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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025

PRONOUNCED ON : 10.06.2025

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.1081 of 2025

1.T.H.Shakeel Ahmed Khan
2.T.H.Shafeeq Ahmed Khan
3.T.H.Shahid Ahmed Khan
4.T.H.Shameel Ahmed Khan ... Petitioners

Vs.

1.A.Shahul Hameed.

G.Balasubramaniam (Deceased)

2.B.Sivasankari

3.B.Manoj

4.B. Manju ... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the Hon'ble XI Assistant City Civil Court, Chennai to strike off the plaint in OS.No.995 of 2019.

For Petitioner : M/s.V.G.Suresh Kumar

For Respondent : M/s.M.N.Kathir for R.1

: R.2 to R.4 not ready in notice.

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O R D E R

The above Civil Revision Petition is filed to strike off the plaint in OS.No. 995 of 2019, on the file of the XI Assistant City Civil Court, Chennai. The defendants 2 to 5 are the revision petitioners before this Court.

2. Before proceeding to discuss the grounds on which the petitioners/defendants 2 to 5 have filed the above Civil Revision Petition, it would be necessary to briefly extract the pleadings in the above suit and the other proceedings that had taken place in the suit. The parties are refereed to in the same ranking as before the Trial Court.

Plaintiff's Case:-

3. The plaintiff had filed the above suit for bare injunction. The suit was originally filed only against one G.Balasubramaniam (1st defendant). Thereafter, defendants 2 to 5 were impleaded, and on the death of G.Balasubramaniam, his legal representatives were brought on record as defendants 6 to 8.

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4. It is the case of the plaintiff that he had entered into tenancy under the 1st defendant in respect of the two shops portions in the ground floor of the suit premises. The plaintiff and the 1st defendant had entered into two lease deeds dated 12.07.2018 and 10.09.2018. The lease was for a period of 10 years. The plaintiff would contend that he had paid a sum of Rs.5,00,000/- for each of the lease deeds and the agreement was that the interest payable on the amounts would be adjusted towards the monthly rent. The plaintiff was bound to pay the actual consumption charges for electricity. The plaintiff is using one portion of the suit premises as an Electronic shop and the other as a Tiffin shop.

5. It is his further contention that from February 2019 onwards, the 1st defendant had been coming with unknown persons, demanding and threatening the plaintiff to hand over vacant possession of the property. On 14.02.2019, the plaintiff had lodged a complaint with the F2 Police Station, Egmore against the 1st defendant. However, the police had refused to register the case and directed the plaintiff to seek

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appropriate remedy before the concerned Civil Court as the issue involved is civil in nature.

6. The plaintiff would submit that he is a statutory tenant and is being evicted otherwise than by due process of law. Therefore, he has filed the above suit.

Defendant's Case:-

7. The 1st defendant had filed a written statement stating that the suit property does not belong to him on the contrary, he is himself a tenant under late T.N. Habib Khan and his legal heirs and there are already legal proceedings pending between him and the landlord, in RCOP No.1107 of 2007. The 1st defendant would submit that he has never leased out the suit property to the plaintiff. He had only borrowed a sum of Rs.5,00,000/- from the plaintiff and he was made to sign blank cheques as well as bond papers which have now been used to create the lease deeds. He would submit that the plaintiff has never been in possession of the suit property and is attempting to use the proceedings to enter possession.

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8. Meanwhile, defendants 2 to 5 have been impleaded as parties to the proceedings and they had filed a written statement inter alia contending that the suit is filed on the basis of two unregistered lease deeds which are for a period of 10 years. They would contend that these documents cannot be looked into as they are unregistered and therefore do not confer any legal right to the plaintiff.

