



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On
25.07.2024

Judgment Pronounced On
22.05.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No.449 of 2022

and

C.M.P(MD)Nos.2808 and 8414 of 2024

1.E.Leela

2.E.B.Raja

3.E.Vijaya

4.E.Latha

... Appellants

/Vs./

1. A.Ayyasamy

2. E.Jaya

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree dated 14.03.2022 passed in A.S.No.51 of 2020 on the file of Principal District Court, Tirunelveli confirming the Decree and Judgment dated 20.01.2020 passed in O.S.No.391 of 2017 on the file of Principal Sub Court, Tirunelveli.

For Appellants

... Mr.T.Arul, for



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For Respondents

...

Mr.S. Suresh Manickam

Mr.S.Parthasarathy, for

Mr.R. Murali, for R-1

JUDGMENT

The present Second Appeal in S.A.(MD)No.449 of 2022 is filed by the defendants 2 to 4 and 6 in the suit to set aside the Judgment and Decree dated 14.03.2022 passed in A.S.No.51 of 2020 on the file of Principal District Court, Tirunelveli confirming the Decree and Judgment dated 20.01.2020 passed in O.S.No.391 of 2017 on the file of Principal Sub Court, Tirunelveli.

2. The 1st defendant died and his legal heirs are impleaded as defendants 2 to 6. The defendants 2 to 4 and 6 in the suit are the appellants herein, the 5th defendant is the 2nd respondent and the plaintiff in the suit is the 1st respondent herein. For the sake of convenience, the parties shall be referred as plaintiff and defendants as per the ranking in suit.

3. The suit in O.S.No.391 of 2017 was filed to vacate the



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defendant from the suit property and hand over possession, to pay the arrears of rent of Rs.3,24,000/- along with interest from the date of the suit, compensation of Rs.1,20,000/- from 31.04.2001 to 01.05.2003 for 10 months from the date of the suit till realization of payment and rent of Rs.12,000/- per month from 01.04.2003 till vacating the premises.

4. The brief facts of the case as stated by the plaintiff is that the suit schedule property is exclusively belonged to the plaintiff and enjoying by paying taxes after mutation. On 01.07.1996 the plaintiff and the 1st defendant had entered into agreement wherein the plaintiff agreed to let the suit property for rent of Rs.10,000/- with advance of Rs.1,00,000/-, the rent is payable on or before 5th of English Calendar month and obtain receipts and other conditions. After the expiry of this agreement the plaintiff had increased the monthly rent by 20% and entered into a second agreement on 01.07.1998 for Rs.12,000/- as monthly rent.

5. As per to the second agreement, the 1st defendant has paid



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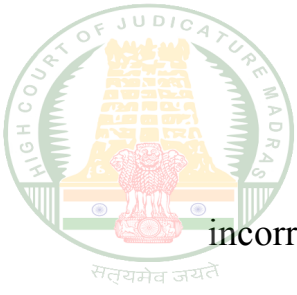
the rent only for the month of July 1998 and receipt was issued to the said payment. The plaintiff repeatedly demanded the defendant to pay the rent amount, but the first defendant did not pay the rent amount in order to create loss to the defendant. Further contrary to the lease agreement without the consent of the plaintiff, the first defendant has leased the first-floor residential area to one Acbar stickers for a commercial purpose. Therefore, plaintiff filed R.C.O.P.No.104/1998 against the 1st defendant before the Rent Control Tribunal, Tirunelveli seeking to vacate from the schedule property. The defendant by stating false averments and by taking plea of composite agreement defended the case. Finally accepting the contention of the defendant, the said RCOP was dismissed. The 1st defendant has to pay Rs.6,48,000/- as rent at the rate of Rs.12,000/- for 54 months from August 1998 to January 2003. After deducting Rs.1,00,000/- as advance the defendant is liable to pay Rs.5,48,000/-. The defendant had deliberately defaulted in paying the rent, hence on 19.02.2003 the plaintiff issued notice to the 1st defendant terminating the lease agreement on the plaint schedule property with effect from 31.03.2003. The 1st defendant received the notice and send a reply notice on 28.02.2003 with false allegations. Therefore, plaintiff



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filed the suit for recovery of possession of the suit property with arrears of rent and compensation from 01.04.2003. Until the 1st defendant is vacating the premises is duty bound to pay Rs.12,000/-. Even though the 1st defendant defaulted from August 1998, but the plaintiff is legally entitled to collect arrears of rent from 2001 onwards, hence the claim is restricted from 2001 onwards. Hence the present suit is filed for the aforesaid prayers.

