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C.R.P.(NPD) No.838 of 2021 and
C.R.P.(NPD) Nos.3313 & 3514 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.04.2022

Pronounced on : 10.11.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(NPD) No.838 of 2021
and
C.R.P.(NPD) Nos.3313 & 3514 of 2019

C.R.P.(NPD) No.838 of 2021:

1.J.R.Chandran
2.Balakrishnan

... Petitioners / Plaintiffs

Vs

1.P.Kubendra Singh
2.Rukmani Bai
3.P.Krishnan Singh
4.Indirani Bai
5.Ram Singh
6.Lakshman Singh
7.Lakshmi Bai
8.Suresh Kumar Singh
9.Saraswathi Bai
10.P.Anantharaman

11.M/s.Shrusti
Rep by its Managing Partners
Alexander
No.22/39, Brahmin Street
Velachery, Chennai – 600 042.

... Respondents / Defendants



C.R.P.(NPD) No.838 of 2021 and
C.R.P.(NPD) Nos.3313 & 3514 of 2019

C.R.P.(NPD) No.3313 of 2019:

J.R.Chandran

... Petitioner / Appellant /
Respondent

Vs

1.P.Anantharaman

... 1st Respondent / 1st Respondent /
Petitioner

2.M/s.Shrusti

Rep by its Managing Partners
Alexander
No.22/39, Brahmin Street
Velachery, Chennai – 600 042.

... 2nd Respondent / 2nd Respondent /
Impleaded respondent

C.R.P.(NPD) No.3514 of 2019:

A.Desikan

... Petitioner / Appellant /
Respondent / Tenant

Vs

1.P.Anantharaman

... 1st Respondent / 1st Respondent /
Petitioner / Landlord

2.M/s.Shrusti

A Partnership firm , Rep by its
Managing Partner, Mr.S.Alexander
S/o.N.Santhanam
No.22/39, Brahmin Street
Velachery, Chennai – 600 042.

... 2nd Respondent / 2nd Respondent /
Impleaded 2nd respondent



C.R.P.(NPD) No.838 of 2021 and
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Prayer in C.R.P.(NPD) No.838/2021: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for the records in fair order dated 17.02.2020 made in O.S.S.R.No.14381 of 2019 on the file of I Assistant City Civil Court, Chennai, and to set aside the same and consequentially direct the I Assistant City Civil Court, Chennai to number the suit.

Prayer in C.R.P.(NPD) No.3313/2019: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act, Act 18 of 1960 as amended by Act 23 of 1973, to call for the records in judgment and decree dated 11.07.2019 made in RCA.No.649 of 2018 on the file of VIII Court of Small Causes at Chennai, confirming the order and decree dated 10.08.2018 against R.C.O.P. No.543 of 2014 on the file of XIII Judge, Court of Small Causes, Chennai / Rent Control Authority and set aside the same and consequently dismiss the RCOP No.543 of 2014.

Prayer in C.R.P.(NPD) No.3514/2019: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act 18 of 1960 as amended by Act 23 of 1973, to set aside the order dated 11.07.2019 passed in RCA. No.660 of 2018 passed by the VIII Small Causes Court, Chennai, confirming the order of eviction passed under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 amended by Act 23 of 1973 by the XIII Small Causes Judge, Chennai dated 10.08.2018 in RCOP.No.548 of 2014.



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In C.R.P.(NPD) No.838 of 2021:
& C.R.P.(NPD) No.3313 of 2019:

For Petitioner(s) : Mr.V.Ramakrishnan
Senior Counsel for Mr.N.S.Nandakumar

For Respondents : Mr.T.M.Hariharan
for Mr.M.Vijayakumar
- for R3 to R10 in CRP(NPD) No.838/2021
- for R1 in CRP(NPD) No.3313 of 2019

In C.R.P.(NPD) No.3514 of 2019:

For Petitioner(s) : Mr.R.Sankarappan

For Respondents : Mr.T.M.Hariharan
for Mr.M.Vijayakumar [R1]

COMMON ORDER

Preliminary Statement:

1.1. A certain Anantharaman had laid two separate petitions in R.C.O.P.No.543 of 2014 and R.C.O.P.No.548 of 2014 before the Rent Controller for eviction of his tenants J.R.Chandran and Desikan respectively principally under Sec.10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (henceforth would be referred to as 'the Act'). Of these two tenants, J.R.Chandran also attempted to institute a suit against Anantharaman, but his plaint was not taken on record and was rejected.



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1.2. Even though the two eviction petitions are founded on different causes of action as they are laid against two different tenants, the line of defence adopted by both the defendants are substantially similar, and hence this Court chose to dispose them of through a common order.

1.3. This order is divided into two parts. Part-I will deal with the civil revisions filed by J.R.Chandran and Part-II will deal with the revision petition filed by Desikan.

