

## S.R.Anantharaman vs G.Selvaraj on 8 April, 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 08.04.2019 CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA S.A.(MD) No.153 of 2007 S.R.Anantharaman S/o.Ramaiyar, Founder, Lakshmi Raman Educational and Charitable Trust, No.34, Sivakoil West Street, Palayamkottai. ... Plaintiff/Appellant/Appellant Vs. G.Selvaraj, S/o.Gabriel, Correspondent, Jose Matriculation School, Podhigai Nagar, Tirunelveli-627 007 .. Defendant/Respondent/ Respondent Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 18.07.2006 passed in A.S.No.65 of 2005 by the Principal District Judge, Tirunelveli, upholding the decree and judgment, dated 01.09.2005 passed in O.S.No.271 of 2001, by the learned II Additional Subordinate Judge, Tirunelveli.

<a href="http://www.judis.nic.in">http://www.judis.nic.in</a>	For Appellant	: Mr.T.Antony Arul Raj
	For Respondent	: Mr.S.P.Maharajan

### J U D G M E N T

The appellant is the plaintiff in O.S.No.271 of 2001 on the file of the II Additional Subordinate Judge, Tirunelveli. He filed the suit for recovery of a sum of 3,20,000/- from the respondent/defendant together with interest at the rate of 12% per annum.

2.For the sake of convenience, the parties are referred to as per their ranking in the original suit and at appropriate places their ranks in the second appeal would also be indicated, if necessary.

3.The case of the appellant/plaintiff is that he was a tenant in the suit property since May 2000 on a monthly rent of Rs.10,000/- and also paid a sum of Rs.3,50,000/- towards rental advance. He took the suit property on lease for running a school. Since the land on which the suit property was situated was acquired by the Government and this was not informed by the respondent/defendant to him at the time of executing the rental agreement, dated 10.05.2000 (Ex.A7) he could not get due recognition for his school from the Government and therefore, he was forced to vacate the premises during May 2001. His further contention is that the respondent/defendant refused to return the rental advance of <http://www.judis.nic.in> Rs.3,20,000/- to him after deducting three months rents for the period of March 2001 to May 2001 in spite of the legal notice, dated 11.06.2001 (Ex.A1) issued by him.

4.The respondent/defendant filed a written statement and counter claim. He infact admitted that the appellant/plaintiff was a tenant in the suit premises on a monthly rent of Rs.10,000/- and that a sum of Rs.3,50,000/- was paid towards rental advance. However, he has averred that since the appellant/plaintiff vacated the premises even before the expiry of the lease period of three years as mentioned in the rental agreement (Ex.A7), the appellant/plaintiff is liable to pay rents for the

unexpired period of lease which comes to Rs.2,45,000/- together with interest at the rate of 12% p.a.,

5.Both the courts below had concurrently held that (i) the appellant/plaintiff is entitled to get back a sum of Rs.3,20,000/- without interest from the respondent/defendant and decreed the suit in favour of the plaintiff; (ii) the counter claim filed by the respondent/defendant was also allowed by both the courts below directing the appellant/plaintiff to pay a sum of Rs.2,45,000/- to the respondent/defendant without interest. <http://www.judis.nic.in>

6.Aggrieved over the decree and judgment in O.S.No.271 of 2001, dated 01.09.2005 passed by the II Additional Subordinate Judge, Tirunelveli and in A.S.No.65 of 2005, dated 18.07.2006 passed by the Principal District Judge, Tirunelveli the appellant/plaintiff had filed the present second appeal. The respondent/defendant did not file any appeal against the decree and judgment passed by both the courts below.

7.The following substantial questions of law were framed

(i)Whether Ex.A7 is a compulsorily registrable document can be looked into to the prejudice of the appellant to determine the terms of tenancy?

(ii)Whether the claim of the landlord to appropriate the rent even for the unexpired period of tenancy is legal?

iii)Whether the landlord had failed to establish the damage suffered by him in law and on facts on account of the pre-mature termination of the tenancy by the appellant?

iv)Whether the agreement between the parties is vitiated on account of suppression of material facts by the landlord?

v)Whether the Courts below ought to have rejected the counter claim raised by the respondent as not being in accordance with the procedural mandate set out in the Code of Civil Procedure? <http://www.judis.nic.in>

8.At the out set it may be observed that the rental agreement (Ex.A7) on which the respondent/defendant relies for getting Rs.2,45,000/- from the appellant/plaintiff (being the amount for the unexpired portion of the lease) is an unregistered instrument.

9.Hence, such an instrument cannot create a lease on account of three pronged statutory inhibition. The first interdict is contained in the first paragraph of Section 107 of the Transfer of Property Act, 1882 which reads thus;-

“A lease of immovable property from year to year, or for any term exceeding one year or reversing a yearly rent, can be made only by a registered instrument.”

