

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021

Pronounced on : 24.03.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.Nos.291 & 292 of 2015
& C.M.P.No.6386 of 2016

1. E.Kanchana, (died on 03.03.2020 leaving behind the 2nd
appellant as sole legal
representative)
W/o.Ekambaram.

2. Balasubramaniam @ E. Saravanan,
S/o.Late Ekambaram. ... Appellants/Plaintiffs
in A.S.No.291 of 2015

/versus/

1. Rajeswari,
W/o.Late Chandrasekar.

2. C.Dhanasekar,
S/o.Chandrasekar.

3. B.Ranganayaki,
D/o.Chandrasekar.

4. C.Manoharan,
S/o.Chandrasekar.

5. C.Subramani,
S/o.Chandrasekar.

6. Kuppammal,
W/o.S.Karthik.

7. S.Karthik ... Respondents/Defendants
in A.S.No.291 of
2015

Prayer in A.S.No.291 of 2015: First Appeal is filed under
Section 96 C.P.C read with Order XLI Rule 1 & 2 of C.P.C.,
against the award and decretal order dated 03.02.2015 made in
O.S.No.8981 of 2010 on the file of the II Additional City Civil
Court, Chennai.

1. E.Kanchana,
W/o.Ekambaram.

2. Balasubramaniam @ E. Saravanan,
S/o.Late Ekambaram.

3. Baskaran.

4. Raj Kumar

... Appellants/Plaintiffs
in A.S.No.292 of 2015

/versus/

1. Mrs.K.Kuppammal,
W/o.S.Karthickeyan.

2. Abdul Khadar (Bala Medicals),
Carrying on business at,
Old No.110, New No.6, Dr.Ranga Road,
Mylapore, Chennai - 4.

3. Nandhalala Regional Trust,
Rep. by its Founded Trustee Mathi Oli Saraswathy,
Old No.110, New No.6, Dr.Ranga Road,
Mylapore, Chennai.

... Respondents/ Defendants
in A.S.No.292 of 2015

Prayer in A.S.No.292 of 2015: First Appeal is filed under
Section 96 C.P.C read with Order XLI Rule 1 & 2 of C.P.C.,
against the judgment and decree dated 03.02.2015 made in
O.S.No.8982 of 2010 on the file of the II Additional City Civil
Court, Chennai.

For Appellants : Mr.M.Sriram
in both cases

For R2 to R7 : Mr.R.Manickavel
in A.S.No.291 of 2015

For R1 & R2 : Mr.R.Manickavel
in A.S.No.292 of 2015

For R1 : No appearance
in A.S.No.291 of 2015

For R3 : No appearance
in A.S.No.292 of 2015

C O M M O N J U D G M E N T

These two appeals arising from the common judgment
passed by the Trial Court in O.S.No.8981 of 2010 and O.S.No.8982
of 2010.

2. The property which is the subject matter of the appeals under consideration had passed through several litigations and have a chequered history. For the sake of brevity and clarity, the parties shall be referred by their names wherever necessary and their status and rank as mentioned in O.S.No.8981 of 2010.

3. E.Kanchana and Balasubramaniam @ E.Saravanan wife and son of late Ekambaram respectively are the plaintiffs in O.S.No.8981 of 2010. They will be hereinafter referred as plaintiffs. S.Chandrasekar, his wife and four sons, who are the defendants 1 to 6 in O.S.No.8981 of 2010 will be hereinafter described as defendants along with K.Kuppammal and Karthik. The said kuppammal is the plaintiff in O.S.No.8982 of 2010 and Karthik is her husband. Kuppammal is the purchaser of the suit property from defendants 2 to 6.

(i). O.S.No.8981 of 2010 was initially filed by Kanchana and Balasubramaniam before the High Court of Judicature at Madras and numbered as C.S.No.4 of 2008, it was later transferred to City Civil Court, Chennai and taken on file as O.S.No.8981 of 2010. In the said suit, the plaintiff sought for declaration of title regarding the superstructure and the land bearing old door No.110, New No.16, Dr.Rangachari Road, Mylapore, Chennai, in R.S.No.3567/2B and the sale deed dated 23.04.2007 executed by the wife and sons of Chandrasekar/defendants 2 to 6 in favour of Kuppammal/7th defendant as null and void.

(ii). O.S.No.8982 of 2010 was filed by K.Kuppammal before the Small Causes Court, Chennai and initially numbered as Ejectment Suit No.6 of 2008. Later transferred to City Civil Court, Chennai, renumbered as 8982 of 2010. In this suit Kuppammal the plaintiff had sought for delivery of vacant land upon which the building bearing old door No.110, New Door No.16, Dr.Rangachari Road, Mylapore, Chennai, comprising in S.No.3567/2 as per patta No.3567/7 of Mylapore Village, measuring to an extent of 1150 sq.ft stand and put the plaintiff in possession of the same after removing the superstructure; also to direct Kanchana and Balasubramaniam who are the defendants in this suit to pay a sum of Rs.88/- p.a being the arrears of rent for the period from April 2007 to April 2008.

4. Before advertng to the respective contentions made by the parties in their pleadings for better appreciate of the case, the background history of the litigations is given in nutshell:-

The suit schedule property is part of larger extent of land measuring 36 x 107 feet in R.S.No.3567/2. In the year 1961, the owner of the land Chandrasekar, who got the property

