

## M.Ezhilmaran vs K.Karunanidhi on 17 December, 2021

S.A.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.09.2021

Pronounced on : 17.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

SECOND APPEAL No.432 of 2021

M.Ezhilmaran

.....Appe

vs.

1.K.Karunanidhi  
2.Central Bank of India,  
represented by Senior Manager,  
73, Arcot Road, Vellore.  
3.The Recovery Officer,  
Office at 5th floor,  
Spenser Tower,  
770A, DRT, III Anna Salai, Chennai.

....Respond

Prayer:This Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908 against the judgement and decree dated 01.02.2012 passed in A.S No.141 of 2017 on the file of the Principal District Court, Vellore and confirming common order passed by the Additional District Munsif, Vellore in I.A.Nos.625 of 2016 and 626 of 2016 in O.S.No.536 of 2012 dated 02.11.2016.

For Appellant: Mr.N.Manoharan for  
M/s.D.Malarvizhi

For R1 : M/s.S.Anuradha Balaji

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<https://www.mhc.tn.gov.in/judis>

### JUDGEMENT

Challenge in this Second Appeal is to the judgement and decree dated 01.02.2021 passed in A.S No.141 of 2017 on the file of the Principal District Court, Vellore, confirming the order passed in I.A.Nos.625 of 2016 and 626 of 2016 in O.S.No.536 of 2012 dated 02.11.2016 on the file of the Additional District Munsif, Vellore.

2. The main suit in O.S.No.536 of 2012 has been filed by the appellant herein for declaring the appellant as a lawful occupant as bona- fide tenant. During the pendency of the above suit, the appellant herein filed petitions in I.A.No.151 of 2011 in O.A.No.150 of 2007 before the Debts Recovery Tribunal-III, Chennai and the same was dismissed.

3. The Admitted facts are that the scheduled mentioned property belongs to one Gnanasekaran and the same was under the mortgage with the second defendant. The second defendant filed O.A.No. 150 of 2007 before the Tribunal for recovery of sum of Rs.49,09,801/- with interest and the same was allowed. The recovery proceedings were initiated on the basis of sale certificate issued by the Tribunal. The Recovery Officer auctioned the <https://www.mhc.tn.gov.in/judis> scheduled property and the first respondent herein has purchased the property in auction and sale certificate was also issued in his favour on 17.02.2011. The Recovery Officer issued an order of eviction of the appellant herein on 04.03.2011 treating him as an unauthorized occupant in the property and he was asked to deliver the possession on or before 31.03.2011. The appellant herein filed I.A.No.151 of 2011, claiming that he is a lawful tenant and he cannot be evicted and the same was dismissed and consequently, he was directed to handover vacant possession of the premises to the second respondent by 30.06.2011.

4. The appellant herein filed petition in R.C.O.P.No.37 of 2011 for permitting him to deposit the rent into the Court and the same was also dismissed on 10.09.2013 by holding that the appellant is not a lawful tenant and there is no tenant and landlord relationship between the appellant and the first respondent. Further the appellant herein filed appeal in R.C.A.No.14 of 2013 against the dismissal order passed in R.C.O.P.No.37 of 2011 and the same was also dismissed. The appellant herein filed O.S.No.536 of 2012 with the following prayer:

<https://www.mhc.tn.gov.in/judis>

a) declaring that plaintiff is a lawful occupant as bona-fide tenant from 05.04.2005 in respect of the suit property and consequently set aside the order passed by the recovery officer in I.A.No.151 of 2011 in R.P.No.2008 in DRC.No.147 of 2008 in O.A.No.150 of 2007 dated 31.05.2011 (Amended as per I.A.No.1131 of 2013 dated 06.12.2013).

b)Declare that the plaintiff should not be evicted except in accordance with the procedure established by law.

c)Grant permanent injunction restraining the defendants 1 and 2 and his servants agents etc., from in any manner interfering with the petitioners peaceful possession and enjoyment of the suit property till evicted under due process of law.

d)Grant permanent injunction restraining the 3rd defendant from passing any eviction order against this plaintiff in R.P.No.171 of 2008 in DRC.No.147 of 2008 and for the cost.