10.The second inhibition can be discerned from Section 17(1) of the Registration Act, 1908 and it reads thus;- (only material portion) “ (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1868 (XX of 1866), or the Indian Registration Act, 1871 (VIII of 1871), or the Indian Registration Act, 1877 (III of 1877), or this Act came or comes into force, namely;-

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(d)leases of immovable property from year to year, or for any term exceeding one year, or reversing a yearly rent;

11. The third interdict is contained in Section 49 of the Registration Act, 1908 which speaks about the fatal consequence of non-compliance of Section 17 of the Registration Act, 1908. Section 49 of the Registration Act, 1908 reads thus;

49.Effect of non-registration of documents required to be registered;- No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882 (IV of 1882)] to be registered shall

(a) affect any immovable property comprised therein, or

(b)confer any power to adopt, or

(c)be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered;

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (IV of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (I of 1877)[...] or as evidence of any collateral transaction not required to be effected by registered instrument.] <http://www.judis.nic.in>

12.It is settled law that a document required to be registered is not admissible in evidence under Section 49 of the Registration Act, 1908. However, such an unregistered instrument can be used as an evidence for collateral purpose as provided in the proviso to Section 49 of the Registration Act, 1908. It is also trite law that though there is no prohibition under Section 49 of the Registration Act, 1908 to receive an unregistered document as an evidence for collateral purpose, the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act. It is therefore clear that the document shall not be admitted in evidence even for collateral purpose, if it is not properly stamped and if already not stamped, then, stamp duty should be paid with penalty as prescribed by the Code. In the decision in Avinash Kumar Chauhan vs. Vijay Krishna Mishra reported in 2008(6) CTC 516 (SC) the Hon'ble Supreme Court had held that if the document is not stamped, it can be received only if the stamp duty penalty is paid in accordance

with Section 35 of the Stamp Act. If a document is not duly stamped, the same cannot be relied upon even for collateral purpose.

13.Mr.S.P.Maharajan, learned counsel appearing for the respondents would contend that as per the rental agreement, dated 10.05.2000 (Ex.A7) the appellant/plaintiff can vacate the premises only after the expiry of <http://www.judis.nic.in> lease period of three years and it is clearly indicated in clause 6 of the agreement. He also contended that since the appellant/plaintiff did not file any reply statement to the counter claim filed by the respondent/defendant it has to be construed that the appellant/plaintiff had not disputed the contentions raised in the counter claim.

14.Per contra, Mr.T.Antony Arul Raj, learned counsel appearing for the appellant/plaintiff relied on the decision in M.Shankaran vs. M.Krishnan reported in (2019) 1 MLJ 513 and contended that as per Section 49 of the Registration Act, 1908 reception of any documents, which was not registered is barred and that the respondent/defendant cannot approbate and reprobate as regards the rental agreement (Ex.A7) since it is not registered. He would further contend that the respondent/defendant could not rely on Clause 6 of the rental agreement, which mentions the period of lease as three years since it is inadmissible in evidence. There is force in the contention of the learned counsel appearing for the appellant/plaintiff and the arguments advanced by Mr.S.P.Maharajan, learned counsel appearing for the respondent/defendant cannot be accepted for the following reasons;-

(i)The rental agreement is not registered.

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(ii)since it is not duly stamped under Section 35 of the Stamp act, it cannot even be used for collateral purpose.

(iii) Clause-6 which states that the tenant cannot vacate the premises before the expiry of the lease period is an important term forming part of the rental agreement and such clause cannot be looked into in the absence of Registration of the rental agreement.

(iv)The non-registration of the rental agreement (Ex.A7) cannot be used to determine the rights of the parties.

(v) An unregistered rental deed for three years is inadmissible under Section 49 of the Registration Act, 1908 and Section 91 of the Indian Evidence Act, 1882 forbids any other evidence of the agreement being given.

(vi) An unregistered rental agreement cannot be used for proving the terms of the lease deed.

16.The admitted facts in the instant case are

(i)The appellant was the tenant in the suit property and respondent/defendant is a landlord. The monthly rent was fixed as Rs.10,000/- and (ii)the appellant/plaintiff paid a rental advance of Rs.3,50,000/-.

