

S.A.No.61 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2025
PRONOUNCED ON : 15.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 61 of 2014

and

M.P. No. 1 of 2014

Sowrashtra Vipra Sabha,
Rep. by its President,
Door No. 11,
Thoopan Kumarasamy Street,
Pettai, Namakkal Town.

... Plaintiff/Respondent/Appellant

Versus

Selvarani,
D/o Kulandaivelu,
Door No. 187/94, Main Road,
Namakkal Town.

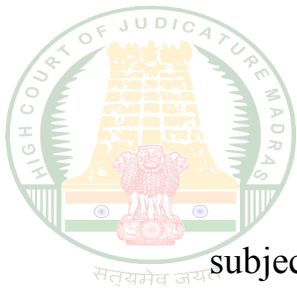
... Defendant/Appellant/Respondent

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree Learned Subordinate Judge, Namakkal dated 20.08.2013 made in A.S.No.90/2012 reversing that of the Learned Additional District Munsif, Namakkal dated 13.08.2012 made in O.S.No.529/2008.

PRAYER IN M.P.:

To grant an order of injunction restraining the respondent from in any manner altering or adding to the existing construction in the property



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subject matter of the suit in O.S.No.529/2008 on the file of the Additional District Munsif, Namakkal pending disposal of the appeal and pass such further or other orders as may be necessary in the circumstances of the case and thus render justice.

APPEARANCE OF PARTIES:

For Appellant : Mr. R. Vivek, Advocate.

For Respondent : Mr. C. Jagadish, Advocate.

J U D G M E N T

Heard.

2.This Second Appeal is directed against the judgment and decree of the Subordinate Judge, Namakkal, in A.S. No. 90 of 2012, dated 20.08.2013, which reversed the decision of the Principal District Munsif, Namakkal, in O.S. No. 529 of 2008 dated 13.08.2012.

3.In this appeal, the plaintiff before the Trial Court is the appellant, and the defendant is the respondent. For the sake of convenience, the parties will be referred to in the same rank as they stood in the Trial Court.

4.The plaintiff association is the owner of the suit property situated in Namakkal Town, which was leased to the defendant's father, late



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Kulandaivel, for running a restaurant known as 'Amudha Hotel'. After his death, the defendant continued in possession as tenant, paying monthly rent of Rs. 5,100/-, which was paid up to May 2008 but has been in arrears thereafter. In May 2008, the defendant, without consent, made unauthorized alterations by damaging the cement floor, fixing tiles, and altering the walls, thereby weakening the building despite objections by the plaintiff. As the tenancy was one at will, the plaintiff issued a notice dated 26.07.2008 terminating the tenancy and calling upon the defendant to vacate by 01.09.2008. The defendant replied with false allegations, claiming permission and a tenancy agreement, but produced no proof. A rejoinder was issued on 06.09.2008, and since the defendant failed to vacate or pay rent for June to August 2008, the plaintiff filed the present suit seeking recovery of possession of the property and arrears of rent of Rs. 15,300/-.

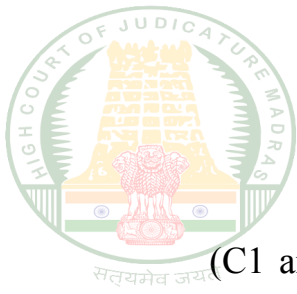
5.The defendant admits that the suit property was originally leased to her late father, who ran a restaurant, and that she has continued as tenant after his death by paying Rs. 2,000/- as name transfer fee and Rs. 1,00,000/- as advance. She states that rent was regularly paid up to April



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2008 at Rs. 4,250/-, later enhanced to Rs. 5,100/-, and though rent for June, July and August 2008 was tendered by money orders, the plaintiff wrongfully refused to accept it, compelling her to deposit rent in O.P. No. 1/2008 before the District Munsif Court, Namakkal, without any arrears up to May 2009. Allegations of unauthorized alterations are denied; according to her, repairs such as fixing tiles, replacing broken roof tiles and laying pipes were done with the plaintiff's knowledge to maintain hygiene and safety after adjoining structures collapsed, and she even paid property tax and Rs. 15,000/- towards water and sewerage charges. She denies having demolished walls or damaged the building, asserting that only minor works were carried out to prevent risk to life and property. The tenancy is based on a long-standing verbal agreement; she has never violated its terms and continues to pay rent. Hence, the plaintiff's claim for arrears and eviction is false, malicious, and unsustainable, and the suit must be dismissed with costs.

