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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 03.12.2025

Order pronounced on : 09.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.Nos.3573 & 3574 of 2024

& CMP.Nos.19368 & 19373 of 2024

Arumugam

... Petitioner in both CRPs

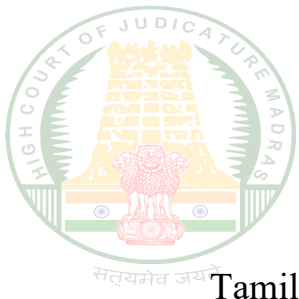
Vs.

Shanmugam (Died)

- 1.Saraswathi
- 2.Sukumar
- 3.Maheswari
- 4.Gowri
- 5.Jayapal
- 6.Madhivanan
- 7.S.Thavasundari
- 8.S.Shobana
- 9.S.Jhansi
- 10.S.Deepak Kumar
- 11.Lakshmipathy
- 12.Chinnammal
- 13.Govindaraj
- 14.Damodharan

... Respondents in both CRPs

Common Prayer: Civil Revision Petition filed under Section 25 of the



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Tamil Nadu (Buildings Lease and Rent Control) Act, 1960, to set aside the fair and decreetal order dated 27.06.2024 made in RCA.No.663 of 2017 and RCA.No.481 of 2018 on the file the VIII Court of Small Causes/Rent Control Appellate Authority, Chennai, reversal of the fair and decreetal order dated 05.12.2012 made in E.A.No.116 of 2009 & E.A.No.49 of 2003 in E.P.No.49 of 2003 in RCOP.No.33 of 2001 on the file of the XII Judge, Court, of Small Causes, Chennai.

For Petitioner : Mr.N.Manoharan in both CRPs

For Respondents : Mr.S.Magesh Kumar
for M.Umashankar for RR1 to 10
RR11 to 14 vacated
in both CRPs

COMMON ORDER

The revision petitioner is the legal representative of the judgment debtor in E.P.No.49 of 2003.

2.I have heard Mr.N.Manoharan, learned counsel for the revision petitioner and Mr.S.Magesh Kumar for Mr.M.Umashankar, learned counsel for the respondents 1 to 10 in both the revisions.

3.Mr.N.Manoharan, learned counsel for the revision petitioner would



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contend that an eviction petition had been filed, alleging landlord-tenant relationship and the said eviction petition was ordered ex-parte. The said application was filed in RCOP.No.33 of 2001 on the ground of willful default. The said eviction petition was filed by one Neelaveniammal, claiming to be the landlord against one K.Parthasarathy, claiming to be the tenant. In the said RCOP, K.Parthasarathy was said ex-parte and the RCOP came to be allowed on 26-07-2001. The said K.Parthasarathy filed an application in M.P.No.544 of 2001, seeking condonation of delay in setting aside the ex-parte order in the RCOP. The same was allowed on 13-02-2004.

4.However, subsequently, M.P.No.97 of 2002, which was filed to set aside the ex-parte order, was dismissed for default on 18-03-2002. The application filed to restore M.P.No.97 of 2002 in M.P.No.352 of 2002 was also dismissed on 10-12-2002. The said Neelaveniammal filed EP.No.49 of 2003 for delivery of possession. In the said execution petition, K.Parthasarathy filed a counter, denying landlord-tenant relationship and also claiming that the property belongs to the Temple (HR & CE Department). Pending the execution petition, the landlady Neelaveniammal

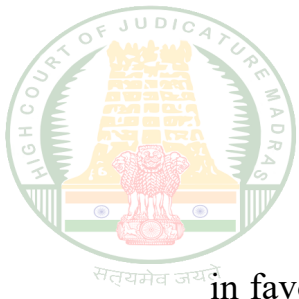


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died. The revision petitioner claimed that K.Parthasarathy had executed a registered Will on 19-03-2008 and subsequently, he also died on 02-04-2008 and that under the Will the property has been bequeathed to the revision petitioner.

