



S.A.(MD)No.5 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.5 of 2025

and

C.M.P.(MD)No.288 of 2025

Shanmugam (Died)

1.Manoranjitham

2.Jeyachandran

3.Manoharan

4.Jeyarani

5.Latha

... Appellants

Vs.

Sastha Kovil,

Muppidathi Amman Kovil Street,

Tenkasi Town,

Rep. through its Administrator,

Harihara Subramanian,

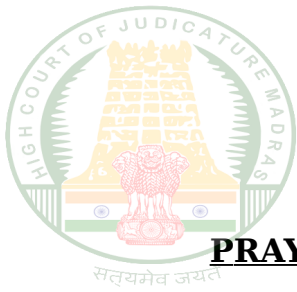
S/o.Lakshmanan,

Breeze, Plot A4/4 Jeyaram Street,

Thiruvanmiyur,

Chennai.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to call for the records relating to the decree and judgment in A.S.No.99 of 2015 passed by the learned Additional Sub Court, Tenkasi dated 23.01.2024, reversing the decree and judgment in O.S.No.82 of 2012, passed by the learned Additional District Munsif Court, Tenkasi dated 16.10.2025 and set aside the same by allowing the Second Appeal.

For Appellants : Mr.K.P.Narayanakumar
For Respondent : Mr.R.Mukundan
for Mr.V.Karthikeyan

JUDGMENT

The original defendant's legal representatives are the appellants in the present Second Appeal, challenging the reversal findings of the First Appellate Court, granting a decree as prayed for in favour of the respondent / plaintiff temple.

2.I have heard Mr.K.P.Narayanakumar, learned Counsel for the appellants and Mr.R.Mukundan for Mr.V.Karthikeyan, learned Counsel for the respondent / plaintiff.

3.The parties are described as per their rank in the Trial Court for the sake of convenience.



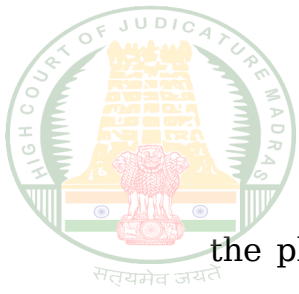
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WEB COPY 4.This Second Appeal was admitted by this Court on 03.06.2025, on the following two substantial questions of law:

“(a) Whether the decree of declaration, recovery of possession and mandatory injunction can be granted without identification of the property as required under Order VII Rule 3 of CPC?

“(b) Whether the First Appellate Court is correct in decreeing the suit for declaration, recovery of possession and mandatory injunction, when the respondent / plaintiff failed to prove his title over the building (superstructure) in 2nd schedule and jural relationship of landlord-tenant regarding the superstructure in 2nd schedule?”

5.Learned Counsel for the appellants Mr.K.P.Narayanakumar, would firstly contend that the respondent / plaintiff had filed the suit for declaration and recovery of possession and also for a mandatory injunction, to remove a gate alleged to have been put up by the defendant. It is his submission that though the plaintiff claimed to be the owner of both land and building and had also filed Rent Control proceedings in R.C.O.P.No.14 of 2009, the Rent Controller had dismissed the eviction petition on the ground that



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the plaintiff / temple was exempt from the provisions of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960, [Act 18 of 1960]. He would further state that though the plaintiff preferred an appeal in R.C.A.No.1 of 2011, the plaintiff chose to voluntarily withdraw the same without any liberty and thereafter, filed the present suit, without even issuing a notice under Section 106 of the Transfer of Property Act, 1882, terminating the tenancy of the defendant.

6.Mr.K.P.Narayanakumar, would further state that it was the specific case of the defendant that the temple had leased out a vacant land and it was only the defendant who had spent Rs.3 Lakhs and put up superstructure and without admitting to the said factual position, the plaintiff, on the contrary, suppressing material facts had filed the suit, as if the defendant was a lessee in respect of both land and superstructure. He would further state that in such cases where the tenant had put up the building, the plaintiff would have to invoke the provisions of the Tamil Nadu City Tenants Protection Act, 1921, which governs such cases of lease of vacant land and the very foundation of the present suit was challenged by the defendant.



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7.Mr.K.P.Narayanakumar, would further refer to the schedule to the suit property and state that the plaintiff had mentioned Door No.431 and 432 in the suit property, while admittedly, the defendant was a lessee only in respect of Door No.431 and not 432. He would therefore, state that behind the back of the other tenant namely one Pitchiah, who is in occupation of Door No.432, a decree for declaration and also recovery of possession of said Door No.432 was not maintainable. He would further state that the First Appellate Court has failed to consider these material contentions raised by the appellants. He would therefore, state that the very identity of the property as mandated under Order VII Rule 3 of CPC itself failed. He would also take me through the findings of the Courts below that it was only the vacant land which had been originally let out by the defendants and in such circumstances, it was the submission that there was no ownership of the superstructure, for the plaintiff to claim recovery of possession of superstructure as well. He would therefore, pray for the Second Appeal being allowed as prayed for.

