O.A.Nos.281, 282 of 2014, and 49 of 2015, A.Nos.245 and 6558 of 2015 and Contempt Petition No.1650 of 2016 in C.S.No.236 of 2014

Reserved on 20.09.2016

M.M.SUNDRESH, J.

Pending the suit for partition and declaration, declaring that the sale deed dated 12.12.2013 is null and void, these applications have been filed.

2. A.No.281 of 2014 in C.S.No.236 of 2014 is filed seeking an order of interim injunction restraining the defendants 1 to 10, their men, servants or agents from in any manner dealing with applicants 1/9th share in the properties set in the plaint schedule Item No.1 and 3 to 8.

3. A.No.282 of 2014 in C.S.No.236 of 2014 is filed seeking an order of interim injunction restraining the defendant No.11, their men, servants and agents from in any manner dealing with the property being all the piece and parcel of land together with building either by way of demolition and/or reconstruction or in any manner alienating the same either wholly or in part or in any manner encumbering the property pending disposal of the suit.

4. Contempt Petition No.1650 of 2016 has been filed contending that the order of injunction passed in Application No.282 of 2014 in C.S.No.236 of 2014 has been wilfully disobeyed.

5. O.A.No.49 of 2015 in C.S.No.236 of 2014 has been filed seeking an order of interim injunction restraining M/s SSPDL Ltd., the 15th respondent herein from in any manner alienating or encumbering or parting with possession of the property.

6. A.No.245 of 2015 in C.S.No.236 of 2014 has been filed to direct the 15th respondent to deposit all the monies payable by it to the respondents 2 and 3 under joint development agreement, which they have entered into with defendants 2 and 3 with respect to the property being the land and building known as Shelat Garden situate in No.144, Seevaram Village comprised in R.S.No.39/1B2 measuring 01.30 acres situate in Old Mahabalipuram Road, Thuraipakkam Village, Chennai, to the credit of the suit in C.S.No.236 of 2014.

7. Application No.6558 of 2015 in C.S.No.236 of 2014 is filed to direct the 15th respondent to hand over the built up space of 6987 sq.ft., to the applicants/plaintiffs in the building complex promoted and developed by the 15th respondent in and over the land.

8. All these applications have been taken up together and disposed of by way of a common order.

9. For the sake of brevity, the parties are referred to as they are in the suit.

10. **The Brief facts are as follows:**

10.1. The suit properties are originally belonged to late Someshwar Harilal Shelat and his wife Kamala Ben Someshwar Shelat. Late Someshwar Harilal Shelat and his deceased wife left behind nine children viz., Jagadeesh Channdra Someshwar Shelat (deceased), Bipin Chandra Someshwar Shelat (deceased), Yogini Ben V. Joshi (deceased), Subashchandra Someshwar Shelat, Rohitkumar Someshwar Shelat, Anilkumar Someshwar Shelat, Harnath Kumar Someshwar Shelat, Indu Ben V Joshi, Usha Ben G.Joshi. The plaintiffs are the legal representatives of the second son viz., Bipin Chandra Someswar Shelat (since deceased). Defendants D1 to D6 are the children of late Someshwar Harilal Shelat. The first son Jagadeesh Chandra Someswar Shelat (since deceased) left behind D7 to D10, as his legal heirs. The third daughter Yogini Ben V.Joshi (since deceased) left behind D12 to D14, as her legal heirs. A deed of partnership was entered into in the year 1962, which thereafter underwent some changes. There was another deed of partnership entered into on

20.12.1966 between all the children. The firm has got its own properties. The father of the plaintiffs along with others created a deed of partnership on 02.11.1971. There is also a proprietary concern owned by the firm. Thereafter, another partnership deed was executed on 02.11.1986. The father of the plaintiffs Bipin Chandra Someswar Shelat (since deceased) duly received the consideration in pursuant to the deed of retirement. He had issued receipts on 04.05.1987 acknowledging the full and final settlements of accounts.

