Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.09.2026

Pronounced on : 20.11.2026

Case QR

CORAM

THE HON'BLE MR.JUSTICE E.MANOHARAN

SA No. 450 of 2016

CNR: {HCMA010850562016}

M/s. Azeez Badsha Sahibs
Charities,
No.40, Veerabadran Street,
Nungambakkam, Chennai - 600 034
Rep. herein by its Secretary.
Now 9, Leith Castle North St.,
Santhome, Ch- 28.

..Appellant(s)

Vs.

Mr. Nazeer Hussain (died)

Ms. Ameena Bi (died).

1. Humera Begum,
   D/o. Rehaman Baig,
   10/60, Muktharunnissa Begum St,
   Mount Road,
   Chennai - 600 002.

2. Haleema Begum
   D/o. Rehaman Baig,
   No. 7/13, Hussai Mulk St.,
   Border Thottam,
   Royapettah, Chennai - 600 014.

3. Abdul Rahim Baig
   S/o. Rehaman Baig,
   No. 96 (od No. 316),

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Inside Big Mosque Compound,
Triplicane High Road,
Triplicane, Chennai - 600 005.

4. Hasina Begum
D/o. Rehaman Baig,
No.7/17, Chinnathambi Street,
Ellis Road, Chennai - 600 005.

5. Rahana Begum,
D/o. Rehaman Baig,
No. 96 (old No. 316),
Inside Big Mosque Compound,
Triplicane High Road,
Triplicane,
Chennai - 600 005.

6. Sabira Begum
D/o. Rehaman Baig,
No. 5/2, Old No. 3/1,
Muktharunnissa Begum Street,
Third Lane, Ellis Road,
Chennai - 600 002.

7. A.R. Fazal Baig
D/o. Rehaman Baig,
No.17, Pensioners Lane,
New Barranks Road,
Pattalam, Chennai - 600 012.

8. Mateen Baig
S/o. Rahman Baig,
No. 96 (old No. 316),
Inside Big Mosque Compound,
Triplicane High Road,
Triplicane, Chennai - 600 005

9. Razina Sultana
W/o. Late Nazir Hussain

10. Fahim Sultana
D/o. Late Nazir Hussain

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11.N. Hyder Hussain
S/o. Late Nazir Hussain.

12.N. Jameel Hussain
S/o. Late Nazir Hussain.

JDs are residing at
New No. 96, Old No. 316,
Wallaja Big Mosque Compound,
Triplicane High Road,
Chennai - 600 005.

13.H.H. Prince Of Arcot
Endowments,
Amir Mahal, Bharathi Salai,
Royapettah,
Chennai - 600 014.

14.P. Damodharan
No.18, Venkatesa Naicken Street,
Chepauk, Chennai - 600 005.

..Respondent(s)

Prayer: Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree passed by the First appellate Court in A.S.No.35 of 2015 dated 11.12.2015 on the file of the learned XVII Additional City Civil Court, Chennai reversing the judgment and decree by the trial Court in O.S.No.367 of 2008 dated 16.07.2014 on the file of the learned I Assistant City Civil Court, Chennai.

For Appellant(s): Mr.S.Suresh Kumar

For Respondent(s): Mr.R.Thanjan for R1 to R12

Mr.I.Mohamed Fazil for R13

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JUDGMENT

PARTIES:

