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K. Mani Vs M.D. Jayavel and Others

S.A. No"s. 1464 and 1465 of 2010

Court: Madras High Court

Date of Decision: June 10, 2011

Acts Referred:
Limitation Act, 1963 â€" Article 54#Registration Act, 1908 â€" Section 17(1A)#Specific Relief Act, 1963 â€" Section 16#Stamp Act, 1899 â€" Article 5#Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 â€" Section 10(2)#Transfer of Property Act, 1882 â€" Section 106

Citation: (2011) 7 MLJ 264

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: V. Subramani, for the Appellant; Y. Jyothish Chander, for the Respondent

Final Decision: Dismissed

Judgement

G. Rajasuria, J.
These second appeals are focussed by K. Mani-the Plaintiff in O.S. No. 104 of 2005 and Defendant in O.S. No. 91 of

2007, animadverting upon the judgment and decrees dated 31.8.2010 passed in A.S. Nos. 1 and 13 of 2010 by the District Judge, No. II,

Kancheepuram, confirming the dismissal decree dated 18.11.2008 passed by the Subordinate Judge, Kancheepuram, in O.S. No. 104 of 2005

for specific performance filed by the Appellant herein and also in confirming the decreeing of the suit O.S. No. 91 of 2007 for eviction and for

recovery of possession filed by the Respondents herein.

2. The parties, for the sake of convenience are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation, avoiding discursive delineation, of the relevant facts absolutely necessary and germane for the disposal of these

second appeals, would run thus:

(i) The Appellant herein/Mani filed the suit O.S. No. 104 of 2005 for specific performance of an agreement to sell, with the following prayer:

a) to direct the Defendants to execute and register the sale deed in respect of the suit property in favour of the Plaintiff at his costs after receipt of

the balance of sale consideration of Rs. 2,78,999/- within a time to be fixed by this Court. (extracted as such)

(ii) The Respondents herein filed the written statement resisting the said suit.

(iii) In turn, the Respondents herein, namely, Jayavel and 7 others, as Plaintiffs filed the suit O.S. No. 91 of 2007 for evicting the Appellant

herein/Mani on the ground that the tenancy in favour of Mani was terminated by the Plaintiffs/landlords and that he should vacate and hand over

possession.

(iv) The following are the reliefs found set out in O.S. No. 91 of 2007:

to evict the Defendant from the suit property and to order recovery of possession of the same in favour of the Plaintiffs, directing to pay a sum of

Rs. 6,600/- as the arrears of rents for the period from 1.2.2002 to 30.9.2004 in favour of the Plaintiffs, directing an enquiry for determination of

the mesne profits for the unlawful use and occupation of the suit property by the Defendant from the date of the suit at the rate of Rs. 500/- per

month till delivery of possession in favour of the Plaintiffs and for costs of the suit. (extracted as such)

(v) Written statement was filed by the Appellant/Mani resisting the suit.

(vi) A joint trial was conducted by the trial Court, after framing issues.

(vii) The first Plaintiff in O.S. No. 91 of 2007 examined himself as P.W.1 and marked Exs.A1 to A13. Mani/the Appellant herein examined himself

as D.W.1 and marked Exs.B1 to B10.

(viii) Ultimately, the trial Court dismissed the suit O.S. No. 104 of 2005 filed by the Appellant/Mani and decreed the suit O.S. No. 97 of 2007

filed by the Respondents/Jayavel and others.

(ix) As against those judgment and decrees, two appeals were filed by the Appellant/Mani for nothing but to be dismissed by the first appellate

Court, confirming the judgment and decrees of the trial Court.

4. Being aggrieved by and dissatisfied with the said judgment and decrees, these second appeals have been filed by Mani on various grounds and

also suggesting the following substantial questions of law:

S.A. No. 1464 of 2011:

(a) Whether the Courts below are correct in holding that the Appellant was not ready and willing to perform his part of the contract, contrary to

the provisions contained in explanation I and II of Section 16(c) of the Specific Relief Act?

