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CMP NO. 94 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

CMP NO. 94 of 2025

IN

SA NO. 4 OF 2025

P.R.Ravikumar

S/o.Late P.K.Ramalingam, No.5/2, Peddunaicken
Street, 1st Floor, Park Town, Chennai-600003
and another

Appellant(s)

Vs

K.R.Jayasundar M Raj

S/o.late K.S.D.Rathnam, NO.10, the Dharmaraja
Koil Street, Saidapet, Chennai-600015 and 4
Others

Respondent(s)

For Appellant(s):

M.Devaraj

For Respondent(s):

M/s S.D.Venkateswaran

For R1

Mr.S.Gopinathan For R2 To R5

ORDER

The appellants are the defendants 1 and 2 in the original suit. The petitioners have preferred this application praying to suspend the order of



injunction granted by the learned XVIII Additional City Civil Court, Chennai, in A.S. No. 22 of 2024, by judgment and decree dated 15.07.2024, pending disposal of the above second appeal.

2. The learned counsel for the appellants submitted the following reasons in support of the suspension of the decree:

(i) An extent of 1 ground and 44 square feet, namely 2444 square feet of land with building, was partitioned through a partition deed dated 26.06.1974. An extent of 1237.5 square feet of land with the building thereon was allotted to our father and grandmother. Subsequently, our grandmother settled her share in the said property in the name of our father as well as in the names of the petitioners herein.

(ii) The 1st respondent, namely the plaintiff in the suit, was leased the 'B Schedule' property in the year 1975 and has been in possession and enjoyment of the same ever since. In 1998, our father and grandmother mortgaged the property in favour of the 1st respondent. To discharge the



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said mortgage, an extent of 360 square feet of land along with the building was conveyed to the plaintiff through a sale deed dated 15.04.1999.

(iii) Since the building belonging to the petitioners over an extent of 927 square feet of land is more than 75 years old and in a dilapidated condition, permission for demolition and reconstruction was obtained from respondents 3 to 5 via proceedings dated 08.12.2008. As a portion of the 'A Schedule' property was in the occupation of a tenant, who refused to vacate, Rent Control proceedings were initiated against him in RCOP No. 2604 of 2008. The Rent Controller allowed the petition by order dated 02.08.2010. The tenant, Kandan Metals, filed RCA No. 729 of 2011, which was dismissed on 19.09.2011. A further revision, CRP No. 4234 of 2012, was also dismissed on 13.07.2021.

(iv) The 1st respondent, in collusion with the tenant against whom the Rent Control Appeal proceedings concluded, filed the present suit on 16.08.2013, praying for a permanent injunction restraining the petitioners

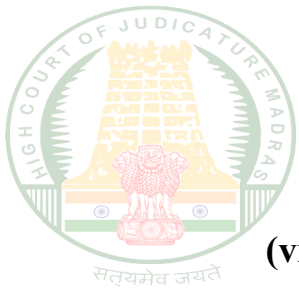


from demolishing the superstructure situated in the 'A Schedule' property.

The 1st respondent also obtained an order of interim injunction pending disposal of the suit, thereby enabling the tenant to continue his possession.

The suit was filed on the basis that the plaintiff's property is adjacent to the petitioners' property and that demolition might damage his property.

(v) The petitioners filed a detailed written statement stating that the suit is a collusive one, filed without any valid cause of action and intended solely to prevent lawful owners from developing their property. In the meantime, after the CRP filed by the tenant was dismissed, the petitioners filed an execution petition in EP No. 44 of 2023. In this proceeding, the respondent filed an application under Section 47 CPC, questioning the executability of the decree on the ground that the demolition and reconstruction permission granted earlier had expired and a fresh plan needed to be obtained, as also observed in the CRP.



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(vi) The suit was dismissed by judgment and decree dated 27.09.2023. The 1st respondent appeared as PW-3 in the Section 47 application filed by the tenant and deposed regarding the non-executability of the RCOP decree. During cross-examination, he admitted the dismissal of the suit and also admitted that he had filed an appeal. He further admitted objecting to the grant of a fresh demolition and construction order. The electricity meter reading was shown to establish that the premises had only minimal or no electricity consumption for many years.

