IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2025

PRONOUNCED ON : 12.11.2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 294 of 2021

The Assistant Commissioner
Commercial Tax Office,
4, Ananda Nagar, 1st Street,
By-pass Road, Ambur. ... Appellant

Vs.

R. Jeeva ...Respondent

PRAYER : Appeal Suit filed under Section 96 r/w order XLI Rule 1 of Act V of 1908 to set aside the judgment and decree dated 02.03.2020 in O.S.No.9 of 2018 on the file of III Additional District Judge, Vellore @ Thirupattur and allow the appeal with cost.

For Appellant : Mr.M.Murali
Government Advocate

For Respondent: Mr.S.Srinivasa Narayanan

JUDGMENT

Heard.

2. This appeal challenges the judgment and decree dated 02.03.2020 of the learned III Additional District Judge, Vellore @ Tirupathur, in O.S. No. 9 of 2018.

3. The plaintiff's case, in brief, is that she owns the premises bearing Door No. 4, Ananda Nagar 1st Street, By-Pass Road, Ambur, Vellore District. The defendant, a department of the State Government, was permitted to occupy the premises with effect from 03.02.2014 for official purposes. At the time of occupation, the plaintiff stated that the monthly rent would be Rs. 40,000/- or the rate to be fixed by the Public Works Department (PWD), whichever was lower. The PWD thereafter fixed the rent at Rs. 28,370/- per month. By letter dated 25.01.2016, the plaintiff demanded arrears of rent of Rs. 6,52,510/- for the period ending December 2015.

4. By letter dated 03.02.2016, the defendant, referring to G.O. Ms. No. 480 dated 26.11.2015, unilaterally fixed the rent at Rs. 16,370/- per month and enclosed a demand draft for Rs. 3,09,861/- towards arrears. The plaintiff

declined consent and, by letter dated 05.05.2016, reaffirmed that the rent payable was Rs. 28,370/- per month. Thereafter, by legal notice dated 18.02.2017, the plaintiff terminated the oral licence and demanded vacant possession and arrears. The defendant, by reply dated 31.03.2017, denied the allegations. Consequently, the suit was filed for recovery of possession, arrears of rent of Rs. 4,49,539/- with interest, and damages of Rs. 5,00,000/- for unauthorised occupation.

5. Written statement in brief: The defendant contends that the suit is not maintainable for non-compliance with Section 80 CPC, no statutory notice having been issued to the Government or the competent authority, and that the plaintiff also failed to obtain leave under Section 80(2) CPC. It is further pleaded that the plaint is improperly valued and that the Government of Tamil Nadu, being the actual tenant, is a necessary party. The defendant denies liability for the rent claimed and asserts that the rent fixed under G.O. Ms. No. 480 dated 26.11.2015 is binding.

6. The trial court decreed the suit in the plaintiff's favour for arrears of

rent and possession, dismissing the claim for damages; however, it neither framed nor addressed an issue regarding the absence of notice under Section 80 CPC.

7. Upon consideration of the pleadings, the evidence on record, and the grounds urged in appeal, the following points arise for determination:

1. Whether the suit filed without notice under Section 80 CPC is maintainable?
2. Whether the suit is bad for non-joinder of the Government of Tamil Nadu as a necessary party under Order XXVII Rule 5-A CPC?
3. Whether the rent fixed by the PWD is binding on the defendant or the rent fixed under G.O. Ms. No. 480 applies?
4. Whether the judgment and decree of the trial court are liable to be set aside?

8. Points 1 and 2: These are pure questions of law that go to the root of the suit's maintainability. The defendant, being an Assistant Commissioner (Sales Tax), is a "public officer" within the meaning of Section 2(17)(g) CPC. The transaction with the plaintiff was undertaken in his official capacity to secure office accommodation for the Department. Accordingly, the suit is, in substance, one against the Government for acts done by its officer in an official capacity.

9. Section 80(1) CPC stipulates that no suit shall be instituted against the Government or a public officer in respect of any act done in an official capacity unless two months' prior notice has been served on the Government or the concerned officer. Admittedly, no such notice was issued, nor was leave under Section 80(2) CPC obtained. The requirement is mandatory and not a mere procedural formality.