9. They would submit that after the death of the 1st defendant a compromise was entered into between the defendants 2 to 5 and defendants 6 to 8, legal representatives of the deceased 1st defendant and a fresh tenancy agreement was entered into between them in and by which the two portions which are the subject matter of the suit had been surrendered at the time of entering into the fresh tenancy agreement and the agreement was entered into only with reference to the remaining portion of the property which was originally given on rent to the 1st defendant. Therefore, it is their contention that the suit property is no longer the subject matter of tenancy between these defendants and defendants 6 to 8. They would further contend, that the

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documents which have been produced by the plaintiff have been tampered with and are fabricated documents. That apart, the plaintiff is not in possession of the suit property. They would deny the various allegations contained in the plaint and seek for a dismissal of the suit in question.

Application for ad-interim injunction:-

10. Thereafter, the plaintiff had filed I.A.No.1 of 2019 for a bare injunction against the defendants 1 to 5. By order dated 09.03.2020, the learned XI Assistant Judge City Civil Court, Chennai was pleased to grant the interim injunction as prayed for. The order was taken up on appeal to the VII Additional Judge, City Civil Court, Chennai, in CMA. No.9 of 2022 and the learned Additional Judge dismissed the appeal and confirmed the order passed by the Trial Court. This order was thereafter challenged in CRP(NPD).No.3122 of 2022 on the file of this court. By order dated 25.04.2024, this Court was pleased to allow the Civil Revision Petition. The learned Judge while allowing the Revision Petition had observed that the order under appeal appears to be a non-speaking, cryptic and laconic one. The learned judge had

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observed that the Courts below have not taken note of the fact that the plaintiff has come to court on the basis of tampered documents and further despite noting that the lease agreement between the plaintiff and the 1st defendant had not been filed into Court has however granted injunction on the basis that the defendants had admitted possession. However, in the counter filed by defendants 2 to 5, there is no such admission. On these basis, the injunction granted by the trial Court was set aside.

Application for striking of the plaint:-

11. Thereafter, it is seen that defendants 2 to 5 have filed I.A.No.6 of 2022, on the file of the XI Assistant Judge, City Civil Court, Chennai, seeking to strike off the plaint in OS.No.995 of 2019. This application was dismissed by an order dated 10.08.2024, as against which, there was no further revision filed by the defendants. Parties had thereafter gone to trial and the plaintiff had examined himself as PW.1 and marked Ex.A1 to Ex.A4. It is thereafter that defendants 2 to 5 have come forward to file this Civil Revision Petition to strike off the plaint.

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12. The main grounds on which this application has been filed are :-

i. The lease deeds, which are for a period of 10 years, are unregistered.

ii. The alleged lease deed was executed by a lessee (the 1st defendant) and therefore, the lease is only a sub-lease which is not authorized.

iii. The lease deed dated 10.09.2018 is a fabricated document.

iv. The First Information Report dated 20.07.2019 is also a fabricated one.

Besides these main grounds, the defendants 2 to 5 have also raised other grounds.

Submissions:-

13. Mr.V.G.Suresh Kumar, learned counsel appearing on behalf of the revision petitioners/defendants 2 to 5 would submit that the suit has been filed on the strength of two lease deeds, both of which are for a period of 10 years and are unregistered. He would submit that the

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plaintiff had admitted to the period of lease in para 3 of the plaint. The 1st defendant under whom the plaintiff claims tenancy has in his written statement stated that the suit property is not his property and he is only a tenant under one late T.N.Habib Khan. The 1st defendant had denied entering into any lease deed with the plaintiff and it is his case that he has only borrowed a sum of Rs.5,00,000/- from the plaintiff. Therefore, the learned counsel would submit that the person under whom the plaintiff staked a claim had denied the document and the tenancy.

14. He would further submit that this Court in its order in CRP(NPD) No.3122 of 2022 has clearly observed that the plaintiff has not established the existence of a landlord - tenant relationship between him and the 1st defendant. He would submit that no doubt the defendants had filed IA No.6 of 2022, for the very same relief and the same had been dismissed. However, the present revision is filed after the documents had been filed into Court by the plaintiff and on scrutinizing these documents, the defendants have come to know about the fraud that has been committed by the plaintiff. Ex.A4, lease

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deed dated 12.07.2018 which is marked on the side of the plaintiff is an unregistered document. The lease is for a period of 10 years, from 12.07.2018 till 11.07.2028. The document therefore is compulsory registrable under Section 17 of the Registration Act and the non-registration cannot be cured by impounding the document and paying penalty as the document cannot be received in evidence. The lease deed dated 10.09.2018, which has been impounded by the plaintiff would clearly demonstrate the fabrication on the part of the plaintiff. The lease deed is dated 10.09.2018 but however, the notary public who has witnessed the signatures has signed it on 27.07.2018 nearly two months prior to its execution. Here again, the lease is for a period of 10 years and is an unregistered document.

