

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : .04.2021

CORAM

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P.Nos.339 & 342 to 347 of 2021 &  
C.M.P.Nos.4508, 4509, 4505 to 4507, 4516, 2975 and 3008 of 2021 in  
CRP No.344 of 2021  
C.M.P.Nos. 3004, 3006 & 3007 of 2021 in CRP No.347 of 2021 &  
C.M.P.Nos.3010, 3012, 3014, 4498, 4500, 4519, 4529, 4527, 4501, 4503 &  
4504 of 2021 in CRP No.343 of 2021

V.Mahendran ...Petitioner in CRP No.339 of 2021  
S.Achuthan Nair ...Petitioner in CRP No.342 of 2021  
V.Ramalingam ...Petitioner in CRP No.343 of 2021  
Sridharan ...Petitioner in CRP No.344 of 2021  
K.Jayabalan ...Petitioner in CRP No.345 of 2021

M/s Soundararajan Transport  
No.28, Davidson Street,  
Chennai – 600 001 ...Petitioner in CRP No.346 of 2021

K.Natarajan ...Petitioner in CRP No.347 of 2021

Vs.

Arcot Lutheran Church  
rep. by its Secretary of the Church,  
No.9, A L C Complex, Cuddalore ... Respondent in all the petitions

Civil Revision Petitions are filed under Section 115 of Civil Procedure

Code to set aside the Fair and Decretal Order dated 29.01.2021 passed

in E.P.Nos.3864, 3896, 3898, 3900, 3902, 3908 and 3916 of 2012 in

O.S.Nos.2454, 2443, 2446, 2460, 2461, 2445, 2463 of 2008 on the file of learned X Assistant Judge, City Civil Court, Chennai and to allow the petitions.

For Petitioners : Mr.G.Veerapathiran

For Respondent : M/s.Srinath Sridevan

**COMMON ORDER**

Since the issues involved in these petitions are one and the same, they are taken up together and a common order is being passed.

2. The present Civil Revision Petitions are filed under Section 115 of Civil Procedure Code to set aside the Fair and Decreetal Order dated 29.01.2021 passed in E.P.Nos.3864, 3896, 3898, 3900, 3902, 3908 and 3916 of 2012 in O.S.Nos.2454, 2443, 2446, 2460, 2461, 2445, 2463 of 2008 on the file of learned X Assistant Judge, City Civil Court, Chennai and to allow the petitions.

3. The suits were filed by the respondent / Arcot Lutheran Church represented by the Secretary of the Church Board, ALC Complex, Cuddalore. The respondent / plaintiff is the public religious trust registered

as a Society under Tamilnadu Societies Registration Act and functions by its bylaws and the Secretary of the Church is authorised to sue on behalf of the plaintiff-church. The trust owns movable properties including the suit properties situated at Chennai and the plaintiff is in possession and enjoyment of the suit properties. The petitioners / defendants entered into the suit properties, as tenants and paying rent of Rs.1,500/-; Rs.2,110/-; Rs.1,800/-; Rs.1,500/-; Rs.2,110/-; Rs.1,010/-; Rs.1,075/- [in respect of Mr.Sridharan, petitioner in C.R.P.No.344 of 2021, M/s Soundararajan Transport, Petitioner in C.R.P. No.346 of 2021; Mr.V.Mahindran, petitioner in C.R.P. No.339 of 2021; V.Ramalingam, petitioner in C.R.P. No.343 of 2021, K.Jayapalan, petitioner in C.R.P.No.345 of 2021, S.Achuthan Nair, Petitioner in C.R.P. No.342 of 2021, K.Natarajan, petitioner in C.R.P. No.347 of 2021] per month to the respondent / plaintiff, who is the lessor and the said defendants has been in arrears of rent of Rs.18,000/-; Rs.8,440/-; Rs.3,600/-; Rs.1,500/-; Rs.4,220/-; Rs.6,060/-; nil; till September 2006 respectively. Therefore, the respondent / plaintiff prayed for passing a decree of quit and delivery of vacant possession of suit properties in favour of the plaintiff and as against the defendants ; to direct the defendants to pay a sum of Rs. 1,000/- per month as damages for the use and occupation from the date of filing of the suits till the date of

handing over/delivering the suit properties. The suits were heard finally in the presence of learned counsel for the plaintiff and on 09.01.2009, the same were decreed as prayed for with cost. By way of said Judgment dated 09.01.2009, the court below ordered the petitioners / defendants to quit and deliver vacant possession of the suit properties and ordered the defendants each to pay a sum of Rs.1,000/- per month towards damages for use and occupation of the suit properties from the date of filing the suits till the date of delivery of the suit properties to the plaintiff. In the said suits, the defendants, i.e., the petitioners were remained absent and set exparte and the court below had delivered Judgment in the absence of the petitioners / defendants .

