



CRP.Nos.646, 647 & 649 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 10.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.Nos.646, 647 and 649 of 2024
and CMP.Nos.27009, 3236, 3246, 3250, 26781 and 26782 of 2024

V.Hithayathulla

... Petitioner in all CRPs

Versus

N.Ganasekaran (Deceased)

1.N.Seit

2.G.Mulliammal

3.G.Kumar

4.N.G.Sugumar

5.G.Sivakumar

6.G.Jayakumar

7.G.Murugan

8.G.Sathish Kumar

9.G.Vinothkumar

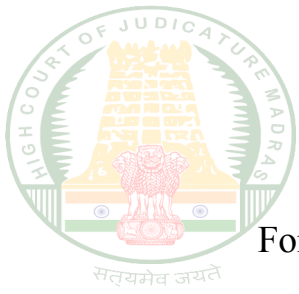
10.G.Karthi

... Respondents in CRP.No.646 of 2024

N.Seit

... Respondent in CRP.Nos.647 & 649 of 2024

Common Prayer: Petitions filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to set aside the judgment and decree dated 21.09.2023 in RCA.Nos.11,9 & 10 of 2001 on the file of Chief Judicial Magistrate, Thiruvarur/Sub Court, Thiruvarur confirming the judgment and decree dated 16.07.2001 in RCOP.Nos.9,8 & 21 of 1997 on the file of Rent Controller/District Munsif, Tiruvarur pending disposal of the above revisions.



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For petitioner : Mr.B.Ramamoorthy

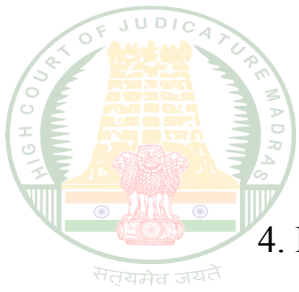
For Respondents : Mr.A.Muthukumar for R1 in CRP.No.646 of 2024
Mr.A.Muthukumar in CRP.No.647 & 649 of 2024

COMMON ORDER

These revisions have been filed challenging the orders of eviction passed by the Courts below as against the revision petitioner.

2. RCOP.No.8 of 1997 has been filed by the respondent/landlord against the revision petitioner for eviction on the ground of wilful default, RCOP.No.21 of 1997 has been filed by the respondent/landlord for eviction on the ground of demolition and reconstruction and RCOP.No.9 of 1997 has been filed by the revision petitioner/tenant to deposit the rent into the Court.

3. Since the issue relates to the very same premises in the RCOPs, these revisions are heard together and disposed of by way of this common order. The petitioner and the respondent are common in all the revisions. The petitioner is the tenant and the respondent is the landlord. For the sake of convenience, the parties are referred to as tenant and the landlord.



4. Brief background of the cases are as follows:

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4.a.The case of landlord is that the shop bearing Nos.B11 to B13 in Thailamai Theatre Complex was let out to the tenant on a oral tenancy on a monthly rent of Rs.1000/-. During the year 1995, the rent was enhanced to Rs.4500/-. The respondent paid a sum of Rs.13,5000/- through his employee Balasubramaniam towards monthly rent for the months of April, May and June and receipt was also issued by the landlord. However, from the month of July, the respondent sent only a sum of Rs.2000/- through cheque, the landlord returned the cheque with a letter. Thereafter, from July 1995 till March 1997, the tenant has not paid the rent and the tenant was due for Rs.94500/-. Therefore, RCOP.No.8 of 1997 was filed on the ground of wilful default.

4.b.RCOP.No.21 of 1997 was filed by the landlord for demolition and reconstruction on the ground that while extending the road by the Municipality major portion occupied by the tenant is also demolished by the Municipality. Therefore, the petitioner intends to demolish the shop. The tenant took a stand that the property originally belonged to the landlord, his father Natesan Chettiar and his brother Gnanasekaran, he came as a tenant in the year 1981, at that time,



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Rs.350/- per month was the rent and he had paid an advance of Rs.20,000/- as advance. Later, the rent was periodically increased and in the year 1997, the rent collected was Rs.1000/-, receipts were issued in the name of Natesan Chettiar and Sons. Further, advance of Rs.1 lakh is also paid by the tenant in the year 1990. Till August 1995, the tenant has paid through cheque, as the rent have been refused by the landlord, the respondent has deposited the same in a separate account, besides, he also filed an application in RCOP.No.9 of 1997. According to the tenant, he has not committed any wilful default. It is further contention that during the encroachment drive by the Municipality, small portion of the property was damaged, the same has been set right and the building is in good condition.