from his mother Dhanammal, entered into sale agreements dated 15.06.1961 and 13.09.1961 with one K.S.Narasimhan. Chandrasekar and his three sons agreed to sell the land to K.S.Narsimhan for sale a consideration of Rs.11,000/- with a promise that they will vacate the tenants in the suit property and handover the vacant possession. One among the tenants was Ekambaram. In order to evict Ekambaram, the landlord Chandrasekar initially filed proceedings under Land and Buildings Lease and Rent Control Act, but same was dismissed since the tenant proved that he was tenant for the ground and paying ground rent, whereas the superstructure was put up by him. Thereafter, suits were filed for evicting the tenants. While in two of the suits, the landlord Chandrasekar succeeded and got the tenants vacated. In suit O.S.No.1153 of 1963, filed against Ekambaram, who was in occupation of the land measuring 26 x 60 feet and had put up hut upon it, was resisted by Ekambaram. He filed Section 9 application claiming he had put up superstructure in the extent of 26 x 60sq.ft and entitled to purchase the ground. Due to long pendency of this suit, despite several extension of time, Chandrasekar, the landlord was not able to handover the vacant possession to K.S.Narsimhan as agreed under the sale deed. After waiting for years, the said K.S.Narasimhan filed suit in O.S.No.1336 of 1974 for recovery of money and the expenses incurred for executing the sale deed. In the said suit Ekambaram, who was occupying the portion of the land was impleaded as 5th defendant. The Slum clearance Board which had initiated acquisition proceedings of the suit was impleaded as 6th defendant. The said suit in O.S.No.1336 of 1971 on the file of City Civil Court was allowed vide judgment dated 24.12.1974. At the same time, the eviction proceedings initiated by the landlord Chandrasekar against his tenant Ekambaram which was the subject matter of O.S.No.1153 of 1963 and the I.A.No.6753 of 1963 filed under Section 9 of City Tenant Protection Act were considered and the Trial Court held that the superstructure upon the portion of suit land was constructed by Ekambaram. Therefore, held Ekambaram is entitled to purchase the ground upon which the superstructure stand. The Slum Clearance Board and K.S.Narasimhan were impleaded in the suit viz., O.S.No.1553 of 1963. On 06.03.1975 a compromise was entered by the parties, viz., the landlord Chandrasekar, owner of the superstructure Ekambaram, the Tamil Nadu Slum clearance Board and K.S.Narasimhan who is the decree holder in O.S.No.1336 of 1974. Ekambaram who was arrayed as 5th defendant held entitled to purchase the ground. He agreed to pay K.S.Narasimhan the decretal amount passed against the landlord in O.S.No.1336 of 1974 and if any balance remains will be paid to the landlord. The parties agreed the value of the property and the extent shall be as fixed by the Slum Clearance Board in the Acquisition Proceedings. The compromise decree was passed as per the terms found in the memo of compromise filed in O.S.No.1153 of 1963 on 06.03.1975.

5. Whether Ekambaram paid K.S.Narasimhan the decree amount as per the compromise decree or not is not known. However, it is admitted by the parties that Tamil Nadu Slum Clearance Board dropped the acquisition proceedings and the superstructure put up by Ekambaram is in possession and enjoyment of his wife and son, after the demise of Ekambaram in the year 1990. Admittedly, they have stopped paying the ground rent to landlord since 1963. While so, on 11.10.2006 Chandrasekar had executed a settlement deed in favour of wife, daughter and three sons in respect of the land and building comprising in R.S.No.3567/2, Block No.71, situated at Old Door No.110 (new No.76), Dr.Ranga Road, Mylapore, Chennai - 600 004, admeasuring 1150 sq.ft. Based on the settlement deed, his wife and children, who are the defendants 2 to 6 in O.S.No.8981 of 2010 has sold the property to Kuppammal under sale deed dated 23.04.2007, claiming themselves the owner of the land and building.

6. The said settlement deed and the subsequent transfer by sale is the subject matter of the suit in O.S.No.8981 of 2010, wherein, Ekambaram had pleaded that after the compromise decree, he has perfected the title and continue to be in possession of the suit property, open and hostile to Chandrasekar, who has lost his right over the property. Ekambaram being in continuous and uninterrupted possession and perfected title. Chandrasekar has no right to settle the property in favour of his wife and children and in turn, they have no title or right to sell the property in favour of Kuppammal. Therefore, when there was an attempt by Kuppammal and her husband Karthick to forcibly evict Ekambaram, the matter went to police and complaint was given. Hence, the suit O.S.No.8981 of 2010 (formerly C.S.No.4 of 2008) for declaration of title and to declare the settlement deed executed by Chandrasekar in favour of defendants 2 to 6 and consequential sale deed by defendants 2 to 6 in favour of Kuppammal filed.

7. The 7th defendant Kuppammal claiming right over the suit property to an extent of 1150sq.ft issued eviction notice under City Tenant Protection Act on 01.03.2008 to the Kanchana and Balasubramaniam. She offered to compensate the value of the superstructure and as owner of the land claimed that she is entitled for vacant possession. Kuppammal thereafter, initiated ejectment proceeding by filing the suit for delivery of possession and vacant land before the Small causes Court, Chennai in ejectment suit. The said ejectment suit No.6 of 2008 was transferred to City Civil Court and renumbered as O.S.No.8982 of 2010 and tried along with O.S.No.8981 of 2010.

8. Gist of rival pleadings:-

According to Kanchana W/o.Ekambaram and Balasubramanian S/o.Ekambaram who are the plaintiffs in O.S.No.8982 of 2010. Ekambaram in the year 1953 entered into the suit land as ground rent tenant for Rs.8/- per month. Thereafter, he put up construction in 26 x 60 feet with ground and three floors, after getting planning permission, obtained drainage connection in the year 1964. Since 1964, the house tax is paid by Ekambaram. The landlord initially filed suit for eviction in R.C.O.P.Act, as if, he is the owner of the building. The Rent Control Proceedings initiated in the year 1960 by Chandrasekar was dismissed. Further, the appeal filed by him was also dismissed thereafter, he initiated O.S.No.1153 of 1963 on the file of City Civil Court, Chennai for ejectment. In the said ejectment suit, Ekambaram filed I.A.No.3753 of 1963 under Section 9 of City Tenant Protection Act. This suit ended in compromise decree on 06.03.1975. Ekambaram agreed to discharge the decree amount which the landlord liable to pay to one K.S.Narasimhan in O.S.No.1336 of 1974. This was also subject to the compensation amount payable by Tamil Nadu Slum Clearance Board for the land proposed to be acquired. Since then, Ekambaram is in the absolute possession and enjoyment of the suit property in exclusion of the title holder and others. During his lifetime, there was an attempt to encroach the land by one Mahalakshmi Traders. Ekambaram filed suit for injunction in O.S.No.6113 of 1986 and succeeded. After his demise, the plaintiffs who are the wife and son of Ekambaram are paying the statutory dues to the Corporation of Chennai and Chennai Metropolitan Water Supply and Sewage Board and enjoying the suit property absolutely.