1.4. For the sake of convenience, Anantharaman would be referred to as the landlord, and J.R.Chandran and Desikan would be referred to as tenants.

Part-I

C.R.P.(NPD) No.3313 of 2019 & C.R.P.(NPD) No.838 of 2021

2.1. The tenant concerned is J.R.Chandran. The landlord had instituted R.C.O.P.No.543 of 2014 for eviction of the tenant for wilful default in paying the rent. The Rent Controller passed an order of eviction vide his order dated 10.08.2018. Challenging the same, the tenant preferred R.C.A.No.649 of 2018 before the Rent Control Appellate Authority and he lost it. Challenging



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the same, the tenant preferred C.R.P.(NPD) No.3313 of 2019.

2.2. While so, the tenant had laid a civil suit for declaration of his prescriptive title of the same premises of which he was inducted as a tenant. This was received by the I Assistant City Civil Court, Chennai in OSSR.No.14381 of 2019. The learned I Assistant City Civil Judge rejected the suit vide her order dated 17.02.2020. This is challenged by the tenant in C.R.P.(NPD) No.838 of 2021.

2.3. The relevance of C.R.P.(NPD) No.838 of 2021 in the context of other C.R.P.(NPD) No.3313 of 2019 lies in the fact that part of the defence in the eviction proceedings forms the cause of action for the intended suit by the tenant. This will be explained later.

A. CRP(NPD) No.3313 of 2019

3.1. This case has a background history and it is now introduced:

- Earlier, the tenant had laid R.C.O.P.No.1204 of 1998, and sought the leave of the Rent Controller to permit him to deposit what he claimed as the monthly rent of Rs.600/- under Section 8 of the Act,



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after complying with the statutory pre-conditions for invoking it. It was his contention that he was a tenant since 1983, that the landlord had received the rent till March, 1988, and that from April, 1988, the landlord had refused to receive the rent.

- The landlord on his part had laid R.C.O.P.No.2010 of 1998 seeking the eviction of the tenant on the ground of wilful default but claimed that the monthly rent payable was Rs.1200/-.
- The learned Rent Controller heard both these petitions, and on 12.03.2002 Vide a common order dismissed both the petitions under Ext.R2 Order. The line of reasoning of the learned Rent Controller *inter alia* was that neither the landlord nor the tenant had proved the rate of rent that they claimed as payable. The landlord did not challenge the order passed by the learned Rent Controller, whereas the tenant took the matter in appeal in R.C.A.No.604 of 2002. That however, came to be dismissed. (The order copy is not produced but is an admitted fact).
- Then there was a lull for the next 14 years. In between, the tenant had moved to VIII Assistant City Civil Court with a suit in O.S.No. 2050 of 2013 for bare injunction against forcible dispossession.



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3.2. This is the setting. After the dismissal of R.C.O.P.No.1204 of 1998, the tenant has not paid any rent. In the said circumstances, the landlord had laid the present eviction petition under Sec.10(2)(i) of the Act for eviction on the ground of wilful default in the payment of rent. He however, did not issue any statutory notice to the tenant claiming the arrears of rent to invoke the presumption of wilfulness to qualify the default he alleges.

4. The tenant has come forward with the following defence:

- (a) That he was only a tenant under the mother of the petitioner and that he does not acknowledge that the petitioner is his landlord.
- (b) No where in the petition, has the landlord indicated either the rate of rent payable, the period of default or the quantum of arrears of rent which according to him is the tenant liable to pay. Earlier, when the landlord did not receive the rent, the statutory course open to the tenant is to approach the Rent Controller, which the tenant did approach when he filed R.C.O.P.No.1204 of 1998 and sought the leave of the Court to deposit the rent. It may be that the Rent Controller and also the Appellate Authority might have rejected the tenant's prayer to deposit



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the rent, but the fact remains that he did attempt to pay the tenant, and it shows his *bonafide*. This will mitigate against the allegation that the he has committed wilful default in paying the rent.

(c) After dismissal of R.C.O.P.No.1204 of 1998, neither the tenant has paid any rent nor the landlord has demanded any rent. The tenant however, is still in continuous and uninterrupted possession of the building and hence, the he has prescribed title to it by adverse possession.

5.1 The dispute was enquired by the Rent Controller. The Rent Controller took the view that even though there is an ongoing dispute/difference between the parties regarding the rate of rent payable, the fact remains that the tenant had earlier filed a petition for deposit of rent and also also appealed against the order dismissing the said petition by the Rent Controller. So far as the competency of the present petitioner to maintain the petition is concerned, his co-sharers have given him the authorisation Vide Ext.P-1 and it answers the allegation that the petition is not maintainable. And, it finally held that the tenant had committed wilful default in paying the rent.