(b) Whether the Courts below were correct in holding that there is material alteration in the sale agreement in Ex.B1?

(c) Whether the Courts below were correct in presuming the month as "May" and the period stipulated as 12 in the absence of any evidence?

(d) Whether the Courts below were correct in interpreting the sale agreement Ex.B1 as materially altered as it is not reasonably possible to make

an alteration of such nature, which is impossible in a computer printed out documents Ex.B1?

(e) Whether the Appellant is not entitled to the benefit conferred u/s 53A of the Transfer of Property Act having satisfied the requirements of the

said provisions?

S.A. No. 1465 of 2011:

a) Whether the tenancy was subsisting on the date of plaint in O.S. No. 91 of 2007 on the file of Sub Court, Kancheepuram?

b) Whether the suit for eviction based on the tenancy is maintainable?

c) Whether the notice of termination under Ex.A7 is valid in law?

d) Whether the Respondents are not barred from enforcing any right in respect of the suit property other than the rights conferred under sale

agreement Ex.B1 in terms of Section 53A of Transfer of Property Act?

e) Whether the jurisdiction of the civil Court is not barred in view of the provisions contained in Tamil Nadu Buildings (Lease and Rent Control)

Act, 1960?

f) Whether the suit is maintainable as framed without proper power or authority?

5. I hark back to the principles as found embodied in the following judgment of the Honourable Apex Court:

Hero Vinoth (minor) Vs. Seshammal, ;

24. ... (iii) The general rule is that the High Court will not interfere with the concurrent findings of 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 refers to any case, where

the evidence, taken as a whole, is not reasonably capable of supporting the finding.

and the other precedents emerged in this regard.

(ii) Vijay Kumar Talwar Vs. Commissioner of Income Tax, Delhi, , certain excerpts from it would run thus:

19. It is manifest from a bare reading of the section that an appeal to the High Court from a decision of the Tribunal lies only when a substantial

question of law is involved, and where the High Court comes to the conclusion that a substantial question of law arises from the said order, it is

mandatory that such question(s) must be formulated. The expression ""substantial question of law"" is not defined in the act. Nevertheless, it has

acquired a definite connotation through various judicial pronouncements.

(iii) Kashmir Singh Vs. Harnam Singh and Another, .

(iv) 2009 (1) L.W. 1 - State Bank of India and Ors. v. S.N. Goya:

6. A bare and plain perusal of the above precedents would exemplify and demonstrate that unless there is any perversity or illegality in the

decisions rendered by the Courts below, the question of interfering in second appeal on the finding of facts would not arise and there should be

valid legal grounds also for interference.

7. It is therefore just and necessary to find out as to whether any substantial question of law is involved in this matter.

8. The learned Counsel for the second Appellant/Mani would put forth and set forth his arguments, which could tersely and briefly be set out thus:

(i) Consequent upon Ex.B1-the sale agreement, which emerged admitted between the landlords i.e. Jayavel and others and Mani, the tenancy in

favour of Mani got extinguished automatically and the possession of Mani elating to the suit property got itself converted into possession of

agreement holder under the said agreement to sell and in such a case, the question of terminating the tenancy and seeking eviction on the part of

Jayavel and others was not at all possible, but even then, the Courts below simply treated the possession of Mani as that of tenant and they held as

though the said tenancy was terminated etc.

(ii) The findings of the Courts below that the agreement to sell was materially altered is not supported by any evidence. Only on conjectures and

surmise, the Courts below held as though the agreement to sell was tampered with at the instance of Mani.

(iii) The question of ushering in limitation also does not arise as there was no tampering with the agreement to sell.

(iv) The Courts below did not take into account the legal position as laid down by the Honourable Apex Court in various decisions.

Accordingly, the learned Counsel for the Appellant would pray for setting aside the judgments and decrees of the Courts below and for decreeing

the suit O.S. No. 104 of 2005 filed by Mani/the second Appellant and for dismissing the suit O.S. No. 97 of 2007 filed by the Respondents

herein.