4. In consequence, the respondent / plaintiff, viz., Arcot Lutheran Church represented by Church Secretary, decree holder, filed Execution Petition Nos.3864, 3896, 3898, 3900, 3902, 3908 and 3916 of 2012 only in the year 2012 in O.S.Nos. 2454, 2443, 2446, 2460, 2461, 2463 of 2008 respectively, in SI.No.9 in the Execution Petitions, it is mentioned that "Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree", it is stated as Delivery of Possession". In SI.No.12 , viz., "Mode in which the assistance of court is

required"; it has been stated that "To deliver the vacant possession of the plaintiff through court by issuing delivery warrant to bailiff under Order 21 Rule 35 of C.P.C., The plaintiff will file another E.P. for recovery of damages"

5. In the said one of the Execution Petition, viz., E.P.No.3902 of 2012, E.A.No.1393 of 2017 was filed to implead the name of one Manikandan, legal heir/son of Achuthan Nair, since Achuthan Nair died and the same was ordered and the legal heir was impleaded. In the E.P.No.3864 of 2012, counter statement was filed by one of the petitioner herein / respondent, viz., Sridharan. In the said counter affidavit, the learned counsel for the petitioner / respondent submitted that the said Execution Petition has been filed by one Signatory, viz., B.Jesuadian, styling himself as Secretary of the respondent / Decree Holder without any document to support as when he took reins of the office and also no documentary proof to show that he is functioning as successor in the interest in the place of one T.Richard Baskaran, who verified the pleadings in the said suits and when the plaints were filed by the decree holder, at the end of verification, he signed as T.K.Richard Baskaran, styling himself as Secretary of Arcot Lutheran Church, whereas, in the E.P., now filed it is

mentioned Secretary of the decree holder, and there is no supporting document to prove that when the present signatory assumed office of the respondent/plaintiff's society.

6. Further, in the said counter, a question was raised that the said society has become defunct, as the respondent has not followed the Rules enshrined in the bylaws under Tamilnadu Society Registration Act and Form VII has not been furnished to the Registrar of Society by the elected office bearers and he claim that the said secretary is not the competent person to file the Execution Petitions, however, it has to be established by documentary proof stating that the said person is the competent person.

7. According to the petitioners, the respondent / decree holder kept quiet for a long time and after the arrival of the new secretary into the administration of church by the present office bearers, the respondent filed Execution petitions and the said person, [viz., the person who is in the post of Secretary at present] is not aware of the facts that new tenancy has been come into existence. Since the petitioners have also paid enhanced rent and on account of the same, the respondent / church promised that they will not pursue the execution proceedings, but by playing fraud they

have proceeded against the petitioners to execute the decree, which was obtained exparte. Moreover, according to the petitioners from the inception of the tenancy, they are not in arrears of rent and they have also paid the enhanced rent and in support of the same, they have filed the documents, such as bank account, which would prove that they have deposited the said amount in the bank account of the authorities of the respondent /Church.

8. Further, the petitioners submitted that for revision of rent they have also brought in some documents to show that they were called for a meeting, however, the said documents / details of amount paid as rent were also produced, but the same were not produced before the court below and the counsel for the respondent objected for admitting the same in the typed set of papers.

9. Also, it is the case of the petitioners that the rents have been paid by the petitioners to the respondent and the same have not been denied anywhere by the respondent and in the plaints itself it is seen that there are reliefs made for Rs.1,000/- per month damages for use and occupation from the date of filing the suits till the date of handing over / delivery the

suit properties. Hence the fresh tenancy was acknowledged and the enhanced rents were paid, it shows that new tenancy have come into existence. The decree of possession and damages was decreed on 09.01.2009 and only in the year 2012, the Execution Petitions have been filed for recovery of possession. Apart from that, no claim for damages in Execution petitions in Column No.9 was not accepted, as in column in XIV, there is other information, viz., that they will file separate proceedings for recovery of damages. There was an understanding between the parties, that is why the tenancy was extended, but the person, Secretary at that time, who had entered into a new tenancy, was not examined and a fresh person has been examined, who had denied and stated that the said extension of tenancy has to be proved by the petitioners. Also when the petitioners seek for producing the documents to the concerned authorities, they were not in a position to say anything about the extension of tenancy or what is the relationship and other details regarding the tenancy, as the said new officer was not aware of anything.