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17.The learned counsel appearing for the appellant would contend that since a notice dated 11.12.2000 in Na.Ka.No.6722/A1/2000 (Ex.A5) was issued by the Chief Educational Officer, Tirunelveli seeking explanation from the appellant/plaintiff for conducting the School in the suit property, even though the said property was acquired by the Tamil Nadu Housing Board as per G.O(Ms) No.1191 dated 1.10.1990 the appellant had to vacate the suit premises. He also drew the attention of this Court to the proceedings of the Director of School Education in Ni.Mu.No. 116510/W12/97 dated 02.02.2001 (Ex.A6) wherein a direction was given to the appellant/plaintiff to shift the School to some other premises. He therefore contended that the appellant had no other option but to vacate the suit property and that the notice dated 11.06.2001 (a copy of which is marked as Ex.A1) was also issued to the respondent/defendant in this regard.

18.In the notice dated 11.6.2001 (Ex.A1) the appellant/plaintiff had clearly stated that the respondent/defendant had concealed the material fact that the land over which the suit building was constructed was already acquired by the Government and that the same was intimated to the respondent/defendant and that the appellant/plaintiff would be vacating the premises by May 2001. The respondent/defendant did not pay the <http://www.judis.nic.in> rental advance of Rs.3,50,000/- to the appellant/plaintiff. It is also clear from Ex.A1 that the appellant/plaintiff had vacated the premises in the month of May 2001 and had requested the respondent/defendant to refund the sum of Rs.3,20,000/- after deducting three months rents for March, April and May 2001. Both the courts below based on the terms of the contract Ex.A7 had concluded that since the appellant/plaintiff vacated the premises even before the expiry of the lease period of three years, allowed the counter claim made by the respondent/defendant and directed the appellant/plaintiff to pay a sum of Rs.2,45,000/- to the respondent/defendant.

19.Both the courts below did not consider the aspect that Ex.A7 is not only registered but requisite stamp duty is not also paid by the party (respondent/defendant) who mainly relies on the terms of Ex.A7. Both the courts below also did not look into the consequence of non-registration of document as enunciated under Section 49 of the Registration Act. Therefore, the findings of both the courts below are perverse. As far as the appellant/plaintiff is concerned payment of advance of Rs.3,50,000/- by him is clearly admitted by the respondent/defendant in the written statement. Therefore, even in the absence of the rental agreement (Ex.A7) the appellant/plaintiff is entitled to get back the said amount after <http://www.judis.nic.in> deducting three months rent of Rs.30,000/- from the respondent/defendant.

20.It is also pertinent to point out that the respondent/defendant did not file any appeal against the decree and judgment passed by both the courts below in favour of the plaintiff directing the respondent/defendant to pay a sum of Rs.3,20,000/- without interest.

21.The conduct of the respondent/defendant is also clear from Ex.A1 to Ex.A5 and he has not approached the court with clean hands while filing the counter claim. Furthermore, it is not also established that the respondent suffered a loss on account of vacating the premises by the appellant/plaintiff even before the lease period of three years. Absolutely, there is no evidence in this regard. Moreover, the lease deed (Ex.A7) is an unregistered document and it would not confer any right on the part of the lessor to enforce the term stipulated in Ex.A7.

22.As a result, the tenancy in respect of the suit premises becomes a month to month tenancy which could be terminated by giving 15 days notice contemplated under Section 106 of the Transfer of Property act. <http://www.judis.nic.in>

23.The appellant/plaintiff has claimed interest at the rate of 12% per annum. Though there is no contract between the parties for payment of interest still the appellant is entitled to get interest as per Section 34 of the Code of Civil Procedure. Section 34 of the Code of Civil Procedure confers a discretion on the Court to award interest reasonably from the date of plaint till the date of realisation. In the instant case though it is admitted by the respondent/defendant that he received a sum of Rs.3,50,000/- from the appellant/plaintiff towards rental advance, did not return the same even after the filing of the suit by the appellant. Therefore, the appellant is entitled to get 6% interest p.a., for Rs.3,20,000/- from the date of plaint till the date of realisation.

24.In the result,

(i)The appeal is allowed. No costs.

(ii)The decree and judgment dated 18.07.2006 passed by the first appellate Court is set aside only with regard to counter claim made by the respondent/defendant.

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(iii) The suit in O.S.No.271 of 2001 on the file of the II Additional Subordinate Judge, Tirunelveli is decreed with costs directing the respondent/defendant to pay a sum of Rs.3,20,000/- together with interest at the rate of 6% per annum to the appellant/plaintiff from the date of plaint till the date of realisation.

(iv)The counter claim filed by the respondent/defendant in O.S.No.271 of 2001 is dismissed with costs.

08.04.2019 Index : Yes/No Internet: Yes/No am <http://www.judis.nic.in> To

1.The Principal District Judge, Tirunelveli.

2.The II Additional Subordinate Judge, Tirunelveli.

<http://www.judis.nic.in> R.H EM A L AT H A , J . , am 08.04.2019 <http://www.judis.nic.in>