

IN THE III ASSISTANT CITY CIVIL COURT AT CHENNAI

Present: Tmt.A.Premavathy, B.A., B.L.,

III Assistant Judge

Monday, the 27rd day of July, 2026

O.S.No. 2725 of 2024

CNR.No.TNCH01- 020265-2024

K. Vaiyapuri, (M/72 years),
S/o. Late Kuppuswamy,
No. 6/158, First Floor,
P.V. Koil Street, Royapuram,
Chennai – 600 013.

... Plaintiff

Vs.

V. Balasubramaniam, (M/46 years),
S/o. K. Vaiyapuri,
No. 6/158, Second Floor,
P.V. Koil Street, Royapuram,
Chennai – 600 013.

...Defendant

This suit came up before me for final hearing on 15.07.2026 in the presence of M/s. V. Ramana Reddy, V. Chandrasekara Reddy, V. Kanagaraj, M. Dhayalan, K. Karthik, S. Govarthanan and G. Sambath Kumar, counsels for the plaintiff and M/s. J. Abdul Hadi, S. Selvakumari, K. Anusarala, S. Rajeswari counsels for the defendant and upon perusal of case records and after hearing the both side arguments and this suit having stood over for consideration till this date, this Court delivers the following:-

JUDGMENT

This suit has been filed under Order VII Rule 1 r/w Sec. 26 of C.P.C, a) for a direction, directing the Defendant to deliver the vacant possession of the tenanted portion situated at No. 158 (Old No. 80), 2nd Floor, Padala Vigneshwarar Koil Street (also known as P.V. Koil Street), Royapuram, Chennai 600 013, more fully described in Schedule "B" of suit property, to the Plaintiff herein; b) for a direction, directing the Defendant to pay a sum of Rs. 5,000/- per month towards damages for the use and occupation from the date of filing this suit till date of handing over the vacant possession of the suit "B" Schedule Property to the Plaintiff herein; c) for directing the defendant to pay the cost of the suit.

1. The brief averments of the plaint filed by the plaintiff is as follows:-

The plaintiff submits that accordingly, in the year 1982 the Plaintiff purchased a land to an extent of 1 Ground 183 Sq Ft. situated at No. 158 (Old No. 80), Padala Vigneshwarar Koil Street (also known as P.V. Koil Street), Royapuram, Chennai - 600 013, comprised in Old Survey No. 2360, Re-survey No. 704, New Survey No. 704/1, more fully described in the "A" Schedule hereunder. The said property purchased by the Plaintiff from one Mrs. Razia Sultana, wife of M.A. Mohammed Ali, vide registered sale deed bearing Doc. No. 1185 of 1982, dated 18.08.1982, before the SRO, Royapuram. The Plaintiff further submits that after purchasing the property, the Plaintiff has constructed dwelling units in the nature of Ground and First Floof in the suit property. Later in the year 1996, the Plaintiff constructed additional

dwelling unit in the second floor, to an extent of 1200 sq. (more fully described as Suit "B" Schedule Property) out of the hard earned income and savings of the Plaintiff herein. The entire suit properties were in joint possession and occupation of the Plaintiff and his family members. The property tax receipts, electricity consumption meter for the entire suit schedule property are in the name of the Plaintiff, which shall form the part and parcel of the Plaintiff's undisputed ownership of the suit properties. While such facts are being so, after the construction of the 2nd floor premises (ie. the "B" Schedule property), and as such the Defendant got married, he needs a dwelling unit. Moreover the Defendant is also working along with the Plaintiff, the Plaintiff decided to place the Defendant in the 2nd Floor premises on rental basis. Accordingly in the year 2005 the Defendant was inducted as a Tenant in the Suit "B" Schedule property with a fixed monthly rent of Rs. 5000/- for his dwelling and occupation along with his family members. The Plaintiff further submits that he is a law abiding citizen and filing this suit as he proves his claim in bona fide manner, and because of the mala fide intention of the Defendant who purportedly squatted in the tenanted premises without paying the monthly rents to the Plaintiff for about 2 years. The Plaintiff submits that being the absolute owner of the suit Schedule mentioned property the Plaintiff has made out a prima facie case for seeking the equitable relief against the Defendant. Hence this suit.