10. The learned counsel for the petitioners submitted that earlier, they have filed an application for setting aside the exparte decree and sufficient cause were shown, however, the same was not considered by

the court below. Since no issues have been prayed in these Civil Revision Petitions, regarding the other aspects of the case, which was earlier raised before the court below, prayed for allowing the Civil Revision Petitions.

11. According to the respondent-Church, the petitioners must be put to strict proof to prove the right conferred on them and the petitioners have not produced any of the documents to show that there was an extension of tenancy by increasing the rent by the respondent / church authorities.

12. A detailed counter affidavit is filed by Mr.Srinath Sridevan, learned counsel appearing for the respondent and submitted that the proceedings were initiated by way filing suits in year 2008 and till the present year, viz., 2021, the church is not in a position to enjoy the fruits of the decree. The church depends on the income derived from the said properties of the church and he further submits that the said Civil Revision Petitions are not maintainable. Firstly, the contention of the petitioners that the respondent-church is a different society, not entitled to maintain the Execution Petitions, is not acceptable. Since the counsel for the petitioners submitted that he is not inclined to press the other issues, which was raised before the court below, the same may need not be discussed further.

13. The learned counsel for the respondent further submitted that the petitioners are not poor shop keepers and the same was also considered by the respondent-church and initiated proceedings in the year 2008 stating the rents are very meager and the said properties have to be vacated. He further submits that a Writ Petition was filed by some third party in W.P.No.26718 of 2019 on the ground that *“the proceedings concluded under Section 44(4) as a mere notice under Section 44(3) of the Tamilnadu Societies Registration Act, 1975 and that the proceedings stood foreclosed and stated that there is an error apparent on the face of record and sought to set aside the impugned order”*, however, considering the submission of the learned counsel for the respondents 4 and 6 that *“the Government issued G.O.(rt) No.633, Commercial Taxes and Registration (m1) Department dated 18.11.2049, whereby the entire proceedings has been closed, the notice has been dropped,”* and the Writ Petition was dismissed by this Court on 29.11.2019. Subsequently, the said third party had challenged it on an appeal in W.A.No.250 of 2020. The Hon'ble First Bench by an order dated 20.07.2020, considering the facts and circumstances of the case, dismissed the said appeal and affirmed the order of the learned Single Judge.

14. Heard the learned counsel on either side and perused the documents placed on record carefully.

15. One Sridhar, viz., R.W.1, [Petitioner in C.R.P.No.344 of 2021] has filed proof affidavit and from his proof affidavit, it is seen that on the date of filing the suits, the revision petitioners intended to file written statements, but the respondent / decree holder promised to them that they will withdraw the suits and the respondent demanded for payment of higher rent and accordingly, the petitioners / tenants are paying three fold rent from the original rent and fresh tenancy came into existence. The action of the respondent / decree holder, viz., instead of withdrawing the suit, has continued with the dispute by way of proceedings in the court and played fraud on the petitioners and further submitted that the respondent executed fresh tenancy by enhancing the rent and the other petitioners / tenants have also paid the said amount and were under the impression that the respondent / church would be withdrawing the suit and they are continuing the tenancy.

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16. It is to be noted that the proof affidavit of one Sridhar, petitioner in C.R.P.No.344 of 2021 would allege that there was an extention of

tenancy and the said Sridhar, was also not examined to prove the same. He has also stated that after the receipt of termination notice from the respondent-Church, the petitioners have approached the respondent - church and at that time, the Secretary of the respondent-church informed the enhancement of rent, The respondent / church assured that they will withdraw the suits and there was a fresh tenancy entered into and the deposit of rents at higher rates were continued, but the competent persons have not been examined and no material was produced before the court to show that the rents were enhanced, however, the petitioners had tried to prove the same by showing their bank account, however the same was not allowed by the other side and not considered by the court below, is the contention in the proof affidavit.