5. While the suit was pending for trial, the first and second respondents herein filed petitions in I.A.Nos.625 of 2016 and 626 of 2016 respectively, praying for rejection of the plaint and the above petitions were <https://www.mhc.tn.gov.in/judis> allowed. Against those orders, the appellant herein filed appeal in A.S.No.141 of 2017 the same was also dismissed by the first appellate Court by confirming the orders passed in I.A.Nos.625 of 2016 and 626 of 2016 by the trial Court. Aggrieved by the same, the appellant has preferred the present Second Appeal.

6. The learned counsel for the appellant would submit that the first appellate Court ought to have allowed the appeal in A.S.No.141 of 2017 and set aside the common order made in I.A.Nos.625 of 2016 and 626 of 2016. It is submitted that the first appellate Court simply confirmed the erroneous findings of the trial Court in holding a view that the appellant is not a bona-fide tenant under the borrower of the secured asset eventhough sufficient oral and docuementray evidence were adduced.

7. The learned counsel would further submit that both the Courts below had failed to appreciate authoritative judicial pronouncing of high Court reported in 2017 (4) CTC 764 (R.Erakkaperumal vs.Union of India) and the decision of the Hon'ble Apex Court reported in "2016 4 L.W.7 (Vishal Kalsaria Vs. Bank of India and others)" in which, it has been <https://www.mhc.tn.gov.in/judis> categorically held that a statutory tenant come into the subject property as a tenant either prior to the mortgage created to the Banking Financial Institution, or came as a tenant prior to the eviction order, is entitled to get the protection of his right as tenant devoid of the ouster clause in Section 34 of SARFEASI Act and also 13(4)(a) has no law passed by the union legislature would override the state law and both the courts below have misfocussed and misjudged as it Rent Contral Court is the only civil Court and the regular Civil Courts are not the civil Courts for the purpose of the above decision and sought for setting aside the judgment and decree of the first appellate Court.

8. Per contra the learned Senior counsel would vehemently opposed the submissions made on the side of the appellant and contended that both the Courts below have rightly held that the appellant is not the tenant and there was no tenant and landlorship relationship between him and the owner of the subject property and that the appellant has not approached the Rent Controller to establish his tenancy, in order to protect his right. He also pointed out that in order to wriggle out from the said situation, he approached the Civil Court with a prayer that he should not be evicted <https://www.mhc.tn.gov.in/judis> except due process of law and for permanent injunction to restrain the respondents from interfering with his possession, which was rightly rejected by the Courts below since the eviction ordered by the Tribunal was only by following the due process of law. He also contended that the Civil Court has no jurisdiction to entertain the suit and to interfere with the orders passed by the Debt Recovery Tribunal. With these contentions, the learned Senior counsel sought for dismissal of the appeal.

9. Heard the learned counsel apearing for the parties and perused the entire materials available on record.

10. On going through pleadings and the entire materials placed on record and on having heard the learned counsel appearing for the parties, the following substantial question of law are framed.

"(a) Whether the finding of the Court below is right in holding a view that the regular Civil Court is not the Civil Court seeking protection as per the authoritative judicial pronouncement in 2016-4-L.W.7 (VISHAL KALSARIA VS BANK OF INDIA AND OTHERS)?

<https://www.mhc.tn.gov.in/judis>

(b) Whether the finding of the Court below that the statutory tenant could get protection against the landlord only before the Rent Controller and not from the regular Civil Court is right?

(c) Whether the Court below is right in holding a view that the dismissal of the claim of this appellant in C.R.P(NPD).No.2164 of 2018 dated 2.12.2020 is a bar to maintain this suit for the purpose of rejection of plaint under order VII Rule 11(a) of CPC?

(d) Whether the finding of the Court below that the appellant can only seek protection before the Rent Controller is not amounting to contribute Articles 129, 215 of the Constitution of the India?"