6. The defendant had filed written statement wherein it is stated that the suit is not maintainable either in law or facts, that the suit is not genuine and the plaintiff is not entitled to the relief of recovery possession, the plaintiff is not entitled to the alleged rental arrears of Rs.3,24,000/- and interest thereon from the date of the suit, from 01.04.2003 to 31.01.2004 the plaintiff is not entitled to compensation of Rs.1,20,000/- and interest thereon, the plaintiff is not entitled to monthly Rs.12,000/- from the date of the suit, there is no cause of action to file the present suit, the cause of action stated in the suit is false, hence based on the alleged cause of action the plaintiff is not entitled to any reliefs, the description of property is incorrect, the value of the property is



incorrect and the suit is liable to be dismissed with cost to the defendant.

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7. The suit property does not belong to the plaintiff, by paying kist or tax the property will not belong to the plaintiff and the fact that the plaintiff is paying tax ought to be proved by the plaintiff, since the alleged fact is denied by the defendant. The defendant denies the averment that from 01.07.1996 the defendant is paying rent of Rs.10,000/- and has paid an advance of Rs.1,00,000/-. There is no agreement to pay the monthly rent by 5th day of every month. The 1st defendant did not execute any rental agreement to the plaintiff. After the first rental agreement, the defendant did not agree 20% increase in rent and did not execute any rental agreement for paying 12,000/- as monthly rent. The rental agreement was never executed by the defendant, the alleged agreement stated in the plaint is false and not legally not valid, the alleged agreement was not executed in any stamp paper and was not registered.

8. Based on the alleged agreement, no right can be conferred



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on the plaintiff and no right has been conferred on the plaintiff, the plaintiff cannot claim any right and the same cannot be relied on as evidence. The allegation that the defendant failed to pay the rent after June 1998 is false. It is false to state that without the consent of plaintiff, the 1st defendant had leased the 1st floor residential area for commercial purpose to run a hotel. There is no appeal filed against the dismissal order of R.C.O.P.No.104/1998. It is false to state that the 1st defendant has to pay Rs.6,48,000/- as rent at the rate of Rs.12,000/- for 54 months from August 2008 to January 2003 and after deducting the advance amount of Rs.1,00,000/- the defendant is liable to pay the balance amount.

9. The 1st defendant herein had filed suit in O.S.No.111 of 1999 on the file of II Additional Sub Court, Tirunelveli. The contention of the 1st defendant herein (plaintiff in the said suit) in the said suit is that the alleged sale deed was executed only as security for the purpose of loan obtained by the 1st defendant from the plaintiff herein. And it was never executed with an intention to sell the property to the plaintiff herein and the said plaint may be read as part and parcel of the present



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written statement. In that suit, the contention of this defendant that the sale deed was executed only for security purpose was accepted and the suit ended in favour of this defendant.

10. It is pertinent to state that the suit property was worth about Rs.45,00,000/-, in such circumstances it would be improbable to sell the property for only Rs.3,10,000/-. The defendant had obtained loan for Rs.2,00,000/- and along with interest the alleged sale deed was executed for Rs.3,10,000/-. The defendant had incurred loss in his business. The plaintiff and his family are doing money lending business with high interest. Taking advantage of the poor plight and poverty of the defendant, the plaintiff had exploited the defendant and had obtained the alleged sale deed, hence the alleged sale deed is not genuine, that was not acted upon as sale deed. Infact already a portion of the suit property was sold to the defendant's nephew and the same also was sold as sham and nominal for the loan obtained from the said nephew. The sale is for a small portion and for such sale of small portion itself the sale consideration was stated as Rs.1,85,000/-.