17. Mr.Sridhar, petitioner in C.R.P.No.344 of 2021 by way of proof affidavit further submitted that though the respondent informed that they would enter into a compromise, they have failed to do so. The petitioners have paid the enhanced rents pending dispute and according to the petitioners, there is no default of rent. All the documents are with the landlord, i.e., the respondent, who ought to have produced the said accounts before the court in order to establish that what was the rent paid

earlier and what was the increased rent paid by the parties, by extending the tenancy.

18. In contrary, on perusal of the proof affidavit filed on behalf of the decree holder, namely, B.Jesuadian, P.W.1, it is clear that the decree holder denied that the petitioners have filed SR.Nos. 5545 to 5558 of 2009 in time to set aside the exparte decree. He also denied the averment that the applications were misplaced and since the applications were not be traced out, they locked the doors of justice and they could not proceed further in the said proceedings and it is only the mistake on the part of the court staff, who had lost the said petitions. Further, on 14.02.2017, the Treasurer, Arcot Lutheran Church has sent a notice to (i) Sabari Tea Stall (ii) T.S.Soundarajan Transport (iii) Malligai Transport (iv) Kalaimagal Transport (v) Achuthan Tea Stall (vi) Shree Jayalakshmi Transport and (vii) Marvel Petroleum stating that he has been appointed as Treasurer, as per the proceedings No. 24/2016-2019 on August 27, 2016, and if any doubt or dispute regarding the rent or other tenancy agreements, for payment of arrears and other queries, the said persons can contact the Treasurer of the respondent church. It is also advised in the said notices only to contact him and not anybody else, failing which, the said society

would not take any responsibility with regard to the rent. When that being the case, it is to be seen that for some of the person, who are the petitioners herein, the said notices have been sent, is the contention of the petitioners.

19. According to the petitioners, Judgments were passed in O.S.Nos.2454 of 2008 etc., on 09.01.2009 and the execution petitions were filed in August, 2012, only after three years and the reason for evictions in the execution petitions are not proved. The respondent has taken three years and 8 months for filing the execution petitions and the petitioners are not in default on paying rent and the same has been paid without any delay. Since, the respondent is a public trust and that there is dispute with regard to authorised representative of the respondent-church, the execution petitions are not maintainable. In support of his contention, the learned counsel for the petitioners relied on the Judgment of **Hon'ble Supreme Court reported in (1997) 1 Supreme Court Cases 373 [Sultana Begum Vs. Prem Chand Jain]**. The person, who has been examined on behalf of the respondent - church is not a competent person and based on the said evidence, the present cases should not be decided because the said person is not having any personal knowledge about the

petitioners / tenants Moreover, decree was obtained without the knowledge of the petitioners by suppressing the real intention and the said society had invited the petitioners for a compromise and then enhanced the rent, as if they are extending the tenancy and proceeded further in the suits proceedings and obtained an ex parte decree and only when the execution petitions were filed and upon receiving the notice, the petitioners had knowledge and immediately they challenged the same. There cannot be any damages because the rent have been paid by the petitioners through the bank account periodically and the issue is, since the petitioners are tenants for a long time, had believed the words of the respondent officials and paid the enhanced rent and as such, the damages cannot be received from the petitioners. He also relied on the Judgment of the **Hon'ble Supreme Court reported in (1968) 2 SCR 559 : AIR 1968 SC 919 [Konchada Ramamurthy Subudhi and Another Vs. Gopinath naik]**

20. It is pertinent to point out that the Secretary of the respondent-church has got no capacity to pursue the execution petitions, is not pressed by the petitioners / tenant. The only point to be considered is, whether the tenants entered into new tenancy by paying rents prior to the decree obtained by the respondent / society?