Question Nos.1 to 4:

Before dealing with the above substantial questions of law, it is relevant to refer the following decision of the Hon'ble Supreme Court reported in "R.V. Bhupal Prasad v. State of A.P. and Ors., reported in AIR <https://www.mhc.tn.gov.in/judis> 1996 SC 140, wherein a two Judge Bench of the Hon'ble Supreme Court, speaking through Ramaswamy, J., made the following pertinent observations in paragraph 8 of the Report:

“8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. “

11. In the present case, absolutely, the appellant has come into possession of the subject property though claiming by virtue of rental agreement dated 05.04.2005 entered with the original owner, Gnanasekaran for a monthly rent of Rs.3000/-, later after his demise, entered into a fresh rental agreement with the wife of the original owner, Mrs.Arputamani on 27.2.2006, which was only for 11 months period and thereby, after the termination of the term of lease by efflux of time, he became "tenant-in- sufferance". In fact, even for this term as "tenant-in'-sufferance" the appellant has to establish the fact that there was tenant and landlord <https://www.mhc.tn.gov.in/judis> relationship between him and the erstwhile original owner and later, after his demise, with his wife, Mrs.Arputamani. It is pertinent to note that well before alleged rental agreement dated 5.4.2005, the original owner D.K.Gnanasekaran had mortgaged the subject property with the 2nd respondent bank as early as on 12.01.2001 itself. While so, according to the appellant, he entered with rental agreement with the original owner and later with his wife and also entered into sale agreement on

06.09.2005. Therefore, all along the appellant was aware of the mortgage created by the original owner in favour of the 2nd respondent bank. While so, the 2nd respondent moved OA 150 of 2007 before the Tribunal for recovery of a sum of Rs.43,09,810 with interest, which was allowed on 25.11.2008 and Recovery Certificate was issued vide DRC No.147 of 2008 for total sum of Rs.77,78,174/- and in pursuance of the same, the subject property was sold in public auction for Rs.41,40,000/- wherein, the 1st respondent became the auction purchaser and sale certificate was also issued and the appellant was issued with eviction notice dated 04.03.2011 by the 3rd respondent, directing him to deliver vacant possession or or before 31.03.2011.

12. It is also pertinent to note that after recognizing the ownership of <https://www.mhc.tn.gov.in/judis> the 1st respondent by virtue of auction purchase, the appellant moved Rent Controller, Vellore by way of RCOP No.37 of 2011, praying to permit him to deposit the rent into Court. During pendency of the RCOP, the appellant filed a suit in O.S.No.536 of 2012 before the District Munsif Court, Vellore for various reliefs mentioned above. By a detailed order dated 10.09.2013, the Rent Controller dismissed the RCOP, holding that the appellant has not proved his tenancy. On appeal, the Rent Control Appellate Authority also confirmed the findings of the learned Rent Controller. Thereafter, the appellant filed a Civil Revision Petition before this Court as against the order of the Rent Control Appellate Authority. By order dated 01.12.2020, this Court, set aside the order to the extent of directing the tenant to vacate and hand over the possession to the landlord.

13. It is the contention of the 2nd respondent bank that creating the rental agreement by the original owner while he was alive after having mortgaged the subject property in favour of the bank vis-a-vis the alleged sale agreement, is hit by Section 65-A of the Transfer of Property Act.

14. It appears that the appellant as well as the landlord/borrower have devised this litigation to commit a largescale fraud on the bank. The <https://www.mhc.tn.gov.in/judis> appellant is not a tenant and has been brought into the picture by the original borrower/landlord to misuse the process of law and is not entitled for any equitable relief. In fact, at the time of creation of the mortgage, the 2nd respondent bank was given to understand that the family of the mortgager was residing in the secured asset. Even after multiple inquiries, and even after initiating proceedings under Section 14 of the SARFAESI Act, the 2nd respondent bank was never intimated about the existing tenancy. Further, the borrower/landlord had given a nonencumbrance certificate to the bank at the time of creation of the mortgage and based on that only the 2nd respondent had processed the mortgage loan. After creation of mortgage in the year 2001, while the outstanding was steadily increasing, the mortgagor brought the appellant and tied up with him by entering a rental agreement only in order to frustrate the 2nd respondent bank from recovering the dues payable by him and to thwart the debt recovery proceedings.

