



CRP. No.466 of 2025

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on: 25.09.2025

Pronounced on:10.10.2025

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THE Hon'ble MR.JUSTICE P.B.BALAJI

**CRP. No.466 of 2025
and CMP. No.2783 of 2025**

Mr.Hothiram

Petitioner

Vs

Mr.Purshotam Mohta

Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 12.11.2024

made in RLTA No.79 of 2023 on the file of 4th Additional Court, City Civil Court, Chennai confirming the order and decree dated 03.01.2023

made in RLTOP. No.115 of 2022 on the file of the 10th Court, Small Causes Court, Chennai.

For Petitioner : Mr.A.Babu for
Mr.A.C.Kumaragurubaran
For Respondent : Mr.G.RM.Palaniappan

ORDER

The petitioner is the tenant who has suffered concurrent orders of eviction before the Rent Court as well as the Rent Tribunal.



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2. I have heard Mr.A.Babu for Mr.A.C.Kumaragurubaran, learned counsel for the petitioner and Mr.G.RM.Palaniappan, learned counsel for the respondent.

3. Mr.A.Babu, learned counsel for the petitioner would state that both the Rent Court as well as the Rent Tribunal have committed a serious error in holding that the Act would apply to the case in question. According to Mr.Babu, learned counsel for the revision petitioner, the possession of the revision petitioner, is in the nature of Othi, akin to a Usufructuary Mortgage. Inviting my attention to the agreement dated 01.04.2013, the Counsel would state that an interest free deposit of Rs.6,50,000/- has been paid by the petitioner to the brother of the respondent, one Sanjaykumar R. Mohta and in consideration of such payment, the petitioner was permitted to occupy the entire third floor portion of the premises bearing New. No.21, Old No.25, Chandrappa Mudali Street, Sowcarpet, Chennai -600 079, for residential purposes, without any liability to pay rent, in lieu of the interest free deposit of Rs.6,50,000/- having been paid.

4. The learned counsel would further state that the agreement was to remain in force for a period of four years and was also renewable by



mutual consent of the parties on fresh terms and conditions. It is therefore, the contention of Mr.Babu that firstly the petitioner/respondent could not have invoked the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (Act 42 of 2017) (in short 'TNRRLT Act, 2017'), and secondly, in any event, he would state that right from day one, the petitioner has clearly informed the respondent that if the interest free deposit of Rs.6,50,000/- is refunded, the petitioner is willing to vacate. He would also take me through the correspondence between the parties in this regard. He would place reliance on the decision of this Court in *Chandrajothi and others vs. Radhakrishnan*, dated 31.08.2018 in CRP. (PD) MD. No.1331 of 2016 to point out that the nature of transaction in the instant case cannot be characterised as a lease.

5. Per contra, Mr.G.RM.Palaniappan, learned counsel appearing for the respondent/landlord would state that the respondent has approached the Rent Court only on the ground that there has been a failure to enter into a tenancy agreement in terms of Section 4(2) of the Act and that as there has been no tenancy agreement entered into even after commencement of the Act, within the time prescribed, the respondent is entitled to seek recovery of possession of the tenanted premises from the



petitioner.

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6. As regards the contention of Mr.A.Babu, learned counsel for the petitioner regarding the refund of Rs.6,50,000/-, he would contend that the said amount was paid to the brother of the respondent and the respondent has to work out his remedy by filing a civil suit as against the respondent's brother and cannot call upon the respondent to refund the said money. He would therefore state the Rent Court as well as the Rent Tribunal have rightly appreciated the facts and circumstances and ordered eviction and the said order does not warrant interference in revision.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. Firstly, it is to be decided as to whether, the transaction between the parties in the instant case, would qualify to be a tenancy or a lease in respect of which proceedings for recovery of possession can be initiated under TNRRRLT Act, 2017. It is contended by Mr.A.Babu, learned counsel for the petitioner that an Othi or Usufructuary Mortgage is different from lease and only if the transaction is in the nature of lease, the provisions of the TNRRRLT Act, would apply. I am unable to

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countenance the said submission for the following reasons:-

(i) The very agreement that has been entered into between the parties, admittedly reads as a “Lease Agreement”. The property belonging to the respondent is under the occupation of the petitioner for residential purposes. The agreement itself clearly stipulates that in lieu of payment of rent, the petitioner has paid a lumpsum one time interest free refundable advance of Rs.6,50,000/-. Therefore, there is a premium that has been fixed as consideration for lease.

