned common order dated 17.07.2018, allowed both the abovesaid applications in A.Nos.1469 and 1470 of 2011 and directed the learned Master to proceed with E.P.No.511 of 2008. Aggrieved by the impugned common order dated 17.07.2018 passed in A.Nos.1469 and 1470 of 2011, the present O.S.As. have been filed by the appellant/first defendant.

8. The learned counsel for the appellant submitted that the appellant/judgment-debtor has become a tenant in respect of the ground floor of the suit property. While so, the original owner of the suit property, i.e. Shatrasala Venkatram persuaded the appellant to enter into a lease agreement for a period of 51 years in respect of the property. Accordingly, on 22.01.1997, the lease deed for a period of 51 years under Ex.A-1 was entered into between them. The said lease deed had not been terminated or declared to be illegal, invalid and non-est in the eye of law and as such, the appellant as lessee is entitled to remain in possession of the property for a period of 51 years till such time the lease period expires or in the absence of any valid decree declaring the lease deed dated 22.01.1997 as illegal, invalid and non-est in the eye of law. Further, admittedly, the lease is in force and the appellant is adhering to the terms of the lease and continues to remit the rent into the Trust account and continues to pay the property tax, water and sewerage tax and other statutory liabilities in his name. As per Ex.A-14 which is the communication of reply notice issued by the Deputy Secretary to Government to the appellant-Shanthilal Kothari by referring his appeal petition, dated 17.12.1999, any person claiming right, title or interest of an immovable property covered in respect of a Will, if the testamentary dispossession has been executed within the Metropolitan City (Madras, Bombay and Calcutta) or whether the property is located within the Metropolitan City, a person who is claiming right, title and interest, by virtue of the testamentary dispossession, must obtain a probate from a competent Court or Letters of Administration of the Will annexed in the absence of a valid probate. The decree-holder/Shatrasala Sharath Babu has not produced any Probate or Letters of Administration with a Will annexed, but this Court granted decree in his favour, in the absence of the prayer declaring the lease as illegal, invalid and non-est in the eye of law.

9. The learned counsel for the appellant further submitted that the appellant is the owner of the superstructure and after

the lease agreement, the appellant was permitted to pull down the existing building and he constructed ground plus three floors and the entire cost of construction was borne by the appellant. He has paid rent at the rate of Rs.15,000/- p.m. for the first two years and Rs.45,000/- thereafter and the payment was to be made in the account of the Trustees. The appellant, as per the agreement, paid Rs.5 lakhs as Earnest Money Deposit (EMD). Originally, the appellant was paying the monthly rent in respect of the premises by remitting the monthly rent in Lakshmi Vilas Bank Account and pursuant to the order of this Court, the appellant is remitting the monthly rent in the Recurring Deposit Account in Indian Bank, Esplanade Branch, High Court Campus, Chennai. As per the terms of the registered lease agreement, the appellant pulled down the existing building and thereafter, constructed the property consisting of ground plus three floors and a top floor with all facilities and amenities required for convenient enjoyment of the building. After completion of the building, the appellant had inducted various third parties as tenants in the premises. Since the tenancy by the chief tenant, viz., the appellant herein, is permissible under the above said lease agreement, the appellant had inducted about 50 tenants who are in occupation of the property. In the said premises, the ground floor portions have been let out to various tenants and the first, second and third floor portions are in occupation of the appellant herein, wherein he is carrying on his business activities and the top floor is occupied by the third defendant. In the top floor, apart from the portion occupied by the third defendant, one room is occupied by the Trust. Ever-since 1997, the appellant and his tenants are in possession and enjoyment of their respective portions of the property. In such circumstances, the plaintiff-Shatrasala Venkatram filed C.S.No.770 of 1997 for the reliefs of declaration that the plaintiff continues to be the owner of the property set out in Schedule-A of the plaint and consequently, to direct the first defendant to put the plaintiff in possession of the property and for permanent injunction restraining the defendants, their agents or servants or anyone of them from in any manner dealing with the property described in Schedule-A to the plaint, including the demolition and reconstruction of the property and also for consequential reliefs. Since the written statement was not filed, ex-parte decree was passed. In the said suit, the decree was confirmed by the Division Bench in O.S.A., and the SLP was also dismissed by the Supreme Court.