2. Brief averments of the Written Statement filed by the defendant is as follows:-

The Defendant admits that he is eldest son of the Plaintiff and also The admits that the property was purchased by the Plaintiff in the year 1982, a land measuring an

extent of I ground 183 Sq.Ft. situated at No. 158(Old No. 80), Padala Vigneshwara Koil Street, Royapuram, Chennai 600 013 vide Sale Deed dated 18.08.1982, registered as Doc. No. 1185 of 1982, SRO Royapuram. However the said property was with the aid and assistance of ancestral assets and the property is not a self acquired property. The said property was purchased out of the nucleus derived from joint family and of Kuppuswamy Naicker (Karta) and from the jewels contributed by the mother of the Plaintiff and the mother of the Defendant (i.e) the wife of the Plaintiff. The Plaintiff and the Defendant are running a business jointly and all his share of income went into the family's welfare and development. After several years due to the ill health of the Plaintiff, the Defendant took over the management of the Business and is running the business. The entire property was in the joint possession of the family members. The contentions in the Para 6 of the Plaint is denied as false. The Plaintiff constructed the building in the ground and first floor of the suit schedule 'A' Premises out of the joint family business income. That apart the Defendant has out of his hands spent more than Rs.15 lakhs for the maintenance and development of the property. The "B" Schedule portion was constructed by the Defendant with the income and share attributable to the Defendant and he lives with his wife in the said premises since his marriage. The contentions that the Defendant was inducted as a Tenant in the "B" Schedule portion for a monthly rent of Rs. 5,000/- is utter false and the Defendant denies the allegation that there is an oral tenancy agreement between the Plaintiff and the Defendant as false. That apart the claim for damages for Rs.5,000/- does not arise for the aforesaid reasons and that I am as a Coparcener

entitled to occupy the 'B' Schedule premises as a matter of right upon the property besides the Defendant has spent more than Fifteen Lakhs for the development of the property. It is therefore prayed that this Hon'ble court may be pleased to dismiss the suit with costs and thus render justice.

3. Based on the pleadings Issues framed:

- 1) Whether it is true that the defendant is in possession of the suit 'B' Schedule property as a tenant of the Plaintiff?
- 2) Whether the defendant is a Co-owner entitled to appropriate share, as a male member of the Hindu undivided Family alleged?
- 3) Whether the Plaintiff is entitled to the relief of delivery of vacant possession of the suit 'B' Schedule property from the defendant as prayed for?
- 4) Whether the Plaintiff is entitled to recover a sum of Rs.5000/- per month towards damages for the use and occupation, from the defendant as prayed for?
- 5) To what other reliefs?

4. On the side of the plaintiff, the plaintiff was examined as PW1 and Ex.A1 to A4 were marked. On the side of the defendant, the defendant was examined as DW1 and no documents were marked. One Mrs.V. Shanthi mother of the defendant was examined as DW2 and no documents were marked.

5. Issue No.1 & 2:

- i) It is the case of the plaintiff that the defendant is the eldest son of the plaintiff.

In the year 1971 the plaintiff started business on his own and succeeded in this

business. He purchased the 'A' Schedule property from one Razia Sultana under a registered Sale deed dated 18.08.1982. The plaintiff constructed a building of ground and 1st floor in the suit property and in the year 1996 he constructed the 2nd floor which is the 'B' schedule property. The entire suit properties were in joint possession and occupation of the plaintiff and his family members. The defendant was jobless in the year 2001. The plaintiff inducted the defendant in the business and the defendant got married since the defendant was working with the plaintiff, the plaintiff decided to place the defendant in the 2nd floor 'B' schedule property on rental basis. The defendant was a tenant in the 'B' schedule property from the year 2005 and the monthly rent was fixed at Rs.5,000/- because the defendant was the son of the plaintiff no written tenancy agreement was entered upon. It was an Oral tenancy agreement. The defendant was irregular in payment of monthly rents and decided to sublet the 'B' schedule property without the concern and knowledge of the plaintiff. The plaintiff demanded the defendant to vacate and hand over the 'B' schedule property as the oral tenancy was deemed to be automatically terminated on the ground of breach of terms and conditions. The defendant is residing in the tenanted premises without paying the monthly rents for about two years. Therefore the plaintiff has filed the above suit for delivery of possession and for damages against the defendant. Hence the suit has to be decreed.

ii) It is arguments of the learned defendant counsel that there is no tenant landlord relationship between the plaintiff and the defendant. The suit property is not a self acquired property of the plaintiff. It was purchased out of the nucleus derived from

joint family of Kuppusamy the Karta of the family and from the jewels contributed by the mother of the plaintiff and mother of the defendant. Suit property is joint family property. The income derived is from the joint family business. Due to ill-health of the plaintiff, the defendant took over the management of the business and running the business. The defendant has spend Rs.15,00,000/- towards the maintenance and development of the property. The 'B' schedule property was constructed by the hard work of the defendant and residing in the 'B' schedule property which is a part of joint family coparcener property. The defendant is entitled for a share in the suit property as a co-owner being the member of the Hindu Undivided Family. The defendant neither paid any rents to the plaintiff nor there was an existence of an Oral tenancy agreement. Hence the suit has to be dismissed.