11. It is pertinent to state based on the alleged sale deed alleged to have been executed by the defendant to the plaintiff, no rights



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of any kind were transferred to the plaintiff. The defendant is a member of several chits and the said chits are conducted by the plaintiff. Hence there are several transactions between the plaintiff and the defendant. The plaintiff is doing lending business, but the plaintiff cannot obtain higher interest, hence it is the practice of the plaintiff to obtain signatures in the blank papers, in stamp papers and executed power of attorney, sale agreement, sale deed etc. In the present case, there are no ingredients of sale at all. The plaintiff filed an appeal in A.S.No.4/2005 against the judgment passed in the original suit 111/1999 and it was allowed on 29.07.2005. The defendant is taking steps to prefer appeal against the same. The above details are not mentioned in the plaint. There is no appeal against the order passed by the Deputy Collector, Tirunelveli that the rental deeds are not genuine. The defendant is doing hotel business and the defendant never sold the infrastructures to the plaintiff at any time. The plaintiff is not in possession on the basis of the sale deed. Hence, prays to dismiss the suit as false suit.

12. Pending suit the 1st defendant died and thereafter the legal heirs were impleaded. The 3rd defendant legal heir had filed



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additional written statement, wherein it is stated that the 5th defendant is a daughter of deceased 1st defendant and she is working abroad. The defendants are Christians and hence they are entitled to equal share in their father's property. The deceased first defendant had no movable and immovable properties, except the suit schedule property. After the death of 1st defendant his legal heirs have not enjoyed any properties except the suit schedule property. The plaintiff is not entitled to any personal decree as against the legal heirs of 1st defendant. Money claim of plaintiff is barred by limitation. The suit filed by the plaintiff has been returned by the 1st Additional District Court, Tirunelveli as there is no pecuniary jurisdiction. Hence, the plaintiff ought to have filed a new plaint with necessary correction. Though the abroad address of the 5th defendant is given in the court, no steps were taken by the plaintiff to send the summons or notice to the said address with necessary correction. The defendant is not an absolute owner of the suit schedule property. The husband of the 2nd defendant one Jeyasingh also got the part of property and he was not impleaded as a party to the suit. Therefore, the suit is bad for non-joinder of necessary party. Hence, the suit is liable to be dismissed.



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13. After analysing the pleadings, evidence and witness of both the parties the Trial Court had allowed the suit partly, wherein the defendant was directed to vacate the suit property and hand over possession within two months from the date of the judgment (the date of judgment 20.01.2020 and to vacate before 20.03.2020), directed the defendant to pay the balance rent of Rs.3,12,000/- for the period from February 2001 till March 2003 for 26 months, from 01.04.2003 to 31.01.2004 for 10 months the past mesne profits of Rs.1,20,000/-, the amounts shall be paid with 6% interest from the date of the suit, for subsequent mesne profits the plaintiff is entitled to file a separate petition under Order 20 Rule 12 and claim the same. The rent for January 2001 is hit by limitation and hence the plaintiff is not entitled to the same. The defendant is directed to pay the cost of Rs.61,078/- to the plaintiff.

14. Aggrieved over the said judgement the except the 5th defendant, all the other defendants had preferred appeal in A.S.No.51 of 2020 and the same was dismissed. Aggrieved over the present second appeal is preferred in S.A.No.449 of 2022.



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15. The second appeal is admitted on the following substantial questions of law:

(i) Whether the Courts below are right in decreeing the suit for recovery of possession when the plaintiff has failed to discharge his initial burden to prove relationship of landlord and tenant between the plaintiff and the 1st defendant when specifically denied in terms of Sections 101-103 of Indian Evidence Act?

(ii) Whether the Courts below are right in relying an incidental finding rendered in R.C.O.P.No.104 of 1998 marked as Ex.A.14 and in A.S.No.4 of 2005 marked as Ex.A2 without considering the relationship of the plaintiff and the 1st defendant independently when there is specific denial in the written statement about the landlord and tenant relationship?

(iii) When both the Courts below have confirmed that the rental agreement in Exs.A11 & A12 are not admissible in evidence, are they right in granting the decree for possession and recovery of arrears of rent against Section 107 of Transfer of Property Act, 1882, Section 17(d) of



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Registration Act, 1908 and Section 35 of Indian Stamp Act, 1899?