10.2. In the year 2006, an agreement was entered into between the firm and the defendant No.15 towards a joint venture. This was meant for construction of the I.T. Park. Admittedly, at present, the entire construction is over, which was also the case at the time of filing the suit. One of the schedule mentioned properties have been sold in favour of defendant No.11 viz., Item No.2 of the schedule "A". Now, the plaintiffs have come forward to file the suit inter alia alleging that the suit properties are joint family properties and therefore, the sale deed executed by the firm in favour of the defendant No.11 in respect of the Item No.2, is to be declared as null and void and therefore, they are entitled for 1/9th share. Incidentally the sale deed said to have been executed by the firm in favour of defendant No.11 is also sought to be challenged on that score.

Pending the suit, the above said applications have been filed.

10.3. In Application No.282 of 2014, there was an order of interim injunction restraining the defendant No.11 in alienating or encumbering the property in question. As the said defendant has demolished the property and constructed a residential house, Contempt Petition No.1650 of 2016 has been filed. These are all the background facts of the case.

10.4. Though the plaintiffs as applicants are aware of the fact that the firm is still in existence holding its own properties, the suit is filed treating them as joint family properties, thus, prima facie it appears that the suit for partition qua the properties owned by the firm divided at the instance of the legal heirs of the retiring partner is not maintainable.

10.5. There is also a proprietary concern which is owned by the firm. In the partnership deed dated 02.11.1971, it has been stated about the concern as follows:

> "The partnership shall carry on the business in the name and style of S.H.Shelat & Sons, Proprietors of Shelat Bros and the principal

> place of business shall be at 8, Lakmudas Street, Madras."

It is also not in dispute that the deed of retirement, being signed by the father of the plaintiffs, reads in the following manner.

> "All parties hereinafter collectively known as retiring partners of the other parts, which includes their heirs, successors, administrators and nominee etc. Whereas the parties hereto carrying on business of manufacturing and dealing in phenyl etc., under the name and style of S.H.Shelat & Sons Proprietor of M/s Shelat Brothers with effect from 20th October 1971 on terms and conditions contained in a deed of partnership dated 2nd November 1971."

Further more, a reading of the abovesaid deed of retirement would make it clear that the settlement pursuant to the retirement would govern all interest qua the plaintiffs' father. For the sake of brevity, para 2 of the deed of retirement is reproduced as follows.

> "2. The accounts of the Partnership firm upto 1st November, 1986 shall be made up and the retiring partners shall be paid as full and final settlement of their dues amounting Rs.10,58,289.61 (Rupees Ten lakhs fifty eight thousand two hundred and eighty seven and paise sixty only) to Mr.Jagdishchandra S.Shelat, Rs.10,63,884.99 (Rupees ten lakhs sixty three thousand eight
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> hundred and eighty four and paise ninety nine

> only) to Mr.Bipinchandra S.Shelat and Rs.11,00,000.00 (Rupees eleven lakhs only) to Mr.Harnathkumar S.Shelat, to have peace of mind and avoid disputes which includes their share of profit, capital balance, loan and goodwill and other assets payable and adjustable if any. The continuing partners will pay to retiring partners as above within eight months from the date of this deed and if not paid within eight months then 12% interest per annum will be paid on unpaid amount uptill payment made."

11. The learned Senior Counsel appearing for the plaintiffs made the following submissions:

11.1. The father of the plaintiffs had 1/9th share in Item No.3 of schedule "A". He was also a partner of the firm. Though, the property belongs to the firm, being the erstwhile partner, he is entitled for a share. The amount received by him does not include the share in the property. There is a sale effected in favour of defendant No.11 on 12.12.2013. This sale has been effected by the firm, though the property stood in the name of the proprietary concern. The plea of oral partition, thereafter reduced into writing being unregistered is to be proved by the defendants.

11.2. The learned Senior Counsel further submits that the sale in favour of the defendant No.11 cannot be justified being sold by M/s Shelat brothers, whereas the title belongs to S.H. Shelat & Sons. In support of his contention, the learned Senior Counsel for the plaintiffs made reliance upon the following decisions.