The plaintiff M/s.Azeez Badsha Sahib's Charities is a religious public charitable Institution represented by its secretary, the Appellant herein. The suit in O.S.No.367 of 2008 was instituted against Mr.Nazeer Hussain (1st Defendant) and Ms.Ameena Bi (2nd Defendant). During the pendency of the suit, the H.H. Prince of Arcot Endowments and Mr.P.Damodharan respectively were impleaded as the defendants 3 and 4 respectively vide order in I.A.No.2457 of 2010 dated 29.07.2010 and the cause title was amended as per order in IA.No.16334 of 2010 in O.S.No.367 of 2008 dated 04.09.2010. On the death of the 2nd defendant Ms.Ameena Bi, defendants 5 to 12 were brought on record, as legal heirs vide Order dated 23.03.2011 in I.A.No.466 of 2011 and the cause title was amended vide order dated 24.06.2011 in I.A.No.8538 of 2011. On the death of the 1st defendant Mr.Nazeer Hussain, defendants 13 to 16 were brought on record as his legal representatives vide Order dated 14.03.2012 in I.A.No.14839 of 2011 and cause title stood amended vide order dated 16.07.2012 in I.A.No.4776 of 2012. In this second appeal, the Respondents 1 to 12 are defendants 5 to 16 and Respondent Nos.13 & 14 are the 3rd defendant and the 4th defendant respectively. The parties are referred to herein by their ranks as assigned in the suit viz., O.S.No.367 of 2008.

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FACTUAL BACKGROUND:

2. The plaintiff instituted the suit in O.S. 367 of 2008 for a decree and judgment directing the defendants to quit and deliver vacant possession of the suit schedule property (namely, House and Ground situated at premises Old No.316, New No.96, Big Mosque Compound, Triplicane, Chennai-600 005) and to pay damages for use and occupation of the suit property at the rate of Rs.2000/- per month from 01.06.2007 till the date of delivery of possession of property together with costs.

3. The case of the plaintiff is that they are the owner of the premises consisting of land and super structure mentioned above and that one Mr.Abbas Hussain was the original tenant. After his death, the 1st defendant and 2nd defendant, who are his legal heirs, continued as tenants in the premises on payment of monthly rent of Rs.2000/-. The tenancy was from month to month, according to the English Calendar year with rent payable on or before 5th of every succeeding month.

4. The plaintiff issued a notice dated 12.04.2007 (Ex.A1) terminating the tenancy with effect from 31.05.2007 and calling upon the defendants 1 and 2 to vacate and hand over possession on or before 01.06.2007. The defendants received the notice on 13.04.2007 and 17.04.2007 and sent a reply dated

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31.05.2007 (Ex.A4 & Ex.B3) through their advocate, which the plaintiff has characterized as false and untenable, and which among other things also denied plaintiff's title over the suit property. The defendants did not vacate the premises as directed by the plaintiff. It is also pleaded by the plaintiff that the amounts tendered by the defendants, towards use and occupation, was accepted on to the account without prejudice to the plaintiff's right to seek eviction. The plaintiff has pleaded that the rent paid was far below the fair rent and the tenancy stood terminated by 15 days notice under the Transfer of Property Act, 1882 [hereinafter referred to as "TP Act"]. Since the defendants refused to vacate the premises, the plaintiff was left with no other option except to file the suit on 10.01.2008 before the I Assistant Judge, City Civil Court, Chennai (hereinafter referred as Trial Court).

5. The Written statement of the defendants 1 and 2, subsequently adopted by the defendants 5 to 16, denied the plaintiff's averments in the plaint. The defendants pleaded that the plaintiff was only collecting a sum of Rs.2000/- as tax payable to Nawab of Arcot. They claimed that in 1945, the defendants' grandmother Kairubowa, a young widow, was appointed by the Sowcar Aziz Batcha Sahib to teach Arabic and Urdu to the children of Sowcar's family and was kept by him and she was gifted the Madrasa to her for her service and no rent was collected from her. After her death, the late Abbas Hussain, who was her son, was appointed as teacher in the Madrasa and his wife late Rameeza Bee

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was appointed as cook in the Sowcar's family. It is pertinent to note that they were the parents of the defendants 1 and 2. The electricity, metro water and drainage connections were said to have been obtained by the defendants 1 and 2 at their own costs, with the permission of the then Nawab of Arcot. The defendants claimed to be the third generation in possession of the property. They further contend that the property in their possession is entirely different from the suit schedule property, which gives no survey number, boundaries or measurements and there was no cause of action arising for filing the suit and also valuation of the property and the Court fee paid were incorrect. Therefore, the defendants, have prayed for the dismissal of the suit.