10. In ***Odisha State Financial Corporation v. Vigyan Chemical Industries***, reported in **[2025 SCC OnLine SC — decided on 05.08.2025],** the Hon'ble Supreme Court held (para 44*):*

> "We have already held that the mandatory requirement under Section 80 CPC was not complied with… On that ground alone, the suit against the appellant was not maintainable and there was a clear bar on the jurisdiction of the trial court… The initiation of the suit against the appellant is illegal and a nullity, and hence, cannot be enforced.*"*

11. Similarly, in ***Gangappa Gurupadappa Gugwad Vs. Rachawwa,*** reported in **AIR 1971 SC 442,** (paragraph10), the Supreme Court held that

where non-compliance with Section 80 CPC is apparent on the face of the plaint, the court must reject the plaint at the threshold, the defect being fatal and not curable.

12. Applying the foregoing principles, the suit—having been instituted without the statutory notice and without obtaining leave under Section 80(2) CPC—is barred by Section 80 CPC and is, therefore, not maintainable.

13. Further, under Order XXVII Rule 5-A CPC, where a suit is instituted against a public officer for an act done in his official capacity, the appropriate Government must be impleaded. In the present case, the State of Tamil Nadu has not been made a party. This non-compliance is fatal and renders the suit defective for non-joinder of a necessary party.

14. The respondents contend that the notice dated 18.02.2017 (Ex.A20), though addressed only to the sole defendant, ought to be treated as a notice under Section 80 CPC. They rely on ***Y. Savarimuthu v. State of Tamil Nadu and others,*** reported in **(2019) 13 SCC 142**, where the Supreme Court held that a communication expressly asserting that premature termination of the contract before the extended period was invalid and

warning that, failing compliance, legal proceedings would be initiated against the State, satisfied the Section 80 CPC notice requirement on those facts.

15. In the present case, however, Ex.A20 contains no clear or specific intimation of an intention to institute legal proceedings or any notice of proposed action against the State. Further, Section 80(1)(c) CPC requires the plaint to aver that such notice was duly delivered or left at the concerned office, an averment conspicuously absent here. The attempt to treat Ex.A20 as a statutory notice under Section 80 CPC is thus an afterthought and cannot be accepted.

16. Even assuming, arguendo, that Ex.A20 qualifies as a notice under Section 80 CPC, the suit is nonetheless vitiated by the non-joinder of the State Government, a defect fatal to its maintainability. As held by the Karnataka High Court in ***State of Karnataka Vs. Eastern Medicals*** **(23 Apr 1993),** when a claim is laid against a public officer for acts done in his official capacity, Order XXVII Rule 5-A CPC mandates impleading the Government as a necessary party and serving the Section 80 notice on the

Government itself; service on subordinate officers is insufficient, and absent notice to the Government, the suit is not maintainable.

17. In view of the foregoing, this Court holds that the suit, having been instituted without a valid notice under Section 80 CPC and without impleading the State Government as a necessary party under Order XXVII Rule 5-A CPC, fails to satisfy mandatory statutory requirements and is liable to be dismissed.

18. In light of the findings on Issues 1 and 2, it is unnecessary to examine the merits of rent fixation or arrears. As the suit is barred by Section 80 CPC and is defective for non-joinder of the Government, the trial court's judgment and decree cannot be sustained.

19. In the result, the appeal is allowed. The judgment and decree dated 02.03.2020 in O.S. No. 9 of 2018 passed by the learned III Additional District Judge, Vellore @ Tirupathur, are hereby set aside. O.S. No. 9 of 2018 is rejected under Order VII Rule 11(d) CPC for non-compliance with Section 80 CPC. No order as to costs.

12.11.2025

dpq
Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No

To
1. The III Additional District Judge,
Vellore @ Tirupathur.

2.The Section Officer,

VR Section,
High Court of Madras,
Chennai

DR. A.D. MARIA CLETE, J

dpq

A.S. No. 294 of 2021

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