10. The learned counsel for the appellant further submitted that the appellant had never challenged the title of the original owner of the property, namely Shatrasala Venkatram and thus, he had not challenged the lease agreement, and therefore,

the appellant cannot have any concern over the relief of decree for declaring that the plaintiff-Satrasala Venkatram is the owner of the property, but the appellant objects to the second link of the decree, i.e. the possession of the suit property. The decree-holder shall not be entitled to a decree for possession, inasmuch as the possession is by virtue of the lease agreement, which remains in-tact and not been set aside or not been declared as null and void. In such circumstances, the claim brought in by the decree-holder that the decree is executable by the Court is illegal and unsustainable in law and on facts. The learned Master, by considering the rival submissions of the parties, correctly allowed the applications insofar as the possession of the property is concerned, holding that without taking steps to cancel the lease agreement, decree for possession has been obtained by misleading the Court and hence, it is not executable and illegal and perverse. The learned Single Judge set aside the said finding of the learned Master. In this regard, the learned counsel for the appellant submitted that the learned Master has powers to declare the decree passed by the learned Single Judge as inexecutable. He relied upon Order 1 Rule 4(3) of the Original Side Rules of this Court, in which, it is stated that the "Court" includes a Judge or Master or First Assistant Registrar of Original Side of this Court. Further, under Order 1 Rule 3 of the said Original Side Rules of this Court, the Honourable Chief Justice may delegate the power. The Master has passed the order based on the delegated power conferred on him. The learned counsel for the appellant further relied on Order 1 Rule 3 of the said O.S. Rules of this Court, which provides that except to the extent specifically provided for by these Rules, the provisions of the Civil Procedure Code (CPC) shall apply to all proceedings. Therefore, the "Master" is also a "Court" under Order 1 Rule 4(3) of the O.S. Rules of this Court. In this context, the learned counsel for the appellant relied on a judgment of this Court reported in 1962 (2) MLJ 166 (Saradambal Ammal Vs. Sambanda Mudaliar).

11. The learned counsel for the appellant further contended that in the instant case, the appellant has appeared before the learned Master, let in evidence and so much of documents were marked, whereas the respondent did not get into the box. The learned Master has passed a well-considered judgment and that the decree is inexecutable.

12. The learned counsel for the appellant further submitted that the main line of attack was that when there is a registered lease agreement for a period of 51 years, as per the lease agreement, dated 22.01.1997, till such time the lease agreement is set aside in the manner known to law, the lessee, i.e. the

appellant herein, shall not be evicted, in view of the bar contained under Section 9 of the CPC. If a Civil Court passes a decree for possession, such a decree cannot be executed, in view of the provisions contained under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act. A statutory tenant can be evicted only in a manner known to law under the provisions of the said Rent Control Act. Even the consent by the parties cannot confer jurisdiction and unless a requirement of law under Section 10 of the said Act is satisfied to a tenant in lawful possession, he cannot be evicted. Even assuming without conceding, if the appellant is a contractual tenant by virtue of the lease agreement, dated 22.01.1997, unless there is a breach of the essential terms of the lease as enumerated in the lease agreement, he cannot be evicted, and unless he has forfeited the lease agreement. If the lease agreement is not valid, the appellant, who was inducted as a tenant, should be only evicted by due process of law and not by virtue of the decree passed in C.S.No.770 of 1997, dated 06.07.2006. Thus, the learned counsel for the appellant submitted that the learned Master has passed well-considered judgment, which was set aside by the learned Single Judge. Hence, he prayed that these O.S.As. may be allowed.