5.In the meantime, the rent control appeal in RCA.No.230 of 2004 filed by the said K.Parthasarathy, challenging the order of eviction in RCOP.No.33 of 2001 was also dismissed as abated on 23-04-2008. In the meantime, the execution petition was taken up and delivery was ordered on 10-07-2009. The son of Neelaveniammal, one Shanmugam filed an application for removal of obstruction under Order XXI Rule 97 of CPC. The petitioner filed EA.No.129 of 2009 to bring himself on record as the legal representative of deceased K.Parthasarathy, claiming under the registered Will of K.Parthasarathy. The executing Court allowed the impleading application filed by the revision petitioner and dismissed the application filed for removal of obstruction and consequently, the EP also was dismissed.

6.Parallely, the Will said to have been executed by K.Parthasarathy



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in favour of the petitioner was sought to be probated in OP.No.536 of 2009.

The sister of the original landlady, Neelaveniammal, one Babuammal filed an application to revoke the Letters of Administration was granted on 02-07-2010. After contest, the said application for revocation came to be dismissed, upholding the grant of probate in favour of the revision petitioner. The OS Appeal filed against the dismissal of the said application for revocation of the grant, even at the numbering stage, came to be dismissed.

7.In the meantime, as against the orders passed by the executing Court, the contesting respondents, legal representatives of Neelaveniammal filed RCA.No.663 of 2017, challenging the dismissal of removal of obstruction petition in EA.No.116 of 2009 and RCA.No.481 of 2018 against the dismissal of EP.No.49 of 2003. Both the rent control appeals came to be allowed by the Appellate Authority, as against which, the present revision petitions have been filed.

8.Mr.N.Manoharan, learned Counsel for the petitioner would take me through the order passed by the executing Court and contend that after



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elaborate enquiry and taking into account the evidence adduced by the respective parties in the Order XXI Rule 97 of CPC application, the executing Court has found that there existed no landlord-tenant relationship between the parties and therefore, the eviction order cannot be validly executed as against the revision petitioner. However, referring to the judgment of the Appellate Authority, Mr.N.Manoharan would contend that the Appellate Authority has erroneously proceeded to allow the appeals, referring to the fact that K.Parthasarathy did not proceed with the rent control appeal filed against eviction order in RCOP.No.33 of 2001. In this regard, Mr.N.Manoharan would contend that K.Parthasarathy died on 02-04-2008 and subsequently, the appeal came to be dismissed as abated on 23.-04-2008 and therefore, the finding that K.Parthasarathy did not proceed with the RCA is factually incorrect.

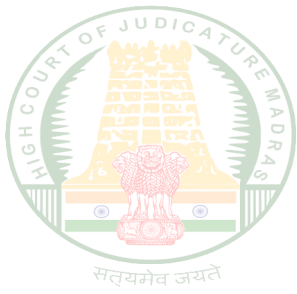
9.Further, Mr.N.Manoharan, would contend that the Appellate Authority has virtually reviewed the judgment passed by this Court in the OP proceedings, by rendering findings that the revision petitioner is not a legal heir of the testator, K.Parthasarathy and that in the Will, there is no recital in respect of pending RCOP, EP, as well as the RCAs. The learned



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counsel for the petitioner would therefore contend that the Appellate Authority has clearly erred in allowing the appeals and setting aside the well considered order of the executing Court.

10. Per contra, Mr.S.Magesh Kumar, learned counsel appearing for the contesting respondent-landlord would submit that the Appellate Authority has not committed any error and he would further state that K.Parthasarathy was very actively participating in all the Court proceedings and he was conscious of the fact that the eviction order had been passed against him and only in order to defeat the said order and the proceedings initiated to execute the eviction order, the said K.Parthasarathy has even executed the Will. He would further state that it was the specific case of the said K.Parthasarathy that he is the owner of the superstructure and the land belongs to the temple. However, in the Will, K.Parthasarathy has bequeathed both the land and building in favour of the revision petitioner, which clearly shows that the attempt to project the Will is only to defeat the legitimate rights of the contesting respondents, namely the legal representatives of Neelaveniammal. He would therefore pray for dismissal of the revision petitions.