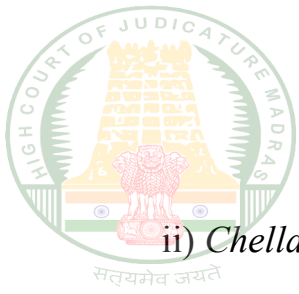
4.c. RCOP.No.9 of 1997 was filed by the tenant to deposit the rent in the Court. According to the tenant, originally building is let out by the respondent's landlord, respondent and his brother. After the death of the respondent's father, the tenant is not aware of the partition effected in their family and he is also not aware of the fact that the petitioner is entitled to receive the rent. The petitioner's brother is also died and his legal heirs are also entitled to receive the rent. Therefore, since, there was a doubt as to who is entitled to receive the rent, he has deposited



the rent in a separate account. He also sent a legal notice dated 15.04.1997 calling upon the landlord to name a bank for depositing the rent, however, there was no reply. That application has been disputed by the landlord. The Trial Court by orders dated 16.07.2001 allowed the petition on the ground of wilful default as well as demolition and reconstruction and dismissed the application filed by the tenant to deposit the rent. The Appellate Court also confirmed the said orders. Challenging the same, these revisions are filed.

5. The main contention of the learned counsel for the revision petitioner/tenant that appellate Court failed to take note of the subsequent development, wherein, subject premises was sold by the legal heirs of Gnanasekaran/brother of the landlord. In fact, suit filed by the revision petitioner in O.S.No.229 of 2000 for specific performance is already decreed in his favour. Pursuant to the decree, the sale deed is also registered. At this stage, the landlord cannot seek for eviction of the tenant, since, tenant has become an owner of the premises. Hence, seeks for allowing these revisions. In support of his submissions he placed reliance on the following judgments:

i) *Abdul Rahim vs. Jothi and others* reported in 2016 (3) CTC 671

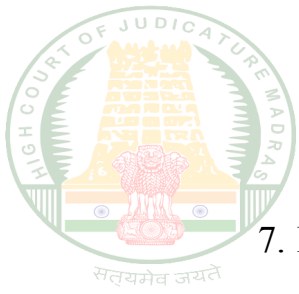


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ii) *Chellakannu vs. Kolanji* reported in 2005 (4) CTC 197

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6. Whereas, learned counsel for the respondent landlord would submit that the so-called unregistered agreement has been created only for the purpose of thwarting the execution proceedings. Though agreement dated 13.01.1998 said to have been executed by legal heirs of one of brother of the landlord, even before the RCOP proceedings, upto 2001, this agreement has not seen the light of the day, only for the first time, in the Appellate Court, the revision petitioner sought to file additional documents which has been rejected by the Appellate Court and later confirmed by this Court in CRP.Nos.754 to 757 of 2006 by order dated 24.08.2003 holding that the tenant has never pleaded the above facts even before filing the RCAs in 2001 and he has filed application for additional documents after five years which clearly shows that the revision petitioner filed the applications only in order to protract the rent control appeals. While dismissing the revisions, this Court directed the first appellate court to dispose of the appeal within a period of 15 days from the date of receipt of a copy of that order.



7. In any event, according to the learned counsel for the respondent that the

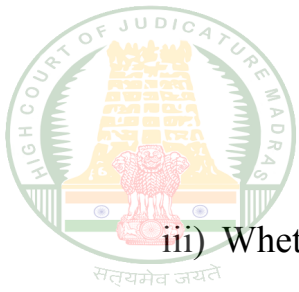
judgment and decree of the Trial Court relied upon by tenant is a *exparte* decree which contains no reasons whatsoever, same can be set aside in a collateral proceedings. Having admitted the landlord and tenancy relationship, now, he cannot take a different stand. Hence, opposed the revisions. In support of his submissions, he placed reliance on the following judgments:

- i) *Asma Lateef and another vs. Shabbir Ahmad and others* reported in (2024) 1 MLJ 563 (SC)
- ii) *J.Savithri and another vs. Selvaraj and others* reported in (2023) 6 MLJ 70

8. Heard both sides and perused the materials placed on record.

9. In light of the above submissions, now the following points arises for consideration:

- i) Is it permissible for the tenant to deny the title of the landlord when having admitted the relationship?
- ii) Whether *exparte* decree obtained during the pendency of the RCOP proceedings without any reasons can be interfered in a collateral proceedings?



iii) Whether the orders passed by the Rent Controller as well as the Appellate

WEB COURT is based on merits?