6. Trial Court originally framed three issues and recast them on 16.07.2014, which are as follows:

1)Whether a valid notice terminating the lease was issued?

2)Whether the plaintiff is entitled for quit and deliver vacant possession of the suit property?

3)Whether the plaintiff is entitled for damages for use and occupation of the suit property?

4)To what relief?

7. On the side of the plaintiff, Mr.A.J.Suhail was examined as PW.1. and Ex.A1 to Ex.A.9 were marked. On the side of the defendants, Mr.Syed Lathief

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Ahamed, the power of attorney agent of the defendants, was examined as D.W.1 and Exhibits B1 to B14 were marked.

8. By judgment dated 16.07.2014, the Trial Court answered issue No.1 in favour of the plaintiff. The Trial Court held that the tenancy was on a month to month basis and the notice (Ex.A1) issued on 12.04.2007 terminating the tenancy with effect from 01.06.2007, was a valid Notice as contemplated by the TP Act, with the suit having been filed after the expiry of the 15 days notice period.

9. With regard to issue No.2, the Trial Court held that there was no proof except oral assertion by the defendants that their grandmother was gifted with the suit property for her service and that Rameeza Bee was appointed as a cook in the Sowcar's family. The Trial Court also recorded that while the defendants had stated in the written statement that the suit property and the property in their possession are totally different, the proof affidavit of DW1 disclosed that the address of the suit schedule property and the address of the defendants are the same. This was also admitted in the cross examination of DW1. The Trial Court after examining the exhibits and evidence placed before it, held that the original lessee Mr.Abbas Hussain, with whom the plaintiff had entered into the lease (Ex.A5) was the father of the defendants 1 and 2 and that the defendants are therefore the heirs of the lessee.

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10. The Trail Court also referred to the reply notice issued by the defendants (Ex.B3) and held that there was an admission on the side of the defendants to the effect that the monthly sum paid was raised from Rs.150/- to Rs.300/- and then to Rs.2000/- per month, which is the very amount claimed by the plaintiff as rent. It noted that the documents viz., Exs.B4 to B9, namely property tax and ration card documents stood in the name of one Mr.Damodharan (4th Defendant) and that in some of documents, address of the property was different, for which there was no explanation and that the defendants relied on information obtained under the Right to Information Act (Exs.B10, B11, B12) to plead that the name of the plaintiff was not reflected in the records relating to the said property. The Trial Court held that admission of the defendant in the reply notice (Ex.B3) and in the cross examination were sufficient to hold that they are tenants in occupation of the suit property. As regards the contention that the land belonged to Arcot Nawab Endowments, which was also admitted by PW1 in the cross examination, the Trial Court held that in light of Ex.A5 that the argument of the defendants have not much strength. Issue 2 was also answered in favour of the plaintiff.

11. With regard to issue No.3, the Trial Court held that Rs.2000/- was the admitted amount paid to the plaintiff's charity, albeit in the name of tax, and that the defendants are therefore liable to pay damages for use and occupation from 01.06.2007 till delivery of possession. The suit was decreed as prayed for

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with costs and three months time was granted for handing over possession.

12. Aggrieved the defendants 5 to 16 preferred A.S.No.35 of 2015 before the XVII Additional Judge, City Civil Court, Chennai (hereinafter referred to as the "First Appellate Court"). They contended that the plaintiff had not proved its ownership or any right over the suit property, that the suit property is not a wakf property and the property dispute has to be referred to rent control proceedings. They also raised ground to the effect that the description of the property lack survey number and details of boundaries and the lessor and lessee under the alleged lease are dead and the lease is fabricated and that the land belong to Arcot Nawab. They relied on Exhibits Ex.B1 to B14 establish their possession.

13. The First Appellate Court framed the following points for consideration:

1)Whether the plaintiff is entitled for the relief of appeal as prayed for?

2)To what other relief the appellant is entitled?