(iv) Whether the Lower Appellate Court is right in giving a finding that the defendant ought to have filed appeal against the finding in R.C.O.P. No.104 of 1998 when as per Section 96 of Civil Procedure Code, 1908, an appeal is maintainable only against the decree and not against the Judgment or finding?

(v) Whether the Courts below are right in granting personal decree against the legal heirs of the deceased 1st defendant in respect of arrears alleged arrears of rent due from the deceased by erroneously interpreting Section 50 of CPC and without considering Order 2, Rule 5 of CPC?

16. The 1st substantial question of law is that whether the plaintiff had proved the landlord and tenant relationship in terms of sections 101-103 of Evidence Act, when the deceased defendant had denied such relationship.



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17. The contention of the plaintiff is that the 1st defendant was a tenant and had executed rental agreement in Ex.A11 dated 01.07.1996 for two years and agreed to pay Rs.10,000/- as rent and Rs. 1,00,000/- was paid as advance and also agreed to pay the same on 5th of every month, for which the plaintiff ought to issue receipts. The further contention of the plaintiff is that after two years another rental agreement dated 01.07.1998 was executed marked as Ex.A12 wherein the defendant agreed to pay the increased rent of Rs.12,000/- and had paid the rent of July 1998, thereafter defaulted to pay the same. Hence RCOP was filed, but RCOP was dismissed on the ground the rental agreement is a composite agreement and RCOP Court has no jurisdiction, hence the present suit was filed with a prayer to evict the defendant. The contention of the defendant is that the plaintiff is the owner of the suit property, he obtained loan from the plaintiff for Rs.2,00,000/-, for which the alleged sale deed dated 26.06.1996 marked as Ex.A3 was executed. The said sale deed was executed for security purpose alone, neither the defendant was intended to sell the property nor the plaintiff was intended to purchase the property. After the alleged sale, the plaintiff had executed the present



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rental agreement and this rental agreement is also for the purpose of security to the loan transaction in order to ensure the payment of interest.

18. In order to consider the rival claims, the Court proceeds to consider the pleadings and evidence. The plaintiff had submitted that the plaintiff and the defendant had executed the rental agreement and in the said rental agreement it has been specifically stated that after paying rent for every month the defendant may receive the receipts. If the defendant had paid the rent, then the plaintiff would have issued the receipts. According to the plaintiff the defendant had paid the rent as per the first rental agreement, in such circumstances the plaintiff would have issued receipts. The plaintiff had not produced any such receipts. The plaintiff is bound to produce the counter-foil of the receipts. Not even a single receipt was produced as evidence.

19. The contention of the plaintiff that the defendant has to produce the receipts. But the defendant denies the existence of such tenancy relationship at all and in such circumstances the defendant cannot be directed to produce the receipts. As per section 101 to 103 of Indian Evidence Act the person who wishes the Court to accept his



contention, then the said person ought to prove and the provisions are

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101. Burden of proof. — *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

102. On whom burden of proof lies. — *The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B



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says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

103. Burden of proof as to particular fact. — The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations

1[(a)] A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

The plaintiff ascertains that there is rental agreement and has produced the agreement, but to prove whether agreement came into existence and the parties acted upon, then the plaintiff ought to prove the same came into existence and the parties acted upon by producing the payment receipts. Further it is already held that the said agreement was executed in ten rupees stamp paper and the same is deficit. Therefore, the Ex.A11 and 12 cannot be relied on as evidence. When the Ex.A.11 and 12 cannot be relied on, then literally there is no evidence to prove that there is landlord tenant relationship. Therefore, this Court is of the considered



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opinion that the plaintiff had not proved the existence of landlord tenant relationship in terms of sections 101-103 of Evidence Act, hence the first substantial question of law is in favour of the defendant and against the plaintiff.