15. The operation of the Rent Act cannot be extended to a 'tenant-in- sufferance' vis-a-vis the SARFAESI Act, due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act. A contrary <https://www.mhc.tn.gov.in/judis> interpretation would violate the intention of the legislature to provide for Section 13(13), which has a valuable role in making the SARFAESI Act a self executory instrument for debt recovery. Moreover, such an interpretation would also violate the

mandate of Section 35, SARFAESI Act which is couched in broad terms.

16. The learned counsel appearing for the appellant relied upon a decision reported in "2016-4-L.W.7 (VISHAL KALSARIA VS BANK OF INDIA AND OTHERS)" in support of the proposition that a tenant is protected from any ejectment proceedings under the SARFAESI Act.

The SARFAESI Act was enacted in response to a scenario where slow-paced recovery and staggering amounts of nonperforming assets were looming over the banks. Section 13 of the SARFAESI Act provides for the enforcement of security interest. This is a self-executory mechanism for the banks. Once the process of realizing the secured interest takes place, the secured creditor acts as trustee having de-jure/symbolic possession of the property and is required by law to realize it strictly in accordance with the provisions of Section 13, 14 and 15 of the SARFAESI Act. Crucially, subSection (2) of Section 13 of the SARFAESI Act envisages a notice, <https://www.mhc.tn.gov.in/judis> which acts as the trigger point for initiation of the recovery process under the SARFAESI Act.

17. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made "only by a registered instrument" and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

18. Hence, if the appellant claims that he is entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument, the Court will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord. In the present case, admittedly, the appellant has not produced any registered instrument of lease deed executed in his favour <https://www.mhc.tn.gov.in/judis> by the landlord.

19. As regards the decision reported in "2016-4-L.W.7 (VISHAL KALSARIA VS BANK OF INDIA AND OTHERS)" is concerned, it deals with the issue of tenants' rights under the SARFAESI Act. The Hon'ble Supreme Court was concerned with the question whether a "protected tenant" under the Maharashtra Rent Control Act, 1999 can be treated as a lessee and whether the provisions of the SARFEASI Act, will override the provisions of the Rent Act? After examining the legal and constitutional position, the Hon'ble Supreme Court held that while the SARFAESI Act has a laudable objective of providing a smooth and efficient recovery procedure, it cannot override the objective of Rent Acts to control the rate of rent and provide protection to tenants against arbitrary and unreasonable evictions. It has been held so as under:

"It is a settled provision that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection

given to the tenant....". In the same <https://www.mhc.tn.gov.in/judis> judgment the Hon'ble Apex Court held that "if the interpretation of the provisions of the SARFAESI Act as submitted by the learned Sr. counsel appearing on behalf of the banks is accepted, it would not only tantamount to violation of the rule of law, but would also render a valid rent control statute enacted by the State Legislature in exercise of its legislative power under Article 46(2) of the Constitution of India, useless and nugatory....." If we accept the legal submissions made on behalf of the Banks to hold that the provisions of the SARFAESI Act override the provision of the various Rent Control Acts to allow a bank to evict the tenant from the tenanted premises which has become a secured asset of the Bank after the default on loan by the landlord and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in a catena of cases, then the legislative powers of the State Legislatures are denuded which would amount to subverting the Law enacted by the State Legislature. Surely, such a situation was not contemplated by Parliament while enacting the SARFAESI Act and therefore, the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this court as the <https://www.mhc.tn.gov.in/judis> same is wholly untenable in law....."

20. In fact, the SARFAESI Act was amended and Section 17(4) A was incorporated which states that where-

(i) Any person, in an application under sub-

section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy- (a) Has expired or stood determined; or (b) Is contrary to Section 65A of the Transfer of Property Act, 1882 (4 of 1882); or (c) Is contrary to terms of mortgage; or (d) Is created after the issuance of notice of default and demanded by the Bank under sub-section (2) of Section 13 of the Act; and (ii) The Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause

(b) or sub-clause (c) or sub-clause (d) of Clause (i), then notwithstanding anything to other contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such orders as it deems fit in accordance with the provisions of this Act. 15. The <https://www.mhc.tn.gov.in/judis> said amendment was given effect to on 1.9.16 and there are no materials to show that the amendment was given any retrospective effect."

