



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 17.02.2026

Judgment pronounced on : 27.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.5471 of 2025
& CMP.No.27561 of 2025

Silambarasan

.. Petitioner

Vs.

Hasina Begam (Died)
A.Rubina

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 24.09.2025, rejecting the unnumbered E.A application to re-open in E.P.No.1 of 2022 in H.R.C.O.P.No.4 of 2017 on the file of the Principal District Munsif, Karaikal.

For Petitioner : Mr.P.Parthiban

For Respondents : Mr.K.V.Babu

ORDER

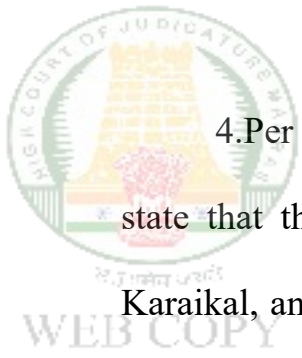
The tenant is the revision petitioner. The petitioner challenges an order passed in the execution proceedings, dismissing an application to re-open an unnumbered



application for summoning the witnesses to prove the usufructuary mortgage arrangement entered into between the petitioner and the deceased 1st respondent on 05.05.2019.

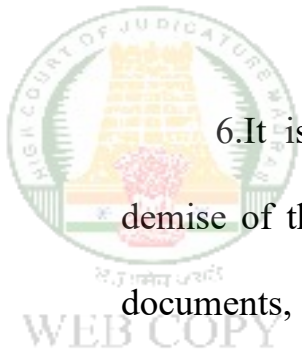
2.I have heard Mr.P.Parthiban, learned counsel for the petitioner/tenant and Mr.K.V.Babu, learned counsel for the respondent/landlady.

3.Mr.P.Parthiban, learned counsel appearing for the revision petitioner would contend that though the petitioner suffered an order of eviction before the Rent Controller, the petitioner had substantial defence to establish that the decree was not executable on account of a mortgage deed dated 05.05.2019, which has been entered into by the deceased 1st respondent with the petitioner. He would state that taking advantage of the demise of the 1st respondent, the 2nd respondent has denied the said mortgage deed, contending that it is a forged document. It had therefore become necessary for the petitioner to establish the payment of the entire arrears of rent and also creation of a new relationship under the usufructuary mortgage deed. According to the learned counsel for the petitioner, the landlady had received Rs.6 lakhs from the petitioner and if the petitioner is able to prove the said document and the payment made under the document, then the decree itself would be rendered inexecutable. He would therefore pray for the revision being allowed.



4.Per contra, Mr.K.V.Babu, learned counsel appearing for the respondent would state that the 1st respondent filed HRCOP.No.4 of 2017 before the Rent Controller, Karaikal, and in the said HRCOP, she had taken out an application under Section 11(4) of the Act in I.A.No.3 of 2018 and that after contest, the Rent Controller found the petitioner to be in arrears and directed payment of Rs.6,15,000/-, within a period of one month, by order dated 02.01.2019. Admittedly, the petitioner did not comply with the order and he preferred CMA.No.1 of 2019, challenging the order passed in the Section 11(4) application. The said CMA came to be dismissed by the District Court, Karaikal, by a well considered and reasoned order dated 27.01.2020, directing deposit of rental arrears from August 2015, till date, within a period of one months.

5.Mr.K.V.Babu, would further state that admittedly, the petitioner did not comply with the directions issued by the Principal District Munsif, Karaikal, which resulted in an order of eviction being passed. In order to execute the order of eviction, E.P.No.1 of 2022 was filed by the 1st respondent and pending the execution petition, consequent to the demise of the 1st respondent, the daughter of the 1st respondent, namely the 2nd respondent has thereafter contested the execution petition. He would therefore state that pending the CMA also, the petitioner never brought up the issue of any alleged mortgage deed having been executed by the 1st respondent, the CMA having been disposed of only on 27.01.2020, during the lifetime of the 1st respondent.



6.It is therefore the submission of Mr.K.V.Babu that taking advantage of the demise of the 1st respondent, the petitioner has fabricated and brought about a forged documents, styled as mortgage deed, as if the petitioner paid Rs.6 lakhs to the deceased landlady, that too pending CMA.No.1 of 2019. In support of his submissions, Mr.K.V.Babu has relied on the decisions of this Court in *Arumughachamy Nadar Vs. Deivanaiammal*, reported in 1998 SCC Online Mad 94 and *D.Srinivasan and others Vs. D.Chairman and others*, reported in 2013 (4) CTC 145.

7.That apart, Mr.K.V.Babu would further bring to my notice that the revision itself is not maintainable for the simple reason that the revision challenges the order passed by the executing Court, dismissing the application to re-open an earlier application. According to Mr.K.V.Babu, the revision was filed on 06.10.2025 and it was numbered on 05.11.2025 and interim stay was granted on 07.11.2025 by this Court in the above CRP. However, even on 25.10.2025, the executing Court has ordered delivery, which order has not been challenged by the petitioner. He would therefore state that when much water has flown subsequently, the revision challenging the docket order dated 24.09.2025 is not maintainable.

8.I have carefully considered the submissions advanced by the learned counsel for the parties. I have also gone through the records and also the decisions relied on by the learned counsel for the parties.



9. Admittedly, the petitioner is a tenant, against whom the 1st respondent initiated eviction proceedings on the ground of wilful default and demolition and reconstruction.

Pending the said RCOP, the 1st respondent took out an application under Section 11(4) of the Act. After enquiry, the Rent Controller allowed the application by order dated 02.01.2019, finding the petitioner to be in arrears and directed the petitioner to deposit Rs.6,15,000/- within a period of one month.