6. It is an admitted fact that the defendant is the son the plaintiff. It is also an admitted fact that the defendant is residing in the 'B' schedule property. The plaintiff contends that the 'A' schedule suit property was purchased by his hard earned money and it is a self-acquired property. On the other hand, the defendant contends that 'A' schedule property was purchase by the nucleus derived from the joint family and of Kuppusamy and by the jewels contributed by the defendant grandmother and mother.

7. In order to prove the claim of the plaintiff, the plaintiff have filed the Exhibits A1 to A4. **Ex.A1** is the Registered Sale deed dated 18.08.1982. In the said document it is mentioned that “ To and in favour of Mr. K. Vyapuri son of Kuppuswamy, Hindu, aged 31 years. Carrying on business at No.37, Rama Nzicken Street, Royapuram, Madras hereinafter called the 'PURCHASER'. ” therefore it is clear that the plaintiff

was carrying on business at the time of purchase of the 'A' schedule property. **Ex.A2** is the EB card. **Ex.A3** is the Property Tax demand card which stands in the name of the plaintiff and **Ex.A4** is the Adhaar card of the plaintiff.

8. On the other hand, the defendant has not filed any documents to prove that the 'A' schedule property was purchased by the assistance of ancestral assets of the joint family property and the business is joint family business the 'B' schedule property was constructed by the hard work of the defendant and also failed to file any documents to prove that 'B' schedule property is a joint family coparcener property.

9. Admittedly there is no material records filed by the plaintiff to prove that the defendant was inducted as a tenant in the 'B' schedule property. No rental receipts filed by the plaintiff. The plaintiff has specifically pleaded that the defendant is squatting in the 'B' schedule property without paying rents for two years. Admittedly the defendant has not filed any documentary evidence to prove that he had initiated eviction proceedings or issued legal notice calling upon him for payment of arrears of rent. On perusal of the evidence of PW1, during the cross-examination he has deposed the following:- “பிரதிவாதிக்கு வழக்கு சொத்தை வாடகைக்கு கொடுத்ததற்கு ஆவணப்பூர்வ ஆதாரம் எதுவும் இவ்வழக்கில் நான் தாக்கல் செய்யவில்லை. வழக்கு தாக்கல் செய்வதற்கு முன்பு வாடகை தொகை தரவில்லை என்று சொல்லி பிரதிவாதிக்கு வழக்கறிஞர் அறிவிப்பு அனுப்பி உள்ளேனா என்பது எனக்கு ஞாபகம் இல்லை. பிரதிவாதியின் படிப்பு முடிந்த பிறகு நானும் பிரதிவாதியும் கூட்டாக தான் வியாபாரம் செய்து

வந்தோம் என்று சொன்னால் சரியல்ல. பிரதிவாதி என்னிடம் கூலியாக வேலை பார்த்தார்.” therefore from the evidence of PW1 it is clear that the plaintiff has not filed any relevant documents to prove that the defendant is a tenant under the plaintiff and further denied that the defendant was associating the plaintiff in his business after completion of the studies and deposed that the defendant was working as a labourer. When the plaintiff has failed to prove the landlord tenant relationship between the plaintiff and the defendant, this court comes to conclusion that the defendant is not a tenant in the ‘B’ Schedule property. It is further admitted that the plaintiff and his family members are in joint possession and occupation in the suit property. When there is a clear admission of the plaintiff regarding joint possession of the plaintiff and the defendant in the suit property the defendant cannot be a tenant under the plaintiff.