1. **Ratan Lal Sharma V. Purshottam Harit ((1974) 1 Supreme Court Cases 671);**
2. **S.V.Chandra Pandian and others V. S.V.Sivalinga Nadar and Others ((1993) 1 Supreme Court Cases 589);**
3. **N.Khadervali Saheb (Dead) by LRs and others V. N.Guru Sahib (Dead) and others ((2003) 3 Supreme Court Cases 229)**
4. **((2005) 11 Supreme Court Cases 314)**
5. **A.R.Asher and three others, Mumbai V. Department of Income Tax (ITA No.5256/Mum/2009);**
6. **Kanagammal V. Theatre Abirami and others ((2009) 3 Law Weekly 900);**
7. **Samalbhai Nathubhai V. Someshwar, Mangal and Harkisan (1880 SCC Online Bom 22); and**
8. **Addanki Narayanappa V. Bhaskara Krishtappa ((AIR 1966 Supreme Court 1300).**

11.3. Insofar as the contempt Petition No.1650 of 2016 is concerned, though it is submitted that there is no specific prayer prohibiting the demolition, such an unilateral action would amount to wilful disobedience. Thus, it is submitted that all the applications will have to be allowed.

12. **<u>The learned counsel appearing for the defendants/ respondents, including the learned Senior Counsel appearing for the contesting respondent, made the following submissions:</u>**

12.1. The suit is not maintainable in law and facts. Admittedly, during the lifetime of their father, no challenge has been made. The construction is over long time back and even prior to the filing of the suit and therefore, the suit is hit by acquiescence, delay and laches which will have also bearing on the applications filed. Item No.3 of the schedule "A" property belongs to the firm and therefore, no right can be claimed. The father of the plaintiffs received the entire consideration. There is a difference between the retirement and dissolution of the firm. The retirement took place on 01.11.1996 and therefore, for more than 25 years, there is no challenge to it. The suit is not maintainable being hit by law of limitation. For the performance of the Boomi Pooja, the plaintiffs' father was present qua Item No.3 of the "A"schedule property. The firm has not been made as a party to the proceedings. The suit has been laid in view of the escalation of the price to some of the schedule mentioned properties. Item No.2 of the schedule mentioned property has been purchased after due publication. There is no violation in the order passed by this Court at the hands of the 11th respondent, since there is no specific order against demolition. There was already a partition orally and it was, thereafter, reduced into writing. However, without prejudice to the contention, a sum of Rs.93,72,500/- will be deposited into the Court to show their bona fides. Item No.3 of the "A" schedule property cannot be divided in view of the fact that it is made for I.T. Park. There is no registration required under Section 17 of the Indian Registration Act since there is no conveyance involved.

12.2. Similarly, the learned counsel for the respondents, to buttress their submission, made reliance upon the provisions contained under the Indian Partnership Act, 1932, under Sections 15, 32, 37 and 48. The learned counsel also made reliance upon the judgments, which are as follows:

1. Addanki Narayanappa V. Bhaskara Krishtappa ((AIR 1966 Supreme Court 1300);
2. Commissioner of Income Tax, Calcutta V. Juggilal Kamalapat (AIR 1967 SC 401);
3. Sunil Siddharthbhai V. Commissioner of Income Tax, Ahmedabad (1985 4 SCC 519);
4. Power Control Appliances V. Sumeet Machines Pvt. Ltd., (1994 2 SCC 448);
5. A.Ramakrishnan V. Vijayalakshmi and others ((2016) 3 CTC 784).

13. Though the learned counsel appearing for the parties have made reliance upon various judgments, they are not gone into in detail. While there is no difficulty in the ratio laid down therein, they do not have application to the case on hand. In this case, we are dealing with the rights available to the legal heirs of a retired partner and therefore, no dissolution is involved.

14. Before going into the merits of the case in respect of the respective contentions, let us have a look at the situation prevailing at the time of filing of the suit.

15. Admittedly, the father of the plaintiffs signed the deed of retirement on 01.11.1986. Thus, cause of action, if any, could have arisen from that date. He also received the amount due to him towards the full and final settlement on 04.05.1987. The averment that he has participated in the firm's Boomi Pooja for the development of Item 3 of the schedule “A” is not specifically denied or disputed. If that is the case, the joint venture agreement could have been entered into in the year 2006. When the father of the plaintiffs seems to be a partner long time back, the plaintiffs, few decades thereafter, cannot come forward to this Court seeking a relief. At the time of filing the suit itself, entire construction is over with respect to Item No.3 of the “A” schedule property. Thus, these factors alone would disentitle the plaintiffs from getting the interim reliefs being discretionary in nature. Admittedly, the firm has not been made as a party defendant in the suit.