14. By judgment dated 11.12.2005, the First Appellate Court allowed the appeal and set aside the Judgment and Decree of the Trial Court passed in O.S.No.367 of 2008 dated 16.07.2014 whilst directing the parties to bear their own costs. It recorded that it was the admitted fact that the defendants were in

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possession and that it was for the plaintiff to prove that it was the landlord. It held that Ex.A5 being unregistered and that the ownership of the Plaintiff cannot be presumed on the strength of it.

15. The First Appellate Court relied on the cross examination of PW1, to hold that the plaintiff was the owner of only the super structure and it had failed to produce any document between the plaintiff and the 3rd defendant supporting its right over the vacant site and that no evidence was adduced as to which year the super structure was constructed and leased out. The First Appellate Court relying on the various exhibits, namely, Exs.A6 to A9, held that the address in those exhibits is not the address of the suit property. It further held that the burden of proving the landlord-tenant relationship fell on the plaintiff and that no document was produced to prove receipt of Rs.2000/- as monthly rent.

16. The First Appellate Court also held that the Trial Court had marked the Xerox copies of Exs.B5, B9 and B11 to B18 without complying with Sections 62, 65 and 66 of the Indian Evidence Act, and on that basis set aside the entire Judgment and Decree of the Trial Court.

17. Aggrieved by the same, the plaintiff has preferred this Second Appeal.

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18. This Second Appeal was admitted on 28.04.2016 and this Court had framed the following substantial questions of law for due consideration:-

a) Whether the Appellate Court failed to take serious note of the fact that non-examination of any of the defendants as witness to prove the allegations in the written statement is fatal to the case of the defendants?

b) Whether the Appellate Court failed in its duty to examine the entire evidence and pleadings on record especially the admissions in the exhibits, allegations in the written statement, cross examination and the grounds of First Appeal according to law?

c) Whether the Appellate Court failed to appreciate that no tenant shall be permitted to deny the title of the landlord according to the provisions of Section 116 of the Indian Evidence Act?

d) Whether the Appellate Court ought not to have discarded Ex.A5, which is marked for collateral purposes?

19. This Court heard the learned Counsels, Mr.S.Suresh Kumar, Mr.R.Thanjan & Mr.I.Mohamed Fazil, appearing on behalf of the Appellant, Respondents 1-12 and Respondent 13, respectively and perused the materials on record, the findings of the Courts below and the written submissions.

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DISCUSSION:

Substantial Question of Law No.1: ***(Non examination of defendants as witness) :***

20. The defendants did not merely deny the plaint averments but had also, on their behalf, made assertions to the following (i) Gift of the Madrasa to the grandmother for the services rendered by her as a teacher and that no rent was collected from her, (ii) that the appointments of late Abbas Hussain and Rameeza Bee in the Sowcar's family as teacher and cook respectively, (iii) that payment of Rs.2000/- as tax, payable to the Nawab of Arcot, (iv) that securing electricity, water and drainage connections at their own costs, and (v) that the property in their occupation is a different property that mentioned in the suit.

21. There facts that has been pleaded by the defendants all lay exclusively within the personal knowledge of the defendants. The persons through whom they claim are all now dead and none of the defendants 5 to 16, who are the legal heirs, entered the witness box nor was any reason was given for their abstention. The only witness examined on behalf of the defendants was DW1, who claims to be a close relative and deposed, as their power of attorney agent under Ex.B2 dated 17.06.2013. It is a settled that the power of attorney agent may depose only as to acts done by him and he cannot depose in place of the principal, on matters which are within the personal knowledge of the principal, on which only the principal can be tested in cross examination. In this regard,

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the Hon'ble Supreme Court in ***Janki Vashdeo Bhojwani v. Indusind Bank Ltd., [(2005) 2 SCC 217]*** has observed as follows:

> *"12. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power-of-attorney holder does not have personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.*
>
> *13. ... In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."*

22. Therefore, the evidence of DW1 can at best be held as 'hearsay' and carries no probative value in the eye of law. DW1 has not given proper evidence as to how the 4th defendant came to be described as a owner of the property nor

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did he provide proper proof for evidence to the assertion of the defendant that Mr.Damodaran had handed over the property to their ancestors, about 100 years ago. In fact DW1, admitted that there is no written document to show that the 4th defendant had handed over the property to the ancestors of the defendants 1 and 2. It is also significant that this statement was not pleaded by the defendants in the written statement and it surfaced only during the deposition of the power agent DW1. The statement of DW1 cannot be relied to prove facts which are only within the exclusive and knowledge purview of the defendants.