9. In a bid to torpido and pulverise the arguments as put forth and set forth on the side of the second Appellant, the learned Counsel for the

Respondents would advance his arguments which would succinctly and precisely run thus:

(a) Ex.B1-the agreement to sell would ex facie and prima facie exemplify and demonstrate that it was tampered with, at the instance of Mani.

(b) The Courts below taking into account the reality held that such agreement to sell was unenforceable, warranting no interference in second

appeals.

(c) The findings rendered by the Courts below are mainly based on finding of facts and in such a case, unless there is any perversity or illegality, the

question of interfering with it, in the second appeal is a well-neigh impossibility.

(d) Nowhere in the said agreement to sell, it is found specified that the possession of the erstwhile tenant Mani got converted into one of an

agreement holder and in such a case, the decisions cited on the side of the second Appellant are not relevant and germane.

Accordingly, the learned Counsel for the Respondents would pray for dismissal of the second appeals.

10. At the outset itself I would like to point out that Section 53A of the Transfer of Property Act cannot be ushered in, in view of Section 17(1-A)

of the Registration Act 1908, which is extracted hereunder for ready reference.

17. Documents of which registration is compulsory:

.....

.....

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer

of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws

(Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes

of the said Section 53-A.

11. The said Sub-section was inserted in the statute book with effect from 24.9.2001 by Act 48 of 2001. Whereas, the agreement to sell Ex.B1

was of the year 2002.

12. Admittedly, the said agreement to sell is not a registered one and in such a case, the question of invoking Section 53A of the Transfer of

Property Act would not arise at all and the contentions of the Appellants based on Section 53A, have to be rejected in limini.

13. I would also incidentally point out that the Courts below as well as both sides fell into error in not noting the fact that the very agreement to sell

Ex.B1 itself was not sufficiently stamped. As per Article 5(j) to Schedule-I of the Indian Stamp Act, which is extracted hereunder,

Article 5. Agreement or Memorandum of an Agreement:

(a) .....

(b) . ....

(j) If not otherwise provided for; Twenty rupees the appropriate minimum stamp duty payable was Rs. 20, as that has been the law ever since

11.7.2001. Without any demur or objection from any quarter, the said agreement to sell was mechanically marked, which in my opinion was not

correct.

14. The implication of Ss.35 and 38 and other provisions of the Indian Stamp Act are well known and axiomatic. Be that as it may; now, it has to

be seen as to whether such an agreement to sell was tampered with or not.

15. A mere poring over of the said agreement to sell-Ex.B1 would reveal that corrections were made thereon. The averments including the

corrections found in Ex.B1-the agreement to sell vis-a-vis the deposition of Mani-D.W.1, if taken into account, they do not go hand in hand or

hang together. The explanation given by Mani tantamounts to putting a square peg in a round hole.

16. D.W.1 Mani the Appellant herein, in his deposition would project and portray as though as on the date of purchase of the stamp papers, the

said document-Ex.B1 was scribed. A perusal of Ex.B1 would demonstrate and display that it is found written on four sheets of papers and out of

them two sheets are embossed stamp papers of the value of Rs. 5/- each. Those embossed stamp papers would bear the date of sale of such

papers as 25.3.2002. If it is so, then in the agreement the date 25.3.2002 should have found reflected. However strikingly Ex.B1 would read as

though the date of scribing of it was 1.12.2002. As such, there is incoherence and inconsistency between the deposition of D.W.1 and the versions

as found in Ex.B1. The word "December" is found inserted by different mechanism; however, the rest of the words are the artifact of computer

device.

17. The learned Counsel for the Appellant would try to explain and expound by pointing out that after getting the agreement-Ex.B1 scribed, it was

handed over to Jayavel for getting signatures of Jayavel and 7 others-the landlords concerned and in that process what actually happened was not

known to Mani, as it was done on Q.T.