(vii) The 1st respondent is actively supporting the tenant, thereby preventing the petitioners from evicting the tenant. The petitioners marked documents Ex.A1 to Ex.A10 in the suit, including communications from the 1st respondent to the 2nd respondent, objecting to the grant of fresh demolition and construction permissions.

(viii) The petitioners clearly established the collusive nature of the suit and proved that a permanent injunction against lawful owners cannot be



maintained. The trial court, upon appreciating the evidence and the admission by the 1st defendant that no damage would be caused to his property by the demolition of the 'A Schedule' property, dismissed the suit by judgment dated 27.09.2023.

(ix) The 1st respondent preferred an appeal in AS No. 22 of 2024 before the learned XVIII Additional City Civil Court, which erroneously appreciated the evidence and reversed the well-considered judgment of the trial court, decreeing the suit and granting permanent injunction against the petitioners from developing the property, by judgment and decree dated 15.07.2024.

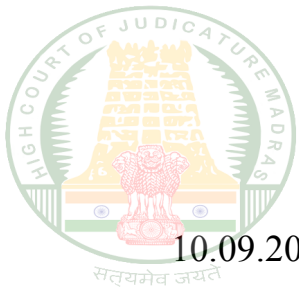
(x) The appellate court, through an improper appreciation of facts and evidence, also endorsed the stand of the official respondents 2 to 5 (Corporation authorities), who stated that unless a No Objection Certificate (NOC) from the 1st respondent is produced, a fresh application for demolition and reconstruction would not be considered. The said



application remains in abeyance. This clearly shows the official respondents are acting arbitrarily and not in accordance with their statutory duty under the Chennai City Municipal Corporation Act.

(xi) The actions of respondents 2 to 5 are arbitrary and seem aimed at preventing the petitioners from enjoying their property profitably. Further, the 1st respondent has deposed in the execution proceedings, attempting to stall the process by reiterating his objection to granting a fresh construction plan. Therefore, it is necessary that this Hon'ble Court directs respondents 2 to 5 to grant the demolition and construction plan applied for on 14.08.2021, within a stipulated time, pending disposal of this second appeal.

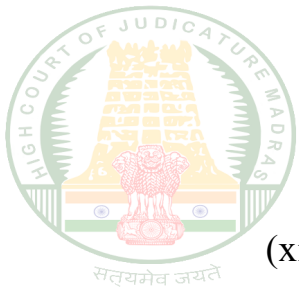
(xii) The 1st respondent had deposed as a witness in the eviction proceedings in EP No. 44 of 2023 on the file of the learned XIV Judge, Court of Small Causes, Chennai. The cross-examination of the 1st respondent dated 25.06.2024 and his additional proof affidavit dated



10.09.2024 in those proceedings may be received as additional evidence in

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this second appeal. Though these are subsequent proceedings, the subsequent events and conduct of the parties are relevant and ought to be considered. It is prayed that the deposition and affidavit may be marked as Exhibits B-13 and B-14, respectively.

(xiii) The petitioners were residing on the 1st and 2nd floors of the 'A Schedule' property. Due to the dilapidated condition of the building, it became difficult to continue residing there, and they have since shifted to the current address. The tenant remains in occupation, and the injunction prevents fresh demolition and construction. This situation is causing grave prejudice to the petitioners. They are lawful owners of the 'A Schedule' property and are unable to enjoy it due to the injunction. The 1st respondent has not been using the premises for the past three years; it is being used merely as a godown. In such circumstances, it is just and necessary that the injunction granted by the appellate court in AS No. 22 of 2024 by judgment and decree dated 15.07.2024 be suspended.