8.Per contra, Mr.R.Mukundan, learned Counsel appearing for the plaintiff fairly states that including Door No.432 in the schedule was clearly a mistake and it was not with any ulterior motive or



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mischievous intention, since as against the tenant in occupation of Door No.432, separate proceedings were initiated and the matter also ended in a compromise and the plaintiff temple has already recovered possession of the property from the said tenant. He would therefore, state that the plaintiff can always be granted lesser relief than what has been prayed for in the suit.

9.Insofar as the arguments of Mr.K.P.Narayanakumar, Mr.R.Mukundan, learned Counsel for the respondent / plaintiff would state that what was leased out is only a vacant land and the defendant was not permitted to put up any superstructure. He would further state that for past several decades, the defendant and now the legal heirs of the defendants, are in occupation, paying a pittance of Rs.250/- per month. He would state that the future plans of the temple have been seriously prejudiced and thwarted because of the unreasonable stand taken by the defendant and now continued by his legal heirs, namely the appellants. He therefore, prays for dismissal of this Second Appeal.

10.I have carefully considered the submissions advanced by the learned Counsel for the parties.



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11.With regard to the first substantial question of law, as rightly pointed out by Mr.K.P.Narayanakumar, the plaintiff ought not to have included Door No.432, which was never part of a tenancy agreement between the plaintiff and the defendant. Admittedly, the tenancy in respect of Door No.432 with a different tenant altogether namely one Pitchiah, against whom separate eviction proceedings had also been taken and therefore, I do not see that mere inclusion of Door No.432, being fatal to the case of the plaintiff. It is now settled law that if the plaintiff is entitled to lesser relief, this Court can always mould the relief and grant a lesser relief. In such circumstances, I do not see how the plaintiff should suffer. No prejudice has indeed been caused to the appellants and there is also no failure of adherence to Order VII Rule 3 of CPC. The substantial questions of law (a) is therefore answered against the appellants and in favour of the respondent.

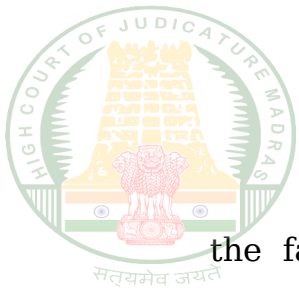
12.With regard to the second substantial question of law (b), it relates to the construction of the superstructure by the defendant. The Trial Court had initially agreed with the contentions of the defendants and dismissed the suit. However, the First Appellate Court has reversed the findings of the Trial Court and found that the plaintiff is entitled to the relief of declaration and



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recovery of possession as well as mandatory injunction as prayed for. The view taken by the First Appellate Court is probable and as long as it is based on pleadings and evidence, I do not see how this Court exercising jurisdiction under Section 100 of CPC, can interfere with such a finding of fact, which has become final with the judgment of the First Appellate Court.

13.Admittedly, the appellants are tenants under the plaintiff / temple and they have also admitted to the fact that they are predecessors in interest and the defendant was inducted only as a tenant. The First Appellate Court has rightly found that the appellant has violated the terms and conditions of the original lease in his favour and was therefore, not even entitled to the benefit of notice under Section 106 of the Transfer of Property Act. The First Appellate Court rightly reversed the findings of the trial Court and granted a declaratory decree in favour of the respondent temple and such findings being arrived at based on available evidence, I do not see any perversity in either the approach or the decision ultimately arrived at by the First Appellate Court warranting interference in the Second Appeal. I do not find any substantial grounds much less substantial questions of law arising for consideration in this Second Appeal. At the same time, considering



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the fact that the defendant had been in possession for several decades and now the appellants are continuing to do business, I am inclined to grant time till **31.01.2027**, to enable the appellants to vacate and hand over possession of Door No.431 alone.

14.In fine, the Second Appeal is partly allowed, restricting the declaratory relief to Door No.431, (Old No.1A), Muppidthi Amman Kovil Street, Tenkasi, under the occupation of the appellants and secondly, directing the appellants to vacate and hand over possession of Door No.431, on or before **31.01.2027**, subject to all the appellants filing an affidavit of undertaking, either a joint or individual affidavits stating that they would peacefully and voluntarily vacate and hand over possession of Door No.431, (Old No.1A), Muppidthi Amman Kovil Street, Tenkasi, under their occupation on or before **31.01.2027**, without driving the respondent / plaintiff to initiate execution proceedings. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

17.06.2026

Index : Yes / No

NCC : Yes / No

MR

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To

1.The Additional Sub-Judge,
Tenkasi.

2.The Additional District Munsif,
Tenkasi.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

JUDGMENT MADE IN
S.A.(MD)No.5 of 2025

17.06.2026