9. It was contended in O.S.No.8982 of 2010 that the settlement deed based on which the vendors defendants 2 to 6 sold the suit property to the 7th defendant is illegal and void document created with intention to set up fake title upon 2 to 6 defendants. It is a collusive document suppressing material facts. When Court in earlier proceedings has categorically held that the superstructure belongs to Ekambaram. In the settlement deed the building has been wrongly and falsely mentioned as exclusive property of Chandresakar. Further, suppressing the compromise decree and loss of title suppressed intentional. Chandresakar or his legal heirs never been recognised as landlord after 1975 and no ground rent paid to them. Therefore, the purchaser who claim title through the defendants 2 to 6 can have no right to get the vacant possession.

10. Per contra the case of Kuppammal the 7th defendant, who is the plaintiff in O.S.No.8982 of 2010 is that the suit property to an extent of 1150 sq.ft belongs to Chandresekar who acquired the same from his mother. He settled the property in favour of his wife and children. They in-turn sold the property

to Kuppuammal on 23.04.2007 for valid consideration of Rs.20,00,000/-. Only 200 sq.ft of land was lease out to Ekambaram. Upon which, he put up a thatched hut. Subsequently he encroached the land and unauthorisedly put up superstructure to total extent of 1150 sq.ft. After the death of Ekambram, his wife Kanchana and son Balasubramaniam are in possession. Except the portion of the building where Kanchana is residing, rest of the portions are unauthorisdely sublet to others, who are the defendants 3 to 6 in the ejectment suit. They are all liable to be evicted. Having failed to pay the ground rent, the defendants 1 & 2 are not entitled for the benefit under City Tenant Protection Act., with an intention to extract money Kanchana and Balasubramaniam had filed suit to set aside the sale deed dated 23.04.2007 executed in favour of Kuppammal. It is a speculative suit and filed to enrich illegally.

11. The Trial Court based on the pleadings in the respective suit formulated the following issues:-
O.S.No.8981 of 2010 (Suit filed by Kanchana and Balasubramaniam).

(i). Whether the plaintiffs are entitled for declaration that the plaintiffs are the owners of superstructure and land as prayed for?

(ii). Whether the plaintiffs are entitled for declaration that the sale deed dated 23.04.2007 executed by the defendants 2 to 6 in favour of 7th defendant as 'null and void'?

(iii). Whether the plaintiffs are entitled for permanent injunction as prayed for?

(iv). Whether the suit is not maintainable as it is hit by law of res judicata under Section 11 of C.P.C as contended in the written statement?

(v). To what other reliefs?

O.S.No.8982 of 2010 (filed by Kuppammal).

(i). Whether all the defendants to be directed to deliver vacant possession of the suit schedule property bearing old No.110, new No.16, Dr.Rangachari Road, Mylapore, Chennai - 4, comprised in S.No.3567/2 as per patta 3567/7 of Mylapore Village, measuring extent of 1150 sq.ft after removing the superstructure and put the plaintiff in possession of the same?

(ii). Whether the defendants 1 & 2 are directed to pay a sum of Rs.88/- per annum being the arrears of rent for the period from April 2007 to April 2008 onwards?

(iii). To what relief?

12. Joint trial was conducted and common evidence was recorded. The witnesses for plaintiffs in O.S.No.8981 of 2010 were ranked as PW's and their exhibits was marked under "A" series. The defendants in O.S.No.8981 of 2010 were ranked as DW's and their exhibits were marked under "B" series. P.W.1 to PW.4, D.W.1 to D.W.3, Ex.A.1 to Ex.A.38 and Ex.B.1 to Ex.B.24 are the respective oral and documentary evidence for the plaintiffs and defendants.

13. The Trial Court, on the premise that there is no dispute regarding the description of the suit property and both the suits are in respect of one and same property proceeded and conclude that, the 7th defendant had purchased the property from defendants 2 to 6 based on the settlement deed executed by 1st defendant Chandrasekar. Therefore, 7th defendant is entitled for a decree to get vacant possession as prayed in O.S.No.8982 of 2010. The declaratory relief sought by Kanchana and Balasubramaniam in O.S.No.8981 of 2010 was declined.

14. Assailing the said common judgment, these two appeals are filed.

The case of the appellant is that in the year 1964 itself Ekambaram had put up construction to an extent of 26 x 60 feet of land after obtaining planning permission from the authorities. The said building is provided with electricity, water and sewage connection in the name of Ekambaram. These evidence not been considered by the Trial Court in proper perspective. While the settlement deed relied by the respondent is the land measuring 1150sq.ft and the superstructure thereon, the said recital in the settlement deed is false and contrary to compromise decree. The settlement deed was executed by the 1st defendant Chandrasekar in favour of his wife and children when he had no title. The respondents have admitted in the cross examination that no ground rent paid either to Chandrasekar or his legal heirs or to the subsequent purchaser for more than 40 years. The Trial Court failed to take note of the fact that the enjoyment of the appellants is open, continuous and uninterrupted against the true owner. The appellants have prescribed title after the compromise decree even if there is cloud in the title, they have perfected the title by adverse possession.

15. Further, the predecessor-in-title of the 7th

respondent had earlier initiated proceedings under City Tenant Protection Act and same ended in compromise decree. Therefore the subsequent proceedings initiated by Kuppammal is hit by res judicata. The purchaser cannot have better title or right than her vendor. The Trial Court failed to apply the principal of res judicata in this case. The description of the property by survey number, door number as well as the extent are wrong in the suit filed by Kuppammal. For the said reason, the trial Court ought to have rejected the suit for ejection filed by the respondents and allowed the suit for declaration filed by the appellants. The evidence of D.W.1 to D.W.3 regarding the payment of sale consideration are contrary to each other which would go to prove the fact that no sale consideration was passed pursuant to the sale deed Ex.A.18. The settlement deed Ex.A.17 being a void document the subsequent sale deed is non est in law. In the absence of proof that the Kuppammal is the bonafide purchaser for value, no relief ought to have been given in the suit filed by Kuppammal.