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5.2 This order was challenged by the tenant in R.C.A.No.649 of 2018 and the learned Rent Control Appellate Authority confirmed the order of eviction passed by the Rent Controller. The line of argument for the tenant appears to be along the same lines as they were before the Rent Controller: That the landlord was not accepted as the landlord, that his co-sharers were not parties, that the tenant had laid O.S.2050 of 2013 for a decree of prohibitory injunction against forced-eviction plus others. Principally, the Appellate Authority had opined: (a) That under Sec.116 of the Evidence Act, the tenant cannot question the title of the landlord; (b) that the eviction petition is maintainable; and (c) that the tenant should have paid at least the admitted monthly rent of Rs.600/-. Hence the tenant has filed C.R.P.(NPD) No. 3313 of 2019.

The Arguments

(a) For the Tenant

6. The learned Senior Counsel for the tenant argued:

- It is not a case where the tenant is unwilling to pay the rent, but is a case where he does not know the rent that he is liable to pay. Contending that the rent payable is Rs.600/- p.m and alleging that the



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landlord (the mother of the present landlord) refused to receive it, the tenant had filed R.C.O.P.No.1204 of 1988 under Sec.8 of the Act seeking the leave of the Rent Controller to deposit the rent. In circumstances such as this, this is the only course available to him. But faced with a claim of Rs.1200/- p.m as rent from the landlord, the Rent Controller very unfortunately rejected the tenant's plea for deposit of rent on the ground that he had not proved that the rent payable was Rs.600/-p.m. It is an impasse that the Tribunals have created in the earlier round of litigation and not by the tenant, and hence he cannot be blamed. On the contrary, the very institution of R.C.O.P.No. 1204 of 1988 establishes the *bonafide* of the tenant.

- When the rent payable is unknown, then unless the rate of rent is established *de novo*, the tenant may not be in a position to pay either. The only course available is for the landlord to approach the Rent Controller to fix the fair rent for the building under Sec.4 of the Act, but the landlord did not do it.
- For seeking eviction under Sec.10(2)(i), the landlord has to establish the rate of rent, the duration of default, the total amount in arrears and then to prove that such default is wilful. The proviso to Sec.10(2)



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provides that where a tenant continues to be in default even after the notice to pay the arrears served on him by the landlord, the default in paying the rent can be presumed to be wilful. Given the criteria which the statute requires to be fulfilled, the landlord in the present chose to do none. Therefore the tenant cannot be blamed as having committed default in paying the rent, and even if there is any, it can hardly be termed as wilful.

- In this regard, the Rent Controller has held that the tenant indeed was liable to pay a sum of Rs.600/- p.m. as rent, not because it was established in the present litigation but on the basis of the statement in the testimony of petitioner as P.W.1. And, the Rent Controller has not chosen to rely on Ex.R2 order of the Rent Controller in R.C.O.P.No.1204 of 1998. If this solitary statement of the landlord is considered as a basis for his conclusion, then the Tribunal should not have overlooked the huge inconsistency which the same witness created when he was confronted with a question in the cross examination as to the rate of rent payable. In the present case, the landlord as P.W.1 has testified that the rent payable is Rs.15,000/- per month. Therefore, the monthly rent payable is neither Rs.600/- nor



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Rs.1,200/- nor can it be Rs.15,000/-, and this itself would fortify the fact that the tenant cannot be even considered as a defaulter much less a wilful defaulter.

- The Rent Control Appellate Authority finding as to the rate of rent payable is also faulty since he almost believed whatever the rent that the tenant had claimed as the rent payable in R.C.O.P.No.1204 of 1998 as an admitted figure. Indeed it has to be construed only as a rent alleged by the tenant as due from him. Now, if only in the earlier occasion the Rent Controller had accepted Rs.600/- as the rent payable by the tenant, then it could have added some significance to the said statement asserted by the tenant, but the Tribunal had not accepted it. Hence, the Rent Control Appellate Authority should not have entered a finding that Rs.600/- as the admitted rent.
- In the context of the finding based on 'admitted rent', there is nothing called admitted rent which the tenant may be expected to pay, as the very expression 'admitted rent' is alien to the scheme of the Act. The Act knows either contractual rent, or fair rent, and it does not recognise a third category of rent.
- As per Section 19 of the Rent Control Act, any application *inter alia*



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made under Section 10(2) of the Act shall be summarily rejected if it substantially raises an issue as to a finding decided or purported to have been finally decided in a former proceedings. This perhaps is a Rent Control Act's version of *res judicata*. However, it differs from *res judicata* stricto sensu in the sense that it is still open to either the landlord or the tenant to establish what the rate of rent payable even subsequently.