15. The learned counsel would also draw the attention of this Court that even the FIR which has been marked as Ex.A3 has been tampered with by the plaintiff. Ex.A3 which is dated 20.07.2018, would show the date of the occurrence of the offence as 18.03.2019. However, the original FIR dated 20.07.2019 certified copy of which the defendants 2 to 5 had obtained would show the date of occurrence

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as 18.07.2019. Therefore, he would submit that the plaintiff who had come to court with unclean hands and that too in a suit for injunction, cannot continue the same and the plaint deserves to be struck off.

16. In support of his arguments, that an unregistered document cannot be admitted in evidence and cannot be relied upon to claim any right, he had relied on the following judgments:-

i. ***(2008) 8 SCC 564 - K.B. Saha and Sons Pvt. Ltd Vs. Development Consultant Ltd.***

ii. ***ILR -2015 Kar - 2335 - Smt. Krishnakumari Vs. Sri K.Suresh Kumar***

*iii.****2016 - LW - 834 - S.Thirumalai Vs. S.Govindarajan (Died) and Others***

iv. ***2019- SCC Online Mad -3049- B.Kalan Vs. Rucki and Others.***

*v.****2019 SCC Online Mad - 16669 - Kothandapani and Another Vs. Veeravalli and Others.***

vi. ***(2020) - 4 - SCC - 60 - Food Corporation of India and Another Vs. V.K.Traders and Another.***

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He would therefore, pray that in the light of the above the plaint has to be struck off.

17. Per contra, Mr. M.N. Kathir, learned counsel appearing on behalf of the 1st respondent/plaintiff would submit that the defendants 2 to 5 had previously filed a similar application before the Trial Court, which was dismissed and have now filed a similar petition before this Court. Therefore, this Revision Petition is hit by res judicata.

18. The learned counsel would further submit that in rent control proceedings, a landlord need not necessarily be the owner of the property. He would submit that the 1st defendant has not denied his signatures in the two lease deeds. If really the documents had not been executed by him, he would have clearly and categorically taken out a stand that the release deed is a forged document. His defence is that he is not the owner of the suit property but himself a lessee, and therefore, he could not have entered into a lease agreement with the plaintiff. Therefore, the learned counsel for the 1st respondent would submit that this is an issue which has to be decided during the trial and

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after the documents are sent for comparing the signature of the 1st defendant in the two lease deeds with other admitted signatures. He would further submit that the trial has already commenced in the present proceedings and if at this stage, the plaint is struck off, it would result in grave prejudice to the plaintiff. Therefore, he would seek for the dismissal of the Civil Revision Petition.

Discussion:-

19. This Application to strike off the plaint has been filed after a similar application that was filed before the learned XI Assistant Judge, City Civil Court, Chennai has been dismissed and after trial had commenced in the above suit. Therefore, the preliminary objection raised by the plaintiff is that this Revision Petition is hit by res judicata since the earlier order of dismissal has not been challenged. In fact, even in the ground of revision, the Revision Petitioners/defendants 2 to 5 have not touched upon this aspect.

