



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2016

Delivered on : 11.05.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.31 of 2010

1.N.Marappan ... Appellants / Plaintiffs
2.N.Kandasamy

Vs

1.V.S.T.Sengottaian
2.V.S.T.Sekar
3.V.S.T.Suresh
4.V.S.T.Nagesh
5.V.S.T.Sundar
6.Nirmala
7.Kalpana
8.Thoppu Duraisamy
9.D.Ravichandran
10.C.Krishnaveni
11.V.Shanmugam
12.S.Banumathi
13.S.Nandha Kumar Pradeep
14.S.Thirumurthi
15.Thulasiammal ... Respondents/ Defendants

Appeal filed under Section 96 of the Civil Procedure Code and Order 41 Rules 1 and 2 of CPC against the judgement and decree of the First Additional District Judge, Erode dated 07.12.2009 in O.S.No.313 of 2007.

For Appellant : Mr.R.Subramanian

For Respondents: Mr.S.V.Jayaraman, Sr. Counsel
Mr.R.Karthikeyan

JUDGMENT

The unsuccessful plaintiffs in O.S.No.313/2007 on the file of the court of the First Additional District Judge, Erode are the appellants in the Appeal Suit.

2. The above said suit was filed by the appellants herein against the respondents for the following reliefs: (1) a declaration that the Partnership Dissolution Deed dated 11.12.1985 entered into by the appellants/plaintiffs 1 and 2, respondents 1 to



WEB CTS

5/defendants 1 to 5 and late V.S.Thangavel is true, valid and binding on the respondents/defendants; (2) a consequential permanent injunction restraining the respondents/defendants from in any manner interfering with the suit property either by creating encumbrance or by making any alienation or otherwise; (3) a permanent injunction restraining the respondents/defendants from trespassing into any portion of the suit property; (4) a permanent injunction restraining the respondents/defendants from in any way altering the physical features of the suit property either by putting up constructions or otherwise; and (5) for a direction against the respondents/defendants to pay the costs of the appellants/plaintiffs.

3. After the trial, the learned trial Judge, based on the consideration of evidence adduced on both sides in the light of the arguments advanced on behalf of both, dismissed the above said suit by a judgment and decree dated 07.12.2009. Aggrieved by and challenging the said decree of the trial court dated 07.12.2009 dismissing O.S.No.313/2007 on the file of the First Additional District Judge, Erode, the present appeal has been filed under Section 96 of the Code of Civil Procedure.

4. For the sake of convenience and in order to avoid confusion, the parties are referred to in accordance with their ranks in the suit and at appropriate places, wherever it becomes necessary, their ranks in the Appeal suit also shall be furnished.

5. The appellants herein/plaintiffs filed the above said suit for the above said reliefs, based on the plaint averments, which can be concisely stated, as follows:

i) Late V.S.Thangavel got a Madras terraced building with a ground floor and first floor bearing old Door Nos.158/B and 727 to 730, that were later on changed as Door No.426 at Brough Road, Erode, comprised in old T.S.No.276/3 and new T.S.No.98, under a registered Partition Deed 12.12.1953. Subsequently, he died intestate on 12.12.1994 leaving behind him defendants 1 to 5 and his wife Pankajam as his legal heirs. The said Pankajam also died intestate on 20.12.2006. Plaintiffs 1 and 2 along with late V.S.Thangavel and defendants 1 to 5 started a partnership business in the name and type of "Marappan Commercial Complex" under a registered Partnership Deed dated 12.08.1995. The sons of V.S.Thangavel, namely defendants 1 to 5 became partners in the said partnership business along with their father late V.S.Thangavel. Each one of the plaintiffs contributed Rs.1,00,000/- towards their respective shares of the share capital. Late V.S.Thangavel and defendants 1 to 5, who did not have cash with them to pay towards their contribution, brought the suit property, described fully in the plaint schedule, towards their share capital. The object of the partnership firm was to do Real Estate business by buying and selling properties and putting up constructions. As difference of