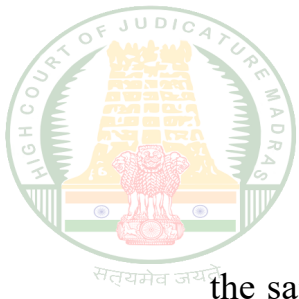


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11.I have carefully considered the submissions advanced by learned counsel for the parties and I have also gone through the order passed by the executing Court, as well as the judgment of the Appellate Court.

12.One Neelaveniammal, claiming to be the landlord, filed an eviction petition under Section 10(2)(i), alleging willful default against K.Parthasarathy, in RCOP.No.33 of 2001. It is the case of the said Neelaveniammal that K.Parthasarathy was a tenant under one Deivanai Ammal and after her demise, under Krishnaveni Ammal and subsequent to the death of Krishnaveni Ammal on 15.03.1998, the petitioner has demanded rent from K.Parthasarathy, who has failed to pay monthly rents, taking advantage of death of Krishnaveni Ammal. Therefore, it is clear that the said K.Parthasarathy has never recognized the said Neelaveniammal as his landlord and it is the admitted case of the landlady, Neelaveniammal herself that no rent was ever paid by K.Parthasarathy to Neelaveniammal.

13.No doubt, an ex-parte order of eviction was passed in the said rent control proceedings. Attempts to set aside the ex-parte decree ended against



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the said K.Parthasarathy. Though the eviction order was challenged by way of a regular rent control appeal, pending the appeal, K.Parthasarathy died and therefore, the said rent control appeal also came to be dismissed. It is subsequent to his demise that the revision petitioner has claimed to be a legatee under a registered Will executed by the said K.Parthasarathy. His application to get himself impleaded as legal representative of K.Parthasarathy, alleged tenant was allowed by the executing Court.

14.The revision petitioner filed an application objecting to the delivery. The Executing Court allowed the application filed by the legal representatives of Neelaveniammal to remove the obstructors. Evidence was adduced by both sides before the executing Court and on the side of the landlords, the revision petitioner was examined as P.W.1 and Ex.P1 to Ex.P22 were marked. On the side of the respondents, one G.Srinivasan was examined as R.W.1 and one D.Prasad was examined as R.W.2 and Ex.R1 to Ex.R33 were marked.

15.It was the contention of the revision petitioner that in respect of an adjoining premises, Neelaveniammal had instituted an eviction petition



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against Kannammal, who is none else than the wife of K.Parthasarathy and said eviction petition came to be dismissed, on the ground that Neelaveniammal had not established jural relationship of landlord and tenant.

16.Mr.N.Manoharan, learned counsel for the petitioner has contended that out of the total extent of 900 sq.ft available in the subject property, 600 sq.ft is in the occupation of the revision petitioner and the remaining 300 sq.ft was under the occupation of Kannammal. It is claiming the very same right that the eviction petition was filed against the said Kannammal as well and in the said eviction petition, the Rent Controller found that Neelaveniammal was not the landlord and she could not seek eviction before the Rent Controller. The said order has admittedly become final. It is claiming right and title under the very same documents that the other rent control petition was also filed against K.Parthasarathy. However, as noticed earlier, K.Parthasarathy did not contest the eviction petition and it resulted in an ex-parte order and subsequently, as already discussed, the application to set aside the ex-parte order was also dismissed, even though the application to condone the delay was allowed and the appeal, challenging



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the eviction order, came to be dismissed on account of the demise of K.Parthasarathy.

17.It is in pursuance of the death of K.Parthasarathy that the petitioner has approached this Court on the Original Side and obtained probate in OP.No.536 of 2009. An attempt was made to revoke the grant of probate by none else than the sister of Neelaveniammal herself and the said attempt was unsuccessful. Though an appeal was preferred, challenging the dismissal of the revocation of probate application, the said appeal also came to be dismissed even at the numbering stage. Grant of probate is a right in rem and it operates against the entire world.