16. Point for consideration:-

Whether the Trial Court conclusion that the appellant, who entered into the suit property as a tenant in the year 1953 continued to be a tenant is legal and factually correct in the light of the compromise decree dated 06.03.1975?

17. Apart from making oral submissions, the Learned Counsels for the appellants as well as the respondents has filed the written arguments in detail.

The gist of the written argument submitted by the appellant.

"9. It is submitted that the 1st respondent land owner did not claim the sale price or demanded the land rent from the said Ekambaram. In this context it is relevant to note Section 9(2) of the CTP Act, 1921, wherein, it is stated that if the tenant commits default in payment of anyone instalment, the application under Section 9 (1) (a) shall stands dismissed. Therefore, the 1st respondent ought to have initiated proceedings within the period of limitation i.e., 12 years from 06.03.1975 seeking delivery of possession but the 1st respondent did not choose to do so.

10. Further by committing default in payment of the sale consideration the

possession of the tenant will become that of a trespasser. In this case, the compromised decree having been passed on 06.03.1975 and as per Section 9(1)(b) the period stipulated to pay the market value of the land is 3 years and if that period is also taken, the time to pay the value of the land expired on 05.03.1978 and the 1st respondent having not initiated any proceedings for well over a period of more than 30 years is not entitled to deal with the property in the year 2007.

11. It is submitted that the appellants have specifically pleaded that the possession of the appellants from the year 1975 was opened and hostile to the 1st respondent and the 1st respondent lost his right thereafter. Admittedly, the appellants are in continuous enjoyment of the property without any interruption.

12. Insofar as the sale deed Ex.A.18 is concerned the same is a void one due to the following reasons.

(i). The sale deed conveys including the super structure which admittedly did not belong to the 1st respondent and respondents 2 to 6.

(ii). The schedule in the sale deed refers to land and the building but the door number given is 76 which is not the door number of the suit property. The correct door number is New No.16, old No.110.

(iii). The survey number given is R.S.No.3567/2 whereas the said survey number was subdivided as R.S.No.3567/2B as per Ex.A.7 as early as 11.01.1968 and the occupier name is shown as Ekambaram and the extent shown is 1561sq.ft.

(iv) The extent of the property was also mentioned as 1150sq.ft which is not correct. The length and breadth measurements were not specifically given.

(v). As per clause 7 of the sale deed the owners have delivered possession and delivered the title deeds to the purchaser i.e., 7th respondent. But fact remains no title deeds were produced and the 7th respondent had initiated ejectment suit seeking delivery of possession.

(vi). The sale deed shows a sale

consideration of Rs.20,00,000/- paid by the 7th respondent to the 6th respondent. The evidence of D.W.1 (Kuppammal) says that the husband purchased the property in her name she has also pledged her jewellery. She pleads total ignorance about the case and says that only had husband D.W.2 knows the entire transaction. D.W.2 in the cross examination states that the sale consideration was paid in instalments prior to the purchase and thereafter also. The D.W.3 who is the seller has deposed that the consideration of Rs.20,00,000/- was paid in instalments and the 1st respondent, his father, alone knows in how many years the same was paid.

(vii). As per the pleading, the respondents have handed over the possession of one shop portion to the 7th respondent but there is absolutely no reference in the sale deed or the settlement deed or in the Power of Attorney about the possession of the shop portion with the respondents 2 to 6.

(viii). The 1st respondent has suppressed the compromise dated 06.03.1975 entered into in O.S.No.1153 of 1963 in the settlement deed.

(ix). There are several false recitals in the sale deed Ex.A.18 and the entire document contains falsehood including the extent of the property, survey number, door number, demolition order etc.,"

18. The Learned Counsel for the respondent referring Section 9(2) of the Madras City Tenants' Protection Act, and the judgment of this Court in The Nungambakkam Muslim Welfare Association -vs- Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam, by Hereditary Trustee and others reported in 2017 (1) MWN (Civil) 18 submitted that, if there is any default committed by the petitioner in Section 9 application his right gets extinguished. In the written submission of the respondents, it is stated that:-

"To dispose the present suits, the compromise decree passed in O.S.No.1153 of 1963 (Ex.A.10) is helpful only on two aspects, they are, under clause 2 of the compromise decree the plaintiffs therein was declared as the owner of the suit land and the first defendant was declared as the owner of the superstructure in the suit

land. After the disposal of the suit by way of compromise decree the first defendant failed to purchase the suit land as per clause 1 & 4 of the compromise decree and failed to take any steps to purchase the suit land under Section 9 of the Madras City Tenants' Protection Act, 1921 for all these years and therefore the parties reverted back to their original status as admitted by P.W.1 during the cross examination.

5. With the above declaration of rights, the parties continued the relationship of landowner and tenant without any further litigation until the landowner chooses to sell the land. The tenant neither offered to purchase the land nor come forward to pay the rent. The land owner continued to exercise his right of ownership by paying all public dues and demands in his name and confirming his right of ownership by settling the suit property to his children. The beneficiaries under the settlement sold the suit property to the first plaintiff in O.S.No.8982 of 2010 namely Kuppammal and ever since she became the owner of the suit property. All the above go to show that the defendants 1 to 6 (in O.S.No.8981 of 2010) exercised their right of ownership even after the compromise decree effectively. Now after the sale the purchaser the plaintiff in O.S.No.8982 of 2010) has become the owner of the suit land.

6. There is no law which prevents the landowner from selling his land simply because the land is occupied by a tenant and the compromise decree earlier passed is also not a bar for such a sale or deterrence to the defendants 1 to 6 (in O.S.No.8981 of 2010) right of selling their property as they never lost their title.

7. The compromise decree does not create any special right or the tenant is vested with any right except a privilege to purchase the land in the manner provided under the compromise decree or under the Act.

8. Now in the given circumstances as the bonafide purchaser the plaintiff in

O.S.No.8982 of 2010 in view of the sale executed by the widow, sons and daughters of late Chandrasekar she became the owner of the suit land and by operation of law she is entitled to all rights of the purchaser under Section 54 of the Transfer of Property Act."