23. Where a party has pleaded a case but fails to enter the witness box to prove the same and to offer themselves for cross examination, a presumption arises that the case put forth by him is not correct. In this regard, reference is made to the judgment of the Hon'ble Supreme Court in the case of ***Vidhyadhar v. Manikrao, [(1999) 3 SCC 573]*** which states as follows:

> *"17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah*

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1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

24. Similarly, the Hon'ble Supreme Court in ***Iswar Bhai C. Patel v. Harihar Behera, [(1999) 3 SCC 457]***, held as follows :

"This decision has since been relied upon practically by all the High Courts. The Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] observed as under:

It is significant that while the plaintiffs put the defendant in the witness-box they themselves had not the courage to go into the witness-box. Plaintiffs were the best persons to give evidence as to the 'interest'

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possessed by them in the institution and their failure to go into the witness-box must in the circumstances go strongly against them."

23. This decision was also relied upon by the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] which observed as under:

"It is the bounden duty of a party personally knowing the facts and circumstances, to give evidence on his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstance which will go to discredit the truth of his case.""

Therefore, where a party abstains from entering the witness box, an adverse inference arises against them, keeping in mind the illustration (g) of Section 114 of the Indian Evidence Act. While this inference does not give relieve the plaintiff of the burden of proving his own case, it operate against the pleas raised by the defendants with regard to matters which are well within their own personal knowledge.

25. In the light of the above, this Court finds that the Trial Court rightly held that the gift of Madrasa and the appointments of the parents of the defendants 1 & 2 were not proved. The First Appellate Court though has

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recorded the statements of the defendants, it has however proceeded to cast the entire burden on the plaintiff to prove it without considering that the defendants abstained from entering the witness box and that the entire foundation of their plea was based solely on the statements of the power of attorney agent. The First Appellate Court also ought to have noticed that the plea of the defendants that the property was gifted to their grandmother is inconsistent with their own statement that they were paying a monthly rent of Rs.2000/- to Mr.Ahamadullah Badsha, a member of the Sowcar family, a situation that cannot exist where the property has been gifted outright to an individual. There is yet another inconsistency statement of the defendants to that while DW1 has deposed that the property was handed over by Damodharan to their ancestors, hundred years ago, whereas they have also simultaneously taken a stand that the said property was gifted to her grandmother by the Sowcar. These assertions remain oral and no material was shown to corroborate the same and therefore cannot be used as a defence to displace the plaintiff's case. Therefore, in light of the above, this Court holds that non examination of the defendants is fatal to their defence and therefore, the Substantial Question of Law No.1 is answered in favour of the Appellant.

Substantial Question of Law No.2: (*Failure to examine the entire evidence and pleadings on record)* :

26. A First Appeal is a rehearing on questions of both fact and law. The

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First Appellate Court must frame state the relevant points for determination and decide each of them with cogent reasons, more so, whether it to takes a different view from that of the Trial Court. By merely reproducing the Trial Court reasonings and differing with it without reasons or analysis, will not be enough to sustain the Decree and Judgment of the First Appellate Court.

27. In this context, it is apposite to refer to the decision of the Hon'ble Supreme Court of ***U. Manjunath Rao vs. U. Chandrashekar and Ors. [2017 (6) CTC 764 SC]***.