(xiv) In light of the above, it is humbly prayed that this Hon'ble Court

may be pleased to:

- Suspend the order of injunction granted by the learned XVIII Additional City Civil Court, Chennai in AS No. 22 of 2024, dated 15.07.2024, pending disposal of the above second appeal;
- Direct respondents 2 to 5 to grant permission for demolition and reconstruction as per the petitioners' application dated 14.08.2021 within a time frame;
- Receive and mark the deposition and affidavit of the 1st respondent dated 25.06.2024 and 10.09.2024 in TA No. 5 of 2023 in EP No. 44 of 2023 in RCOP No. 2604 of 2008 as Exhibits B-13 and B-14 respectively; and
- Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

3. By way of common objections, the 1st respondent submitted that,

(i) C.M.P. No. 94 of 2025 in S.A. No. 4 of 2025 has been filed by the petitioners seeking suspension of the Order of Injunction granted by the Learned 18th Additional City Civil Court, Chennai, in A.S. No. 22 of 2024, by its judgment and decree dated 15.07.2024, pending disposal of the above Second Appeal. If this Hon'ble Court grants the relief sought as mentioned above, it would effectively amount to allowing the Second Appeal itself, as prayed for by the petitioners/appellants. By no stretch of



imagination can the petitioners/appellants expect such an order in C.M.P.

No. 94 of 2025 pending the disposal of the Second Appeal. Granting such a relief would result in grave injustice to the 1st respondent and would be contrary to the settled principles of law.

(ii) The facts and circumstances that led to the filing of the suit by the 1st respondent/appellant/plaintiff clearly establish that the First Appellate Court, i.e., the Learned XVIII Additional District and Sessions Judge, City Civil Court, Chennai, rightly allowed the appeal in A.S. No. 22 of 2024 by judgment and decree dated 15.07.2024, setting aside the judgment and decree of the Trial Court and decreeing the suit restraining the defendants 1 and 2 from demolishing the property detailed in Schedule 'A' to the plaint.

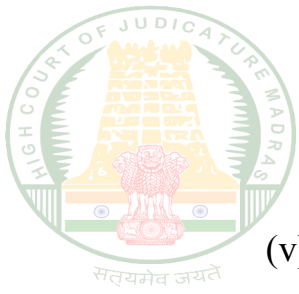
(iii) A perusal of the affidavit of the 2nd petitioner in support of the Civil Miscellaneous Petitions shows that the properties described in Schedule 'A' and Schedule 'B' are two portions of a single building constructed on land measuring 1287 sq. ft. The 1st respondent was a tenant



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occupying 360 sq. ft. on the North-Eastern side of the property, while the remaining 927 sq. ft. on the ground floor was let out to "Kandan Metals." It is pertinent to note that the Schedule 'A' and Schedule 'B' properties are not divisible by metes and bounds, although Schedule 'A' belongs to the petitioners and Schedule 'B' belongs to the 1st respondent.

(iv) The suit documents, i.e., Exs. A1 to A16, B1 to B12, C1 to C5, and the oral evidence of PW1, PW2, and DW1, clearly establish that the building bearing New No. 9, Old No. 5, Peddu Naicken Street, Park Town, Chennai-600003, in total land measuring East to West (North side) – 26 feet, East to West (South side) – 26 feet, North to South (East side) – 49.5 feet, and North to South (West side) – 49.5 feet, totaling 1287 sq. ft., originally belonged to P.K. Kuppammal (paternal grandmother of the petitioners), her son P.K. Ramalingam, and the petitioners, who acquired title under a Partition Deed dated 26.06.1974. At the time of the partition, there was a single Madras Terrace structure on the land.



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(v) Subsequently, by a Settlement Deed dated 26.06.1974, Mrs. P.K. Kuppammal settled the entire property with the Madras Terrace structure in favor of her son P.K. Ramalingam for life and thereafter absolutely to her grandsons—the petitioners herein.

(vi) Around 1975, the North-Eastern portion measuring 360 sq. ft. of the said building was let out to the 1st respondent on a monthly rent basis. Since then, the 1st respondent has been running a proprietary business under the name "Jaya Agencies" in that portion. The remaining 927 sq. ft. of the ground floor was let out to "Kandan Metals," which continues to operate in that portion.