Reliance was placed on the dictum in *Chordia Automobiles Vs S. Moosa* [(2000) 3 SCC 282], *Chandramohan Vs Sengottayan* [(2000) 1 SCC 451], *Chandrasekar V M. Lalitha* [2010 (7) MLJ 348], *Dhakshayani Vs V. Suseela* [2010 (3) MWN 149] and *Kannaiah Vs Chinnaraj* [2009 (1) CTC 817].

(b) For the Landlord:

7. The counsel for the landlord made the following submissions:

- It is not in dispute that the tenant has not paid any rent for over 12 years. The tenant himself has admitted it. And, any unexplained default in paying the rent has to be construed as wilful and the onus will be on the tenant to prove the contra.



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- When once his earlier petition in R.C.O.P.No. 1204 of 1998 was dismissed, the tenant should have began depositing at least Rs.600/-, which according to him was the rent payable before the Rent Controller in this proceedings. During the pendency of the present petition for eviction, the landlord filed application in M.P.No. 9 of 2015 under Section 11(4) of the Act, wherein he had indicated his willingness to accept the rent as contended by the tenant. However, the tenant had filed his counter-affidavit opposing this application, and persisted in contending that he is not liable to pay since the Order dismissing prayer for deposit of rent in R.C.O.P.No. 1204 of 1998 has become final. Even at that stage, the tenant did not move the Rent Controller under Section 11(3) to determine the quantum of rent.
- It is further well settled that it is the duty of the tenant to pay the rent and that if there is a dispute regarding quantum of rent, the tenant cannot remain silent, and should move the Rent Controller for fixation of fair rent.
- Not only the tenant did not choose to pay the rent, but also claimed title to the property through adverse possession. The tenant's focus was on the title to the property and he cannot camouflage his intent with a



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veil of innocence by hiding behind the Order in R.C.O.P.No. 1204 of 1998.

- By pleading adverse possession against the landlord, which is forbidden under Sec.116 of the Evidence Act, the tenant has exposed himself to the forfeiture of the lease. Indeed he avoided to step into the witness box, and the three documents which he has produced are not adequate to sustain even *prima facie* his plea of prescription of title by adverse possession. Here, it is significant to note that shortly prior to the filing his counter to the present eviction petition, the tenant had laid O.S.No.2050 of 2013 for a decree of prohibitory injunction that he should not be dispossessed forcibly. And, a year later he has taken out a plea of adverse possession and chose to challenge the title of the landlord. This suit was decreed. The tenant though pleaded about this suit in his counter to the present eviction petition, yet did not produce it. Read in the context, the denial of landlord's title cannot be termed *bonafide*. He raised it in his counter/written statement, in his Memorandum of appeal in R.C.A.No. 649 of 2018. And, he invited a pointed finding of the Appellate Authority rejecting his plea of adverse possession. And, after knowing full well the strategy of the landlord,



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and his own positioning *vis-a-vis* his plea of adverse possession, the tenant has not only avoided the witness-box, but also has proceeded to institute another suit claiming title by prescription which is now the subject matter of C.R.P.(NPD) No. 838 of 2021. Set in the context, the denial of title of the landlord is also wilful, deliberate and *malafide*. Hence, he is liable to be evicted under Sec.10(2)(vii) of the Act.

- Besides, the tenant has also challenged that landlord is not his landlord even though he admits the latter's mother as the landlady. Here, in his earlier petition in R.C.O.P.No.1204 of 1998, the tenant had admitted that both Kamala Bai and Anantharaman were his landlords, and that the present landlord has been receiving the rents for himself and on behalf of his mother. Under the Act landlord is defined as the one who is entitled to receive the rent. And, he also the joint title holder of the property along with his other co-sharers.

(c) Reply by the Counsel for the Tenant, and the reaction to it:

8.1. The learned counsel for the tenant would submit that the landlord cannot invoke Sec.10(2)(vii) of the Act for summary eviction unless he has pleaded it. A mere statement in the counter of the tenant claiming title by adverse



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possession is not adequate to invoke Sec.10(2)(vii) of the Act. Reliance was placed on the ratio in ***J.J.Lal Pvt. Ltd., & Others Vs M.R.Murali & another*** [(2002) 3 SCC 98]. Sec.10(2)(vii) cannot be read in isolation and it has to be read along with the proviso to it. The second proviso to Sec.10(1) does not confer any independent power to the Rent Controller to invoke Sec.10(2)(vii). Reading Sec.10(1) along with Sec.10(2)(vii), the landlord is only required to move the civil Court for eviction under any of the grounds mentioned in Sec.10(2) of the Act. Indeed, denial of landlord's title is not an independent plea but is only a back-up plea for explaining the default in paying the rent. This would be borne out by the fact that the Rent Controller has not even framed an issue on this. And, so was the Appellate Tribunal. Similarly, the tenant has not challenged the present landlord's status as a landlord pointedly, but has only contended that he is not the only heir to his mother and there are others as well.