18. In fact, the records would speak, pellucidly and palpably that the landlords were residing in Chennai; whereas, Mani the Appellant herein was

residing in Keelottivakkam Village. It is also precisely not known as in which location the signatories put their signatures and as to how the

witnesses two in number also were present and put their signatures, after witnessing the signatories putting their signatures.

19. The learned Counsel for the second Appellant would submit that the factum of the execution of the agreement-Ex.B1 is not a disputed one and

in such a case, this Court may not go into that aspect; the only issue that has to be probed into is as to whether there was any tampering with

Ex.B1 or not. Even assuming that such an argument is tenable, the Appellant is duty bound to explain as to why the said correction in the form of

inserting the word "December" emerged in Ex.B1.

20. Over and above that the period of performance, in sheet No. 3 of Ex.B1, is found corrected as "12 months". Both the corrections were not

attested by any one. The Courts below appropriately and appositely, correctly and convincingly, applying the preponderance of probabilities and

the appropriate ratiocination held that those were all alterations.

21. The question arises as to whether those are all material alterations effected unauthorisedly.

22. It is readily understandable and legally inferable that such corrections relating to the date and the month of execution of a document and the

period of performance of the contract contemplated therein should necessarily be taken as material ones and that too in the peculiar facts of this

case. The Court cannot be expected to cut some slack in favour of the Appellant. In view of such unauthorised material corrections, it was virtually

held by both Courts that Ex.B1 had disaster whither all over and that the probability of specifically enforcing it had become a well neigh

impossibility.

23. The Respondents herein would claim that in fact, the said agreement emerged on 1.12.2002 and the suit O.S. No. 104 of 2005 itself was filed

on 22.11.2005. According to them only six months" time was contemplated as the period of performance. As on the date of presentation of the

plaint, even after excluding the said six months" period, three years limitation period got expired as per Article 54 of the Limitation Act, 1963. As

such, the said material alteration affected the very maintainability of the case.

24. The Courts below au fait with law and au courant with facts and also taking into account the oral as well as documentary evidence arrived at

the just conclusion that the said agreement-Ex.B1 was materially and that too unauthorisedly altered. It beats me as to how the Appellant could

justify his grounds.

25. The learned Counsel for the Appellant cited the following precedent. Sasadhar Chakravarty and Another Vs. Union of India and Others, etc.,

certain excerpts from them would run thus:

23. Question 5: Before proceeding to determine this question, it would be well to advert to the legal position bearing on the matter. As aptly stated

in para 1378 of Volume 12 of HalsburyÃ¯Â¿Â½s Laws of England (Fourth Edition)

if an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party

to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration

so as to prevent the person who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce

against any party bound by it, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made.

A material alteration, according to this authoritative work, is one which varies the rights, liabilities, or legal position of the parties as ascertained by

the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision

which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed.

30. As the abovementioned alterations substantially vary the rights and liabilities as also the legal position of the parties, they cannot be held to be

anything but material alterations and since they have been made without the consent of the Defendants first set, they have the effect of cancelling the

deed. Question 5 is, therefore, answered in the affirmative

26. There is no quarrel with the proposition as found enunciated and laid down in the cited decision; but the factual and legal discussion supra

would convey and cannote that the said decision has been cited out of context and it would not enure to the benefit of the Appellant herein.

27. The learned Counsel for the Appellant, by inviting the attention of this Court to the averments in Ex.B1 and also the oral evidence on record,

would develop his arguement that ever since the date of emergence of Ex.B1, the possession of the Appellant got itself converted into one of an

agreement holder and not that of a lease holder and accordingly, he would cite the following decisions.

(i) Arjunlal Bhatt Mall Gothani and Others Vs. Girish Chandra Dutta and Another, certain excerpts from it would run thus:

5. We are satisfied that both the courts below have arrived at the correct conclusion that there is no evidence at all to justify an inference that the

agreement in question was obtained from the Appellants under undue influence or coercion. None of the instalments were paid as agreed upon.