16. The concept of delay, laches and acquiescence though treated as one in the common parlance, are different from each other. An act of acquiescence may also come under the ambit of delay and laches. It can be termed as specie while the other two are genus. Thus, a mere delay or laches *per se* would not amount to an acquiescence. All the three elements come under the purview of the common law. They are not law as such but constitute a practice or prudence. Acquiescence involves in a positive act, which can be implied or expressed. It also deals with the roles of both plaintiff and the defendant. For a plaintiff, it deals with his legal right with knowledge by allowing the defendant to act in contravention of such a right. In such a case, the defendant is allowed to go on with the violation of the right of the plaintiff. It is a case of abandonment of a right qua the plaintiff. The knowledge that is required is attributable to its legal rights. The said concept also applies in all fours to a defendant as well. The application gets extended both to the main and incidental reliefs. In this connection, the judgment rendered by the Apex Court in **M/s Power Control Appliances and others V. Sumeet**

Machines Pvt. Ltd., (1994 2 Supreme Court Cases 448) is worth mentioning, which reads as follows:

> “29. This is the legal position. Again in **Halsbury's Laws of England, Fourth Edn., Vol. 24 at paragraph 943** it is stated thus:
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> "943. Acquiescence.- An injunction may be refused on the ground of the plaintiff's acquiescence in the defendant's infringement of his right. The principles on which the court will refuse interlocutory or final relief on this ground are the same, but a stronger case is required to support a refusal to grant final relief at the hearing. [.Patching v. Dubbins18; Child v. Douglas19; Johnson v. Wyatt2O; Tumer v. Mirfield 21; Hogg v. Scott22; Price v. Bala and Festiniog Rly. Co.23] The reason is that at the hearing of the cause it is the court's duty to decide upon the rights of the parties, and the dismissal of the action on the ground of acquiescence amounts to a decision that a right which once existed is absolutely and for ever lost: Johnson v. Wyatt2O at 25; and see Gordon v. Cheltenham and Great Westem Union Rly. Co.24 per Lord Langdale MR.')
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> 30.In **Aktiebolaget Manus v. R.J. Fullwood & Bland, LD.4 at pp. 338-39** it was held thus:
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> "Apart from this point the case of Fullwood v. Fullwood25 shows that the injunction in a passing-off case is an injunction sought in aid of a legal right, and that the Court is bound to grant it if the legal right be established unless the delay be such that the Statute of Limitations would be a bar. That case apparently concerned some predecessors of the defendants. The delay was one of rather under two years and the relief sought was an injunction to restrain the use by the defendants of cards and wrappers calculated

to induce the belief that his business was connected with the plaintiff. Fry, J., in the course of his judgment said this:

> " Now, assuming, as I will, for the purpose "of my decision, that in the early part of 1875 the plaintiff knew of all the material facts" which have been brought before me today, he commenced his action in November 1876. "In my opinion that delay, and it is simply delay, is not sufficient to deprive the plaintiff of' his rights. The right asserted by the plaintiff in this action is a legal right. He is, in 18 (1853) Kay 1 : 69 ER 1 19 (1 854) 5 De GM&G 739: 43 ER 1057 20 (1863) 2 De GJ&Sm 18: 46 ER 281 21 (1865) 34 Beav 390: 55 ER 685 22 (1874) LR 18 Eq 444 23 (1 884) 50 LT 787 24 (1 842) 5 Beav 229, 233 : 49 ER 565 25 (1878) 9 Ch D 176: 47 LJ Ch 459 "effect, asserting that the defendants are liable to an action for deceit". It is not suggested in the defence that the delay here involves a question under or analogous to the period under the Statute. The defendants did suggest that there had been something more than mere delay on the part of the plaintiffs, and that the plaintiffs had lain by and allowed the goodwill which the plaintiffs now propose to acquire, but this point was not seriously pressed. It was suggested that Mr Evans Bajker, the plaintiffs' solicitor, knew from 1941 onwards what the defendants were doing, but it is impossible to impute to a busy solicitor a knowledge which he could only acquire by seeing advertisements in local or farming papers advertising the defendants' activities. No direct information was afforded to him; on the contrary it will be remembered that when in 1942 he made enquiries on behalf of his clients information was studiously withheld from him. I conclude therefore that there has been no acquiescence to disentitle the plaintiff to relief."'