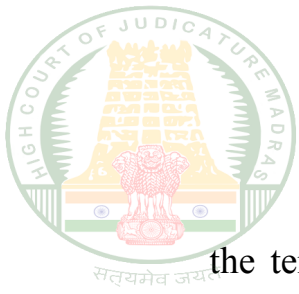
6.The Trial Court framed issues on arrears, alterations, entitlement to possession and reliefs, examined P.W.1 with Exs.A1–A3, D.Ws.1 and 2 with Exs.B1–B7, and considered the Commissioner's report and plan



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(C1 and C2). It held that rent had been duly tendered by money orders and later deposited in court, proving no arrears; that the alleged alterations were in fact repairs carried out with consent after the southern wall collapsed, and allegations of demolition of four walls were unproved.

7.The Trial Court observed that Section 106 of the Transfer of Property Act provides that, in the absence of a contract, local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee by six months' notice, while a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee by fifteen days' notice. The Trial Court found that in the present case, the building in question was let out on a month-to-month basis for the purpose of running a hotel business. Accordingly, the tenancy could be terminated by issuing a 15-day notice under the said provision. Here, the plaintiff issued notice dated 26.07.2008 terminating the tenancy. Since the defendant, who was a tenant, admitted receipt of

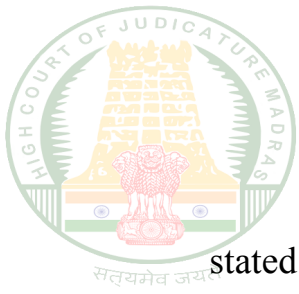


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the termination notice and had replied on 19.08.2008 and the suit was filed on 17.09.2008, i.e., more than one month after such notice, the Trial Court held that the tenancy was validly terminated in accordance with Section 106 of the Transfer of Property Act, and the plaintiff is entitled to the relief of possession. Accordingly, it partly decreed the suit, granting the plaintiff recovery of possession but dismissing the arrears claim of Rs. 15,300/-, with no costs awarded, and allowed the defendant two months' time to vacate and hand over possession.

8.On appeal, the first appellate court set aside the decree of the trial court. It framed the issues as to whether the defendant had carried out the works in the suit property with the permission of the plaintiff, and whether the plaintiff was entitled to recovery of possession.

9.The appellate court noted that the trial court had given contradictory findings: while holding in favour of the defendant on the issue of arrears of rent, it had nevertheless found in favour of the plaintiff on the issue of unauthorized alterations. According to the appellate court, once the finding on arrears was in favour of the defendant, the finding on alterations also ought to have been in her favour. The first appellate court

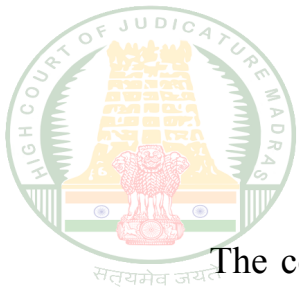


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stated that the appeal was therefore filed by the defendant to challenge only the finding on alterations. The appellate court observed that the trial court had applied Section 106 of the Transfer of Property Act and held that in a month-to-month tenancy 15 days' notice suffices for termination, but in cross-examination P.W.1 admitted that the defendant had been in possession and running a business in the suit property for more than fifty years as a tenant. On this basis, the appellate court held that the relationship between the parties did not amount to a "lease" under the Transfer of Property Act but was merely that of landlord and tenant outside the purview of the Act.

10. On the allegation of alterations, the appellate court found that the evidence showed only that tiles had been fixed on the walls and floor of the building, which was over 60 years old, and that these works were minor repairs necessitated by the collapse of the southern wall when an adjoining shop was demolished and by rainwater entering from the neighbouring properties. It accepted the testimony of D.W.1 and D.W.2 that the repairs were done with the permission of the then President of the plaintiff Sabha, who was not examined by the plaintiff to deny this.



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The court held that fixing tiles on the wall and floor did not amount to structural alteration and that the plaintiff had failed to prove otherwise.

11. Accordingly, the appellate court concluded that the plaintiff was not entitled to recovery of possession. Since the plaintiff had not filed any cross-appeal, and the defendant had successfully challenged the adverse finding on alterations, the appeal was allowed, the trial court's finding on Issue No. 3 was set aside, and the suit in O.S. No. 529 of 2008 was dismissed in entirety.

12. While admitting the Second Appeal on 01.04.2014, this Court framed the following substantial questions of law for consideration, which is reproduced verbatim below:

“1. Whether the lower appellate Court was right in holding that the relationship of the landlord and tenant as established will not come within the purview of the term lease contemplated in the Transfer of Property Act?