WEB COPY

not vacate and hand over the portions in their occupation, the partnership firm was a non-starter and hence all the partners decided to dissolve the partnership. At that point of time V.S.Thangavel and the defendants 1 to 5 wanted the building to be valued and the accounts to be settled. The suit property together with building was valued at Rs.6,00,000/- and it was mutually agreed that the plaintiffs would take the property and the other partners, namely V.S.Thangavel and defendants 1 to 5 should get Rs.1,00,000/- from the plaintiffs towards full quit of their claim and it was mutually agreed that the plaintiffs 1 and 2 would take the property in entirety and late V.S.Thangavel and defendants 1 to 5 would get Rs.1,00,000/- each from the plaintiffs. Accordingly a Dissolution Deed dated 11.12.1985 was executed and defendants 1 to 5 and late V.S.Thangavel were paid Rs.10,000/- each by way of cheques. A recital was made in the Dissolution Deed to the effect that the balance capital amount had already been received by V.S.Thangavel and defendants 1 to 5. They were paid a sum of Rs.10,000/- each by way of cheques bearing Nos.266252 to 266256 dated 03.12.1985 drawn on Lakshmi Vilas Bank. The defendants 3 to 7 received a sum of Rs.5,000/- each on 12.09.1985, which payments were evidenced by the receipts issued by them. V.S.Thangavel received a sum of Rs.90,000/- in cash on 12.09.1985 and received the balance amount of Rs.10,000/- by way of a cheque bearing cheque No.266257. Thus the entire sum of Rs.6,00,000/- being the share capital of V.S.Thangavel and defendants 1 to 5 had been paid.

ii) After such receipt neither V.S.Thangavel nor defendants 1 to 5 did have any right, title or interest in the suit property and the plaintiffs became the absolute owners of the same. One Sundararajan & Co Ltd had obtained a money decree in O.S.No.1309/1982 against V.S.Thangavel and brought the suit property for sale in E.P.R.No.107/1986 in the court of the District Munsif, Erode. The said fact was suppressed by late V.S.Thangavel and defendants 1 to 5 at the time of entering into the partnership. After the execution of the Partnership Dissolution Deed, late V.S.Thangavel and defendants 1 to 5 executed a registered Special Power of Attorney for presenting the Deed of Dissolution for registration at Madras. Accordingly, the Dissolution Deed was registered as Document No.572/1986 on the file of the Joint Sub Registrar No.2 in the cadre of District Registrar, North Madras.

iii) One Dr.Shenoy was a tenant in respect of a portion of the suit property till 2004 and he was using the ground floor and the first floor portion for his residential purpose. In 2004, he vacated the suit property. In respect of three shops on the front side of the suit property, separate electricity service connections had been provided with. In all, there were five service connections bearing S.C.Nos.342, 343, 344, 360 and 418. By virtue of the consent letters given by V.S.Thangavel and defendants 1 to 5 to various departments, house tax assessment, electricity service connection and water supply connections were charged in the names of the plaintiffs. After the death of V.S.Thangavel in the year 1994, the defendants 1 to 7 acquiesced in the plaintiffs' enjoyment of the suit property as absolute owners without making any rival claim. However, on 05.03.2002, defendants 1 to 7, surreptitiously



WEB C

created agreement for sale registered as Document No.1005/2002 in favour of Sekar and Kuzhandaivel for the sale of the suit property for a sum of Rs.5,00,000/-. Pankajam w/o.V.S.Thangavel also entered into an agreement for sale with one C.Thangamuthu on 08.04.2004 registered as Document No.1485/2004 for a sale consideration of Rs.45,00,000/-. When the plaintiffs took objection and filed a suit in O.S.No.184/2002 in the Court of the District Munsif, Erode, both the agreements were cancelled. However, at that juncture, defendants 1 to 7, along with rowdy elements came to the suit property and made a threat that they would not allow the plaintiffs to remain in possession as they had given up their right for a lower price. After the filing of the above said suit O.S.No.184/2002 on the file of District Munsif, Erode, the defendants entered into an agreement dated 03.11.2004 which was challenged as hit by the doctrine of lis pendens. Under the said circumstances, the plaintiffs filed an application in I.A.No.870/2006 seeking permission to withdraw O.S.No.184/2002 with liberty to file a fresh suit if necessary and got such permission.