> *"8. A three-Judge Bench in Santosh Hazari v. Purushottam Tiwari (deceased) by L.Rs. While discussing about power of the first appellate court, has opined that it is the final court of facts and, therefore, pure findings of fact remain immune from challenge before the High Court in second appeal. It is necessary to note that the Court had also held thus:*
>
> *... The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the*

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trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi v. Bijendra Narain Choudhary MANU/SC/0287/1966 : AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. ... [Emphasis supplied]

"The aforesaid passage has to be appositely understood. While reversing the finding and conclusions of the trial Court, the duty of the first appellate court is different than while affirming a judgment. Be it stated, the Court has also held that it is a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law is a substantial one. In the said case, the Court, after referring to the decision in Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh MANU/SC/0002/1950 : AIR 1951 SC 120, has further opined that: ... "while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial

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court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code…." The purpose of referring to the said decision is to highlight the responsibility cast on the first appellate court or a court hearing the first appeal."

28. Tested against the above principles, the judgment of the First Appellate Court cannot be sustained. The following admissions were on record and were not considered by it: The defendants did not specifically deny the payment. In the written statement wherein they have stated that they were paying a sum of Rs.2000/- every month without any default and merely labelled the same as tax payable to the 3rd defendant Endowment. They did not produce a single receipt or demand of such tax and no representative on behalf of the third respondent was examined despite being impleaded at the instant of the defendants. It is their consistent stand that the said amount was paid towards tax on the house, in increasing proportion over a period of time. In fact, in the written statement, the defendants have admitted that the amount paid by them, which is adjusted to the tax due, seems very high and disproportionate to the extent, location and amenities of the property.

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29. The defendants pleaded that they are the third generation in possession of the property. The address of the suit property furnish in the proof affidavit of DW1, as admitted by him in his cross examination, is the same as the address of the defendants. The defendants had originally pleaded that the suit property is different from the property in their possession, and this stand was abandoned in cross examination.

30. The defendants 1 & 2 being the children of Abbas Hussain, the lessee under Ex.A5, and did not deny the execution of that instrument by their father. The First Appellate Court had simply stating held that the plaintiff had not proved the relationship of landlord-tenant despite it being an admitted fact that the sum was being paid and the only dispute was as to the label attached to it. Section 105 of the TP Act defines a lease as follows :

> ***"105. Lease** defined.— A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*
>
> ***Lessor, lessee, premium and rent defined.**—The transferor is called the lessor, the transferee is called the*

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lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

In view of the above admissions, it stands established that the father of the defendants 1 and 2 was paying monthly rent under Ex.A5 and the defendants claim over the property as tenant is denied from Ex.A5 and this leads to the finding that the relationship lessor and lessee subsisted. The First Appellate Court did not deal with any of these admissions.

31. The First Appellate Court relied on differences in the street names in the various exhibits. It ought to have noticed that the door number (316) appears in every document, including Ex.A5 and should have also considered the admission of DW1 that the plaint address is address of the defendants, torne out by the address furnished by the defendants themselves in the cause title of this Appeal. A mere difference in street names should not have outweighed these facts, especially since the said street was renamed over a period of time and was known by more than one name.

32. The First Appellate Court ought to have taken due cognizance that on 4th defendant, who was impleaded on behalf of the defendants remained ex-parte and was not examined and neither were any officials of the corporation

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/authorities examined to explain the entries on which the defendants had relied in support of their defence.

33. The First Appellate Court laid much emphasis on the description of the plaintiff in the plaint as the owner of the land and superstructure, as against the answers of PW1 in cross examination that the land belongs to the 3rd defendant Endowment and that the plaintiff holds it with a right to sublet and that the plaintiff had constructed the super structure. The Appellant has offered explanation that the use of the word "owner" in the plaint was an oversight and the variation caused no prejudice to the defendants. During the hearing, the learned Counsel appearing for the 3rd defendant, who had remained ex-parte till now, made an oral submission that the land belongs to the Endowment and the plaintiff's claim should be restricted to the superstructure. This lends support to the statements of the plaintiff that the super structure alone belongs to them and that the land belongs to the endowment, with a right to the plaintiff to sublet and which has not been questioned till date. The endowment's ownership of the land coupled with the plaintiff's right to sublet, does not make the plaintiff any the less the landlord of the defendants. It is evident from the defendants own statement that the amount was paid either as tax or as rent by their own variation. The amount Rs.2000/- is the same as that claimed by the plaintiff as claimed as rent. Therefore this reveals that the plaintiff maintained a landlord-tenant relationship with the defendants 1, 2 & 5 to 16.