18.No doubt, the probate Court does not confer title on the testator or the legatee, who claims under the testator. The question of title has to be decided independently and not in probate proceedings. The probate Court is concerned only with the truth and genuineness of the Will, which is in question before the probate Court and nothing more. In the present case, I find that the petitioner's predecessor namely, K.Parthasarathy has asserted his right to superstructure, claiming that he is a tenant under the temple and

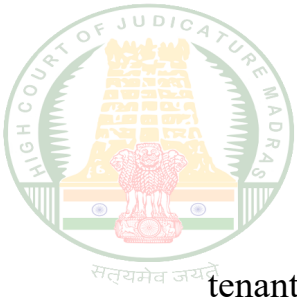


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that Neelaveniammal had no right to the subject property. In fact, the land belongs to Sri Parvathi Amman temple.

19.It is the further case of the revision petitioner that one Arumuga Naicker, the grandfather of K.Parthasarathy, had purchased the property as early as on 01-03-1934 under a registered sale deed under Doc.No.1854 of 1934 and subsequent to his death, his son, Kannappa Naciker was the absolute owner and after his demise on 23-01-1973, his son K.Parthasarathy acquired the property and has been enjoying the same. The revision petitioner has also exhibited electricity, property tax and Metro water receipts in the name of K.Parthasarathy in Ex.P3, Ex.P4, Ex.P5, Ex.P7, Ex.P8, Ex.P9, Ex.P13 and Ex.P20 to Ex.P22. On the side of the respondents, they have also claimed right under a sale date dated 01-12-1900 and besides payment of water bills for the year for second half of 2002 and the second half of 1984-1985.

20.Admittedly, there is an issue with regard to the title to the subject property. Unless the landlady, who comes to Court, invoking the jurisdiction of the Rent Controller is able to make out a case that the respondent is a



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tenant, amenable to the jurisdiction of the Rent Control Court, the Rent Controller has no jurisdiction to try the dispute in the first place. Here, initially, the said K.Parthasarathy was set ex-parte and therefore, he did not contest the eviction petition. However, in the application to set aside the ex-parte order of eviction, along with an application for condoning delay, as well as in the appeal filed challenging the eviction order in RCOP.No.33 of 2001, the said K.Parthasarathy has clearly denied the existence of a jural relationship of landlord and tenant between himself and Neelaveniammal.

21.The obstruction made by him was under an independent right, claiming under his grandfather, Arumuga Naicker, who had purchased the property on 01-03-1934. Contrary to the same, the contesting respondents claimed title under 1900 sale deed. However, the executing Court rightly found that there is a missing link between the original title for the subject property on both sides. However, it was noticed that Neelaveniammal herself had issued a notice under Ex.P18 to K.Parthasarathy, where Neelaveniammal claimed only land rent. There is nothing on record to show that the deceased Neelaveniammal or for that matter her legal representatives were owners of the superstructure and that the said

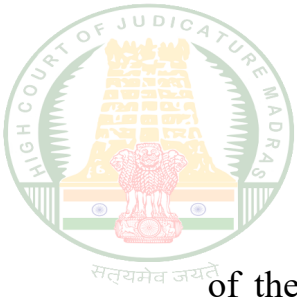


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superstructure has been let out to K.Parthasarathy.

22.Under Ex.P12, Sri Parvathi Amman temple has claimed rents for the land from K.Parthasarathy. However, the fact remains that Neelveniammal had filed R.C.O.P.No.2331 of 1989 against Kannammal, where also she claimed right under the 1900 sale deed and said RCOP came to be dismissed, finding that there was no landlord and tenant relationship between the parties. The said order of dismissal of the eviction petition cannot be lightly brushed aside, for the simple reason that the said Kannammal, against whom RCOP.No.2331 of 1989 has been filed is none else than the wife of K.Parthasarathy and out of the total extent of 900 sq.ft, 600 sq.ft was under the occupation of K.Parthasarathy and the remaining 300 sq.ft was under the occupation of his wife Kannammal. Therefore, when the legal representatives of Neelaveniammal had failed to establish that K.Parthasarathy was a tenant in respect of the superstructure, the obstruction was certainly valid and rightly the executing Court had upheld the valid objections of the obstructor, the revision petitioner.