31 In **Electrolux LD. v. Electrix5 at pp. 32 and 33** it was held thus:

"I now pass to the second question, that of acquiescence, and I confess at once that upon this matter I have felt no little sympathy for the defendants, and have been not a little envious of the good fortune which has attended the plaintiffs, though no doubt they may justly attribute it to the astuteness of their advisers; but, as has already been said, the defendants have traded openly and (as the Judge found) honestly, beyond any question, in the ordinary course and substantially under this name 'Electrix' for a very long period of time, since early 1930's. During that time, they have built up (I doubt not) a valuable goodwill associated with that name. If the possibility that the mark 'Electrolux' was infringed is out of the way, and if I disregard for the moment (as I do) the point taken by Mr Kenneth John stone that in any event for use of 'Electrolux' was a sufficient use for the purpose of Section 26(1) of 'Electnix' (seeing that the two marks were associated). I have no doubt that if the plaintiff had challenged in the courts the right of the defendants to use 'Electrix' before they have effect to their decision to apply the word 'Electrux' to their cheaper model in lieu of 'Electrolux', they would in all probability have failed, because the defendants' motion to strike the word 'Electrux' off the Register would have succeeded, but the fact is that when the battle was joined, 'Electrux' was no longer vulnerable on that account, unless the defendants can establish that the use was not bona fide, a matter to which I shall come presently. It is, however, said that by the defendants that the plaintiffs have deprived themselves of their legal right or, at least, of any right to the equitable remedy of injunction.

Upon this matter, a great deal of learning has been referred to, and we have also had our attention drawn to a number of cases. The latter include the well-known statement in Willmott v. Barber26 by Fry, J. (as he then was) at p. 105. He said this: 'It has been said that the acquiescence which' will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would 'make it fraudulent for him to set up those rights'. Let me pause here to say that I do not understand that, by the word 'fraudulent', the learned Judge was thereby indicating conduct which would amount to a common law tort of deceit. 'What, then, are the elements or requisites necessary to constitute fraud of that description?' In the first place 'the plaintiff must have made a mistake as to his legal rights'. Secondly, the plaintiff must 'have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of 'the legal right, must know of the existence of his own right which is inconsistent with 'the legal right, must know of the existence of his own right which is inconsistent with' the right claimed by the plaintiff. If he does not know of it he is in the same position 'as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge' of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know 'of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which' calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal 'right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right'. In reading that

> passage, it is perhaps necessary to note (because it makes it at first sight a little more difficult to follow) that the positions of plaintiff and defendant as they are usually met with are there transposed, and that one of the parties who is there spoken of as the plaintiff corresponds with the present case with the defendants, and vice versa."

Thus, taking note of the above said principle, this Court is of the view that the elements, delay, laches and acquiescence are all present in the case on hand.

17. Now, let us go to the merits of the case. The fact that the father of the plaintiffs/applicants received the entire consideration in pursuant to the deed of retirement dated 01.11.1986 is not in dispute. Till his date of death, no dispute has been raised. He is said to have died on 26.02.2009. Similarly, the plaintiffs' grand mother also died on 25.11.2013. Till this time, there was no dispute. Section 15 of the Indian Partnership Act, 1932, deals with the application of the property of the firm. As per this provision, the partners are entitled to use the property of the firm, only for the purpose of the business, for which, it is constituted. No partner can sell any part of the assets of the partnership firm claiming to be that of his own. Thus, once the property vests in the firm, it does not vest with the partners. Hence, no partner can claim any portion of the property of the firm. Even assuming that the property was earlier owned by the partner, once it is brought into the firm, the title get transferred to it. Therefore, it would be treated as asset of the partnership firm, in which, partners have interest in proportionate to their share. This position of law has been succinctly put forth by the Apex Court in **Addanki Narayanappa and another Vs. Bhaskara Krishtappa and 13 others (AIR 1966 SC 1300)** in the following manner.