8.2. Per contra, the learned counsel for the landlord contended that the dictum in ***J.J.Lal*** case [(2002) 3 SCC 98] must be read in the context of the facts in that case, and it cannot be used to draw parallel to cases which are not matchable on facts. Reliance was placed on the ratio in ***Bhagwati Prasad Vs***



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Chandramaul [AIR 1966 SC 735] and ***Nagubai Ammal Vs B. Sharma Rao***
[AIR 1956 SC 593].

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B. C.R.P.(NPD) No. 838 of 2021

9.1. After the dismissal of R.C.A.No.649 of 2018 (which is now under challenge in C.R.P.NPD) No. 3313 of 2019), the tenant filed a plaint for declaration of his title to the property of which he was inducted as a tenant. The quintessence of his contention is that the landlord did not demand rent for more than 12 years since the dismissal of the earlier round of litigations and hence he has prescribed title to the premises in question under Article 65 of the Limitation Act.

9.2. The learned Judge before whom the plaint was laid, raised a preliminary objection as to the maintainability of the suit when the Rent Control Appellate Authority had already passed an order of eviction in R.C.A.No. 649 of 2018. Subsequently Vide his order dated 19.12.2019, the learned Judge rejected the plaint, relying on Sec.116 of the Evidence Act. This is now under challenge in CRP(NPD) No. 838 of 2021.



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(a) Arguments for the Tenant:

10. Opening with a caveat that this CRP might be superfluous if the tenant could reach ashore safely in his C.R.P.(NPD) No. 3313 of 2019, the learned counsel for the tenant submitted that:

- The learned Judge has hurried to press into service Sec.116 of the Evidence Act at too premature a stage in the litigation. Principally Sec.116 of the Evidence Act is a rule of evidence, and it needs to be considered only based on the defence not at the time when the plaint is presented.
- The Court has ignored the ratio laid down in *Selvaraj Vs Kodankulam Nuclear Power Plant India Ltd.*, [(2021) 3 LW 677].

Reliance was also placed on the dictum in *Darshar Kaur Bhatia Vs Ramesh Gandhi* [2022 LiveLaw (SC) 246], *Ravinder Kaur Grewal Vs Manjit Kaur* [(2019) 8 SCC 729], *S. Thangappan Vs P.Padmavathy* [(1999) 7 SCC 474], and *Sanapathi Sitaramaiah Vs Nandarapu Ramasway* [(1937) 46 LW 848].

Of Discussion & Decision:

11. The tenant is neither confused nor is he confusing. He has his strategy



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well in place. He knew he is liable to pay the rent. But he did not pay. And, he has a point. He states that the monthly rent payable was Rs.600/-. Earlier when the landlord refused to receive the rent, he moved the Rent Controller with R.C.O.P.No. 1204 of 1998 for depositing the rent under Sec.8 of the Act. He was absolutely on the track up to this point. But the Rent Controller confronted a claim of Rs.1,200/- as the rate of rent from the landlord, and he chose to reject the plea of both on the ground neither of them had proved the rent that was payable. And, from the tenant's stand point he lost his R.C.O.P 1204 of 1998. The tenant was instantly caught in a quandary and his predicament is understandable. Obviously, if he has stuck to his predicament and strategized his defence in projecting it in the ongoing round of litigation, the ratio in ***C.Chandramohan Vs Sengottaytaiyan*** [(2000) 1 SCC 451] would have come in handy for him, for nowhere the landlord has pleaded the rate of rent, the duration of default and the total arrears of rent due from the tenant. He also chose not to issue any statutory notice to aid him with a presumption of wilfulness of the default. This, if the tenant had resorted to, it might have created a strong probability that his current default in paying the rent might not be wilful, since his conduct may not be construed *as a conscious or a deliberate defiance along with an intention not to pay the rent*



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as has been held in the endless list of authorities on the point.

12. But, the tenant here has chosen to do something very different, something no tenant would ordinarily dare to venture: He pleaded that he has not paid the rent for more than twelve years because the landlord has not demanded rent for more than twelve years, and hence he has prescribed title to the demised premises by adverse possession. And, to cap it all he has even instituted a suit for a declaration of his prescriptive title after he lost his appeal before the Rent Control Appellate Authority.

13.1. It is one thing for the tenant to say that he did not know the rate of rent payable as an excuse to explain the default in paying the rent, and it is entirely another thing for him to declare that he need not pay the rent since he has perfected title by adverse possession since the landlord has not demanded rent for more than twelve years.

13.2. A tenancy under the Act is a statutory tenancy, and once a lease comes under the operational ambit of the statute, a tenant will remain always a tenant till the Act intervenes to end the tenancy in an eviction proceeding.



