



S.A.(MD)No.594 of 2025

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 02.12.2025

CORAM :

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

S.A.(MD)No.594 of 2025

and

C.M.P.(MD)No.19195 of 2025

S.Suresh  
Correspondent,  
Mother Therasa Nursery and Primary School,  
Plot No.464, 10<sup>th</sup> East Cross Street,  
Anna Nagar, Madurai-20.

... Appellant/  
Appellant/  
Defendant

Vs.

Rev.Fr.Peter,  
Procurator,  
R.C.Diocese of Madurai  
having office at Arch Bishop's House,  
K.Pudur, Madurai-7.

... Respondent/  
Respondent/  
Plaintiff

**PRAYER :** Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 28.10.2024 passed by learned IV Additional District Judge, Madurai in A.S.No.24 of 2023 which confirmed the



S.A.(MD)No.594 of 2025

judgment and decree dated 16.12.2022 passed by learned II Additional Sub Judge, Madurai in O.S.No.1117 of 2018.

For Appellant : Mr.S.Sukumar

### **JUDGMENT**

The Second Appeal is directed against the judgment and decree passed in A.S.No.24 of 2023 dated 28.10.2024 on the file of the IV Additional District Court, Madurai, confirming the judgment and decree made in O.S.No.1117 of 2018 dated 16.12.2022 on the file of the II Additional Sub Court, Madurai.

2. The appellant is the defendant (hereinafter referred as 'defendant'). The respondent / plaintiff (hereinafter referred as 'plaintiff') filed a suit in O.S.No.1117 of 2018 directing the defendant to vacate and hand over the vacant possession of the suit property, to pay arrears of rent to the tune of Rs.2,05,267/- for the period till 08.08.2018, the date of termination of lease and for past and future mesne profits. The defendant filed a written statement and contested the suit. The learned II Additional Sub Judge, Madurai, after framing necessary issues and after full trial,



S.A.(MD)No.594 of 2025

WEB COPY

passed the judgment and decree dated 16.12.2022 decreeing the suit with costs by directing the defendant to vacate the suit property and hand over the same to the plaintiff within a month time and to pay Rs.2,05,262/- as arrears of rent and the plaintiff was entitled to conduct separate enquiry for the past and future mesne profits under Order 20 Rule 12 C.P.C. Aggrieved by the said judgment and decree, the defendant filed an appeal in A.S.No.24 of 2023 and the learned IV Additional District Judge, Madurai, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 28.10.2024 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendant has preferred the present Second Appeal.

3. At the outset, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in



S.A.(MD)No.594 of 2025

an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

*“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing*



S.A.(MD)No.594 of 2025

WEB COPY

*erroneous substantial question of law.”*

4. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs. Saraswati and others*** reported in ***2022 SCC OnLine SC 1273*** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the following principles relating to Section 100 C.P.C., which are as follows;

*“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*

*(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a*



*mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*

*(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also*



S.A.(MD)No.594 of 2025

*refers to any case, where the evidence, taken as a whole,  
is not reasonably capable of supporting the finding.”*

5. Bearing the settled legal position in mind, let us proceed with the present case.

6. The case of the plaintiff is that the plaintiff is the owner of the suit property and the defendant is a tenant running a school in the name and style of 'Mother Theresa Nursery and Primary School' in 1841 sq.ft. area and resides in 1245 sq.ft. area totally occupying 3086 sq.ft. The plaintiff and the defendant entered into an unregistered lease deed dated 13.08.2016 for a period of three years from 01.04.2015 to 31.03.2018 fixing the advance amount at Rs.50,000/- and monthly rent at Rs.14,000/-. Though the lease period has already expired, the lease has been extended orally from month to month, as the plaintiff has been insisting the defendant to vacate and hand over the vacant possession of the suit property. The defendant is a chronic defaulter in payment of rent. The defendant made last payment vide cheque dated 22.03.2018 for Rs.98,000/- and the said amount was appropriated towards the arrears of