> "3.............. From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in cl. (a) and sub-cls.. (i), (ii) and (iii) of cl.(b) of s. 48. It has been stated in Lindley on Partnership, 12th ed. at p. 375 "
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> 5. It seems to us that looking to the scheme of

> the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

Prima facie it appears that the share of the plaintiffs' father was quantified at the time of his retirement. Thus, once, he retires, he goes from the partnership meaning thereby, he loses any interest in the properties of the firm. To put it differently, the property of the firm would remain intact irrespective of the retirement of the partner. Therefore, such a deed cannot be termed as conveyance. A retirement of a partner can happen with the express agreement between the partners, which fact is available in the case on hand. A partner will have his right in the property of the firm only after dissolution. In the case on hand, we are concerned with the retirement. Therefore, even when the existing partner does not have the specific right over the properties, such a right cannot be inferred and extended to the retiring partner. Even otherwise, there is nothing available on record to accept the contention that the intention of the parties was to keep the property to be used by all, including the retiring partner. In such view of the matter, there is no necessity to apply the rigour of Section 17 of the Indian Registration Act, 1908, to the deed of retirement. Even the father of the plaintiffs was inducted into partnership without any registration under Section 17 of the Indian Registration Act, 1908.

18. Coming to the relief sought for by the defendant Nos.11 and 15 are concerned, they are also liable to be granted. Insofar as the defendant No.15 is concerned much water has flown under the bridge. The object underlined in the joint venture agreement being one of creation of I.T. Park, there cannot be any divisibility available especially, when there is no prima facie case is made out. The construction has been put up long time back. Similarly, insofar as the defendant No.11 is concerned, he has made due publication before the sale in his favour. The property has been purchased from the firm. Therefore, there cannot be any injunction for the above said property. When once, there is no title prima facie available, then there cannot be any injunction. The demolition said to have been made by the defendant No.11 would not constitute a contumacious act. The injunction was only against the proposed alienation or encumbrance which has not been violated. The defendant No.11 wants to put up a construction for his own residential purpose. If any construction is made, would obviously be subject to the final decision in the suit. Thus, in such view of the matter, there is no prima facie case or balance of convenience in favour of the plaintiffs against defendant No.11. However, a fair submission, made by the learned counsel appearing for the defendant No.15 and some of the contesting defendants that a sum of Rs.93,72,500/- will be deposited on the file of this Court to show their bona fides, is recorded and accordingly, they are directed to deposit the same within a period of four weeks from the date of receipt of a copy of this order. It is to be noted that the proprietary concern is owned by the firm as seen from the documents, which are undisputed and thus, the contention that the firm has no title has no basis especially when both of them are not parties before this Court with adequate pleading.

19. Coming to the other properties, i.e., other than the ones governing defendant Nos.11 and 15 in Item Nos.2 and 3 of the schedule "A", this Court finds merit in the submission made by the learned Senior Counsel appearing for the plaintiffs/applicants. There is always presumption of jointness in a Hindu family. The person, who sets up an oral partition, then reduced it into writing has to prove it. These are all the matter for trial. Hence, excluding Item Nos.2 and 3 of Schedule "A" of the suit properties, it would be just and proper to direct the respondents/defendants concerned, not to alienate or encumber those properties, till the disposal of the suit. That is also for the reason that any such proposed action would create unnecessary third party interest. This order is passed since this Court can always grant lesser relief than the one sought for.

20. Accordingly, the following order is passed.

20.1. Original Application Nos.281 and 282 of 2014 in C.S.No.236 of 2014 are ordered to the effect that the respondents shall not alienate or encumber the schedule mentioned properties except the Item No.3 of Schedule "A". However, O.A.No.282 of 2014 in C.S.No.236 of 2014 is also ordered to the effect that the defendant

No.11 can go on with the construction. The contempt petition No.1650 of 2016 is dismissed.

20.2. Original Application No 49 of 2015 in C.S.No.236 of 2014 stands dismissed with an observation that any alienation or encumbrance is subject to the result of the suit.

20.3. Application No.245 of 2015 stands ordered to the effect that the Respondent No.15 shall deposit a sum of Rs.93,72,500/- (Rupees ninety three lakhs seventy two and five hundred only) on the file of this Court within a period of six weeks from the date of receipt of a copy of this order.

20.4. Application No.6558 of 2015 in C.S.No.236 of 2014 stands dismissed.

28.09.2016

Index:Yes

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<u>M.M.SUNDRESH, J.</u>

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Pre Delivery Common order in <u>O.A.Nos.281, 282 of 2014, and 49 of 2015, A.Nos.245 and 6558 of 2015 and Cont. Petition No.1650 of 2016 in C.S.No.236 of 2014</u>

28.09.2016