10. Admittedly the above suit is filed for recovery of possession by the plaintiff against the defendant and no counter claim sought for by the defendant with a relief of appropriate share in the suit property as a member of Hindu Undivided Family. The defendant has not filed any material records to prove that the ‘A’ Schedule property was purchased out of the nucleus of the joint family property and by the jewels contributed by the mother of the plaintiff and mother of the defendant. It is the evidence of the DW1, during the cross examination that "வழக்கு சொத்து 1982 ஆம் ஆண்டு கிரையம் பெறப்பட்டது என்றால் சரிதான். அந்த சயம் எனக்கு இரண்டு வயது இருக்கும். வாதி தர்ப்பு ஒன்றாவது சான்றாவணமாக குறியீடு

செய்யப்பட்டுள்ள வழக்கு சொத்து உரிமை ஆவணத்தில் எந்த ஒரு இடத்திலும் வழக்கு சொத்துக்கான கிரையத் தொகை எனது தாத்தாவின் பணத்தைக் கொண்டு அல்லது என் அம்மாவின் நகையை கொண்டு செலவு செய்யப்பட்டது என்று குறிப்பு இல்லை என்றால் சரிதான்.” from the evidence it could be seen that the defendant was two years old at the time of purchase of the ‘A’ schedule property by the plaintiff in the year 1982 and the defendant also admitted that he has not filed any documentary evidence to prove that the suit property was purchased by the funds of his grandfather and jewels of his mother. The defendant also deliberately failed to prove that the suit property is as joint family property. Accordingly issue no.1 is answered against the plaintiff and issue no.2 is answered against the defendant.

10. Issue no. 3 & 4:-

The plaintiff has not filed any relevant material records to prove that the date on which the defendant became a tenant under the plaintiff. The plaintiff has just pleaded that he decided to place the defendant as a tenant in the year 2005. It is the burden of the plaintiff to prove that there was an oral tenancy agreement between the plaintiff and the defendant and the defendant tried to sublet the property to third parties. In this regard, **Section 101 of the Evidence Act clearly states as follows:-** "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist. When a person is it bound to prove the existence of any fact, it is said that the burden of proof lies on

that person".

Section 102 of the Evidence Act clearly states as follows:- "On whom burden of proof lies.- " The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side." **In this aspect the Hon'ble Supreme Court of India in the case of Anil Rishi Vs Gurbaksh Singh dated 02.05.2006 has held that " There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is in-flexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."** The above citation applies to the above case.

11. The plaintiff claims recovery of possession of the 'B' Schedule property from the defendant based on an Oral tenancy. The plaintiff must establish the existence of the alleged tenancy by way of acceptable evidence. The Jural relationship has to be establish before the question of termination of tenancy arises. Admittedly in this case

plaintiff has not produced any rental receipt, account statement, bank records, acknowledgment of payment of rent or any other valid documents evidencing the alleged tenancy. The plaintiff has failed to place any independent or corroborative evidence sufficient to establish that the defendant was inducted into possession pursuant of the contract of a tenancy. Mere occupation of the property by the defendant without any satisfactory proof cannot by itself establish the jural relationship of landlord and tenant. **In this regard the Hon'ble Supreme Court in its reported judgment reported in 1990 (4) SCC page 286 in the case of Life Insurance Corporation Vs. Automobiles & Co.** “ wherein the court observed that in a suit for eviction between landlord and tenant a court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law.” Since the above suit is for recovery of possession that the defendant is a tenant the same has to be proved by the plaintiff, in the absence of proof regarding the alleged oral tenancy the plaintiff is not entitled for the relief as prayed for. Accordingly issue no.3 and 4 are answered against the plaintiff.

12. Issue No. 5 :-

As already Issue No.1 to 4 were discussed elaborately the plaintiff is not entitled to any other relief.

In the result this suit is dismissed. Both parties to bear the costs.

Dictated to the steno-typist directly and computerized by him, corrected and pronounced by me in the open court, this the 27th day of July, 2026.

**III Assistant Judge,
City Civil Court, Chennai.**

Plaintiff Side Witness:-

PW1 : K. Vaiyapuri

Plaintiff Side Exhibits:-

Ex.A1	18.08.1982	Copy of Sale Deed, vide Doc. No. 1185 of 1982	Certified Xerox copy
Ex.A2	-	Copy of Electricity Card	Xerox copy
Ex.A3	-	Copy of the Property Tax Card	Xerox copy
Ex.A4	-	Aadhaar Card of the Plaintiff	Xerox copy

Defendant side Witness:-

DW1 : V. Balasubramaniam

DW2 : V. Shanthi

Defendant side Exhibits:- Nil

**III Assistant Judge
City Civil Court, Chennai**