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34. Moreover, no issue was framed or adjudicated on the maintainability of the suit or on the applicability of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and in light of the assertion of the plaintiff that the buildings of religious charitable public trust such as that of the plaintiff stood exempted by the G.O.Ms.2000 dated 16.08.1976. The First Appellate Court also did not address the finding of the Trial Court that the notice of termination of tenancy (Ex.A1) was valid and in accordance with Section 106 of the TP Act. A finding cannot be reached overlooking the pleadings, evidence and admissions. The findings of the First Appellate Court are not supported with sufficient reasonings nor with proper analysis. Accordingly, the Second Substantial Question of Law is answered in favour of the Plaintiff.

Substantial Question of Law No.3: ***(Section 116 of the Indian Evidence Act)*** **:**

35. Section 116 of the Indian Evidence Act provides that no tenant of immovable property or person claiming through such tenant shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to that property. The Hon'ble Supreme Court in ***Vashu Deo v. Balkishan, [(2002) 2 SCC 50]*** has observed as follows:

> *" 6.. Section 116 of the Evidence Act, which codifies the common law rule of estoppel between*

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landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also mutatis mutandis govern a tenant and his sub-tenant in their relationship inter se."

36. The Hon'ble Supreme Court in ***Sri Ram Pasricha v. Jagannath*, (1976) 4 SCC 184** has also observed that as follows :

"***14.*** *...The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is,*

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therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such."

37. The defendants' claim to the property arise through Abbas Hussain and the lease executed in his favour by the plaintiff (Ex.A5). It is also the stand of the defendants that they have never surrendered possession and have continued to be in occupation for the past three generations. They are therefore, persons claiming through the original tenant and are bound by the above estoppel under Section 16. Their denial of plaintiff's title in the reply notice, the written statement and the allegation that the land belongs to the 3rd respondent or the 4th respondent are barred, as none of the exceptions as contemplated Act applies in this situation.

38. The defendants did not attorn to the 3rd or 4th defendant and were not evicted by either of them. The 3rd defendant Endowment which remind ex-parte through out made no claim against the defendants nor was the 4th defendant was examined in this regard. The ownership of the land by the 3rd defendant, even accepted, is matter between the plaintiff and the endowment concerning the latter's rights to sublet the property and this cannot assist the defendants, who have admitted to pay monthly sums toward their occupation of the suit property. It is necessary to reiterate that the defendants own admission they have been paying a sum of Rs.2000/- , whether be it tax or rent, in the absence

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of any evidence produced by them, is clear that their ancestors were not gifted the property and defendants, hold the status of tenants.

39. The First Appellate Court erred in making the plaintiff's title to the land and the superstructure a condition precedent to its right to recover possession and ought not to have faulted them for not producing its agreement with the Endowment. What the plaintiff was bound to prove the tenancy, its termination and continuous possession of the defendants and the same had been done so. The plaintiff has also established its capacity as lessor from the recitals in Ex.A5 and the notice of termination (Ex.A1) and the defendants own admission of payment. The approach of the First Appellate Court is contrary to Section 116 of the Evidence Act and the decisions cited above. Taking into consideration the above, this Court holds that the scope of Section 116 of the Indian Evidence Act was not properly appreciated by the Appellate Court and therefore, the Substantial Question of Law is answered in favour of the Appellant/Plaintiff.