20. This revision has been filed on the ground that after the documents had been filed, the fraud committed by the plaintiff has

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come to light and therefore the defendants 2 to 5 have come forward to invoke the jurisdiction of this Court under Article 227 of the Constitution of India to reject the plaint. It is the contention of the defendants 2 to 5 that not only has fraud been played upon the Court but the plaintiff has also abused the process of Court to secure an unfair advantage. The plaintiff would claim a right as a lessee to the suit property on the basis of two lease deeds, one dated 12.07.2018 and, the other dated 10.09.2018. Both the documents are unregistered though the period of lease is prescribed for 10 years. Section 17(d) of the Registration Act makes it mandatory for all lease of immovable property for over a period of a year to be registered. Section 49 of the Registration Act would further stipulate that no document, which is required to be registered under Section 17 of the Registration Act shall be received in evidence unless it is registered. The only exception being an unregistered document effecting an immovable property in a suit for specific performance. Further, in this regard, the judicial pronouncement clearly holds that an unregistered document cannot be admitted in evidence and cannot be relied on to claim any right.

21. In the judgment of the Hon'ble Supreme Court reported in

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(2008) 8 SCC 564 - K.B. Saha and Sons Pvt. Ltd Vs. Development Consultant Ltd., the learned judges were considering an unregistered tenancy agreement styled as a memorandum of lease agreement. This lease agreement was for an indeterminate period and the lease was terminable on the issue of a notice. It was argued that the said memorandum of lease agreement cannot be looked into as it is an unregistered document. The learned Judges after discussing various judgments with reference to the cause and effect of a compulsorily registrable instrument not having been registered, had laid down the following principles:-

> *"1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.*
>
> *2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.*
>
> *3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*

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4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

They ultimately held that since the release deed was an unregistered one, the same could not be looked into.

22. This judgment was followed by me in the judgment reported in ***2019 SCC Online Mad - 16669 - Kothandapani and Another Vs. Veeravalli and Others,*** wherein it has been held as follows:-

"That apart, the document is sought to be marked to prove the main object namely, the severance and allotment of the shares and possession of the various

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sharers, this being the primary purpose the same cannot be permitted to be marked as it requires to be compulsorily registered and proper Stamp Duty to be affixed. In the Judgment reported in 2019 (1) LW 555, this Court has clearly held that Section 35 of the Indian Stamp Act, 1899 places a fetter on the admissibility of an instrument chargeable with duty in evidence for any purpose including a collateral purpose unless the first proviso thereto is followed. Section 35 of Indian Stamp Act should be read conjointly with Section 49 of the Registration Act, 1908, where the proviso to Section 49 states that an unregistered document affecting immovable property which is required to be compulsorily registered can be received in evidence for proving a collateral transaction which need not to be effected by a registered instrument."

23. In another judgment of the Hon'ble Supreme Court reported in ***(2020) - 4 - SCC - 60 - Food Corporation of India and Another***

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Vs. V.K.Traders and Another, the learned Judges had held as follows:-

> *"11. We are of the considered opinion, that no reliance can be placed upon the lease deeds allegedly executed between the defaulting rice miller(s) and the respondent(s), as they do not satisfy the statutory requirements of Section 17(1)(d) of the Registration Act, 1908. These Lease deeds thus cannot be accepted as evidence of valid transfer of possessory rights."*

24. Therefore, in the instant case, the two documents which forms the basis for filing the suit relates to a lease for a period of 10 years which are compulsorily registrable and which have not been registered. The documents, even if, impounded and the penalty paid, cannot be received in evidence as there is a clear fetter placed under Section 17 read with Section 49 of the Registration Act.

25. Further, a perusal of Ex.A4 lease deed dated 12.07.2018,

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would show that the document is for a period of 10 years and therefore, compulsorily registrable under Section 17(1)(d) of the Registration Act. A copy of the lease deed dated 10.09.2018 has been filed by the learned counsel for the defendants 2 to 5. A mere perusal of this deed would clearly show that it had been fabricated for the purpose of this case. Though the lease deed is dated 10.09.2018 and the presumption is that the parties to the proceedings have signed the document on the said date, the notary who had witnessed the signature of the parties to the document has affixed his signature on 27.07.2018, nearly two months prior to the execution of the lease deed. Therefore, it is clear that the plaintiff has filed the suit on the basis of a forged document. That apart, only a color xerox of the lease deed dated 10.09.2018 has been filed. Despite directions to produce the original lease deed by orders of the Court dated 26.7.2023, the same has not been produced. The lease deed dated 12.07.2018 has been impounded and a stamp duty penalty of a sum of Rs.54,980/- has been imposed. This document in the light of the judgment referred supra cannot be looked into even after the payment of the stamp duty penalty since the documents are registrable one and have not been registered. Therefore,

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the suit based on these two documents has to necessarily fail. These documents and its shortcomings have been examined by defendants 2 to 5 only after the trial had commenced and when the documents have been produced in evidence. They have immediately come forward with this Revision and therefore the argument that the order in IA.No.1 of 2019 would act as res judicata cannot be countenanced.