21. Thus, in light of the decision of the Hon'ble Supreme Court in "Vishal N. Kalsaria Vs. Bank of India and Others" (cited supra) and also in the light of the amendment of the SARFAESI Act (extracted above), it is seen that a tenant cannot be evicted only on the basis of the SARFAESI Act by overriding the Rent Laws and therefore, it can be held that the civil Courts have jurisdiction to try suit filed by a lawful tenant to save himself from eviction except by following the due process of law

although a proceeding under the SARFAESI Act was initiated by the bank.

22. Further, in a decision of "Harshad Govardhan Sondagar v. International Asset Reconstruction Co. Ltd.," reported in (2014) 6 SCC 1, the Hon'ble Supreme Court has held that the right of appeal is available to the tenant claiming under the borrower. In "Kanaiyalal Lalchand Sachdev v. State of Maharashtra", reported in (2011) 2 SCC 782, the Hon'ble Supreme Court has held that DRT can not only set aside the action of the secured creditor but even restore the status quo ante. <https://www.mhc.tn.gov.in/judis>

23. In fact, the above mentioned decisions of the Hon'ble Supreme Court will come to the aid only in respect lawful and bona fide tenants, who were either inducted as tenants prior to the creation of the mortgage by the landlords in favour of the banks and whose against eviction proceedings were initiated by invoking the provisions under the SARFAESI Act even without even serving any prior notice despite taking note of the fact that the tenant has been in possession by virtue of registered instrument of lease/rental agreement and regularly paying the rents. Taking note of the predicament of the lawful tenants who suffered eviction proceedings initiated without resorting to basic principles of natural justice by issuing prior notice, the Hon'ble Supreme Court has come to the rescue of such tenants and held that the SARFAESI Act cannot override the objective of Rent Acts to control the rate of rent and provide protection to tenants against arbitrary and unreasonable evictions and that no lawful tenant could be evicted without due process of law.

24. A Three Judge Bench of the Hon'ble Supreme Court in "Bajrang Shyamsunder Agarwal v. Central Bank of India, reported in "(2019) 9 SCC 94", after considering almost all decisions of the Supreme Court, in <https://www.mhc.tn.gov.in/judis> relation to the right of a tenant in possession of the secured asset, has held that if a valid tenancy under law is in existence even prior to the creation of the mortgage, such tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. If a tenancy under law comes into existence after the creation of a mortgage but prior to issuance of a notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65-A of the Transfer of Property Act, 1882. If a tenant claims that he is entitled to possession of a Secured Asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the said decision of the Hon'ble Apex Court, it was clarified that in the absence of a registered instrument, if the tenant only relies upon an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under the provisions of the Transfer of Property Act. While noting the above discussion, the Hon'ble Bench held in para 25 as under:-

“25. In our view, the objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner:

<https://www.mhc.tn.gov.in/judis>

a) If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by



taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the risk undertaken by the bank while providing the loan, it is expected of Banks/Creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.

b) If a tenancy under law comes into existence after the creation of a mortgage, but prior to the issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the T.P. Act.

c) In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered <https://www.mhc.tn.gov.in/judis> instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act."