21. The suit is filed for eviction and damages and the suit was decreed ex parte and the petitioners have not chosen to file a petition for setting aside the said ex parte order and failed to contest the same and kept quiet for long years. That apart, the Execution Petitions were filed in the year 2012 by the respondent and in the E.P. Proceedings, there is a mention inside the said petitions in SI.No.12, ' Mode in which the assistance of the court is required', it is mentioned as "..... The plaintiff will file another EP for recovery of damages" . That apart, Mr.Sridharan, viz., R.W.1, at the time of cross examination, has submitted that

"நாங்கள் மனதாரர் சொல்லியபடி நடக்கவில்லை ஏமாற்றி வழக்கில் உத்தரவு பெற்றார்கள் என்று அறிவிப்பு எதுவும் அனுப்பவில்லை. காவல்நிலையத்தில் புகார் எதுவும் கொடுக்கவில்லை"

on perusal of the said evidence, it is clear that no complaint was given by R.W.1, viz., Sridhar. Further, according to the petitioners, the execution petitions were filed by the respondent on August, 2012 and Sridhar, petitioner in C.R.P. No.344 of 2021 has filed his proof affidavit on 30.11.2016 and he was cross examined on 23.03.2017. However, the respondent side witness was completed by 18.10.2016, by calling the said Sridhar, for cross examination, after one year from the date of examination

of respondent side witness, by taking adjournments one after other, the said person, would have been confused and he would not be in a position to give proper reply. As there would have been a continuous trial, they would have obtained a better output from the said witness. **On account of the same, he relied on the Judgment of Hon'ble Supreme Court in (1997) 1 Supreme Court Cases 373 [Sultana Begum Vs. Prem Chand Jain].**

22. The counsel for the respondent has put forth a plea that if at all there was any compromise entered into between the petitioners and the respondent-church, a new tenancy would have been reduced in writing, the tenants ought to have produced such compromise deed or any materials to show that there was an extension of tenancy. The oral compromise or oral agreement cannot be entertained, the respondent-church being a trust, it has its own procedures to continue a tenancy or any other action. The notices sent by the respondent-church does not confer or create any tenancy and it is only a notice and there was no outcome shown regarding the said notice. If at all there was any tenancy, the new tenancy has to be entered into by way of a written agreement, with whom and what stage and what is the rent and other necessary details.

When no such material has been produced to show that there was an extension of tenancy, the same has to be dismissed. In order to substantiate his contention, the learned counsel for the respondent relied on the following judgments:

**(i) In the Judgment of Hon'ble Supreme Court in Civil Appeal No.139 of 1951 [Mohanlal Goenka Vs. Benoy Krishna Mukherjee and others) reported** in [1953] 4 SCR 377, wherein at Paragraph no.26, it is held as follows:-

*"26. Sha Shivraj Gopalji Vs. Edappakth Ayissa Bi and Others MANU / PR/0022 / 1949 : In this case the decree holder in the earlier execution proceedings could have raised a plea that the judgment-debtor had an interest in certain property which could be attached under his decree but the plea was not raised through his own default and the execution was dismissed. It was held under such circumstances that the dismissal operates as res judicata in the subsequent execution proceedings and even apart from the provisions of section 11 of the civil procedure code, it is contrary to principle to be neglected at a proper stage in previous proceedings to support his claim by the argument of which he subsequently wishes to avail himself."*

**(ii) In the Judgment of this Court in C.R.P.No.2451 of 1966 [V.Ramaswami Iyer Vs. K.Ramakrishnayya], among other things it is**

held that *“any amount received by the landlord from the tenant after an order for eviction was passed by the Rent Controller would not constitute a fresh tenancy and it cannot be accepted as there is no default”* and prayed that the said petitions are liable to be dismissed.

23. With respect to the First Point, viz., the present representative of the church has not produced any records as per Tamilnadu Society Registration Act declaring him as a 'Secretary' of the decree holder- church is not pressed and hence the same has not been considered by this Court.

24. With regard to the Second Point, viz., the decree holder and the Judgment debtor entered into a compromise deed by enhancing the rent three fold and the decree has been obtained by playing fraud on the court is concerned, it is seen that they have not produced any material, such as memo of compromise or deed of compromise before this Court or before the Court below to show that they have entered into a new tenancy. The decree holder/respondent, being a trust, namely, Arcot Lutheran Church, if at all entering into a new tenancy when proceedings before the court below are pending, automatically, they would have entered into a compromise reduced in writing and they will not just like that enter into a

oral compromise and such oral compromise cannot be acted upon. As it is seen that it is a trust governed by a committee of members, no compromise deed can be entered into unless the same has been recognised by the church by passing any such resolution regarding such compromise and in the absence of any such compromise entered into between the church and the petitioners, the mere statement that the petitioners are in possession by way of extension of tenancy, by enhancing the rent, is not acceptable.