"10. The plaintiffs in O.S.No.8982 of 2010 are bonafide purchasers from lawful owners and they have every right to file the suit for recovery of possession and the subject matter being land tenancy governed under the provision of Tamil Nadu City Tenants Protection Act, the suit is laid before the Court of Small Causes, the same being the competent Jurisdictional Court. The suit is filed under Section 41 of the Presidency Small Causes Court Act, as an ejectment suit. When a suit for recovery of possession is filed under the Tamil Nadu City Tenants Protection Act, it should be filed only before the Court of Small causes under Section 41 of the Presidency Small Causes Court Act. Hence, the procedure adopted by the plaintiff in O.S.No.8982 of 2010 is correct."

20. According to the Learned Counsel for the respondents, the compromise decree made in O.S.No.1153 of 1963 will not affect the suit in O.S.No.8982 of 210 and it will not act as res judicata since it does not involve any determination of rights of parties and compromise decree will not operate as res judicata, as per the dictum laid down by the Hon'ble Supreme Court in Pulavarthi Venkata Subba Rao and others -vs- Valluri Jagannadha Rao (deceased) by his heirs and legal representatives and others reported in AIR 1967 SC 591.

21. As far as plea of adverse possession is concerned, in the written argument, the Learned Counsel for the respondents stated that, after the judgment in Ravinder Kaur Grewal and others -vs- Manjit Kaur & others reported in 2019 (4) CTC 936, the plea of adverse possession is not available to the appellant. The following passage from Ravinder Kaur Grewal case cited supra relied:-

"In law there is presumption in favour of the continuity of the tenancy and against the possession of the tenant becoming adverse. Furthermore, the doctrine of tenant estoppels, which continues to operate even

after the termination of the tenancy, debars a tenant who had been let into possession by a landlord, from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord."

"A tenant who upon determination of the tenancy does not deliver up possession to the landlord as required by Section 108(q), cannot be heard to say that he is not a tenant" Be he one at sufferance or be he one from month-to-month. Therefore, unless the landlord is actually put into possession, the premises remain under a tenancy, which unless assented to by the landlord, has the character of one at sufferance."

"It is stated that, thus, the suit of the plaintiffs filed within 12 years of the determination of the tenancy by efflux of time is within the period of limitation. The defendant has not proved forfeiture of tenancy prior to the expiry of lease period. Mere non-payment of rent does not amount to forfeiture of tenancy. It only confers a right on the landlord to seek possession. The plaintiffs have filed a suit for possession against the defendant on the basis of determination of tenancy; such suit is governed by Article 67 alone."

22. Therefore, the Learned Counsel for the respondents would submit that, mere non-payment of rent does not amount to forfeiture of tenancy and the non-payment only confers a right to the landlord to seek possession. Therefore, non-payment of rent however long period will not amount to adverse possession. The oral and written arguments considered. The evidence relied by respective parties reappreciated.

23. It is settled law that a tenant could not, by any amount of declaration or act on his part, acquire as against the landlord. The title by adverse possession. The application of this principal that tenant cannot deny landlord's title however subject to certain other factual circumstances. Therefore, the rule is not an hard and fast rule without exception. If the status of tenant gets severed then assertion of title by adverse possession is permissible.

24. In the instant case, the landlord Chandrasekar and his sons, initially in the year 1961 had sold a larger extent of land inclusive of the suit property to one K.S.Narasimhan with a specific understanding that they will deliver vacant possession of the suit property. Having failed to deliver vacant possession, K.S.Narasimhan has initiated a suit and had obtained money decree against Chandrasekar, his three sons as well as Ekambaram, who was one of the occupant of the suit land. Pending suit the Tamil Nadu Slum Clearance Board, had initiated proceedings to acquire the land. In the said suit, one of the issue is that, whether the 5th defendant (Ekambaram) is entitled to protection under the City Tenant Protection Act, as claimed in this written statement. For the said issue, the trial Court has held as below:-

"The fifth defendant is admittedly in possession of a portion of the suit property, having put up superstructure thereon. The subject matter of the sale to the first plaintiff's wife is only the vacant land. Proceedings are also pending between the first defendant on the one hand and the fifth defendant on the other and a suit filed in this connection has not yet been disposed of. The fifth defendant claim rights under the City Tenant's Protection Act. The present is not a suit for recovery of possession in which contingency only the question of the decree for possession being subject to the rights of the fifth defendant to purchase the portion in his occupation exercising the benefits of the City Tenants' Protection Act would arise. However, having regard to the possibility of the fifth defendant's claim under the City Tenants' Protection Act, being upheld, the plaintiffs have advisedly prayed for a direction to the fifth defendant to pay the price of the land that may be directed to be sold to him, not to the first defendant but to the first plaintiff to extent of the suit liability. The question whether the fifth defendant is entitled to the benefits of the City Tenants' Protection Act does not really arise for consideration in this suit which is not one in ejectment. Further more, in the suit for ejectment filed by the first defendant against the fifth defendant, the fifth defendant has claimed the rights under the City Tenants' Protection Act. Therefore,

this issue will have to be left open for being answered in the suit in O.S.No.1153 of 1963 on the file of the City Civil Court, Madras, and which is stated to be still pending. For these reasons, no finding is recorded on this issue."

25. Ex.A.9 which the certified copy of the judgment passed in O.S.No.1336 of 1974 in this suit Chandrasekar from whom the respondents claim right and Ekambaram from whom the appellants traced their right are parties. In this suit, the Court has held that,

"In the event of the fifth defendant (Ekambaram) being entitled to purchase the land on which the superstructure stands, the compensation payable by him to the extent of the decree liability shall be paid to the first plaintiff. In the event of the sixth defendant (Slum Clearance Board) acquiring the property, the compensation payable for the acquired property, will be paid to the first plaintiff to the extent necessary to meet the decree liability with interest and costs." This judgment was delivered on 24.12.1974. Thereafter, in O.S.No.1153 of 1963 filed by Chandrasekar and others against Ekambaram, the compromise was entered between the parties and compromise decree was passed on 06.03.1975. In this suit also, the Slum Clearance Board and K.S.Narasimhan the decree holder in O.S.No.1336 of 1974 were parties. This suit was filed by Chandrasekar for declaration that, he is the owner of the hut in the site of area admeasuring 10 x 22 feet, for which, the defendant Ekambaram was admitted as a tenant and to remove the unauthorised superstructure put up by him. This suit was ended in compromise. The terms of compromise as per the decree is as below:-

"1. The suit be and the same is hereby dismissed without any order as to costs and the application I.A.No.6753/63 in the suit shall stand allowed.