25. As already discussed above, in the present case, the bona fides of the appellant/tenant is highly doubtful, as there is no good or sufficient evidence to establish the tenancy in the first place. The present case involves the appellant/tenant who allegedly entered into a rental agreement of tenancy before the mortgage deed was entered into between the landlord/borrower and Bank/Creditor. All along the appellant failed to establish his case either before the Rent Controller or before the DRT and all the proceedings taken by him, came to end in dismissal. Therefore, the records also do not demonstrate that the appellant tenant has been able to prove his status as a valid tenant to merit the protection sought for. Admittedly, an equitable mortgage on the secured asset was created by the landlord by depositing title deeds with respondent no. 2 bank on 12.01.2001. In fact, the claim of tenancy made by the appellant tenant is not supported by a registered instrument. It is settled that if a valid tenancy under law is in existence even prior to the creation of the mortgage, such <https://www.mhc.tn.gov.in/judis> tenant's possession cannot be disturbed by the secured creditor by taking possession of the property and if a tenancy under law comes into existence after the creation of a mortgage but prior to issuance of a notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65-A of the Transfer of Property Act, 1882. In the present case, admittedly, the appellant/tenant entered into a rental agreement with the landlord only after creation of mortgage by the landlord in favour of the respondent no.2 bank. Further, the appellant/tenant claimed that he is entitled to possession of a Secured Asset for a term of more than a year, but he has failed to produce the registered rental agreement. In the above decision, it was clarified that in the absence of a registered instrument, if the tenant only relies upon an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under the provisions of the Transfer of Property Act. Therefore, the appellant/tenant being "tenant-in-sufferance" is not

entitled to any protection of the Rent Act.

<https://www.mhc.tn.gov.in/judis>

26. However, in view of the decision of the Hon'ble Supreme Court in "Vishal Kalsaria case" cited supra, though it can be held that the civil Courts have jurisdiction to try suit filed by a lawful tenant to save himself from eviction except by following the due process of law although a proceeding under the SARFAESI Act was initiated by the bank, it is pertinent to note that as already discussed supra, the appellant failed to prove his tenancy and that he is a lawful tenant in the eye of law. All along he claimed that he should not be evicted without following due process of law. This Court fails to understand as to how the appellant/tenant could be evicted without following due process of law.

27. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the various decisions both by High Courts and Apex Court which emphasize that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in <https://www.mhc.tn.gov.in/judis> settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

28. In the present case, the appellant has moved the various Courts of law and Forums, by filing numerous petitions to frustrate the SARFAESI proceedings and to defeat the rights of the mortgagee/Bank as well as the rights of the 1st respondent/auction purchaser, which are stated as under:

Pending OA No.150 of 2007 before DRT:

- a. I.A.Nos.664 and 665 of 2005 against the eviction order dated 04.03.2011, which dismissed before the final order in the OA. Pending DRT proceedings:
- b. I.A.No.392 of 2009 seeking to question the

on the ground that he is an Agreement holder of the property under an alleged Agreement for sale dated 06.09.2005, which was dismissed on 15.03.2009.

c. I.A.Nos.8 and 9 of 2011 questioning the sale before the Recovery Officer on the ground that the appellant has a right over the property as an Agreement holder. The IAs were dismissed on 10.02.2011.

Post Confirmation of auction sale <https://www.mhc.tn.gov.in/judis> d. I.A.No.151 of 2011 was filed before the 3rd respondent/3rd defendant seeking to recall the order of eviction dated 04.03.2011 dismissed on 31.05.2011.

e. RCOP No.37 of 2011 before the Rent Controller, Vellore, for deposit of rent, which was dismissed on 10.09.2013.

f. Appeal No.03/2011 before the DRT III, Chennai against the order of dismissal dated 31.05.2011 in I.A.No.151 of 2011 and the same was dismissed on 03.04.2012.

g. AIR No.418 of 2012 before Hon'ble DRAT, Chennai against the order in Appeal No.03/2011 and the same is pending.

h. Appeal No.09/2012 before the DRT III, Chennai against the order dated 14.08.2012 in I.A.No.336 of 2012 appointing the Advocate Commissioner for eviction, dismissed on 08.05.2013.

i. Writ Petition filed in W.P.No.18346/2013 challenging the order passed in I.A.No.336/2013 appointing the Advocate Commissioner for delivering vacant possession to the auction purchaser was withdrawn and accordingly the writ petition was dismissed as withdrawn by order of court dated 19.09.2013.

<https://www.mhc.tn.gov.in/judis> ii. CRP 2164 of 2018 before this Court, which was disposed of by this Court on 01.12.2020.

29. It is pertinent to note that all the above said proceedings were disposed of the Courts of law by following due procedure of law by issuing notice to the appellant and after considering all pleas and contentions raised by him. Therefore, the appellant cannot claim that he cannot be evicted without following due process of law. While so, with untenable grounds, the appellant has filed the suit in O.S.No.536 of 2012 on 11.12.2013 before the District Munsif Court, Vellore, praying apart from other reliefs, to declare that he should not be evicted except in accordance with the procedure established by law.