25. Further, the statement of the petitioners that there was a meeting and they have entered into an agreement and on account of the same, there was an extension of tenancy, are all after thought statement to get rid of the exparte decree, where the petitioners have all remained exparte by not contesting the case, when the suits were pending. The averment that the petitioners have already filed an applications for setting aside the exparte and stating some SR Numbers would not be sufficient to prove that they were diligent in proceeding with the said setting aside petitions. Further, if the petitioners are really interested in continuing with the tenancy, they would have been proceeded with the said SR Numbers for setting aside the exparte decree. In the absence of any such evidence, a

mere statement by the petitioners that they have taken steps to reconstruct the bundle, if at all it was lost, would show that there was no 100% involvement in continuing with the said suits or setting aside the exparte decree.

26. With regard to the compromise entered into the petitioners and the respondent-church, as averred by the petitioners, this Court is of the view that if fresh tenancy has been created, it has to be executable, if there is no written agreement, the same cannot be construed to be as a valid document, the decree holder had rightly proceeded further.

27. As far as the notices sent by the decree holder is concerned, it would show that the petitioners were tenants under the said respondent and all the documents regarding the transfer of amount from various parties to the Arcot Lutheran Church's account would show that it is only a rent paid and whether it was an arrears of rent or it was fresh rent, are not proved by way of any written receipt received by the petitioners. It is only taken as damages paid by the said tenants / petitioners and the petitioners are not having any right to sit or squat in the properties. The alleged compromise entered into was also not proved beyond doubt before this Court by any material and the said plea of fresh tenancy created between

the decree holder and the judgment debtor is not acceptable and it has to be rejected.

28. It is to be noted that the documents have been lost by the petitioners in the year 2009. As per the averment of the petitioners that since the case bundle was misplaced by the Registry of the City Civil Court, the petitioners could not set aside the ex parte decree, is not sustainable, because even till date, the petitioners have not taken any steps to set aside the same and they are proceeding only in the Execution Petition proceedings and if at all the said petitions were misplaced, they could have taken the leave of the court for filing a fresh setting aside petitions and proceeded further, if they were really interested to do so and the petitioners had a knowledge at that point of time itself, viz., they have filed a setting aside petition in the year 2009, but waited for the decree holder to file the Execution Petitions and then, they are filing these Revision Petitions, are not acceptable.

29. From the counter affidavit filed on behalf of the respondent and upon hearing the submission of the learned counsel for the respondent, it is crystal clear that earlier, the petitioners have filed I.A.Nos.2195 of 2018 etc., in O.S.Nos.2445 of 2008 etc., before the court below seeking to

condone the delay of 3254 days in filing the applications to set aside the exparte order dated 09.01.2009 and the court below had dismissed the same. Challenging the said orders, the petitioners approached this Court by way of C.R.P.Nos.1440 of 2019 etc., batch and this Court by an order dated 15.04.2019 dismissed the said petitions by observing that “...*The applications for reconstructing the earlier applications for setting aside the exparte decree are kept pending till January 2018 and thereafter, the applications were dismissed as withdrawn. Meanwhile, the applications which are the subject mater of these revisions are filed. The defendants have come forward with a very feeble explanation in the petition filed for condoning the delay in filing the set aside application that the Church authorities had given assurance that they would not proceed further. Such a reason appears false since even as early as in the year 2012, the execution proceedings had been initiated. The revision petitioners who had come to know that the plaintiff has taken execution proceedings in the year 2012 itself does not take any serious efforts and only in the year 2018, the applications are filed to set aside the exparte decree. I do not find any infirmity in the order passed by the learned XVIII Assistant Judge, City Civil Court, Chennai.*” While that being the case, the same submission of the petitioners that the respondent had given assurance that the Church

authorities had given assurance that they would not proceed further, cannot be accepted.

30. Even assuming that there is a decree obtained by playing fraud on the court by the respondent is a nullity in order non-est in eye of law, it can be challenged before the court concerned, even in collateral proceedings. But herein the petitioners, who have not challenged the said exparte decree and not taken any prudent steps to set aside the same, cannot prove that there is a fault played on by the decree holder against them. The executing court can proceed only as per the decree and they cannot go beyond the decree. Unless the court which passes the decree suffers from lack of jurisdiction, the point of 'nullity' does not arise. If there is any erroneous decree passed by the trial court / court below, always the Appellate remedy is available to the petitioners to appeal and proceed further. In these cases, it is not shown whether the petitioners have filed any appeal against the said decree, only in the execution proceedings they are fighting and the Judgment was passed by the learned X Assistant Judge, City Civil Court, Chennai, who has got jurisdiction to pass such orders and executing court cannot go beyond such decree. Hence the decree is valid and the court below had proceeded further in execution of

the decree and ordered for delivery of possession of said property by 05.03.2021 at the expenses of the petitioners / Judgment debtors.