2. The 1st defendant is declared as the owner of the superstructure in the suit land and the plaintiffs do have no right title or interest in the same, that the plaintiffs be declared as the owners of the suit land only and not the superstructure.

3. The 1st defendant be entitled to buy the land required by him or that may be allotted to him for his occupation, by the Tamil Nadu Slum Clearance Board, the 3rd defendant in the suit.

4. The 1st defendant be entitled to an order in I.A.No.6753 of 1963 mentioned in clause 1 supra entitling him to purchase either the suit land or the land claimed by the 1st defendant or the land that may be allotted to him by the Tamil Nadu Slum Clearance Board the 3rd defendant herein at the price determined by the Land Acquisition Officer under acquisition proceedings, at the time it is so determined.

5. The amount determined mentioned in clause 4 supra be payable by the 1st defendant to the defendants 4 to 7 as decree holders in O.S.No.1336 of 1974 on the file of II Assistant Judge, City Civil Court, Madras, decreed on 24.12.1974 and in partial discharge of the decree against the plaintiff in the said suit and that if any amount in excess of the said decree amount become payable by the 1st defendant the said excess be paid by the 1st defendant to the 3rd defendant to be paid over to the 1st plaintiff as claimant in acquisition proceedings and;

6. This decree shall not in any wise affect or prejudice the right of the decree holder in O.S.No.1336 of 1974 mentioned in clause 5 supra."

26. The 1st defendant Chandrasekar in O.S.No.8981 of 2010 in his written statement had stated that the suit property and the adjacent property originally belong to his father Subramania Aachary and his brothers which they acquired under the the partition decree made in O.S.No.927 of 1932 on the file of City Civil Court, Chennai. Later, the 1st defendant Chandrasekar along with his brother and sister of late his father entered into the partition deed dated 02.06.1951. The first defendant was allotted a larger extent of land comprising in S.No.3567 (part), which includes the suit property. After alienating portion of the property to different purchasers, Chandrasekar retains 1150 sq.ft of land for which patta and tax receipts stands in his name. Having absolute title over the property, he has executed settlement deed dated 11.10.2006, settling the suit property in favour of his wife and children namely the defendants 2 to 6 with all absolute powers of

alienation, disposal and ownership.

27. Regarding the compromise decree entered between him and Ekambaram, Chandrasekar has pleaded that 1150 sq.ft of land in occupation of Ekambaram was agreed in the compromise that he is entitled to the benefit of City Tenants Protection Act. But Ekambaram did not pay the cost of the land and purchased the suit mentioned property for all these years. Ekambaram was not prepared to pay the cost of the land and purchase the land consequently the 1st defendant Chandrasekar being absolute owner of the property had settled it in favour of his wife and children. It is also contended by the 1st defendant that pursuant to the sale of the property in favour of the 7th defendant, the shop portion in the suit property was delivered to the purchaser and remaining portions are not in occupation of the plaintiff but sublet to third parties.

28. The Learned Counsel appearing for the respondent relying upon Section 9(2)(b) of City Tenants' Protection Act would submitted that, pursuant to the compromise decree, Ekambaram has not paid the value of the land within a period of three years therefore, in view of his default Section 9 application filed by Ekambaram is deemed to be dismissed.

29. Section 9 of City Tenants Protection Act as it stood in the year 1963 when the suit for ejectment filed and when I.A.No.6753/1963 filed by Ekambaram under Section 9 enables the tenant who has put up the superstructure to purchase the ground upon which the superstructure stands and the land appurtenant to it for convenient enjoyment of the superstructure. The pre-condition to exercise this option is that the tenant should face the suit for ejectment. As per Section 9(1)(b) of City Tenant Protection Act, an application by the tenant in a pending suit for eviction, the Court shall first decided the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. Thereafter, price of the land shall decided, which shall be the average market value of three years immediately preceding to the date of order. The price fixed shall be paid in one or more instalments with or without interest within a period to be determined by the Court, not less than 3 months and not more than three years.

30. Section 9(2) of the Act, which is relied by the Learned Counsel for the respondents deals with:- Default in payment by the tenant of any one instalments:-

"2. In default of payment by the tenant of any one instalment, the application [under clause (a) of sub-section (1)] shall stand dismissed, provided that on sufficient cause being shown, the Court may excuse the

delay and pass such orders as it may think fit, but not so as to extend the time for payment beyond the three years above-mentioned. On the application being dismissed, the Court shall order the amount of the instalment or instalments, if any, paid by the tenant to be repaid to him without any interest."

31. The averments made in the written statement of the 1st defendant Chandrasekar is contrary to the terms of the agreement as found in the compromise decree. In the compromise decree marked as Ex.A.10, the cost of the land is payable to the decree holder K.S.Narasimhan and if any balance remains that alone is payable to the landlord Chandrasekar. The value of the property has to be ascertained by the 6th defendant in the proceedings namely the Slum Clearance Board which has initiated the acquisition proceedings. The contesting parties admits that the Slum Clearance Board dropped the acquisition proceedings. The decree holder who had right to proceed against Ekambaram as per the compromise decree for recovery of the decree amount has not initiated any proceedings against Ekambaram. From that, we can only infer that Ekambaram has satisfied the decree in favour of K.S.Narasimhan as per the compromise decree passed in O.S.No.1553 of 1963. To add, even Chandrasekar has not initiated any proceedings either to ascertain the value of the property after the Slum Clearance Board dropped the acquisition proceedings or to collect the ground rent from Ekambaram.