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14. Taking a break here, and if the submissions made in C.R.P.(NPD) No. 838 of 2021 is considered, the learned counsel focused more on the application of Sec.116 of the Evidence Act at the preliminary stage. Relying on the dictum in *S. Thangappan* case [(1999) 7 SCC 474], he argued that where the landlord loses title after the commencement of the lease, Sec.116 of the Evidence Act will not have any application. And, placing reliance on the ratio in *Sanapathi Sitaramaiah* case [(1937) 46 LW 848], he contended that where the landlord did not take possession of the property from the tenant for twelve years or more after the termination of tenancy, the tenant has every right to claim title in himself by adverse possession. This Court finds that neither of these propositions will be of any advantage to the tenant here. It is only where a superior title holder establishes his title to the leased property since the commencement of the lease can the tenant avoid the embargo in Sec.116 of the Evidence Act as in *S.Thangappan* case, but not otherwise. In *Sanapathi Sitharamiah* case [(1937) 46 LW 848], the facts indicate that after the due termination of lease the landlord had not taken possession of the property from the lessee for over twelve years. So far as the present case is concerned, no third party has intervened to establish a



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superior title to the property.

15. Reverting back to the present eviction proceedings, the facts of the case disclose that the tenant's default in paying the rent is not the result of his confusion over the rate of rent payable, but owing his strategy not to pay the rent because he has become the title holder of the very property of which he was inducted as the tenant. Mr.V.Ramakrishnan, learned Senior Counsel, however, would urge this Court to segregate the defence founded on wilful default and the one rooted in adverse possession and test them independently, but this Court is plainly against this. The tenant's strategy cannot be termed as involving alternate and inconsistent pleas but composite pleas. Consequently, his pleadings cannot be segregated for differential treatment by yielding to a casuistic differentiation.

16. Is then the tenant in wilful default in paying the rent? Yes. Not because he did not know the rate of rent payable, but because he has deliberately decided not to pay the rent since he claims ownership over the demised building. This Court would have appreciated if the tenant has required the Tribunal to indicate to him the rent he is liable to pay. To state it differently,



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he need not have even volunteered to pay what the Rent Control Appellate Authority has considered as admitted rent but offered his willingness to pay the rent. That would have in all probability cleansed him the sin of default in law. Alternatively, faced with an obligation to pay the rent and to seek the landlord to pay it, if the tenant was justly anxious to pay the rent he could have approached the Rent Controller to determine the fair rent payable under Sec.4 of the Act. Instead he busily displayed a mindset in proclaiming his intent not to pay the rent because he has become the owner of the building, and declaring that he has become the owner since the landlord has not demanded the rent for twelve years or more. This mindset is dominant in him and it is reflected not only in his defence in the eviction proceedings, but also in instituting a suit claiming title to the property. Given the visibility of his mindset, it is logical to infer that this tenant would not have paid the rent even if he had known the rate of rent payable, because according to him if the landlord did not demand any rent for twelve years, he would become the owner of the property, a plea not recognised in law and is plainly unavailable to him in law. For a mind that has decided to assert title in the demised property and has refused to pay the rent, its attempt to explain the default in paying the rent owing to lack of clarity in the rate of rent is but a well



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pretended excuse. What is the need for knowing the rate of rent and the duration of default for a mind that has set its eyes on the ownership over the property? If wilfulness of the default is a concept of mind, then this tenant fulfils the criterion required with utmost ease.

17. This now brings to the question of invoking Sec.10(2)(vii) of the Act. Denial of landlord's title was touched by the Rent Controller, considered by the Appellate Authority, but neither chose to invoke Sec.10(2)(vii), which authorises the Tribunal to order eviction of the tenant if it finds that the denial of landlord's title by the tenant is made without *bonafide*. Here the arguments heard are: (a) that the landlord should have amended his pleading to include that the denial of title by the tenant is not *bonafide*; (b) the Tribunal should have framed an issue; and (c) the tenant should have been given an opportunity to defend it.

18.1. It needs to be underscored that the jurisdiction of the Tribunal under the scheme of the Act in deciding the disputed title of landlord is limited. It can either enter a finding whether the denial of landlord's title by the tenant is bonafide or not. And, it indicates two consequences: If it finds that the denial



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of landlord's title is *bonafide*, it is required to refer the dispute to the Civil Court in terms of Proviso to Sec.10(1) of the Act; and if it finds that it is not *bonafide*, then eviction under Sec.10(2)(vii) would be the result. The statute has told the tenant beforehand that even as it protects him from arbitrary eviction, the tenant needs to tread carefully within the statutory lane if he is keen to enjoy the benefit it offers. It has informed him of the rules of the game and told him that if he were to deny the title of the landlord he must be careful not raise it if it is not likely to be *bonafide*, and has adequately cautioned him of the consequences awaiting him under Sec.10(2)(vii).