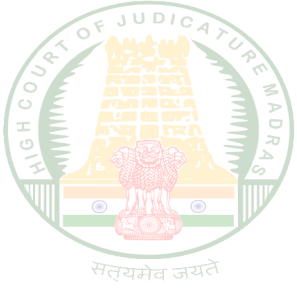
20. The second substantial question of law is that whether the incidental finding in RCOP and A.S.No.4 of 2005 can be relied on or whether the Civil Court ought to independently consider the issue and rendered a finding. It is seen the defendant specifically denies the very rental agreement. According the defendant, the said tenancy agreement was executed in order to ensure the payment of interest of Rs.10,000/-. When the defendant had taken a specific stand that the entire transaction is only loan transaction, in such circumstances, the burden is on the plaintiff to prove the same independently. Then the initial burden and entire burden to prove the existence of tenancy agreement is on the plaintiff. The plaintiff ought to prove that the rental agreement was executed for the purpose of tenancy alone, especially when the Ex.A11 and 12 are inadmissible evidence and when not even a single payment receipt is produced by the plaintiff, then it has to be construed that the plaintiff fails to prove the existence of landlord tenant relationship, then



the plaintiff is not entitled to the relief of vacating the defendant from the suit property.

21. The Learned Counsel appearing for the plaintiff heavily relied on the deposition of the defendant to prove the existence of landlord-tenant relationship, since in the deposition the defendant had admitted the execution of the tenancy agreement, admitted his signature in the tenancy agreement. But the defendant qualifies the said admission that the same was executed only for the purpose of paying the interest for the said loan transaction. The relevant portion of the deposition is extracted hereunder:

□26.06.1996ம் தேதிய கிரையப் பத்திரம் பிரகாரம் 1ம் பிரதிவாதி அந்த சொத்தில் அனுபவம் எடுத்துள்ளாரா என்று கேட்டால் அந்த சொத்தில் நான் தான் எடுத்திருக்கிறேன். அந்த கிரையத்திற்கு பின்னர் 1.7.1996க்கு பின்னால் நானும் 1ம் பிரதிவாதியும் அதே சொத்தைப் பொறுத்து வாடகை ஒப்பந்தம் ஏற்படுத்திக் கொண்டோம் என்றால் சரிதான். அந்த அக்ரிமெண்டை படிக்க எனக்கு சரியான கண்பார்வை இல்லை. அந்த அக்ரிமெண்டில் உள்ள கையெழுத்து என் கையெழுத்து



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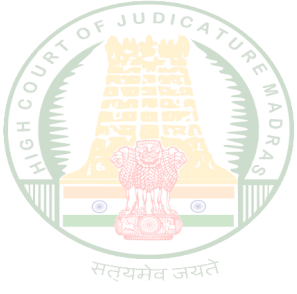


தான். அந்த ஒப்பந்தப்பத்திரம் தான் பி.வா.சா.ஆ.1. இந்த வாடகை ஒப்பந்தம் 2 வருடத்திற்கு ஏற்பட்டது. அந்த ஒப்பந்தப்படி மாதம் தோறும் 10,000-செலுத்தினேன் என்றால் சீட்டுப்பணத்திற்கு வட்டியாக தான் கொடுத்தேன். எனது ரிக்கார்டுகளை பார்த்தால் சீட்டு பணத்திற்கு வட்டியாக கொடுத்த விவரம் துலங்கும். அந்த ஒப்பந்தத்தில் தான் ஒரு லட்சம் டெப்பாசிட் செய்தது சரிதான். அந்த வாடகை ஒப்பந்தத்தில் ஹேராட்டலில் உள்ள சாமான்கள் பற்றி கண்டுள்ளது என்றால் அப்படி ஒன்றும் வைக்கவில்லை. வாடகை ஒப்பந்தப்படி அந்தந்த வாடகை அடுத்த மாதம் 5ம் தேதிக்குள் கொடுக்க வேண்டும் என்றால் அப்படி இல்லை. மாதா மாதம் ரூ. 10,000-கொடுக்க முடியாததால் தினசரி கொடுத்து வந்தேன் என்றால் சரிதான். வட்டி தான் கொடுத்தேன்.