32. As far as the present case is concerned, as per the terms of the compromise decree, the extent and value of the property in occupation of Ekambaram was to be ascertained by Tamil Nadu Slum Clearance Board. From out of the sale price, Ekambaram was suppose to satisfy the decree amount passed in O.S.No.1336 of 1974, if any balance left, same should be paid to Chandrasekar. As pointed out earlier neither K.S.Narasimhan who is the decree hold in O.S.No.1336 of 1974 nor Chandrasekar had initiated any proceedings for recovery of the money or recovery of the land. For the first time, the landlord Chandrasekar, after 31 years of the compromise decree ascertaining right in the property including the superstructure has executed the settlement deed (Ex.A.17). The superstructure which Chandrasekar claims ownership is in fact constructed by Ekambaram, who has obtained building plan permission as early as in the year 1962 and same is marked as Ex.A.1. The fact that, Ekambaram is the owner of the superstructure is admitted by Chandrasekar in the earlier proceedings and he has entered into a compromise admitting his right to invoke Section 9 of City Tenant Protection Act. In fact, Chandrasekar had been satisfied with consideration of made overing the decree against him through Ekambaram as per the compromise decree. Therefore, it is

factually incorrect to say that Ekambaram has not paid the consideration and Chandrasekar has not received consideration. His silent for more than 31 years and admission that he did not collect any ground rent from Ekambaram for all these years is suffices to hold that Ekambaram had been enjoying the property on his own, continuously, for more than 30 years, openly against the title holder.

33. There is a semblances of transfer of property in his name in view of the compromise decree. It is true that there is no formal transfer of title and no evidence to show that the value of the land in occupation of Ekambaram upon which he put up construction in the year 1961 was ascertained. Nevertheless, K.S.Narasimhan, the decree holder to whom the Ekambaram has to pay the sale consideration as per the compromise decree has not initiated any execution proceedings against Ekambaram. Unless, K.S.Narasimhan was satisfied with the decree amount, he would have not kept quiet. Likewise, Chandrasekar would have not kept quite for more than 30 years. The conduct of Chandrasekar and K.S.Narasimhan lead to inference that, all the parties to compromise decree entered in O.S.No.1153 of 1963 were satisfied with the decree. This Court embolden to hold so because, Chandrasekar while settling the property in favour of his wife and children, had conveniently suppressed the fact of the compromise decree.

34. In the suit O.S.No.1553 of 1963, the Trial Court has held that the superstructure as found in suit property was constructed by Ekambaram and he is the exclusive owner of the superstructure. Suppressing the said facts and the compromise decree, Chandrasekar had settled the property in favour of his wife and children under Ex.A.17, wherein, he has claimed absolute ownership of the superstructure found in door No.110, New No.76, Dr.Rangachari Road, Mylapore, Chennai. Surprisingly, when his wife and children who are the defendants 2 to 6 sold the property to the 7th defendant had mentioned in O.S.No.1154 of 1963 vide judgment dated 10.08.1966, which has declared the title over the land and superstructure in favour of Chandrasekar. The ULT proceedings and demolition order find place in the recital of the sale deed to show, as if, the 7th defendant is the bonafide purchaser and his vendor defendants 2 to 6 have valid title to convey.

35. The Trial Court erred in holding that the subsequent purchaser is entitled to file a suit for eviction since the owner of the superstructure had failed to pay the land cost as per the compromise decree entered between the parties in O.S.No.1553 of 1963. The Trial Court has miserably failed to take note of the fact that, the decree holders in O.S.No.1153 of 1963 have not proceeded for any execution of the said compromise decree. Suppressing all these facts, claiming ownership over

the superstructure, which was never his case before the Court in the earlier proceedings, Chandrasekar had executed the settlement deed inclusive of the building.

36. The Trial Court had not taken note of Ex.A.1 to Ex.A.8 which are the documents to show that the superstructure was put up by Ekamabram and he has obtained all basic amenities from the Corporation and paying the tax to the Corporation. This has been accepted by Chandrasekar while entering into the compromise in the suit filed by him for eviction. The parties admitted that they have never collected ground rent from Ekambaram or his wife and children for the past 40 years. While so, when Chandrasekar himself has lost his title over the property on entering into a compromise and keeping quiet for nearly 31 years not insisting for execution of the compromise decree, they cannot have any right to alienate the property or to evict Ekamabaram and his legal heirs.

37. Yet another peculiar fact in this case is that the purchaser 7th defendant, who is the plaintiff in O.S.No.8982 of 2010 had not only tried to improve the title over the property by adding certain recitals which are not found in the settlement deed of his vendor but had come out with the case for eviction and removal of superstructure, admitting the fact that the superstructure found in the suit property was constructed by Ekambaram. While his sale deed and settlement deed in favour of his vendor claim absolute right over both the superstructure and the land, conceding the right of the superstructure to Ekambaram, suit for eviction has been filed. The omission of necessary particulars like compromise decree in the settlement deed Ex.A.17 and the embellishment found in Ex.A.18 sale deed and thereafter, the suit filed for eviction against the plaintiffs in O.S.No.8981 of 2010 conceding right in the superstructure to the plaintiffs would clearly show that the 7th defendant is not a bonafide purchaser for value and he is trying to ascertain better right than his vendor, who had lost his right over the suit property by allowing the plaintiff to enjoy the land openly, continuously and uninterruptedly for more than 31 years.

38. The appellants herein in the plaint had clearly ascertain their right over the property based on the compromise decree and on adverse possession. To the general rule that the tenant cannot claim adverse possession, there are few exceptions. Adverse possession is essentially doctrine that operates by default or inaction of true owner as in the instant case. The inaction of the original owner cannot be waived or condoned merely because he had conveyed the property to a third party.

39. The facts of the case narrated above indicates the

right of the appellants not only enured merely by continuous possession but the earlier proceedings which has culminated in the compromise decree, the title had also vested on them sans formal transfer of title. The plea of adverse possession is an additional defence taken by them to protect their enjoyment of the property.