30. During the pendency of the above suit filed by the appellant, the respondent 1 and 2 moved I.A.Nos.625 and 626 of 2016, seeking to reject the plaint in O.S.No.536 of 2012. The trial Court, vide its common order, dated 2.11.2016, dismissed the I.As. on the ground that the Civil Court has no jurisdiction to entertain the suit or proceedings in respect of any matter which DRT or the Appellate Tribunal is empowered under the SARFAESI <https://www.mhc.tn.gov.in/judis> Act and as such, the suit is barred by law. In the appeal in A.S.No.141 of 2017 preferred by the appellant, the lower appellate Court also, vide its judgment, dated 01.02.2021 concurred with the findings of the trial Court and held that the jurisdiction of the Civil Court is expressly barred under Section 34 of SARFAESI Act and as such, dismissed the appeal preferred by the appellant.

31. However, it is pertinent to note that in a decision reported in “Vishal N.Kalsaria versus Bank of India and others” (cited supra), the Hon'ble Supreme Court has held that Civil Courts have jurisdiction to try the suit filed by a lawful tenant to save himself from eviction except by following due process of law even though proceeding under the SARFAESI Act was initiated by the Bank. Further, a person can approach a Civil Court and seek a declaratory or other relief in respect of secured asset since such relief cannot be granted by the Debts Recovery Tribunal or the Appellate

Tribunal as they are not a Civil Court. Therefore, it cannot be held that the jurisdiction of the Civil Court is completed barred by law and as such, any suit filed by a lawful tenant and any person who claims declaratory relief <https://www.mhc.tn.gov.in/judis> over the secured asset, can very well entertained by a Civil Court. To this extent, the orders of the Courts below are modified, holding that a Civil Court has jurisdiction to entertain the suit filed by a lawful tenant or a person who claims declaratory relief over the secured asset. However, in the present case, as already discussed above, it has been held categorically that the appellant is not a lawful tenant in order to safeguard his interest over the secured asset. In fact, to defend the said I.As., surprisingly, the appellant/plaintiff filed counter affidavits by suppressing various proceedings and orders passed by the DRT, lower Courts and this Court, wherein, the appellant has been declared as unlawful tenant and accordingly ordered his eviction after following due process of law. Therefore, this Court does not find any substance in the claim of the appellant and hence, the Second Appeal preferred against the common order passed by the trial Court, rejecting the plaint filed by the appellant, deserves to be dismissed.

32. Therefore, since following the due process of law only, the appellant has been declared that he is not lawful tenant and that his eviction was ordered after putting him on notice and on consideration of his pleas <https://www.mhc.tn.gov.in/judis> raised before the DRT, Rent Controller, Rent Control Appellate Authority and before the Civil Court and de hors the proceedings of the DRT and Rent Control authorities, the trial Court as well as the lower Appellate Court have concurrently rendered findings that the appellant/tenant has not proved his case and he is liable to be evicted. Though the eviction order was inflicted against the appellant herein as early as in the year 2011 by treating him as not a lawful tenant by the DRT after following due process of law, it is very unfortunate to note that nearly even after a decade also, the appellant has successfully thwarted the eviction proceedings and squatted over the property by filing numerous petitions and appeals.

33. In the light of the above discussion, this Court does not find any infirmity or irregularity in the orders passed by the Courts below. Accordingly, the Second Appeal fails and it is dismissed. No costs.

Index : Yes/No  
Internet : Yes/No  
suk

<https://www.mhc.tn.gov.in/judis>

To

- 1.The Principal District Court, Vellore.
- 2.The Additional District Munsif, Vellore.
3. The Section Officer,  
V.R Section, Madras High Court,  
Chennai.

<https://www.mhc.tn.gov.in/judis>

S.KANNAMMAL, J.

Suk/mpa

Pre-delivery Judgement made in

17.12.2021

<https://www.mhc.tn.gov.in/judis>