10. Aggrieved by the said order, the petitioner filed CMA.No.1 of 2019 before the District Judge, Karaikal. The said CMA was also dismissed by the learned District Judge, Appellate Authority by order dated 27.01.2020. The Appellate Authority directed deposit of arrears right from August 2015, till the date of disposal of CMA in January 2020.

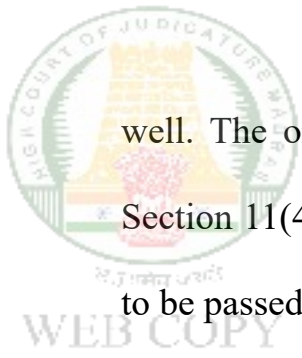
11. The petitioner did not make any deposit in compliance with the order passed by the Appellate Authority. The same resulted in an eviction order being passed in the RCOP, as a consequence of failure to comply with the order under Section 11(4) of the Act. In order to execute the eviction decree, the respondent filed E.P.No.1 of 2022. It is in the said EP that the petitioner filed an application to reopen the petitioner's side evidence and to enable him to examine the attestors to Ex.R3, in order to prove the document. The executing Court, by order dated 24.09.2025, rejected the application to



reopen the petitioner's side evidence, finding that sufficient time has already been granted to the petitioner, despite which the petitioner has not come forward to present arguments. Orders were reserved in the execution petition on the same date i.e. 24.09.2025 and the EP was adjourned for passing orders to 07.10.2025.

12.It is an admitted position that thereafter on 25.10.2025, the executing Court has allowed the EP and ordered delivery of possession. The petitioner has admittedly not challenged the order dated 25.10.2025. The petitioner merely challenges the rejection of his application for reopening his side of the evidence. As rightly contended by Mr.K.V.Babu, according to the petitioner, the alleged mortgage deed entered into between the petitioner and the deceased 1st respondent was on 05.05.2019, on which date admittedly, CMA.No.1 of 2019 was pending and the 1st respondent was very much alive. The petitioner did not choose to bring it to the notice of the Appellate Authority about the alleged mortgage deed and settlement of the entire arrears and creation of a fresh usufructuary mortgage arrangement between the petitioner and the 1st respondent.

13.The petitioner slept over the matter and proceeded to contest the execution petition right from 2022 and at the fag end of proceedings, the petitioner took out an application to reopen the petitioner's side evidence by filing an application only on 18.09.2025, stating that he intends to examine the attestors to Ex.R3, in order to prove the document and also payment of the arrears of rent, apart from further amounts as



well. The order of the Rent Controller, directing deposit of the arrears of rent under Section 11(4) has not been complied with. This entails a consequential order of eviction to be passed. However, in view of pendency of CMA.No.1 of 2019, at the instance of the petitioner, the respondents were not in a position to proceed with the execution. However, the CMA also came to be dismissed even in January 2020. For more than five years, the petitioner did not even deem it necessary to plead about the alleged usufructuary mortgage said to have been entered into between the petitioner and the 1st respondent. Thus, it is clearly an after thought and designed to protract the execution proceedings further.

14. In fact, even when the CMA was disposed of by the Appellate Authority also, the petitioner did not deem it appropriate to bring it to the notice of the Appellate Authority that he has already paid the entire arrears. On the contrary, he having suffered an order before the Appellate Authority as well, the petitioner only defended the execution proceedings. I do not see any merit in the application to reopen the evidence on the side of the respondent. The order of delivery subsequently passed on 25.10.2025 is also not challenged by the petitioner and therefore, as rightly contended by Mr.K.V.Babu, the revision challenging the docket order dated 24.09.2025 has virtually become infructuous. The respondent is entitled to execute the eviction order passed pursuant to failure of the petitioner to comply with the order passed under Section 11(4) of the Act. In the light of the above, I do not see any merit in the revision. However, the



alleged creation of usufructuary mortgage on 05.05.2019 cannot be put as a spoke in the execution proceedings for recovering possession of the property. If at all the petitioner is advised to seek for refund of the alleged amounts paid under the usufructuary mortgage deed, over and above the arrears of rent, then it shall be only open to the petitioner to independently canvas the same by filing a civil suit, subject to proof and the law of limitation and not by attempting to prove the said documents in the execution proceedings.

15. This Court in *Arumughachamy's case*, held that when the tenant claims under an unregistered mortgage deed, he cannot be permitted to mark the said document in evidence, even for collateral purposes. In *D. Srinivasan's case* also, this Court held that when a document creates or extinguishes a right, then sufficient stamp duty and due registration are necessary and any such insufficiently stamped and unregistered document would be inadmissible in evidence and cannot be relied upon for collateral purposes. I am not inclined to go into the ratio laid down in the above cases since I have come to the conclusion that the petitioner cannot seek to enforce his right in respect of the alleged mortgage deed in the execution proceedings. As and when the petitioner chooses to claim any rights under the alleged mortgage deed dated 05.05.2019. It shall be open to the 2nd respondent to contest the same, including the maintainability on the grounds that the alleged usufructuary mortgage deed dated 05.05.2019 is not stamped and also unregistered and other available legal defence open to the 2nd respondent.



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16. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. The execution petition shall be disposed of by the learned District Munsif Court, Karaikal, on or before 30.04.2026. Connected Civil Miscellaneous Petition, if any, is closed.

27.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

1. The Principal District Munsif, Karaikal.
2. The District Judge, Karaikal.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.5471 of 2025
& CMP.No.27561 of 2025

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