40. Ever since, the year 1960, when Chandrasekar attempted to evict Ekambaram from the suit premises it has been resisted by Ekambaram consistently claiming right over the superstructure. Chandrasekar earlier filed R.C.O.P claiming ownership over the building and land but he failed in that attempt. Next he tried to sell the property to one K.S.Narasimhan and received consideration, promising him to vacate the tenant and handover the vacant possession. He has failed to handover the vacant possession since Ekambaram was in occupation of the land and refuse to vacate it. This has led to the O.S.No.1336 of 1974 suit for recovery of money by K.S.Narasimhan. In that suit, decree was passed against Chandrasekar. In the said suit Ekambaram right over the superstructure and his occupation of the land as ground rent tenant had been recognised. Thereafter, the compromise decree in O.S.No.1153 of 1963 filed by Chandrasekar against Ekambaram came to be passed on 06.03.1975. From the day on which the compromise decree passed, the landlord tenant relationship between Chandrasekar and Ekambaram got severed. Chandrasekar was relieved of his debt payable to K.S.Narasimhan in lieu of his right in the ground in occupation of Ekambaram.

41. The above conclusion of this Court is well fortified by the decisions of the Privy Council rendered in Raja Mohammad Mumtaz Ali Khan -vs- Mohan Singh reported in AIR 1923 PC 118. The facts in this case are almost identical except the intervention of compromise decree in the instant case. In the appeal from the Judicial Commissioner of Oudh, the Privy Council has held as below:-

"The only issue in the suit was: Is the plaintiff under-proprietor of the plots in suit? The Munsif decided that the plaintiff had no under-proprietary rights, but that he had become under-proprietor by prescriptive possession; he therefore decreed the suit with costs. The defendant appealed to the Court of the District Judge of Gonda, who agreed with the Court below and dismissed the appeal. The defendant next appealed to the Court of the Judicial Commissioner of Oudh, who affirmed the judgment on the same grounds and dismissed the appeal."

"...Each party had had his supposed

rights judicially challenged by the other, the plaintiff by the notice of ejectment, of which he had obtained cancellation, the defendant by the assertion in the proceedings for cancellation of the notice for ejectment, that he was not liable to be ejected, because of his rights as under-proprietor. The Board, however, do not consider that it was the duty of either party to institute such a suit if they were content that possession should remain on the same footing as before the notice of ejectment was served. They are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands. Such a judgment might have very far-reaching results and would almost certainly lead to a flood of litigation. It is notorious that in actions for rent, or enhancement of rent, or for ejectment, the persons in possession are prone to maintain rights, which they do not possess and if for any reason, as in the present case, no judicial determination is arrived at, but the parties continue on the original footing, the mere lapse of so short a period, as six or twelve years (which, might be amply explained upon other grounds), would deprive the landlord of his proprietary rights, unless in the meantime he had brought a declaratory suit to settle once and for all the terms on which possession was held. The case might have been different if, in addition to the judicial assertion by the plaintiff, there had been any change in the money payment, which he thereafter made to his landlord..." (emphasis added).

42. The change in the money payment in the instant case is the compromise decree dated 06.03.1975 and relief gained by the landlord from the money decree against him in O.S.No.1336 of 1974.

43. The Trial Court failed to consider the litigative

history of the case and the transfer of status and right. The conduct of Chandrasekar who had all along tried to evict Ekambaram under one pretext or another, failed in his attempt and later compromised with Ekamabaram and got satisfied being relieved from discharging the debt payable to K.S.Narasimhan under the decree in O.S.No.1336 of 1974. Ekamabaram had agreed to discharge the said debt in lieu of the land cost payable to Chandrasekar. While fact being so, after 31 years, Chandrasekar has created documents on 11.10.2006 by settling the property on which he had lost right long ago. Then within six months that property is transferred through the sale deed in favour of 7th defendant on 23.04.2007 with embellished recital. Passing of consideration Rs.20,00,000/- itself is highly doubtful. The testimony of D.W.1 to D.W.3 in respect of payment of sale consideration does not inspire confidence the 7th defendant a bonafide purchaser. The contradictions regarding the payment of sale consideration causes doubt about the bonafide of the 7th defendant.

44. As far as suit of ejectment and vacant possession filed by the 7th defendant, is barred by limitation. It is appropriate to refer the century old decision of the High Court of Calcutta rendered in Panchkari Chatterjee -vs- Maharaj Bahadur Sing reported in 28 Ind. Cas 708 which had followed the earlier judgment of that Court in Probhabati Dassi -vs- Tiabatunnessa Choudhurani reported in (1) 17 C.W.N. 1088 (1913) which say:

".....That a Plaintiff suing in ejectment a purchaser of a non-transferable occupancy holding cannot succeed, unless he makes out a case under section 18 of the Indian Limitation Act, where his right to possession accrued long before 12 years of the commencement of the suit. Here the Defendant has been openly in possession of the land ever since his purchase. It has not been suggested that circumstances exist such as would attract the operation of sec. 18 of the Limitation Act. The Plaintiff has consequently to make his choice of one of two possible alternatives; either the Defendant has held as tenant or has been in adverse possession as trespasser for a longer time than the statutory period; in either view, he is protected from ejectment."

45. The classical requirement of adverse possession namely "nec vi, nec clam and nec precario" is fully satisfied in this case. The animus to hold the land as owner has been proved from the conduct of Ekambaram. The landlord Chandrasekar, after

compromise deed dated 06.03.1975 had not shown any animus to hold the property and he had been ousted openly. The continuously, uninterrupted possession and enjoyment of the property adequately proved by the plaintiff through documentary and oral evidence.

46. In such circumstances, the trial Court having failed to appreciate the documentary evidence on holistic manner and had lopsidedly held in favour of the purchaser, who has not proved his bonafide nor proved the right of his vendors to alienate the property. In such circumstances, this Court holds that the judgment and decree passed by the trial Court is liable to be reversed. Accordingly, the both Appeal Suits Nos.291 & 292 of 2015 are Allowed. The suit in O.S.No.8981 of 2010 filed by Kanchana and Balasubramanian is Allowed as prayed for and the suit in O.S.No.8982 of 2010 filed by Kuppammal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:-

- 1.The II Additional City Civil Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.

+2ccs to Mr.Manickavel , Advocate SR.No. 19095,19096

+2ccs to Mr.Sriram, Advocate SR.No. 19315,19316

A.S.Nos.291 & 292 of 2015

& C.M.P.No.6386 of 2016

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A.SK(23.04.2021)

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