26. That apart, the plaintiff had also manipulated the First Information Report dated 20.07.2019. The web copy of the FIR obtained by the defendants 2 to 5 would clearly show the date of the occurrence of the offence as 18.03.2019. However, in the document which has been filed by the plaintiff in the Court as Ex.A3, the date of occurrence has been changed to 18.03.2019, which is yet another manipulation of the records.

27. The suit is one for a bare injunction and it has been time and again stated that the plaintiff who comes to court seeking injunction should come to court with clean hands and a person who comes to court with a false case and with the aid of false and fraudulent

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documents should be thrown out at the threshold. The plaintiff has not only manipulated the lease agreement dated 10.09.2018 but has also manipulated the First Information Report dated 20.07.2019.

28. In the judgment of this court reported in ***1997 (III) CTC - 567 - Renuka Devi Vs. D Manoharan,*** the learned judge has observed as follows: -

> *"8. Both the Courts have on materials found that the plaintiff has come with a fraudulent documents, as if executed by the petitioner. He occupied the building on that basis and he had the courage enough to move the trial Court to get an order of injunction. Though it is vacated, he continues to be in possession. Under our system, possession has great weight, and if that is allowed to stand, on the basis of a fraudulent document, the loss or the injustice can never be compensated. In such cases, I do not think that the petitioner must be asked to file a suit and get possession, as contended by the counsel for the*

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respondent. That will amount to granting a premium on the fraud."

29. The learned judge had further observed as follows in paragraph no.18:-

> *"18. Here, it is a case of fraud, and the person had taken advantage of his own fraud. When these facts are brought to the notice of the Court, can such a person be allowed to remain in possession with immunity and take advantage of his own fraud? if the Court refuses to act on that grievance, it only means, that it abdicates its duty, and it also perpetuates the fraud and injustice."*

30. In the judgment reported in ***1999 (I) CTC - 600, Ramiah Asari Vs. Tmt. Kurshand Begaum and another,*** the learned judge had observed that where the court is satisfied that there is no chance of the plaintiff succeeding then the Court should not be allowed to continue the vexatious litigation. The learned judge has observed as follows:-

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"Taking into consideration above decision. I feel it is a fit case where the said power should be invoked. On going by the averments of plaint, I am satisfied that there is no chance of plaintiff succeeding in the suit and the claim is made only for collateral purpose or it is only a spurious claim. It is of frivolous nature and to prevent the time of public and court being wasted, suit should not be allowed to be proceeded with. Improper use of machinery of court also should not be allowed to be continued for the continued prosecution of this vexatious litigation. Interest of Justice being paramount consideration, I feel it is the fit case that the plaint is to be struck off the file."

31. It is also seen that in the order passed in CRP.No.3122 of 2022 (filed by defendants 2 to 5 to set aside the injunction order granted by the Trial Court in IA.No.1 of 2019 in OS.No.995 of 2019), the learned Judge has clearly observed that the plaintiff has not proved possession and therefore, the interim injunction granted by the Courts

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below was set aside.

32. Therefore, in the light of the above discussion, the fact that an application for striking off the plaint has been moved after trial may not stand in the way of the Court to strike off the plaint especially when fraud and tampering of documents have been established before this Court.

33. In fine, the above Civil Revision Petition is allowed and the plaint in OS.No.995 of 2019 is struck off. No costs.

10.06.2025

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

To

1.The _XI Assistant City Civil Court, Chennai

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P.T. ASHA. J.,

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