13. Countering the above submissions, the learned counsel appearing for the respondent submitted that it is a well settled proposition of law that the Executing Court cannot go beyond the decree. The issue of jurisdiction of Court which passed the decree, cannot be raised under Section 47 C.P.C. A perusal of the ex-parte judgment makes it clear that the learned Single Judge has consciously rejected the Trust Deed and Lease Deed as not binding on the plaintiff to grant a decree of declaration of title and recovery of possession. The plea of lack of jurisdiction and failure to seek appropriate relief raised by the first defendant before the Division Bench, had also been rejected. The issue of applicability of the Rent Control Act, was also rejected by the Division Bench. The various contentions put forth in Section 47 CPC are nothing by way of defence to the suit claim, which had already been rejected by all the Courts. Further, the Executing Court cannot now sit in appeal over the ex-parte judgment, which had been confirmed upto the Supreme Court. As there is now a decree for possession by this Court against the first defendant, the same has to be executed. The Executing Court cannot be treated as a Court of Appeal to reverse the decree. The Executing Court cannot refuse to execute a validly obtained decree and the Executing Court cannot find fault with the judgment or any question of law or fact. It is further submitted by the learned counsel appearing for the respondent that as regards the issue of jurisdiction, admittedly, the building was demolished pending suit and the

existing superstructure was raised in violation of the order of injunction. The Lease Deed was held to be not binding on the plaintiff and so, the plaintiff is entitled to recovery of possession. The Court which passed the decree, has jurisdiction to try the suit and there was no inherent lack of jurisdiction to try the suit. In this case, the first defendant/judgment-debtor cannot file an application under Section 47 CPC to conduct a re-trial of the suit and defeat the decree for possession obtained after a prolonged litigation. The aim of the first defendant/judgment-debtor is to continue in possession as long as possible, as he is illegally enjoying the same. The very fact that the judgment-debtor has raised construction in violation of the order pending suit, as admitted and recorded by the Division Bench, is itself sufficient to dismiss the present O.S.As. Thus, the learned counsel appearing for the respondent contended that the learned Single Judge had correctly appreciated the factual aspects of the matter and rightly dismissed the applications, which needs no interference by the Court.

14. We have heard the submissions made on either side and keeping in mind the same, we have also perused the records. As we have dealt with the factual matrix in detail, we are reiterating hereunder only the facts which are germane.

15. It is the main submission of the learned counsel for the appellant that the decree in this case is inexecutable. In the plaint, there is no prayer for cancellation of the Lease Deed and in the absence of such prayer, the plaintiff cannot seek for possession. But it is the reply by the learned counsel for the respondent that all the issues raised by the appellant, had already been dealt with by the learned Single Judge. In this regard, the learned counsel for the respondent invited the attention of this Court to the judgment of the learned Single Judge, rendered in C.S.No.770 of 1997, dated 06.07.2006, wherein, in paragraphs 9 to 13, the learned Single Judge had considered the issue and came to the conclusion that there is absolutely no need to set aside the Lease Deed, since it was created by fraud. The findings of the learned Single Judge in the abovesaid paragraphs 9 to 13 are as follows:

"9. The First Plaintiff has passed away. Hence, his version regarding the circumstances under which he executed the documents cannot be obtained. P.W.1 has stated that the First Plaintiff had given instructions to the Defendant to file a suit and all the averments in the Plaint the First Plaintiff has signed. Hence, much sanctity is to be attached to the

averments in the Plaint. In paragraph 21 of the Plaint, the First Plaintiff has alleged that the creation of the Lease Deed and the act of the First and Third Defendants is a clear case of fraud and that the Third Defendant had taken advantage of old age, feeble health and helplessness. It is alleged that in that aspect, the First and Third Defendants are responsible. According to the First Plaintiff, since the documents Lease Deed and Trust Deed were created by fraud, it is not necessary to set aside the aforesaid document.