23.The Appellate Authority, however, on an erroneous consideration



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of the facts, has held that K.Parthasarathy having not prosecuted the rent control appeal, his legatee, claiming under a Will cannot validly obstruct the the execution of the eviction order. The Appellate Authority has failed to see that even though K.Parthasarathy's attempts to get the ex-parte order of eviction set aside were unsuccessful, despite the condonation of delay application having been allowed, independently K.Parthasarathy had challenged the eviction order passed in RCOP.No.33 of 2001 in RCA.No.230 of 2004 and only on account of death of the said K.Parthasarathy pending the appeal, the appeal came to be dismissed as abated. The appeal was not decided on merits. In the circumstances, it was certainly open for the executing Court to go into the objections that have been raised by the revision petitioner.

24.Unfortunately, the Appellate Authority has shut out the objections of the revision petitioner, summarily holding that having lost in the challenge to the ex-parte eviction order, the said K.Parthasarathy or anybody claiming through the said K.Parthasarathy cannot resist or obstruct the delivery of possession in execution proceedings.



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25.The Appellate Authority also clearly fell in error in suspecting the genuineness of the Will, when the probate has been granted by this Court under the Indian Succession Act and it was sought to be challenged by none else than the own sister of Neelaveniammal herself and the said challenge was also unsuccessful, not only at the revocation stage, but also before the Division Bench at the OS Appeal stage. The Appellate Authority erred in holding that since Letters of Administration was granted behind the back of the legal representatives of Neelaveniammal and that the Will does not disclose about pending rent control proceedings, the Will has been created, which runs contrary to the grant of Letters of Administration by this Court.

26.The Rent Control Appellate Authority cannot sit on appeal over the grant of Letters of Administration made by this Court under the provisions of the Indian Succession Act. In any event, when Neelaveniammal has not been able to even *prima facie* establish a jural relationship of landlord and tenant and that the superstructure was let out by Neelaveniammal to K.Parthasarathy and thereby the eviction petition was maintainable, the Appellate Authority grossly erred in allowing the appeals on erroneous consideration of the factual, as well as legal position.



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27.No doubt, the grant of Letters of Administration is conclusive only in so far as the factum of the truth and genuineness of the Will executed by K.Parthasarathy, it does not in any way prevent the contesting respondents from asserting their title in independent civil proceedings. However, resort to summary proceedings under the Rent Control Act are clearly and wholly unsustainable in the absence of Neelaveniammal being able to demonstrate that K.Parthasarathy was a tenant under her, thereby conferring jurisdiction on the Rent Controller to order eviction.

28.In fact, I find that the executing Court has elaborately dealt with the oral and documentary evidence adduced by the parties and rightly came to the conclusion that the obstruction made by K.Parthasarathy was valid and that there is a bona fide title dispute between the parties. The well considered findings of the executing Court have been upset by the Rent Control Appellate Authority by misapplication of admitted facts and legal position as well. In view of the above, I am inclined to allow the revision petitions.



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29. In fine, the Civil Revision Petitions are allowed. The order dated 27.06.2024 made in RCA.No.663 of 2017 and RCA.No.481 of 2018 on the file the VIII Court of Small Causes/Rent Control Appellate Authority, Chennai, reversing the order dated 05.12.2012 in E.A.No.116 of 2009 & E.A.No.49 of 2003 in E.P.No.49 of 2003 in RCOP.No.33 of 2001 by the XII Judge, Court, of Small Causes, Chennai, are set aside. However, it is made clear that the orders passed in these proceedings will not come in the way of the legal representatives of Neelaveniammal to independently have their right and title adjudicated before the competent civil Court, including to seek recovery of possession from the revision petitioner. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

09.01.2026

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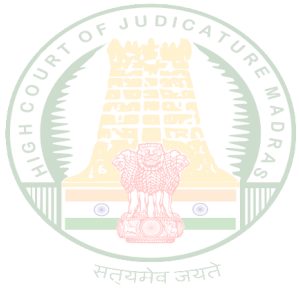
To

1. The VIII Court of Small Causes/Rent Control Appellate Authority, Chennai.

2. The XII Judge, Court of Small Causes, Chennai.

P.B. BALAJI, J.

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Pre-delivery order made in
CRP.Nos.3573 & 3574 of 2024
& CMP.Nos.19368 & 19373 of 2024

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