Point No.i

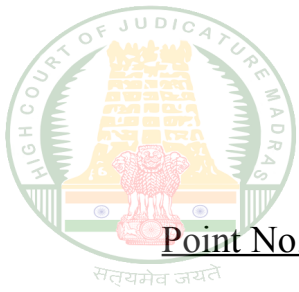
10. The contention of the revision petitioner that he has entered into an unregistered agreement for sale with the legal heirs of one Gnanasekaran/brother of the landlord on 13.01.1998. It is relevant to note that all along in the rent control proceedings from the year 1997 and when examined in RCOP.No.8 of 1997 on 13.02.2001, even in his evidence, he has not disclosed about the so-called unregistered agreement dated 13.01.1998 and the suit filed by him for a specific performance in O.S.No.229 of 2000 and exparte decree obtained thereon. Though he claims to have obtained an exparte decree on 25.09.2000, in his oral evidence, on 13.02.2001, he has not whispered anything about the decree and judgment. Whereas he admitted in his evidence that he has never received any objections from the legal heirs of Gnanasekaran in paying the rent to the landlord, i.e., respondent in the revision petitions. Even after the disposal of the rent control proceedings and thereafter the appeal proceedings in RCA.Nos.9 to 11 of 2001, he has not disclosed anything about the subsequent events. Whereas, for the first



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time, the tenant filed application that too after five years in the year 2006 seeking to file subsequent documents executed in his favour. Such application was dismissed by the appellate authority which has been confirmed by this Court in CRP.Nos.754 to 757 of 2006.

11. In CRP.Nos.754 to 757 of 2006, this Court, by Order dated 24.08.2023 has clearly recorded the finding that the tenant has never pleaded such facts before the rent controller. Even at the time of filing the rent control appeals in the year 2001, the tenant did not file applications immediately and filed applications only in the year 2006(un-numbered) after 5 years which clearly shows that the tenant filed those applications in order to protract the rent control appeals. Be that as it may, the very conduct of the tenant remaining silent for more than 5 years and disclosing the above facts to the appellate authority after five years about the so-called unregistered agreement and exparte decree itself indicate that those documents are only sham and nominal only to protract the proceedings.

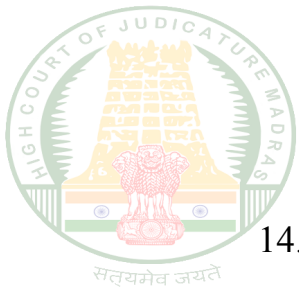


Point No.ii

WEB COPY 12. It is relevant to note that the suit for specific performance was filed on 04.09.2000. The very next hearing, the suit was decreed exparte, i.e., on 25.09.2000 within a period of 20 days. The Exparte decree reads as follows:-

Defendant set exparte. The plaintiff examined as P.W.1. Exs.A1 to A3 marked. Claim proved. Suit is decreed as prayed for. Time for execution – two months.

13. The above judgment makes it clear that it is not a judgment in the eye of law, particularly, when the suit for specific performance is filed, the Trial Court ought to have seen the basic requirements, genuineness of agreement, readiness and willingness, further there must be reasons and decisions thereon. When the unreasoned judgment is contrary to the provisions under Order XX of CPC, such judgment is not a judgment in the eye of law. When the judgment of the Court does not comply with the requirements under Order XX Rule 4 and 5 of CPC, even if the defendant remains exparte, it is the duty of the Court to give reasons for its judgment. The Court has duty to analyse the pleadings and evidence and reasons must be given in the judgment.



WEB SCOPES

14. In *K.P.Natarajan and another vs. Muthalamman* reported in 2021 15 SCC 817, the Hon'ble Apex Court has held that if in collateral proceedings, it comes to the notice of the High Court that the judgment is contrary to law, the High Court under Article 227 of the Constitution of India is empowered to set aside such a decree. Similar, view is also taken by this Court in CRP(PD).Nos.3689, 3707 & 3709 of 2019, vide order dated 22.09.2023, wherein, this Court has held that High Court sitting under Article 227 of the Constitution of India can take into consideration such a judgment, even in a collateral proceedings and set aside the same. The Full Bench of the Hon'ble Supreme Court in the case of *Asma Lateef and another vs. Shabbir Ahmad and others* reported in (2024) 1 MLJ 563 (SC) has held as follows:

42. *There is one other reason which we wish to assign as a ground for upholding the order of the executing court and the High Court.*

43. *Reference may once again be made to Balram Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] where the law has been reiterated succinctly, as follows : (SCC pp. 414-15, paras 41-46)*

“41. There is yet another infirmity in the case which relates to the “judgment” passed by the Single Judge and upheld by the Division Bench.

42. “Judgment” as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment



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“shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision”.

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

43. ***

44. ***

45. *The learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that “the points for determination” as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.*

46. *... Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2)CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say “suit decreed” or “suit dismissed”. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained.”*

(emphasis supplied)

We concur with the observation that a judgment, as envisaged in Section 2(9)CPC, should contain the process of reasoning by



which the court arrived at its conclusion to resolve the controversy and consequently to decree the suit.

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47. It is one of the cardinal principles of the justice delivery system that any verdict of a competent judicial forum in the form of a judgment/order, that determines the rights and liabilities of the parties to the proceedings, must inform the parties what is the outcome and why one party has succeeded and not the other — the “why” constituting the reasons and “what” the conclusion. Apart from anything else, insistence of the requirement for the reason(s) to support the conclusion guarantees application of mind by the adjudicator to the materials before it as well as provides an avenue to the unsuccessful party to test the reasons before a higher court.