(ii) Section 2(f) of the Act defines “premises” as any building or part of a building that is, or is intended to be let separately for purpose of residence after commercial, except premises registered under the Factories Act.

(iii) The transaction in question between the petitioner and the respondent clearly amounts to a lease/tenancy and the nomenclature of the agreement also reads only as a lease agreement. The purpose of lease is for residential purposes and the parties have consciously covenanted that in lieu of the huge one time interest free advance paid by the petitioner, the petitioner is absolved of liability to pay monthly rents. Merely because, the petitioner is not required to pay any rent and he is in occupation of the premises, in consideration of the one time payment of an interest free security deposit of Rs.6,50,000/-, it does not take the



premises outside the purview of the TNRRRLT Act.

(iv) The transaction of this nature, where there is separate letting of a building for residential purposes, would clearly fall within the definition of premises and the provisions of the TNRRRLT Act, 2017 will certainly apply to such a transaction as well.

9. The plea taken by the petitioner/tenant is that he is in possession of the premises under transaction which can only be styled as Othi or Usufructuary Mortgage and not a lease agreement. The characteristics of Othi or Usufructuary Mortgage are entirely different from a lease transaction. In an Othi or a Usufructuary Mortgage, the mortgagor delivers possession under the Othi or Mortgage deed, binding himself to deliver possession of the mortgaged property to the mortgagee, entitling the mortgagee to receive rents and profits and set off the same, as against the loan or borrowing.

10. In fact, this Court in *Pitchi and Ors Vs. Parameswaran Pillai and Others* reported in, 2022 (4) CTC 436 discussed the nature of transaction styled as Othi and also distinguished the same from a Usufructuary Mortgage and held that Othi is an anomalous possessory mortgage and the mortgagor, unlike in a Usufructuary Mortgage is personally liable for the amount, which is subject matter of the mortgage



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in the case of Othi. Testing Ex.P1 document, in the light of the characteristics of Othi, it is clear that the parties have understood the document only as lease agreement. The recitals also clearly indicate that the petitioner need not pay rent since, he has paid a refundable interest free security deposit. Therefore, I am unable to countenance the submissions of Mr.A.Babu, learned counsel for the petitioner that the transaction between the petitioner and the respondent's brother was only in the nature of Othi or a type of mortgage and not a lease agreement.

11. Insofar as reliance being placed on the decision in *Chandra Jothi's* (referred herein supra), though it was a case arising Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 (Act 18 of 1960), since repealed, pending the said proceedings, the tenant sought to mark a document under which a sum of Rs.5,00,000/- had been paid as premium, in lieu of payment of rents and the tenant had been allowed to occupy the premises. This Court found that the agreement in question had all characteristics of an Othi and it requires registration. However, this Court held that the said document can be looked into for collateral purposes, even though it is not registered and permitted the document to be received, subject to payment of stamp duty and penalty in terms of Section 35 of the Indian Stamp Act, 1899. This Court did not deal with



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the issue as to whether the transaction of this nature would be amenable to the provisions of the Rent Act. Therefore, I do not see how this decision would come to the rescue of the revision petitioner/tenant.

12. As I have already found that the terms of the agreement, leave alone nomenclature, all clearly point to the fact that a tenancy has been created by virtue of such agreement, the provisions of the TNRRRLT Act, 2017 would certainly apply to the facts of the case and the arguments of Mr.Babu, learned counsel for the petitioner in this regard cannot be countenanced.

13. Admittedly, on the date of coming into force of the TNRRRLT Act, 2017, there was no subsisting tenancy agreement and the parties have also not entered into a tenancy agreement as contemplated under Section 4 of the Act, within the time period of 575 days. The respondent sought eviction under Section 21(2)(a) of the Act and the Rent Court as well as the Rent Tribunal have rightly found that the document in question was only a lease agreement and not a Usufructuary Mortgage.

14. The Courts also proceeded to render finding that there has been a failure to enter into tenancy agreement in terms of Section 4(2) of the

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Act and eviction was ordered by the Rent Court and the same has also been confirmed by the Rent Tribunal. I do not see any grounds warranting interference with the well considered orders of the Rent Court as well as Rent Tribunal.