The application made by the Appellants on March 31, 1960, as well as the application made subsequently are patently dishonest attempts at

avoiding payment of the instalments as agreed upon. Under Clause (5) of the agreement the question of giving notice arises only if the vendor

wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does not arise and no

notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement

stood cancelled the Appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the

Transfer of Property Act. We are of opinion that when the agreement, dated June 7, 1959, was entered into the old relationship of landlord and

tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement. This is obvious from the fact

that there was no provision for payment of any rent till the whole purchase money was paid or even for the balance of the purchase money that

may be due after one or more instalments were paid. There was no provision even for payment of interest in respect of the whole of the purchase

money or any of the instalments. Therefore, when the agreement stood cancelled the Plaintiff was automatically entitled to possession under the

terms of the agreement.

(ii) R. Kanthimathi and Another Vs. Beatrice Xavier (Mrs), , certain excerpts from it would run thus:

5. Submission for the tenant is after entering into the agreement, the landlady accepted Rs. 20,000 confirming delivery of possession in this context

which already constitutes the clear intent of the landlady of entering into a new relationship with the tenant under it. On the other hand, learned

Counsel for the Respondent submits that the words ""already been surrendered"" therein, only refer to the existing possession of the tenant and

nothing more. So far as this submission for the Respondent is concerned we have no hesitation to reject the same. The reference of the words

already been surrendered"" has been incorporated with consciousness. This is to be construed in the background of the landlady having received a

major amount of sale consideration and as normally, if a substantial sum is received by the seller, the purchaser is put in possession of the property

hence to fall in the same lines the said words were used to confirm this possession in this context. There could be no other reason to record therein

as such. Even if it be said to refer to the possession as a tenant the reassertion in the agreement of sale is only for the purpose of denoting

possession given in pursuance of this agreement of sale.

6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to

the limitations under the law. Earlier when the Appellants were inducted into tenancy it only means both agreed that their relationship was to be that

of landlord and tenant. Later when the landlord decided to sell this property to the tenant and the tenant agreed by entering into agreement, they by

their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum he actually acts under this agreement.

This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change, their

relationship of landlord-tenant ceases.

(iii) S. Gurumurthy Vs. N. Raman, , certain excerpts from it would run thus:

(A) Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), Section 10(2)(i) - Eviction petition on the ground of wilful default - Tenant

entering into a sale agreement with the landlord, for purchase of the tenement - Sale agreement stipulating that the tenant should pay the rent till the

execution of the sale deed - Sale agreement will not terminate the liability of the tenant to pay rent - Tenant''s failure to pay rent will tantamount to

wilful default - Tenant liable to be evicted for failure to pay rent - Revision dismissed.

28. Per contra, the learned Counsel for the landlords would cite the following decisions.

(i) 93 L.W. 858 - S. Doraisami Nadar V. Nagammal, certain excerpts from it would run thus:

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) Section 10(3), Transfer of Property Act, Sections 53-A and 105 - Plea by

tenant that he is entitled to be in possession as a purchaser in pursuance of an agreement for sale under the principle of part performance (Section

53-A, T.P. Act) - Absence of proof of possession under the terms of the agreement - plea, held not sustainable.

3. ...In this case, even if there has been an agreement of sale and advance has been paid in pursuance of that agreement, no agreement has been

filed before the Court and none of the parties had spoken about the agreement containing a term putting an end to the relationship of landlord and

tenant and that the continued possession by the tenant should be traced only to the agreement of sale. Though in a way the Petitioner says that his

possession is traceable to the agreement of sale, unless the agreement of sale itself refers to that fact his possession which is traceable to the lease

arrangement cannot now be treated as possession under the agreement of sale. Even assuming that the Petitioner is entitled to the benefit of Section

53-A his liability to pay rent does not cease unless the agreement of sale puts an end to that liability in specific terms. In this case, it is not claimed

even by the Petitioner that under the agreement the liability to pay rent has ceased .....