(vii) In respect of the portion occupied by the 1st respondent for running "Jaya Agencies," a Lease Deed was executed on 04.06.1990 by the petitioners and their father, P.K. Ramalingam. Later, to discharge a mortgage, a Sale Deed dated 15.04.1999 was executed by Mrs. P.K. Kuppammal, P.K. Ramalingam, and the petitioners in favor of the 1st



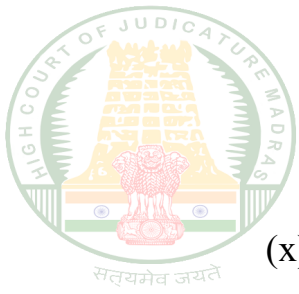
respondent, conveying the 360 sq. ft. North-East portion (Schedule 'B')

including the undivided superstructure (Ground + 2 Floors + Terrace),

while retaining the remaining 927 sq. ft. (Schedule 'A').

(viii) After the demise of P.K. Kupppammal and P.K. Ramalingam, the petitioners executed a Deed of Partition dated 20.08.2008 among themselves, dividing the retained 927 sq. ft. Schedule 'A' property—420 sq. ft. fronting Peddu Naicken Street was allotted to the first petitioner and 507 sq. ft. fronting Thirumalai Pillai Lane was allotted to the second petitioner.

(ix) Despite the indivisible structure of the Schedule 'A' and Schedule 'B' properties, the petitioners, suppressing these facts, obtained a Demolition and Reconstruction Plan from the 3rd respondent dated 08.12.2008. The said plan has since expired, and the petitioners are now required to obtain a fresh plan from the Greater Chennai Corporation, as per the provisions of the Chennai City Municipal Corporation Act.

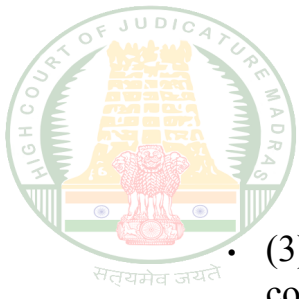


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(x) As per Ex.A14, on 14.08.2021, the petitioners applied for demolition and reconstruction of the Schedule 'A' property. On 17.08.2021, the 4th and 5th respondents inspected the site and found a single building with door Nos. 5/1 & 9/1 and 5/2 & 9/2. The inspection report confirmed that the building is a single structure owned by two different individuals—360 sq. ft. by the 1st respondent and 927 sq. ft. by the petitioners. The applicants were advised to obtain a No Objection Certificate (NOC) from the 1st respondent before any demolition, as demolition of one portion could damage the other.

(xi) These facts clearly establish that the petitioners/appellants cannot unilaterally demolish their portion (Schedule 'A') of the building. The Trial Court's dismissal of the suit cannot be sustained, and the relevant legal provisions prohibit demolition without proper permission. According to Section 246-A of the Chennai City Municipal Corporation Act:

- (1) Any person intending to demolish a building must apply in writing to the Commissioner.
- (2) The Commissioner may grant permission subject to health and safety conditions.



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- (3) No demolition shall begin without such permission and without compliance with the conditions.

(xii) Regarding C.M.P. No. 95 of 2025 in S.A. No. 4 of 2025, the petitioners seek to receive and mark the deposition of the 1st respondent dated 25.06.2024 and his additional proof affidavit dated 10.09.2024 from E.A. No. 5 of 2023 in E.P. No. 44 of 2023 in R.C.O.P. No. 2604 of 2008 on the file of the 14th Judge, Court of Small Causes, Chennai. These documents relate to eviction proceedings against "Kandan Metals," a third party who is not a party to the present appeal. Therefore, marking these documents in the Second Appeal is inappropriate, and C.M.P. No. 95 of 2025 must be decided along with the main appeal.