Substantial Question of Law No.4: ***(Ex A5 and its use for a collateral purpose)*:**

40. Ex.A5 is the lease agreement of October 1980 between the then secretary of the plaintiff's charity and Mr.Abbas Hussain. The plaintiff relies

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on it to show that the premises form part of the trust properties and that the plaintiff is a charity and pays contribution to the Wakf Board. Reliance is also placed on it to show that the lessee was already in occupation of the premises on rent and agreed to pay the enhanced rent and it was monthly tenancy and the lessee agreed not to make any alterations. The First Appellate Court taking note that Ex.A5 is unregistered, refused to presume that the plaintiff was the owner of the property and has not gone into the contents of the documents at all. It is to be noted that Ex.A5 requires no registration as under Section 107 of TP Act. The 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. Section 17(1)(d) of the Registration Act likewise requires registration only for those above three kinds of lease. A lease from month to month is not contemplated among them. Section 18 (c) of the Act which prescribes the documents of registration is optional, includes leases of immovable property for any term not exceeding one year and lease is exempted under Section 17. Section 18 (f) also includes all other documents not required by section 17 to be registered. Section 49 of the Registration Act applies only to documents that Section 17 requires to be registered. Ex.A5 being a lease from month to month does not fall within the ambit of Section 17(1)(d). In any event, even if a document is not registered, it may still be relied upon for collateral purpose,

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namely so has to prove the nature of the possession, though not to prove the terms and conditions embodied in it.

41. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***Satish Kumar vs Zarif Ahmed & Ors [1998 AIR SCW 4035]***

> *"The combined effect of all the provisions is that an un-registered leases deed executed from month to month for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a ten-ant, is not a compulsorily registerable instrument and, therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the im-movable property contained therein or to receive as an evidence of any transaction vis-a-vis such property. The High Court, therefore, was not right in reaching the con-clusion that an unregistered document is inadmissible in evidence and cannot be looked into for the purpose of ef-fecting the rights as landlord and tenant created under the document."*

42. Reliance is also placed on the judgment of the Hon'ble Supreme Court in **K.*B. Saha & Sons (P) Ltd. v. Development Consultant Ltd.*, (2008) 8 SCC 564,** wherein it was held:

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34.From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

43. Even if Ex.A5 had required registration, it was marked for a collateral purpose, namely to prove the fact of the tenancy and identity of the property and

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not to prove title or to enforce its terms. The proviso to Section 49 of the Registration Act permits an unregistered document to be received as evidence of any collateral transaction not required to be effected by a registered instrument.

44. The Hon'ble Supreme Court in ***S. Kaladevi v. V.R. Somasundaram, [(2010) 5 SCC 401]*** held that such a document may be used for a collateral purpose provided that the purpose is independent of or divisible from the transaction requiring registration and the document cannot be used to prove terms.

> *"12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs 100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any*

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collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act."

45. Therefore, the First Appellate Court had erred in discarding Ex.A5. It is also pertinent to note that notwithstanding Ex.A5, the tenancy also stands proved by the admitted payments made by the defendants and the other evidence discussed above. Therefore, In light of the above, the Substantial Question of Law No.4 is also answered in favour of the Appellant.

CONCLUSION:-

46. For the foregoing, this Court holds that all the substantial questions of law framed, are answered in favour of the Appellant/Plaintiff.

47. In the result, the Second Appeal stands allowed. The Judgment and Decree passed by the XVII Additional Judge, City Civil Court, Chennai in A.S.No.35 of 2015 dated 11.12.2015 is set aside. Consequently, the Judgment and Decree passed by the I Assistant Judge, City Civil Court in O.S.No.367 of 2008 dated 16.07.2014 is hereby restored. The defendants 5 to 16 shall quit and deliver the vacant possession of the suit schedule property to the plaintiff,

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within a period of three months from the date of receipt of a copy of this judgment. The defendants 5 to 16 shall pay damages at the rate of Rs.2000/- per month from 01.06.2007 till the date of delivery of possession after giving credit of any amounts, if already paid during that period. The costs awarded by the Trial Court is also restored.

20.11.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The XVII Additional City Civil Court,
Chennai.

2.The I Assistant City Civil Court,
Chennai.

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E.MANOHARAN, J.

DP

Judgment made in
SA No. 450 of 2016

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