50. The decree signed by the trial court on 11-11-1991 is not on record. Nevertheless, at the cost of repetition, we record that examination of the order dated 5-8-1991 does not reveal any adjudication leading to determination of the rights of the parties in relation to any of the matters in controversy in the suit and, therefore, the decree since drawn up is not a formal expression of an adjudication/determination since there has been no adjudication/determination so as to conform to the requirements of a decree within the meaning of Section 2(2). In this regard, we express our concurrence with both the High Court and the executing court that there is no decree at all in the eye of the law.

51. We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eye of the law and execution thereof, if sought for, would be open to objection in an application under Section 47CPC. "

15. Therefore, having obtained exparte decree within a period of 20 days of filing a suit and all along remaining silent till 2006 and for the first time filing an



application to adduce evidence before the appellate Court, the conduct of the party

WEB clearly indicate that the so-called unregistered agreement is only a creation for the purpose of stalling the execution proceedings. Considering the well settled position of law, exparte decree obtained in the case is non est and cannot be given any importance.

Point No.iii

16. As far as the merits is concerned, though it is the stand of the tenant that he was paying rent upto 1995, on facts, the Courts below had clearly found that from the year 1990 rents have been paid only to the landlord and having paid the rent of Rs.13500/- for three months, thereafter, he has conveniently sent a cheque of Rs.2000/- which was returned and thereafter the amount was not paid. As there was no bonafide dispute between the brothers as to who has to receive the rent, rent has not been properly deposited as per law. That apart, the Courts below also found that the building is dilapidated and portion of the building is already damaged during road expansion. In fact, tenant has also admitted in his evidence that portion has been damaged, further, it is the only contention that portion has been repired and he is in occupation. The condition of the building is also clearly



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spoken and established. Therefore, when the person is adopting dilatory tactics in withholding rents, he cannot raise dispute as if there was a bonafide dispute between the brothers as to who has to receive the rent. In fact, it is a categorical admission before the Courts below that none objected for payment of rents and the rents have been paid to the landlord from the year 1990. The Rent Controller factually recorded that tenant has not disclosed in his evidence that there is an objection raised by the legal heirs of Gnanasekaran. Further, factual finding is recorded to the effect from October 1995, tenant has failed to pay amount and his contention that he has paid advance is also rejected on appreciation of evidence.

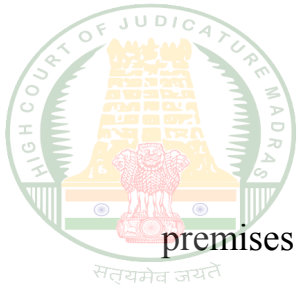
17. As far as the demolition aspect is concerned, the rent controller factually recorded the fact that the Commissioner has noted down the physical feature that portion of the shops have been demolished about one feet, premises in the western side about 4 feet, eastern side about one feet have been demolished. Commissioner also examined before the Rent Controller. The landlord has also obtained a plan for construction and he also given undertaking to demolish the building as required under law. Taking note of the fact that the landlord proved his case and requires the building bonafidely, the Trial Court allowed the application. While



dismissing the application filed by the tenant to deposit of rent, the learned Rent Controller has recorded the finding that the application has been filed only to protract the proceedings. Further, in his evidence, in RCOP.No.8 of 1997, it is clearly admitted that there was no objection raised by other legal heirs and the revision petitioner was continuously paying the rent from 1990 to the landlord. Therefore, as there was no dispute arose in receiving the rent, as a matter of right, the petitioner cannot file an application to deposit before the Court. That application has been filed only to thwart the proceedings. Therefore, this Court is of the view that both the Courts below have rightly held that tenant is liable to be evicted and the application filed for deposit of rent is not bonafide one.

18. All along the tenant had taken a stand to the effect that the landlord and his brother have equal shares and he is not aware of any partition between them, even such stand remains to be true, he cannot claim title for the entire property based on the such exparte decree.

19. On the other hand, as per the registered famly arrangement dated 22.11.1999 entered between the landlord and the legal heirs of his brother, the



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premises is already allotted to the landlord. This document is also filed as Ex.P3 in RCOP.No.21 of 1995. Despite the production of such document in the year 1999, tenant remaining silent about the unregistered agreement and exparte decree till 2006 indicate that it is nothing but a sham and nominal agreement and the exparte decree is not valid in the eye of law. Therefore, now the tenant cannot resist the order of eviction.

20. Accordingly, these revisions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

10.01.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The Chief Judicial Magistrate/Sub-Judge
Tiruvarur

2.The Rent Controller/District Munsif
Tiruvarur

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