S.A.(MD)No.594 of 2025

rent from July 2016 to January 2017. Since the defendant was representing that the cheque for Rs.98,000/- was for the period from July 2017 to January 2018, another cheque dated 03.05.2018 for Rs.42,000/- sent by the defendant along with advocate notice was not encashed. The plaintiff sent a legal notice dated 24.07.2018 terminating the lease and directing the defendant to pay all the arrears and vacate the suit property and hand over the vacant possession of the same within 15 days from the date of receipt of the notice and in case of failure to do so, the defendant shall pay Rs.40,000/- per month as mesne profits with 15% interest per annum till possession is handed over. The defendant sent a reply notice dated 01.08.2018 with false and untenable allegations. Since the plaintiff is a religious Trust, the suit building has been exempted from the applicability of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 (hereinafter referred as 'the said Act') as per the Government order G.O.Ms.No.2000, Home, dated 16.08.1976 issued under Section 29 of the said Act.

7. The defence of the defendant is that the plaintiff actually let out 1789.88 sq.ft. for commercial purpose and 399.31 sq.ft. for residential



S.A.(MD)No.594 of 2025

WEB COPY

purpose totalling 2189.19 sq.ft., that though monthly rent of Rs.14,000/- was for 3086 sq.ft., the defendant is liable to pay Rs.9,960/- per month for 2189 sq.ft. and as such, the excess amount of rent Rs.4,040/- paid per month has to be adjusted since 01.04.2015, that since the plaintiff received the rent upto April 2018 without any objection, he is estopped from denying the same, that the suit filed by the plaintiff without invoking the provisions of the Rent Control Act is not maintainable, that the defendant has got oral permission from the plaintiff and spent Rs.1,40,000/- for effecting repairs in the suit property and hence, the defendant is liable to adjust the same in the rent and that therefore, the suit is liable to be dismissed.

8. At the outset, it is pertinent to note that the defendant has admitted the relationship of landlord and tenant between the plaintiff and himself. Hence, the defendant is not entitled to question the title of the plaintiff.

9. Though the defendant has alleged that the plaintiff has actually let out 1789.88 sq.ft. for commercial purpose and 399.31 sq.ft. for



S.A.(MD)No.594 of 2025

residential purpose totalling 2189.19 sq.ft., he has not produced any iota of evidence to substantiate the same.

10. The defendant has not specifically disputed the Ex.A.1 (lease agreement), wherein, it was agreed by the defendant to pay monthly rent of Rs.14,000/- for the leased out property. After accepting the rent at Rs.14,000/- and after paying the rent at the said rate for some years, the defendant is clearly estopped from taking a stand that he is liable to pay Rs.9,960/- as rent per month and is entitled to adjust the excess amount of Rs.4,040/- paid per month since the date of lease.

11. The defendant has challenged the maintainability of the suit on the ground that the said Act is applicable to the suit building and that the plaintiff cannot claim exemption as per G.O.Ms.No.2000 dated 16.08.1976. According to the defendant, the plaintiff has not raised any necessary pleadings to claim the exemption, but in paragraph No.8 of the plaint, the plaintiff has specifically stated that the said Act is not applicable to the suit property and that the plaintiff is a religious Trust and all building of such religious Trust has been exempted from the



S.A.(MD)No.594 of 2025

WEB COPY

applicability of the said Act as per G.O.Ms.No.2000, dated 16.08.1976 issued under Section 29 of the said Act.

12. The learned counsel appearing for the defendant would contend that the plaintiff is not a Trust, entitled to claim the exemption under G.O.Ms.No.2000 but the Courts below, without considering the said defence in proper perspective, erred in decreeing the suit.