15. However, as regards the refund of the amount of Rs.6,50,000/-, I am unable to countenance the submissions of Mr.G.RM.Palaniappan that the petitioner has to seek refund from the respondent's brother to whom the said amount was paid. Admittedly, the property has been settled in favour of the respondent herein by his brother who received the sum of Rs.6,50,000/- as an interest free deposit/advance from the revision petitioner. Therefore, all rights and liabilities attached to the property would consequently fall and rest on the shoulders of the respondent and he cannot shrug off his liability, by contending that he is not liable to repay the said advance amount of Rs.6,50,000/- and that it has to be recovered from his brother.

16. Section 24 of TNRRRLT Act, which deals with the aspect of refund of advance by the landlord. In terms of Section 24(1), a landlord is liable to refund any payment in advance from the tenant. He shall refund the same to the tenant after deducting the rent and other charges



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due to the landlord, before recovery of possession. Therefore, in view of the clear stipulation and mandate of Section 24 of the Act, the respondent is entitled to recovery of possession, only if he returns the advance amount. Therefore, the respondent has to refund the sum of Rs.6,50,000/-, before becoming entitled to recover possession from the petitioner.

17. In view of the above, though I do not find any infirmity or perversity in the order of the Rent Court, confirmed by the Rent Tribunal. Considering the fact that the respondent is liable to refund the said sum of Rs.6,50,000/- which is an interest free advance lying with him, it is made clear that across the petitioner vacating and handing over the vacant possession, the sum of Rs.6,50,000/- shall be refunded by the respondent.

18. It is made clear that the respondent shall indicate their readiness to refund a sum of Rs.6,50,000/- by issuing a written communication atleast 30 days in advance, to the learned counsel for the petitioner, mentioning the date on which, the payment would be made. Accordingly, the petitioner shall make arrangements to vacate and handover the vacant possession on the said date receiving the sum of Rs.6,50,000/- in full and final settlement.



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19. With the above direction, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

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Index : Yes

Internet : Yes

To:

1. The Judge,
IV Additional Court,
City Civil Court, Chennai.



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P.B.BALAJI, J.,

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2.The Judge,
X Court, Small Causes Court, Chennai.

Pre-delivery order in
CRP. No.466 of 2025
and CMP. No.2783 of 2025

10.10.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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1. Hothiram
S/o.Balaji, No.42 Hanumantharayan
Koil Street, 2nd Floor, Chennai -
600 003. also at New No.21, Old
No.25, 3rd Floor, Chandrappa
Mudali Street, Chennai - 600 079.

Petitioner(s)

Vs

1. Purushotam Mohta
S/o.Late Sri Raw Ratanji Mohta,
No.21 Old No.25, Chandrappa
Mudali Street, Sowcarpet, Chennai -
79.

Respondent(s)

For Petitioner(s): Mr.A.C.Kumaragurubaran

For Respondent(s): Mr.GR.M.Palanippan

ORDER

Today, this matter is listed under the caption 'for being mentioned'.

2.The petitioner seeks extension by further one month and



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undertakes to vacate by 05.01.2026, without seeking any further extension of time.

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3.In furtherance of the directions of this Court, the amount of Rs.6,50,000/- has already been made available and is ready to be released to the petitioner, across the petitioner vacating and handing over vacant possession.

4.The request for extension of time is opposed by Mr.GR.M.Palaniappan, learned counsel for the respondent, stating that the respondent has already taken a demand draft for the said sum of Rs.6,50,000/- and as directed by this Court, (30) days notice cum intimation has already been served on the revision petitioner.

5.Considering the above, I am inclined to grant time to the petitioner to vacate and handover possession by 05.01.2026 subject to the petitioner paying Rs.20,000/- towards charges for use and occupation and in view of the same, the respondent shall make a payment of Rs.6,30,000/- instead of Rs.6,50,000/- across the petitioner handing over vacant possession to the respondent on or before 05.01.2026. It goes without saying that the petitioner is liable to pay electricity charges, until the date he vacates and handover the possession.



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To,

- 1.The IV Additional Judge, Chennai.
- 2.The Judge, X Court, Small Causes Court, Chennai.



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P.B.BALAJI J.
smv

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