10. In the Plaint, the Plaintiff has alleged that he was never a consenting party to the documents and the documents are not binding on the Plaintiff. Since in the year 1997 the First Plaintiff was aged 89-90 years, due to his old age, he has to depend upon others. The Third Defendant being the servant maid was in a position to dominate the First Plaintiff, in view of his old age and that the Third Defendant being in a position to dominate the Will of the First Plaintiff, the Lease Deed and the Trust Deed are to be proved to be the Deeds of the First Plaintiff. In the Plaint averments, it is clearly alleged that Ex.P.1 - Lease Deed was obtained from the First Plaintiff under fraud and misrepresentation. At the time of execution of Ex.P.1, the First Plaintiff being aged 89 years, it is quite improbable that he would have executed the Lease Deed for a period of 51 years.

11. The First Plaintiff - Sathrasala Venkatram must have lost his vigour and must have been infirm on account of his old age. He must have been of weak health enfeebled mind. Because of his old age and weakening physical condition, the First Plaintiff - Sathrasala Venkatram must have been depend on his servant maid - Third Defendant. The Third Defendant had the opportunity of taking advantage of the physical infirmity of the First Plaintiff. The physical infirmity carries with the mental incapacity. Undue influence is to be presumed. Though the Third Defendant was served, she had neither entered appearance nor filed the

Written Statement rebutting the presumption. The facts and circumstances surrounding the documents raise a presumption that the Third Defendant must have taken the opportunity to gain an unfair advantage to herself and to the First Defendant.

12. From the evidence of P.W.1 and by the averments in the Plaint, it is clear that the mind of the First Plaintiff did not go with the documents. The evidence of P.W.1 and the Plaint averments show that the documents had been obtained from the First Plaintiff.

13. From the Plaint averments, evidence of P.W.1 and the documentary evidence, the case of Plaintiff is proved. The suit is decreed as prayed for with costs."

16. From the above judgment, it is clear that the learned Single Judge had dealt with the issues raised with regard to the lease deed executed by the plaintiff-Satrasala Venkatram in favour of the appellant and finally, the suit was decreed. Further, as against the above ex-parte decree, the first defendant has preferred appeal in O.S.A.No.237 of 2006, which was dismissed on 02.09.2008 by the Division Bench, along with O.S.A.Nos.236 and 238 of 2006, confirming the judgment rendered by the learned Single Judge in the abovesaid suit.

17. Thus, the Division Bench confirmed the findings of the learned Single Judge, as against which, Special Leave Petitions were filed before the Supreme Court in S.L.P.(Civil).Nos.25807, 25808 and 25810 of 2008, which were also dismissed on 07.11.2008. Thus, the submissions were taken note of by the Division Bench of this Court in the O.S.A., which were dismissed, which was also confirmed by the Supreme Court in the said S.L.Ps., and again the same cannot be raised in the Execution Proceedings and in fact, the Executing Court cannot act as an appellate authority. Therefore, the contention that there is no prayer for declaration to declare the lease deed as null and void, cannot be countenanced.

18. It is yet another submission of the learned counsel for the appellant that the first defendant is in possession under Registered Lease Deed. Therefore, if the Civil Court passes a decree for possession, such a decree cannot be executed, in view of the provisions of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act. A statutory tenant can be evicted only in the manner known to law under the provisions of the said Rent Control Act. The issue with regard to the applicability of

Section 10 of the said Rent Control Act, was raised before the Division Bench of this Court in the abovesaid O.S.A. filed against the ex-parte decree and the Division Bench has also taken note of the said submission and finally dismissed the O.S.A., by confirming the judgment of the learned Single Judge passed in C.S.No.770 of 1997. Therefore, any amount of submissions made at the execution stage with regard to the prayer for declaration as well as the applicability of the Rent Control Act, will not be helpful to declare the decree as inexecutable.

19. It is settled proposition of law that the Executing Court cannot go beyond the decree and the Executing Court cannot be a Court of Appeal to reverse the decree. The Executing Court cannot find fault with the judgment or any question of law or fact. The Executing Court cannot sit in appeal over the ex-parte judgment of the learned Single Judge, which had been confirmed by the Supreme Court. Now the various contentions put-forth under Section 47 CPC, have already been raised by the appellant by way of defence before the learned Single Judge as well as in the application filed by the appellant to set aside the ex-parte decree as well as before the Division Bench and finally, the findings of the learned Single Judge were confirmed by the Supreme Court.