31. On going through the Judgments passed by the court below it is clear that when no materials produced to show that there was an compromise entered into between the petitioners and the respondent by extending the tenancy and by enhancing the rent and also no materials provided to show that the petitioners have challenged the said exparte decree prudently, as such, the decree becomes the final and accordingly, the decree holder got every right to proceed against the said parties / petitioners, by way of filing the Execution Petitions and the court below in the Execution Petitions have rightly considered all the points raised by the parties and came to the conclusion that the Execution Petitions filed are based on the decree passed in the Civil Court and not by the Rent Control Authority. The court below holds that *"the decree holder is entitled to the delivery of possession of the schedule property through the court at the expenses of the Judgment debtor"* and this Court does not find any merits in the contention raised by the petitioners herein and the same is hereby dismissed. The petitioners are directed to handover the delivery of possession of said property to the respondent by 01.06.2021.

With the aforesaid observations, the present Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition are closed. No costs.

.04.2021

Index : Yes/No  
Internet : Yes/No  
Speaking /Non-Speaking Common Order

ssd

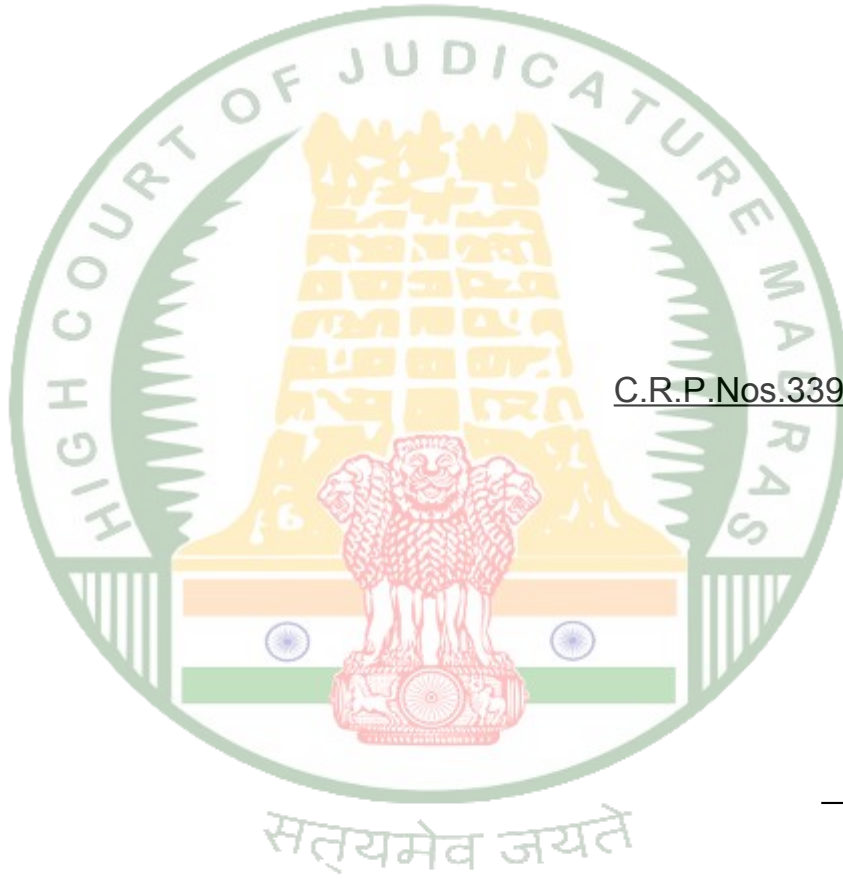
To

1. The X Assistant Judge, City Civil Court, Chennai
2. The Section Officer,  
V.R.Section, High Court, Madras

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**V.BHAVANI SUBBAROYAN, J.,**

ssd



C.R.P.Nos.339 etc., batch

.04.2021

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