



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-03-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 217 of 2025

AND

CMP NO. 6318 OF 2025

Balusamy (Died)
Chinnammal (Died)
Anthonyraj

Appellant

Vs

S. Kannappan (Died)
K. Victoria (Died)
1. K. Kotti
2.K. Kottiammal
3.K. Kottirajan
4.K. Sekar
5.K. Vivekanandan
6.R. Vittabai @ Lakshmi
7.R. Kavitha
8.R. Vinothkumar

Respondent



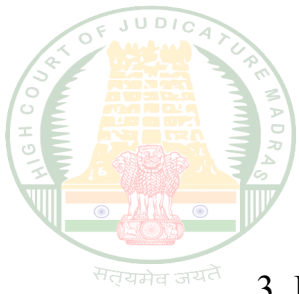
PRAYER : Second Appeal filed under Sec.100 of Code of Civil Procedure, praying to set aside the the judgement and decree passed by the Subordinate Judge at Thiruvottriyur passed in A.S. No.32 of 2022 dated 30.08.2024 confirming Judgement and Decree passed by the District Munsif at Thiruvottriyur, passed in OS No.78 of 2001 dated 28.09.2018 confirming by allowing this appeal.

For Appellant: Mr. G.S.Prabu

JUDGMENT

The appellant, who is the legal heir of 1st defendant in the suit in O.S.No.78 of 2001, challenging the concurrent findings of the courts below rendered in A.S.No. 32 of 2022 by the Subordinate Judge, Thiruvottriyur arising out of trial court findings rendered in O.S.No.78 of 2001 by the District Munsif, Thiruvottriyur, had preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.



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3. Before the trial court, original plaintiff S.Kannappan filed a suit against the 1st defendant Balusamy directing to quit and deliver vacant possession of property bearing Door No.70/1 situated at Sannadhi Street, Kaladipet, No.28, Sathankadu Village, Thiruvottiyur Municipality in R.S.No. 169/1A in O.S.No.78 of 2001. During the pendency of proceedings, original plaintiff Kannappan as well as original defendant Balusamy died. The respective legal heirs of plaintiff and defendant are added and they are contesting the present Second Appeal. The 3rd defendant/appellant herein is son of original 1st defendant Balusamy and his mother/2nd defendant was already died. According to original plaintiff, original 1st defendant Balusamy was the tenant under him in respect of land measuring an extent of 30' x 30' as described in plaint schedule for the monthly rent of Rs.5/- and he is in arrears of rent from 01.03.1979. Moreover, in view of limitation, the plaintiffs restricted their claim only from 01.07.1976 to 30.06.1979 for a period of 36 months. Furthermore, the suit property was already earmarked for the purpose of theatre under the master plan of Madras Metropolitan Development Authority. By terminating the tenancy, the



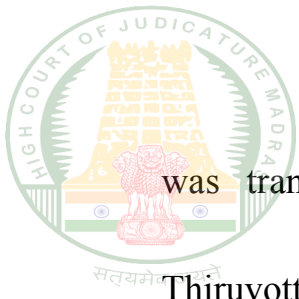
plaintiff issued a notice on 29.11.1978 and it was duly served on him on

02.12.1978. The copy of notice was also sent to the Commissioner, Thirvottiyur

Municipality. As the Rent Control Act does not apply to this village, he had filed a suit for ejection.

4. The 3rd defendant contested the suit by filing written statement stating that his father, 1st defendant was the tenant of the site mentioned in the schedule on a monthly rent of Rs.5/- and the original 1st defendant put up a superstructure and enjoyed the site as tenant. As the provisions of Tamil Nadu City Tenants Protection Act would apply, they are entitled to benefits under the said Act and they are ready and willing to purchase the site as per the provision of law and also ready and willing to pay rent. However, the plaintiff not given any reply and notice of termination also not valid as per the provision of Tamil Nadu City Tenants Protection Act, but, the defendants put up superstructure by spending huge amount. On suppressing the material facts, they have come forward with the suit for recovery and delivery of possession.