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□நான் ஆகஸ்ட் 98லிருந்து நாளது தேதி வரை வாடகை கொடுக்கவில்லை என்றால் நான் வாடகைக்கு இருக்கவில்லை.□

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□நான் ஒப்புக்கொண்ட எனது வழக்கு பிரகாரம்
ஆகஸ்ட் 98ல் இருந்து ரூ.12,000-த்தை கொடுக்காத
காரணம் எனது கஸ்ட் நிலைமை தான். அந்தத்
தொகையை நான் வட்டியாகக் கொடுக்க கடமைப்பட்டவர்.
வாடகையாகக் கொடுக்கக் கடமைப்பட்டவர் அல்ல□.

When the defendant had specifically stated that the alleged rent stated in the tenancy agreement is only for the purpose of payment of interest for the loan, then the plaintiff had not proved the tenancy agreement and the landlord-tenant relationship. Therefore, the RCOP finding cannot be taken in the present case, since the admission of the defendant is a qualified admission. The said “qualified admission” is not in one place, but in several places and repeatedly had stated that the alleged rental agreement is only for security purpose and he is paying Rs.10,000/- for interest only. Therefore, this Court is of the considered opinion that the plaintiff ought to prove independently the landlord-tenant relationship and cannot rely on the RCOP and A.S.4 of 2005, hence the second substantial question of law is held in favour of the defendant and against the plaintiff.

22. Infact the aforesaid fact is substantiated by one more fact



that the 1996 tenancy agreement it is agreed for Rs.10,000/- as rent and Rs.1,00,000/- as advance. Normally if there is any increase in rent then the advance amount also would be increased. But there is no such increase in the alleged advance amount in the 1998 tenancy agreement but only the rent has been increased and the advance amount is retained as Rs.1,00,000/- alone.

23. The Learned Counsel appearing for the defendant submitted that if the interest calculation is applied then it would be evident that the transaction is for loan and not for sale or rental. Further stated the defendant had obtained loan with the promise to repay within two years, if not repaid then the same would carry additional interest. Hence the interest was increased from Rs.10,000/- to Rs.12,000/-.

24. Further the Learned Counsel vehemently submitted that the defendant had sold a portion of the land to his son-in-law through Ex.A4 and if the sale consideration with measurement of the property is compared then it would be evident that the sale is only a security. But the Learned Counsel appearing for the plaintiff with equal vehemence



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objected for such contention since the same was raised in the earlier suit in O.S.No.111 of 1999. Even though the suit was allowed, but on appeal in A.S.No.4 of 2005 the decree was reversed and the suit was dismissed. Then the S.A.No.398 of 2006 and SLP Diary No.19383 of 2017 filed by the defendant was dismissed. Hence the issue attained finality, the same cannot be reagitated.

25. But it is seen that the said issue was not considered by comparing the sale consideration and the extent of the property. Therefore, this Court proceeds to consider the same on this angle. It is seen through Ex.A4 dated 19.04.1994 the defendant had sold 710 square feet (1.62 cents) for a sale consideration of Rs.1,85,000/-. Through the alleged sale in Ex.A3 dated 26.06.1996 the sale is for 1988 square feet (4.56 cents) for Rs.3,10,000/-. Even if it is sold with the same rate as stated in Ex.A4 then the sale to the plaintiff ought to have been approximately for Rs.5,20,000/-. The earlier sale was in the year 1994 and the subsequent sale was in the year 1996 and by applying the increased rate for the said two years, definitely the sale consideration would have been approximately Rs.6,00,000/-. But as per the document the amount is only Rs.3,10,000/-. Definitely no prudence man would sell



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a larger extent property with half of the sale consideration. Therefore, this Court is of the considered opinion that the sale deed is either obtained by misrepresentation or by fraud or as a security for the loan. The consistent stand of the defendant is that the said sale was executed as security.

26. But the above comparison, it is evident that the defendant had obtained loan for which sale deed has been executed. For ensuring the payment of interest again the rental agreement has been executed. This Court is also taking judicial notice of the fact that earlier there was a practice prevailing to execute power of attorney instead of mortgage. Then the said practice was slowly extended to executing agreement to sale, now sale deed itself. In the present case one more step is the rental agreement to ensure the payment of interest. Therefore, this Court is of the considered opinion that the alleged sale in Ex.A3 was executed for security purpose only. Now the crucial question is when the earlier litigation had held that the said document is only sale, then it is right to hold that the said document is only security. This Court is of the considered opinion when there is an element of misrepresentation, fraud, patently error on the fact which hits the conscience of the Court, then the



Court can take a different view. Since in the present case there is misrepresentation, fraud, patent error on the fact, therefore this Court is holding that the Ex.A3 is not sale but was executed for security. Further this Court is of the considered opinion that the plaintiff had not approached the Courts with clean hands.