18.2. It needs to be emphasised that when the legislature chose to deal with leases relating to buildings within the territory where the Act is in force for a special treatment and carved out an exception to the application of Transfer of Property Act and barred the civil court jurisdiction, the same cannot be construed as if the legislature has switched over to a pampering mode to condone the faults of the tenant. The grounds of eviction that it has provided may be the visible part of the enactment which may give an impression that landlord's rights to evict the tenant are curtailed. But the invisible part and the less realised part of what is not expressly stated is how the tenant should



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conduct himself if he is keen not to invite the wrath of the statute. If so understood, it is possible to appreciate the sagacity of the legislature in visualising situations where a tenant might deny the title of the landlord, both *bonafide* and *malafide*. This is addressed in Sec.10(1) with a back up provision in Sec.10(2)(vii). While Sec.10(2)(vii) can provide independent cause of action for eviction, as stated earlier, it can also visit where the tenant's denial of landlord's title even in a proceedings before the Rent Controller. Sec.10(2)(vii) is a safety valve to prevent abuse of statutory protection by an over ambitious tenant such as the one now before this Court. This is amplified by the very choice of words employed by the legislature in Proviso to Sec.10(1) and those employed in Sec.10(2)(vii) would demonstrate it:

Proviso to Sec.10(1)	Sec.10(2)(vii)
<i>Provided further that <u>where the tenant denies the title of the landlord or claims right of permanent tenancy</u>, the Controller shall decide whether the denial or claim is <u>bona fide</u> and if he <u>records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil</u></i>	<i>That the tenant has <u>denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building</u> and if the Controller is</i>



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Proviso to Sec.10(1)	Sec.10(2)(vii)
<u>Court and</u> <i>the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.</i>	<i>not so satisfied, he shall make an order rejecting the application</i>

Is it not a fine art in balancing the *bonafide* and *malafide* denial of landlord's title by a statutory tenant?

18.3. This tenant amazes this Court, and keeps amazing this Court. First he leaped into a wilderness with a plea of adverse possession, and now he harps on amending the pleading, framing issues etc. What he missed is that the Code of Civil Procedure has limited application in a proceedings under the Act, and that the nature of enquiry contemplated under the Act is summary in character. So amending the pleading and framing issue are not considered mandatory within the scheme of the Act. What is required is that the rule of fairness should not be ignored, which implies that the tenant should be put on notice about facts that would impair his prospects in the litigation. It is hence when the Tribunal finds that the denial of landlord's title is *bonafide*,



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the statute does not require the Tribunal to decide the issue, but directs him to refer the dispute to the civil Court.

19.1. This now brings into consideration if the dictum in ***J.J.Lal*** case mandates that the Court can invoke only if the landlord has pleaded denial of title by the tenant as a specific ground for eviction? In ***J.J. Lal*** case, the building in question belonged to the Municipal Corporation, and the Corporation had leased out to the landlord and term of this appears to have expired. When faced with a proceeding for eviction instituted by the landlord under Sec.10(2)(i) as in the present case, the tenant came out with a plea that there is certain uncertainty about the rate of rent payable (as in the present case) but still offered to pay the rent that was paid (contrary to this case). While so, the Municipal Corporation which owned the building issued a notice on the tenant whereinafter the tenant filed a supplementary counter statement touching on the issue of ownership of the building etc., and disputed the maintainability of the eviction proceeding. And, the tenant was successful both before the Rent Controller and the Appellate Authority on the principal allegation of wilful default in paying the rent. And when the matter reached this Court in revision, this Court for the first time read the facts



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raised in the additional counter as a denial of title, and passed an order of eviction. This is the setting in which the Hon'ble Supreme Court has held that if at all the landlord intended to consider that the tenant has denied his title without bonafides, he ought to have amended his petition and invoked Sec.10(2)(vii) as a specific ground of eviction. Here it is apposite to extract paragraph 17 of the **J.J. Lal** case and it reads:

“17. A plea taken by the defendant in written statement can itself be made a ground for allowing relief to the plaintiff subject to well known limitations. The plea taken in the written statement should by itself be enough as furnishing a ground for relief to the plaintiff; the plea taken by the defendant does not stand in need of any further pleadings being joined by the party; an issue is framed and put to trial unless the facts of the case show that the parties actually went to trial fully alive to the real issue between them and had opportunity of adducing evidence, that is, to put it in other words, the parties know that the plea taken in the written statement too was subject matter of trial and could form basis for relief to the plaintiff. In such case, though the pleadings may be lacking or there may be failure to frame an issue or a specific issue, the applicability of the law laid down by this Court in Nagubai Ammal & Ors. Vs. B. Shama Rao & Ors., (1956) SCR 451 would be attracted.”