5. Both parties have adduced their oral and documentary evidence before the trial court, however, before the trial court, on jurisdictional aspect, the case



was transferred to various courts and finally tried by District Munsif, Thiruvottiyur in O.S.No.78 of 2001, but the original case was filed in the year

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1979 before the District Munsif Court, Poonamallee. The learned trial judge had framed the issues. The foremost issue is “whether the plaintiff is entitled for recovery of possession? Considering the evidence on record, the trial judge held that the defendants were tenants under the plaintiffs for the vacant site and they have committed default in payment of rent from 01.07.1976 to 30.06.1979. For the period of 36 months, there is arrears of rent and by issuing notice on 21.11.1978 the tenancy was terminated as per the provision prescribed under Sec. 106 of Transfer of Property Act. In spite of notice, the defendant not paid the arrears nor delivered the vacant possession. According to the defendants, as they have put up superstructure, they are entitled to purchase the property under Sec.9 of City Tenants Protection Act. But, they have filed the said application under Sec. 9 of City Tenants Protection Act with defect and it was represented with the delay of 8458 days and the same was dismissed on 15.11.2016. Against which, no appeal was preferred. So, as on date, the defendants have not proceeded with Sec.9 of City Tenants Protection Act, thereby they are not



entitled to take such a defence. Indeed, the tenancy was already terminated.

Therefore, the plaintiffs are entitled for recovery of possession of a vacant site

along with arrears of rent as claimed. Hence, the suit was decreed as prayed for.

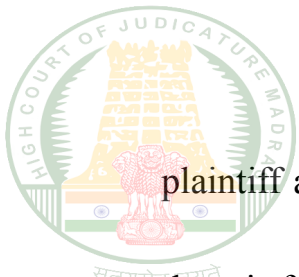
6. Challenging the said findings, the defendants have preferred an Appeal Suit in A.S.No. 32 of 2022. Before the first appellate court, the 3rd defendant contended that the trial court failed to determine the compensation to be paid to the tenant in respect of superstructure put up by him and also prayed to direct the landlord to pay the compensation by setting aside the decree of ejectment passed by the trial court by relying the proposition laid down by the Apex Court in the case of ***P.Ananthakrishnan Nair and another vs. Dr.G.Ramakrishnan and another*** reported in ***1987 SCC (2) 429***. However, there is a submission on the side of respondent/plaintiff that for a vacant site let out by the deceased 1st defendant, the monthly rent was fixed at Rs.5/-, but he failed to pay the rent from 01.07.1976. Hence, notice was issued during November 1978 terminating the tenancy by giving three months time to vacate and hand over the vacant possession, for which the defendant refused. Hence, the suit was filed in O.S.No.962 of 1979 before the District Munsif Court, Poonamallee. If at all, the



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defendant/tenant wanted to purchase the property, by invoking Sec.9 of Tamil Nadu City Tenants Protection Act, he has to file an application within 30 days from the date of receipt of summons, but the case in hand he has not filed any such application immediately. With the condonation of delay of 8458 days, he filed an application in the year 2007 with defect and the same was represented, but the said Sec.5 application was dismissed in the year 2016 due to non-appearance of defendant, thereby the tenant not complied the provision of law properly nor they have filed any application seeking compensation for the superstructure before the trial court. That apart, he constructed a building without the approval of competent authority. Therefore, the appellant/defendant not entitled to challenge the findings of trial court and the objection for non-passing of compensation as such is unsustainable one. Accordingly, the Appeal Suit was dismissed by confirming the findings of trial judge. Challenging the said findings, now the defendant preferred this Second Appeal.

7. The learned counsel for appellant would argue that both the courts below failed to appreciate pleadings and evidence adduced on the side of appellant in proper perspective and erroneously granted the relief in favour of



plaintiff as such is illegal and liable to be set aside. He would also submit that

there is following substantial question of law evolved for consideration :-

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“(a) Whether the courts below at error in founding out the ownership that the plaintiff are owners of the vacant land alone, they let out it for rent of vacant land only, on the other hand, the building was built by the defendants only, and they hold the ownership of the building?

(b) Whether the plaintiffs has right to enjoy the building, which built and owned by the defendants, without paying compensation for the same to the defendants?