(ii) 100 LW 577 - B. Kuppulal V. D. Sagunthala and Anr. certain excerpts from it would run thus:

Mere agreement of sale will not terminate the landlord tenant relationship and the liability of the tenant to continue to pay the rent, unless there are

specific recitals to the contrary in the agreement of sale. In this case the tenant-Respondent, despite the alleged oral agreement of sale with one of

the co-owners, even if it is found to be true, will still be under an obligation to pay the rent to the Petitioners. Further, it is settled law that u/s 53-A

of the Transfer of Property Act the agreement has to be in writing and, even if there was one, mere agreement of sale does not transfer title. In the

instant case, even according to the Respondent, there was only an oral agreement between him and one of the co-owners. There is no perversity

or illegality in the finding of both the Courts below that there has been a default in the payment of rent.

(iii) 1996 (I) CTC 398 - Jessie Thavamani v. Liakath Basha, certain excerpts from it would run thus:

11. In the written statement filed by the second Defendant in the above suit (the Respondent herein), he has specifically stated that the alleged

receipt dated 1.2.1984 would not in any way affect the right, title and interest of the parties and the property purchased by him and the said receipt

is not binding on him. Learned Counsel for the Respondent/landlord has cited a decision of Padmini Jesudurai, J. reported in Kuppulal, B. v. D.

Sagunthala 100 L.W. 577, which runs as follows:

Mere agreement of sale will not terminate the landlord-tenant relationship and the liability of the tenant to continue to pay the rent, unless there are

specific recitals to the contrary in the agreement of sale. In this case the tenant-Respondent, despite the alleged oral agreement of sale with one of

the co-owners, even if it is found to be true, will till be under an obligation to pay the rent to the Petitioners. Further, it is settled law that u/s 53-A

of the transfer of Property Act the agreement has to be in writing and, even if there was one, mere agreement of sale does not transfer title. In the

instant case, even according to the Respondent, there was only an oral agreement between him and one of the co-owners. There is no perversity

or illegality in the finding of both the Courts below that there has been a default in the payment of rent....

I am of the same view that an oral agreement to sell would not terminate the landlord-tenant relationship and even if there was an agreement of sale

it had to be in writing and the agreement itself should, in clear terms, specify that the landlord-tenant relationship was being terminated and that

there was no future liability on the part of the tenant to pay rent to the landlord and in the absence of such specific recitals in the written statement

the mere oral agreement of sale would not exonerate the tenant from continuing to pay rent to the landlord. In this case, admittedly, the tenant has

not paid any rent to the Respondent herein, even after the notice. The explanation offered by the Petitioner herein is not at all acceptable.

12. Ramanujam, J. in an identical case, reported in S. Duraisami Nadar Vs. Nagammal, observed as follows:

A landlady filed a petition for eviction against the tenant on two grounds (1) wilful default in payment of monthly rent, and (ii) bona fide requirement

of the building for the purpose of running a hotel business by her son. The application was resisted by the tenant on the ground that the relationship

of landlady and tenant had come to an end by reason of his having entered in an agreement to purchase the property and that the requirement of

the landlady for the purpose of running her son''s hotel business was not bona fide. The Rent Controller accepted the defence of the tenant that he

had entered into an agreement of sale with the landlady and held there was no relationship of landlady and tenant after the agreement. However,

the appellate authority held that notwithstanding the agreement of sale, the relationship of landlady and tenant continued and ordered eviction. On

revision against the order.

Held: In this case there was no evidence that the parties agreed that the relationship of landlady and tenant should cease and the tenant''s

possession should be traced only to the agreement of sale. By merely entering into an agreement of sale the tenant did not acquire any right in the

property.

If possession is traceable to the agreement of sale, then such possession can be sustained on the basis of the principle of part-performance u/s 53-

A, Transfer of Property Act. Even assuming that the Petitioner is entitled to the benefit of Section 53-A, his liability to pay rent does not cease

unless the agreement of sale puts an end to that liability in specific terms. The liability to pay rent, therefore, continued. The default in payment of

the rents in the present case was wilful and the requirement of the building by the landlady for the purpose of the business of her son was bona fide.