19.2. The aforesaid dictum of the Hon'ble Supreme Court came to be considered by this Court in **V. Ramadoss & another Vs Udayakumar** [2002



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(5) CTC 541], and the Court held:

“8.in the case on hand, not only the landlord but also the tenants were conscious of the fact of denial of title of the landlord and adduced evidence on either side in support of their respective stand. Only after filing of the petition on the ground of wilful default and for demolition and reconstruction, in defence the tenants in order to avoid the above two grounds have projected the case by denying the title of the landlord to the premises.

9.even though there are no pleadings in the petition as to the denial of title by the tenant, if the landlord establishes either by way of subsequent pleadings as in that case in the affidavit filed in support of the interim applications or in the course of the evidence that the tenant has denied the title, the same could be a ground for eviction.” (emphasis supplied)

19.3 A judgement is a precedent for what it actually decides. If the facts narration in ***J.J. Lal case is read***, it only highlights that the tenant doubted the maintainability of the eviction petition only after the owner of the building had issued some notice. In the present case the tenant has left no stone unturned when he grabbed every opportunity he had and also created for himself to proclaim his ownership over the property, which as said earlier,



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is not available to him in law. What is the need for amending the pleading and framing the issues when the tenant knew or at least ought to have known what he is pleading?

20. The tenant having set the ground for eviction under Sec.10(2)(vii), this Court is only required to complete the formalities. He has taken every pains to ensure that he is evicted not just under Sec.10(2)(i) but also under Sec.10(2)(vii) of the Act. That will be duly done.

21. Turning to C.R.P.(NPD) No.838 of 2021, this Court has already dealt with the same particularly in paragraph 14 above. The only other question remains is whether the concerned civil Court should have registered the plaint and should have waited for the Landlord to enter appearance and to invoke Order VII Rule 11 CPC. Reliance was placed on the judgement of this Court in **Selvaraj** case [2021-3-L.W.677]. Even in that decision, this Court has referred to the dictum of the Hon'ble Supreme Court in **Madiraju Venkata Ramana Raju Vs Peddireddigari Ramachandra Reddy** [(2018) 14 SCC 1] wherein the Hon'ble Supreme Court has held that plaint could be rejected even prior to its registration as a suit. Here is a case where the tenant



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had claimed title by adverse possession when law says once a tenant is always a tenant, and obviously it does not disclose any cause of action for the suit. To entertain a suit such as this would be a gross abuse of judicial process. Therefore, this Court finds no merit in the submissions made in aid of C.R.P.(NPD) No.838 of 2021.

PART-II

C.R.P.(NPD) No. 3514 of 2019:

22.1. The name of the tenant is Desikan. The earlier proceedings that he had instituted under Sec.8 of the Act seeking the leave of the Tribunal to deposit rent is RCOP.No.1205 of 1998. There he asserted the rent payable is Rs.600/- pm and the same landlord claimed Rs.1,200/-. And it met the same fate as the Tribunal dismissed the tenant's petition due to his inability to prove the rate of rent he asserted. There was a huge silence on both sides for 12 years or more and the landlord laid RCOP No.548 of 2014 for eviction on two grounds: (a) of wilful default under Sec.10(2)(i) and (b) for non-user under Sec.10(2)(vi) of the Act. The tenant resisted the eviction on the template plea of adverse possession and claimed title to the demised building by prescription. Like J.R.Chandran, he also laid O.S.No.2489 of 2013 for a



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decree of injunction against forcible eviction. However, in this suit he was directed to pay the admitted arrears of rent in I.A.No.6806 of 2013 for grant of interim injunction. This application was dismissed for non-compliance and it resulted in C.M.A.No.108 of 2012. This tenant however, is wise enough not to file any separate suit for declaration of his title on adverse possession and just stopped with pleading adverse possession in his counter statement. And he also did not choose to depose orally.

22.2. The line of argument advanced was identical to what was argued by the counsel of J.R. Chandran. Therefore, this Court does not consider it necessary to deal with it in detail, since what applies to J.R.Chandran should necessarily must apply to this tenant as well. This necessarily mean that the tenant in this case also invites upon himself an order of eviction under Sec.10(2)(i) and Sec.10(2)(vii) of the Act.

23. In fine, this Court does not find any merit in any of the revision petitions and dismisses them all with costs and the orders of the appellate Tribunal dated 11.07.2019 made in R.C.A.No.649 of 2018 and R.C.A.No.660 of 2018 are confirmed, and the tenants in both the case are granted three months time



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from today to deliver vacant possession of the property.

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10.11.2022

Index: Yes/No

Internet: Yes

ds/abr



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To

- 1.The I-Assistant City Civil Court,
Chennai.
- 2.The VIII Court of Small Causes,
Chennai.
- 3.The XIII Judge,
Court of Small Causes, Chennai /
Rent Control Authority.
- 4.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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N.SESHASAYEE, J.

ds

Pre-delivery Common Order in
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10.11.2022