(c) Whether the trial court has power to pass eviction order against the appellants, who was a tenant, who build a building without granting compensation under Sec.4 and 5 of the Madras City Tenants Protection Act?

(d) Whether the first appellate court had not committed grave error in upholding the trial court's judgment without considering to grant compensation under Sec. 4 and 5 of the Madras City Tenants Protection Act?

8. Heard and considered submissions of learned counsel for appellant and perused the materials available on record.



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9. On considering the facts and circumstances of case as well as legal proposition submitted before the trial court, the original plaintiff viz., Kannappan filed a suit for ejection against the original 1st defendant Balusamy in the year 1979 stating that the vacant land 30' x 30' of the suit property was given tenancy to him for the monthly rent of Rs.5/-, but they have committed default from 1976 onwards. Therefore, he issued a notice terminating tenancy in the year 1978 and filed a suit in the year 1979 to deliver vacant possession of suit property by the tenant/defendant. Due to jurisdictional issue, the case was transferred and finally it was decided by the trial court in the year of 2018 in O.S.No. 78 of 2001. In the meanwhile, the original plaintiff and defendant died and their legal heirs have contested the suit. Son of original defendant viz., Balusamy filed written statement, wherein he admits that for the vacant land, his father entered into tenancy with original plaintiff Kannappan for the monthly rent of Rs.5/-. Thereafter, his father put up superstructure in the suit property and under Sec.6 of City Tenants Protection Act, they are entitled to purchase the site and they are also ready and willing to purchase the case. But, invoking



Sec.9 of City Tenants Protection Act, within 30 days from the date of tenancy,

they ought to have filed such application, but the case in hand nearly about

delay of 8458 days and the same was dismissed. Against which, no appeal was

preferred. Therefore, the tenant is not entitled to get any benefit under Sec.9 of

City Tenants Protection Act, which needs no interference. However, the

tenant/defendant contended that superstructure was put up by his father, hence,

the plaintiff ought to pay compensation. According to plaintiff/landlord, without

the consent and without valid permission of competent authority, the

superstructure was put up by 3rd defendant's father Balusamy. Furthermore,

there is no claim of compensation in the written statement filed by the appellant

before the trial court and not taken any steps to fix the compensation to be

awarded to him. At the time of tenancy, the tenant only put up a hut and

subsequently, due to default in payment of rent in the year 1979, suit was filed.

In the meanwhile, in the year 1979, tenant put up a tiled house without getting

consent of landlord nor without getting permission from the competent

authority. So, he had put up unauthorised construction and the tenancy also

terminated by issuing notice. Therefore, the courts below rightly held that the



tenant is not entitled to the benefit prescribed under the Tamil Nadu City

Tenants Protection Act as he committed default in payment of rent nor he

claimed compensation. So also, the construction is unauthorised one. Therefore,

without pleading and without any materials to ascertain the quantum of

compensation for superstructure, the courts below rightly held that

appellant/defendant is not entitled for the compensation, which needs no

interference. Proper notice was sent to the defendant for terminating tenancy by

the plaintiff by giving three months time and the copy of notice was also sent to

Commissioner, Thiruvottiyur Municipality as required under law. Therefore, by

applying all the provision of law, the plaintiff rightly approached the court of

law within six months and the courts below also rightly granted the relief and

there is no question of law involved. By removing the superstructure, the

appellant/defendant is directed to hand over vacant possession of land to the

landlord/plaintiff within a period of three months from the date of receipt of

copy of this judgment, failing which, the respondent/plaintiff is entitled to take

possession of property through execution proceedings. If any execution petition

is filed by the respondent/plaintiff, the executing court is directed to take the



petition on file and dispose the same within a period of three months for the reason that the original suit was filed in the year of 1979 and for nearly 50 years, the case is pending and the original landlord is not able to get back his property due to discomfort caused by the defendants. Accordingly, this Second Appeal is dismissed as no merit and the findings rendered by the court below is confirmed. Suit is decreed as prayed for. Time to hand over vacant possession three months. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20-03-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. Sub-Court, Thiruvottriyur.
2. District Munsif, Thiruvottriyur.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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