(xiii) The balance of convenience lies in *not* suspending the judgment and decree dated 15.07.2024 passed in A.S. No. 22 of 2024 by the Learned XVIII Additional Judge, City Civil Court, Chennai. Accordingly, the 1st respondent prays that C.M.P. No. 94 of 2025 be dismissed.

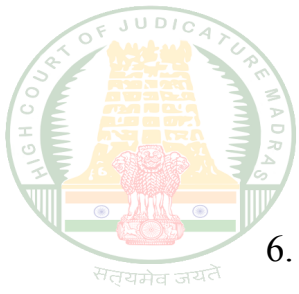
4. On hearing both sides, the facts reveal that the petitioners, as



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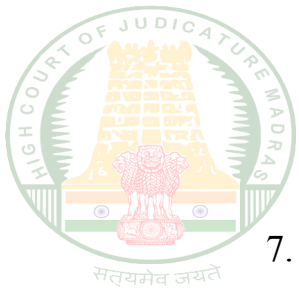
landlords, had earlier filed RCOP No. 2604 of 2008 to evict their tenants who were occupying the A-Schedule property. The said RCOP was allowed, against which CRP No. 4234 of 2012 was filed by the tenant. This was dismissed by order dated 13.07.2021. Subsequently, E.P. No. 44 of 2003 was filed by the present petitioners to evict the tenants.

5. During the pendency of these proceedings, O.S. No. 4422 of 2013 was filed by the 1st respondent/ K.R.Jeyasundar, who is the owner of the B-Schedule property, seeking a permanent injunction restraining defendants 1 and 2 (the petitioners herein) or anyone claiming under them from demolishing the superstructure situated in the suit A-Schedule property, and for costs. The said suit was originally dismissed. However, on appeal, the plaintiffs filed A.S. No. 22 of 2024, which was allowed. The appellate court granted a permanent injunction restraining the petitioners from demolishing any structure on the A-Schedule property. Presently, the tenants continue to remain in possession, pending execution proceedings.



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6. The learned counsel for the petitioners submitted that due to the injunction granted in favour of the respondents/plaintiffs, he is unable to proceed with the execution proceedings instituted to implement the eviction order passed in RCOP No. 2604 of 2008. He further submitted that the tenants, in collusion with the respondents, are interfering with the execution of the said order. As a result, the executing court is also hesitant to proceed with the Execution Petition due to the permanent injunction granted by the first appellate court. He therefore prayed for a suspension of the decree passed by the learned first appellate judge, as he is unable to proceed with the execution application. He also submitted that the respondent, being the owner of the adjoining property, is not inclined to give a no-objection certificate, due to which he is unable to construct his portion in accordance with the rules and regulations prescribed by the Corporation. However, he has submitted a fresh application for construction without damaging the respondent's wall. The authorities have instructed that the application be considered as per the manner known to the law.



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7. The learned counsel appearing for the respondents raised objections, arguing that the reason cited for eviction of the tenants is for demolition and reconstruction. If the building is demolished, it will adversely affect the respondent's property. It was further submitted that in the RCOP proceedings, the petitioner had sought eviction of the tenants on the grounds of demolition and reconstruction. However, any such demolition must follow the procedure laid down by the Corporation, including fulfilling other legal requirements.

8. It is observed that despite filing RCOP in 2008, the landlord has not been able to evict his own tenant for nearly 20 years, causing serious prejudice and hardship. The objections raised by the respondents are therefore not sustainable. The conduct of the respondent also reveals that colluded with tenants creating all sort of troubles to the appellants not to enjoy his property.

9. Accordingly, this Court is inclined to suspend the decree passed by



the first appellate court. Further, the execution court is directed to proceed with the execution proceedings in accordance with law, uninfluenced by the pendency of the second appeal before this Court.

10. This application is accordingly allowed.

30.04.2025

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To

- 1.The XVIII Additional City Civil Court, Chennai.
- 2.The XIII Assistant City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

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CMP NO. 94 of 2025

IN

SA NO. 4 OF 2025

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