27. The next substantial question of law is when the Courts have held that Ex.A11 and Ex.A12 is inadmissible evidence, can a decree for possession and recovery of arrears be granted. If granted the same would be against the Section 107 of Transfer of Property Act, 1882, Section 17(d) of Registration Act, 1908 and Section 35 of Indian Stamp Act, 1899. The provisions are extracted hereunder:

Section 107 of Transfer of Property Act, 1882:

107. Leases how made.—*A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

2[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

3 [Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are



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more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

*Provided that the State Government may, 4 *** from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]*

Section 17(d) of Registration Act, 1908:

“PART III

OF REGISTRABLE DOCUMENTS

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a), (b), (c) ...

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;”

Section 35 of Indian Stamp Act, 1899:

35. Instruments not duly stamped inadmissible in evidence, etc.

- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent



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of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that

(a) any such instrument [shall] [Substituted by Act 21 of 2006, Section 69, for "not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions," .] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the [Code of Criminal Procedure, 1898 (5 of 1898)] [Now see the Code of Criminal Procedure, 1973 (2 of 1974).];

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the



certificate of the Collector as provided by section 32 or any other provision of this Act.

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From the provisions it is clear that the said Ex.A.11 and 12 are inadmissible evidence in the court of law. Further the plaintiff had not paid any penalty to accept the unstamped documents. Therefore, this Court is of the considered opinion that the finding of the both the Courts that the Ex.A.11 and 12 are inadmissible is confirmed.

28. While dealing with this issue the Trial Court had held that the Ex.A11 and Ex.A12 are inadmissible evidence but further held it is the defendant who has to prove under what capacity the defendant is in possession of the property. The said finding of the Trial Court is total non-application of mind. As held supra it the plaintiff who has to prove the same and not the defendant under section 101 to 103 of Evidence Act. The Appellate Court while dealing with the said issue had held that the Ex.A11 and Ex.A12 are inadmissible evidence, but held that the plaintiff has not wholly relied on the Ex.A11 and Ex.A12, but is relying on the sale deed and the RCOP order. But this Court has already held that the said sale deed is only for security purpose. Also, this Court held that the plaintiff ought to prove that the landlord-tenant relationship



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independently. When the defendant is in possession and the burden is on the plaintiff, when the same is not proved, then the defendant cannot be evicted from the suit property. Hence the 3rd substantial question of law is held in favour of the defendant.

29. It is settled proposition that the appeal cannot be filed for finding or judgment, it is only against the decree that appeal would lie. Therefore, the finding of the appellat court that the defendant had not filed appeal against the finding in RCOP is erroneous. Hence the 4th substantial question of law is held in favour of the defendant.

30. Since this Court has held the 1st and 2nd substantial questions of law in favour of the defendant, consequently there cannot be any decree for evicting the defendants. Therefore, the 5th substantial question of law does not arise for consideration.

31. All the substantial questions of law are answered in favour of the defendant and against the plaintiff. Therefore, the second appeal is allowed and the Judgment and decree dated 14.03.2022 passed



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in A.S.No.51 of 2020 on the file of Principal District Court, Tirunelveli confirming the Decree and Judgment dated 20.01.2020 passed in O.S.No. 391 of 2017 on the file of Principal Sub Court, Tirunelveli are hereby set aside. Consequently, the suit is dismissed.

32. In the result the second appeal is allowed. No costs.

Connected Miscellaneous Petitions are closed.

22.05.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
TMG

To

1. The Principal Sub Court,
Tirunelveli.
2. The Principal District Court,
Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SRIMATHY, J.

TMG

**Pre-Delivery Judgment made in
S.A(MD)No. 449 of 2022**

DATED : 22.05.2025