20. At this juncture, it is worthwhile to notice the following judgments of the Supreme Court relied on by the learned counsel appearing for the respondent:

(i) 2009 (2) SCC 294 (Deepa Bhargava Vs. Mahesh Bhargava):

"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Contract Act."

"14. Mr.Tiwari submitted that the appellant having not challenged the correctness of the order dated 12.5.1995 and, thus, the same having attained finality, the question of applicability of

Section 74 of the Contract Act cannot be revisited. We are not able to persuade ourselves to accept the said view. The question as to whether the executing court had any jurisdiction to travel beyond the decree was not raised. The executing court had no such jurisdiction. The High Court while exercising the revisional jurisdiction also had no jurisdiction to invoke the provisions of Section 74 of the Contract Act which for all intent and purport amounts to modification of a valid decree passed by a competent court of law. The decision of the High Court, therefore, was wholly without jurisdiction. Furthermore the High Court did not hold that Section 74 of the Contract Act will have application. It only remitted the matter to the executing court.

15. We do not find that any legal principle has been adverted to by the executing court in reducing the rate of interest to 14% and the High Court in further reducing the same to 9%. There are a large number of decisions where interest has been directed to be paid even at the rate of 18% or 21% per annum.

16. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The executing court is directed to proceed to execute the decree as it is. The appeals are allowed with costs. Counsel's fee assessed at Rs.25,000/-."

(ii) 2017 (5) SCC 371 (Brakewel Automotive Components (India) (P) Ltd. Vs. P.R.Selvam Alagappan):

"20. It is no longer res integra that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be equalled with

one which is a nullity. There are no intervening developments as well to render the decree unexecutable.

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman , [(1970) 1 SCC 670 : AIR 1970 SC 1475 : (1971) 1 SCR 66] in essence enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: (SCC pp. 672-73, paras 6-7)

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is

passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

23. Though this view has echoed time out of number in similar pronouncements of this Court, in *Dhurandhar Prasad Singh Vs. Jai Prakash University*, [(2001) 6 SCC 534 : AIR 2001 SC 2552], while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing. None of the above eventualities as recognised in

law for rendering a decree unexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view."

In respect of the same issue, the learned counsel appearing for the respondent also relied on the following decisions:

(i) 1970 (1) SCC 670 (V.D.Modi Vs. Rajabhai Abdul Rehman and others),

(ii) 1996 (8) SCC 243 (Bharmappa Nemanna Kawale Vs. Dhondi Bhima Patil) and

(iii) 2003 (8) SCC 289 (Ravinder Kaur Vs. Ashok Kumar):

21. The dictum laid down in the above judgments would clearly show that the Executing Court cannot sit as an appellate authority to declare the judgment passed by the Court as nullity and inexecutable and the Executing Court has to execute the decree as it is.

22. From the facts of the case on hand, it is clear that the grounds raised by the appellant, have already attained finality and action under the guise of claim under Section 47 CPC, cannot be raised by filing an application under Section 47 CPC. The decision rendered in the earlier proceedings, is binding between the parties. Therefore, we are of the opinion that there is absolutely no infirmity in the impugned order passed by the learned Single Judge warranting this Court to make interference in these O.S.As. Accordingly, the O.S.As. are dismissed. In view of the dismissal of the O.S.As., as discussed above, we are not traversing into the other submissions made by the learned counsel for the appellant.

23. No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

The Sub-Assistant Registrar,
Original Side, High Court, Madras.

+2 cc to M/s.R.Thiagarajan, Advocate Sr.Nos.1411 & 1412

+2 cc to M/s.T.S.Baskaran, Advocate Sr.No.602 (04/02/2020)

AKM/22.01.2020/18P-4C /

AKM/04.02.2020

Judgment

in O.S.A.Nos.430 and 433 of 2018