WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2026

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

A Nos.1969 & 1970 of 2026
AND
A.NOs. 864 & 865 OF 2024,
in EP NO. 64 OF 2023 &
A NO. 4723 OF 2024

St.Peters Church Royapuram
Represented by its Board of Trustees
T.Gokulachandran, L.James, K.S.Barnabas,
K.M.Irudhayaraj, B.Peter Vijayan, Having their
office at 19 West Madha Church Street,
Royapuram, Chennai - 600 013.

..Applicant(s)

Vs

1. K.Abdul Samad
   171, 41 Main 4th Cross, Bank Officers Colony,
   BTM, II Stage, Bangalore 560 063.

2. K.M.Saleem
   C-2, Rivew Fide, Mankavu, Calicut 673 007.

3. K.Nizamudeen
   No.7, 9th South Cross Street, Off ECR Road,
   Neelankarai, Chennai 600 041.

4. K.Razia Veerankutty
   Flat No.8, 4th Flor, Highlight Manor, Nadukav,
   Kozhikode 6713 011.

5. K.Zareena
   No.9, Lamak Ave, Apartment No.CG, Alsa
   White Stone, Spurtank Road,
   Chennai 600 031.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. K.Fathima
   N.5, Desi Colony, III Street, Perambur High Road, Chennai 600 012.

7. K.Mumtaz
   No.7, 9th South Cross Street, Off ECR Road, Neelankarai, Chennai 600 041.

8. P.C.Malpani and Co
   Rep.by its Partners, Ashok Malpani, S/o.H.K.Malpani, Lata Malpani, W/o.Ashok Malpani, Arushi Mohta, D/o.Ashok Malpani and W/o.Varun Mohta, Having Office at No.329, Lingi Chetti Street, Chennai 600 001.

9. M/s.Samad and Co
   (Estate of K.Muhammed Kutty), (Constituting the legal heirs of Late K.M.Kutty), Represented by its Co-owner K.Zainuden, Having office at II Street, Perambur High Road, Chennai - 600 012.

10. A.P.M.Mariyam
    No.5, Desi Colony, III Street, Perambur High Road, Chennai 600 012.

11. K.Muneerudeen
    No.709, Desi Colony, III Street, Perambur High Road, Chennai 600 012.

..Respondent(s)

EP No. 64 of 2023

St. Peters Church Royapuram
Represented by its Board of Trustees
T.Gokulachandran, L.James, K.S.Barnabas, K.M.Irudhayaraj, B.Peter Vijayan, Having their office at 19 West Madha Church Street, Royapuram, Chennai - 600 013.

..Applicant(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

Vs

1. M/s. Samad and Co.
   (Estate of K.Muhammed Kutty), (Constituting the legal heirs of Late K.M.Kutty), Represented by its Co-owner K.Zainuden, Having office at II Street, Perambur High Road, Chennai - 600 012.
2. A.P.M.Mariyam
   No.5, Desi Colony, III Street, Perambur High Road, Chennai 600 012.
3. K.Abdul Samad
   171, 41 Main 4th Cross, Bank Officers Colony, BTM, II Stage, Bangalore 560 068.
4. K.M.Saleem
   C-2, Rivew Fide, Mankavu, Calicut 673 007.
5. K.Munirudeen
   No.709, Desi Colony, III Street, Perambur High Road, Chennai 600 012.
6. K.Nizamudden
   No.7, 9th South Cross Street, Off ECR Road, Neelankarai, Chennai 600 041.
7. K.Razia Veerankutty
   Flat No.8, 4th Flor, Highlight Manor, Nadukav, Kozhikode 6713 011.
8. K.Zareena
   No.9, Lamak Ave, Apartment No.CG, Alsa White Stone, Spurtank Road, Chennai 600 031.
9. K.Fathima
   N.5, Desi Colony, III Street, Perambur High Road, Chennai 600 012.
10. K.Mumtaz
    No.7, 9th South Cross Street, Off ECR Road, Neelankarai, Chennai 600 041.

https://www.mhc.tn.gov.in/judis

WEB COPY

..Respondent(s)

A No. 1969 of 2026

To set aside the order dated 07/04/2026 in A.No.5698 of 2024 in E.P.No.64 of 2023 in the following grounds.

A No. 1970 of 2026

To set aside the order dated 07/04/2026 in A.No.4022 of 2025 in E.P.No.64 of 2023 in the following grounds.

EP No. 64 of 2023

Pleased to issue Warrant directing the Judgment Debtors / Defendants to vacate the suit schedule premises and hand over vacant possession after removing all constructions put up therein as per decree U/o. XXI Rule 35 and 36 of C.P.C.