2. Whether the lower appellate Court was right in holding that the landlord has to be proved the grounds alleged for eviction in a suit filed for ejectment after



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issuing a notice of termination under Section 106 of the Transfer of Property Act?”

13.During hearing on 04.09.2025, the opening argument on the side of the respondent was that the suit filed by the plaintiff itself is not maintainable as the plaintiff is only a society and therefore has to proceed only before the rent control authority, and as such, while the plaintiff did not accept the rents paid by the defendant, the same was deposited before the RCOP Court and the plaintiff had also withdrawn Rs. 3 lakhs from the court, and that the RCOP suit is pending before the rent court. It was submitted that the point raised was a mere question of law and could be raised at any stage of the proceedings. In these circumstances, the following additional substantial question of law was framed:

“3.Whether the suit building is exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in view of G.O.Ms.No.2000 dated 16.08.1976?”

14.As regards the additional substantial question of law, the maintainability of the suit was sought to be challenged on the ground of jurisdiction. That said, the question of maintainability in the present case

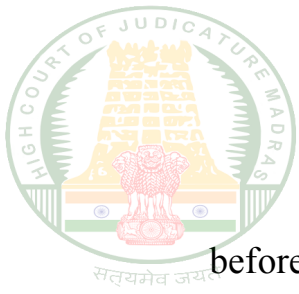


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is not a pure question of law, as it depends on the legal status of the plaintiff Sabha in question.

15. In that context, the appellant rightly placed reliance on the decision of this very Court in CRP No. 3164 of 1998 dated 07.04.2004, which had conclusively determined the status of the plaintiff Sabha in an earlier dispute concerning the very same property and parties, albeit involving the father of the present defendant. In that case, this Court had examined the nature of the Sabha and the building in question and held that the Sabha was a public trust engaged in charitable activities. Consequently, it was found that G.O. Ms. No. 2000 dated 16.08.1976 applied to exempt the building from the operation of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. That decision, having been rendered in relation to the same property and the same institution, carries binding effect and is not open to re-litigation. The character of the trust, though generally a matter of evidence, has already been adjudicated with finality. This Court, therefore, cannot revisit or come to a finding contrary to the one already reached in the earlier CRP proceedings.

16. Accordingly, the argument that the suit should have been filed



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before the Rent Controller cannot be sustained. The building, being exempt from the Rent Control Act by virtue of the said G.O. and the earlier ruling, falls squarely within the jurisdiction of the civil court, and the Transfer of Property Act, 1882 is the applicable law. The plaintiff's suit was rightly instituted before the civil court.

17. On the first substantial question of law, the first appellate court fell into error by confusing the evidentiary requirements of a Rent Control petition with those of a civil suit governed by the Transfer of Property Act and concluding that the parties' relationship was not a “lessee” within the meaning of the Act. Once it is admitted that there is a landlord and tenant relationship, evidenced by decades of rent payments and possession, the arrangement is nothing but a lease under Section 105 of the Transfer of Property Act. The Act speaks the language of a lease but rent control statutes use tenancy/tenant; the words “lessee” and “tenant” are often used interchangeably; any distinction is subtle and turns on the governing statutes. All the ingredients to constitute a lease as defined under Section 105 of the Transfer of Property Act, 1882 are satisfied in this case. Therefore, the appellate court was wrong in holding



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that the relationship was not a lease within the meaning of the Act.

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18. On the second substantial question of law, the reasoning of the trial court is sound. In paragraph 12 of its judgment, the trial court correctly held that in a month-to-month oral tenancy, what matters is the termination of tenancy by a valid notice under Section 106 of the Transfer of Property Act. Once such termination notice is served, the landlord is entitled to possession. It is not necessary for the landlord to also prove fault such as default in rent or damage to the building. Those grounds are relevant under Rent Control statutes, if the eviction petition is filed under Sections 10(2)(i) and 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, but not under the Transfer of Property Act, 1882. In the present case, it is an admitted fact that a notice of termination dated 26.07.2008 was duly served, and the suit was instituted after the expiry of the statutory period. This is sufficient to entitle the landlord to recover possession. The first appellate court's insistence that the plaintiff must also prove default or damage was misplaced and contrary to law.

19. For the reasons stated above, all substantial questions of law are



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answered in favour of the appellant. The lower appellate court's judgment and decree are set aside, and the judgment and decree of the trial court are restored. In consequence, this Second Appeal is allowed; Consequently, the connected miscellaneous petition is ordered to be closed. No order as to costs.

15.10.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

- 1.The Subordinate Judge, Namakkal.
- 2.The Additional District Munsif, Namakkal.
- 3.The Section Officer, V.R.Section,
High Court of Madras, Chennai.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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