The order of eviction had therefore to be sustained.

29. Absolutely there could be no hesitation in falling in line with the view found highlighted in those precedents and there is no conflict of opinion

also in this regard. There is no hard and fast rule that soon after the emergence of an agreement to sell between a landlord and a tenant with regard

to a demised premises, the possession of the tenant should automatically get itself converted into one that of an agreement holder, unless there is

specification to that effect in the agreement itself.

30. Here, the learned Counsel for the landlords would meaningfully and meticulously draw the attention of this Court to the averments in Ex.B1 and

point out that there is absolutely no shard or shred, jot or molecular, iota or miniscule extent of evidence to convey or indicate that the landlords

agreed that the tenant''s possession should get itself converted into one that of an agreement holder ever since the date of Ex.B1.

31. I would like to agree with the argument as put forth by the learned Counsel for the Respondents. There is nothing on record to evince and

denote that consequent upon the emergence of Ex.B1, the possession of Mani/the Appellant got itself converted into one that of an agreement

holder. Wherefore, the issuance of termination notice Ex.A8 u/s 106 of the T.P. Act cannot be found fault with.

32. As has been already pointed out by me supra, Section 53A of the Transfer of Property Act also cannot be ushered in. The learned Counsel for

the landlords would submit unconvincingly that a sum of Rs. 1000/-(one thousand) was paid as advance under Ex.B1; thereafter, there was nothing

to exemplify that rent was paid by Mani in favour of Jayavel and others and that that itself is indicative of the fact that the tenancy got terminated

automatically consequent upon the emergence of Ex.B1.

33. Whereas, by way of torpedoing such an argument, the learned Counsel for the second Appellant/Mani would correctly and acceptably without

any fear of contradiction invite the attention of this Court to the indubitable fact and point out that pendente lite, Mani himself, understanding and

recognising the right of Jayavel and others to receive rent, deposited a sum of Rs. 19,500/- and an affidavit also was filed by him in the Court to

that effect.

34. A faint attempt has been made by the learned Counsel for the Appellant to press into service the point that the provisions of Tamil Nadu

Buildings (Lease and Rent Control) Act also would be applicable in the facts and circumstances of this case.

35. However, the learned Counsel for the Respondents would invite the attention of this Court to the findings rendered by the first appellate Court

that the said Act is not applicable to this case. He would also submit that relating to the village Panchayat areas, the Tamil Nadu Buildings (Lease

and Rent Control) Act, is not applicable. Despite the finding rendered by the first appellate Court that the provisions of the Tamil Nadu Buildings

(Lease and Rent Control) Act are not applicable, to this case, nothing has been shown before this Court that the said area is covered under the

Act.

36. It is also quite obvious and axiomatic that the Tamil Nadu Buildings (Lease and Rent Control) Act is not applicable to the village Panchayat

areas. Hence, in this view of the matter I would like to hold that there is no question of law much less substantial question of is involved in this

matter. Accordingly, both the second appeals have to be dismissed and accordingly dismissed.

37. The learned Counsel for the second Appellant would make an extempore submission that since this Court decided the appeals as against the

second Appellant/Mani, the advance amount paid under the lease due repayable by the Respondents/erstwhile landlords towards the erstwhile

tenant Mani be adjusted towards arrears of rent/damages for use and occupation as the case may be.

38. The learned Counsel for the Respondents-Jayavel and others would submit that certainly that could be adjusted.

39. Accordingly, it is recorded. The sale consideration under the agreement to sell-Ex.B1 deposited in Court by the Appellant-Mani shall be

refunded to him by the Court concerned immediately.

40. In the result, the second appeals are dismissed. However, there is no orders as to costs. Consequently, connected miscellaneous petition is

closed.