A Nos. 1969 & 1970 of 2026

For Applicant(s) in both A.Nos.: Mr.B.Ullasavelan

For Respondent(s) in both A.Nos.: Mr.S.Balasubramanian for R1

COMMON ORDER

A.Nos.1969 and 1970 of 2026 have been filed challenging the order dated 07.04.2026 passed by the learned Master, whereby A.No.4022 of 2025 filed by the applicant/Decree Holder/Landlord was dismissed and A.No.5698 of 2024 filed by the applicants/Judgment Debtors 3, 4 and 6 to 10/Defendants was allowed.

https://www.mhc.tn.gov.in/judis

WEB COPY

2. The plaintiff instituted the suit seeking recovery of vacant possession of the suit property after demolishing the building constructed by the defendants, who were tenants of the vacant land. The suit was decreed, directing the defendants/tenants to hand over vacant possession of the land after demolishing the building constructed thereon and to pay future damages. The decree has attained finality.

3. Since the defendants failed to comply with the decree, the plaintiff initiated execution proceedings in E.P.No.64 of 2023. During the pendency of the execution proceedings, the sub-tenant, who had been inducted by the defendants/tenants, deposited a sum of Rs.20,19,000/- towards the arrears of rent payable to the defendants/Judgment Debtors.

4. The Decree Holder filed an application seeking permission to withdraw the said amount. However, the application was dismissed by the learned Master. On the other hand, the application filed by the Judgment Debtors seeking permission to withdraw the amount was allowed.

5. Heard the learned counsel appearing for the parties.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. Admittedly, the amount in question was deposited by the sub-tenant towards the arrears of rent payable to the defendants/Judgment Debtors and not towards any amount payable to the Decree Holder. Further, the decree does not contain any direction for payment of arrears of rent by the defendants/Judgment Debtors. It only directs them to pay past and future damages.

7. The learned Master has rightly observed that the amount deposited by the sub-tenant represents the arrears of rent payable to the defendants/Judgment Debtors. The learned Master has also taken note of the fact that, on an earlier occasion, the landlord/Decree Holder had agreed before this Court that the rental arrears deposited by the sub-tenant in the two applications could be paid to the tenants/Judgment Debtors. Having taken such a stand before this Court, the Decree Holder cannot now seek to withdraw the said amount. The learned Master has further observed that there is no privity of contract between the sub-tenant and the landlord.

8. It is relevant to extract Paragraph 8 of the impugned order dated 07.04.2026 passed by the learned Master, which reads as follows:

"8. The admitted facts are that the first respondent/3rd party is a sub-tenant under judgment debtors in the above execution proceedings and the amount deposited by the

https://www.mhc.tn.gov.in/judis

WEB COPY

1st respondent lying to the credit of above EP are the rental arrears to be paid by the sub-tenant to the judgment debtors/tenants. The deposit made by the sub-tenant is on behalf of the tenant which does not mean admission of liability to the landlord directly. The sub-tenant has no privity of contract with the landlord unless statue expressly provides otherwise. The above E.P. is field by the landlord/decree holder u/o 21, R35 & 36 of CPC to issue warrant directing the tenants/judgment debtors to vacate the suit schedule premises and handover vacant possession after removing all constructions put up on the premises. Though it is the contention of the landlord/decree holder that the tenant/judgment debtor was in arrears of rent for a period of 4 years. Furthermore, the landlord/decree holder on previous occasions, having accepted before this Court to pay the rental arrears deposited by the sub-tenant/1st respondent in both the applications to the tenant/Judgment Debtors in A.No.5140 of 2023 and in A.Nos.864 & 865 of 2024 now cannot claim the same in the absence of proof of privity of contract".

https://www.mhc.tn.gov.in/judis

WEB COPY

9. In view of the above, I find no illegality or infirmity in the order dated 07.04.2026 passed by the Master warranting interference by this Court. Accordingly, A.Nos.1969 and 1970 of 2026 are dismissed. However, the dismissal of these applications shall not preclude the plaintiff/Decree Holder from working out his remedies, if any, in accordance with law.

28-10-2026

DNA

https://www.mhc.tn.gov.in/judis

WEB COPY

HEMANT CHANDANGOUDAR J.

DNA

A Nos.1969 & 1970 of 2026
AND
A.NOs. 864 & 865 OF 2024,
in EP NO. 64 OF 2023 &
A NO. 4723 OF 2024

28-10-2026

https://www.mhc.tn.gov.in/judis