13. The learned trial Judge as well as the learned first appellate Judge have considered the objection of the defendant with regard to the maintainability of the suit and came to a decision that the suit is perfectly maintainable. The learned appellate Judge, referring to the decision of the Hon'ble Supreme Court and also this Court that diocese is entitled to get benefits of G.O.Ms.No.2000 dated 16.08.1976, held that the suit is maintainable in law and the relevant passage is extracted hereunder;

*“12. While it is so it has to be seen that the R.C. diocese of Madurai which is the plaintiff herein is entitled to maintain the suit without invoking the provision of the Rent Control Act. It is pertinent to note that the identical point with regard to the R.C. Diocese Kumbakonam came*



S.A.(MD)No.594 of 2025

*up for consideration before the Hon'ble High Court, Madras. The Hon'ble Madras High Court following the guidance issued in the judgment of the Hon'ble Supreme Court of India in Mulla Gulam Ali and Safiabai D.Turst ..vs... Deelip Kumar and Co. (2001 1 L.W.652 = 2001(1) CTC 688) having regard to the object of the Kumbakonam Diocese Society similar to that of object of the R.C. Diocese Madurai under Ex.A10 held in the judgment in Vijayakumar ..vs.. Roman Catholic Church represented by K.Antony Joseph published in internet following the judgment in Ranjan Deva Shayam ..vs.. Hindustan Bible Institute of India (1996 1 L.W. 522) that there is no scope to hold the respondent therein that is Roam Catholic Church under control of Kumbakonam diocese is not entitled for the benefits of G.O.Ms.2000 dated 16.08.1976. It is pertinent to note that there cannot be any dispute that the R.C. Diocese, Madurai is related to the one of the denomination of the Christianity known as Roman Catholic. Moreover it appears from the object of the Society known as R.C. Diocese of Madurai, the said Society has been involving religious and charitable activities and that in view of the dictum laid down by the above said judgment this court concluded that the suit is maintainable in law. ”*



S.A.(MD)No.594 of 2025

WEB COPY

14. The learned counsel appearing for the defendant would then contend that the defendant paid lease amount through cheques and the same were encashed by the plaintiff but the Courts below, without considering the same, gave a findings that the defendant is a willful defaulter. According to the plaintiff, the defendant sent a cheque for Rs.98,000/- and the same was encashed for the arrears of rent for the period from July 2016 to January 2017. It is the further case of the plaintiff that since the defendant has issued a legal notice along with cheque for Rs.42,000/- stating that the earlier cheque for Rs.98,000/- was for the period from July 2017 to January 2018, the plaintiff did not encash the cheque.

15. It is pertinent to note that the plaintiff claimed rent arrears from February 2017 till 08.08.2018 the date of termination of lease at Rs.2,55,267/- and deducting advance amount of Rs.50,000/- claimed arrears of rent at Rs.2,05,267/-. Though the defendant has taken a stand that the subsequent cheque was also encashed, that was disputed by the plaintiff. The learned trial Judge has rightly observed that the defendant has not produced his bank statement to prove that the cheques sent by



S.A.(MD)No.594 of 2025

him were encashed and that they have not produced their school accounts to prove the alleged payments.

16. The defendant has not shown that material evidence available on record in the case had been ignored by the first appellate Court or that there was no evidence at all. The defendant has also not shown that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The defendant has not canvassed any stand that the Courts below have wrongly placed the burden of proof.

17. It is pertinent to note that the first appellate Court, on appreciating and re-appreciating the entire evidence and the legal aspects in proper perspective, has come to a definite decision that the plaintiff has proved their case and as such, is entitled to the decree prayed for.

18. Considering the judgments of the Courts below, no question of law much less Substantial Question of Law is made out. As per the dictum laid down by the Hon'ble Supreme Court in **Chandrabhan's** case



S.A.(MD)No.594 of 2025

referred supra, it is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Consequently, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed.

19. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.1117 of 2018 on the file of the II Additional Sub Court, Madurai and in A.S.No.24 of 2023 on the file of the IV Additional District Court, Madurai. Consequently, connected Miscellaneous Petition is closed. No costs.

**02.12.2025**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/ No  
csm

**To** 1. The IV Additional District Judge, Madurai.

2. The II Additional Sub Judge, Madurai.

3. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

15/16



WEB COPY



S.A.(MD)No.594 of 2025

**K.MURALI SHANKAR, J**

csm

**Judgment made in**  
S.A.(MD)No.594 of 2025  
and  
C.M.P.(MD)No.19195 of 2025

**Dated : 02.12.2025**