iv) The defendants 1 to 5 along with the other members of their family fraudulently created a mortgage on 01.12.2007 in favour of defendants 9 and 10, as if they borrowed a sum of Rs.10,00,000/- from defendants 9 and 10 on the security of the suit property. The 8th defendant is a politically influential person and 9th defendant is the son of the 8th defendant. The 10th defendant is an associate of defendants 8 and 9. Subsequently also the defendants took several offensive measures against the plaintiffs with the aid of police and rowdy elements. After Dr.Shenoy vacated the suit property, C.Thangamuthu became a tenant under the plaintiffs. The defendants gave a lot of troubles to him and even threw away his articles by using force. The efforts made by C.Thangamuthu by making complaints to the authorities and even approaching the High Court proved to be exercises made in vain. The defendants also set up M.K.Vetrivel and Palanisamy to file a suit in O.S.No.271/2007 in the Court of the District Munsif, Erode claiming tenancy rights in respect of the suit property. The defendants also got electricity connection and municipal tax assessment transferred to the name of the first defendant. The same was challenged by the plaintiffs in W.P.No.8841/2007. Meanwhile the above said suit O.S.No.271/2007 filed by M.K.Vetrivel and Palanisamy was dismissed for default.

v) While so, on 01.09.2007, the defendants trespassed into the suit property with the help of rowdy elements and forcibly evicted the above said Thangamuthu. They also demolished the entire superstructure except the two buildings, on the front fencing of Brough road wherein three shops were located. The private complaints preferred before the Judicial Magistrate No.2, Erode by the first plaintiff against such high handed act of the defendants, was of no use. Under the said circumstances, the plaintiffs requested the tenants of the three shops to vacate the same and they have also vacated the said premises. In order to safeguard their possession, the plaintiffs have put a gate in the front side. Subsequently defendants 1 to 5 executed five sale deeds bearing Nos. 5111 to 5115/2007 in respect 897 sq.ft., 898 sq.ft.,



WEB COPY

879 sq.ft., 861 sq.ft., 836 sq.ft. and 818 sq.ft. respectively in favour of defendants 11 to 15 on 15.10.2007. The said sale deeds are not valid and they are not binding on the plaintiffs. After getting such sale deeds, defendants 11 to 15 attempted break open the gate and trespass into the property on 26.10.2007. Though such an attempt was thwarted by the plaintiffs, the defendants 11 to 15 challenged that they would come forward with more number of people to break open the gate and demolish the shop. Under the said circumstances, the plaintiffs were forced to file the suit for the reliefs indicated supra.

6. The suit was resisted by defendants 1 to 7 based on the written statement filed by the first defendant and adopted by the defendants to 2 to 7. The contents of the said written statement are summarised as follows:

i) The suit, as framed is not maintainable. The suit property was the joint family property of late V.S.Thangavel. The claim of the plaintiffs that they were conducting a partnership business along with late V.S.Thangavel and defendants 1 to 5 in the name of "Marappan Commercial Complex" under a Partnership Deed dated 12.08.1985 is not fully correct. Though partnership deed is dated 12.08.1985, it came to be registered only on 02.12.1985. The suit property, being the joint family property of late V.S.Thangavel and defendants 1 to 5, was brought as contribution towards their share capital. The plaint averment that the business could not be continued on account of difference of opinion among the partners is not correct. On the other hand, the partnership venture aimed at putting up a commercial complex suffered a setback at its inception, since the tenants in the building refused to vacate the building. In fact the business itself was a non-starter. With evil design to grab the suit property, the plaintiffs got involved in such kind of acts from the beginning. The suit claim that the suit property was evaluated at Rs.6,00,000/- and it was agreed that each one of the defendants and Late V.S.Thangavel would be given Rs.1,00,000/-, on payment of which the suit property became the absolute property of the plaintiffs is totally false. The alleged payments as recited in the Deed of Dissolution and the payment of Rs.85,000/- each by way of payment of cheques towards repayment of the share capital are not true. The alleged payment of Rs.5,000/- on 12.09.1985 is also false. The payments of Rs.90,000/- by cash on 12.09.1985 to late V.S.Thangael and the payment of the balance amount of Rs.10,000/- each to Thangavel and defendants 1 to 5 by way of cheque found mentioned in the Dissolution Deed are also false.

ii) In the execution petition in E.P.F.No.107/1986 on the file of the District Munsif Court, Erode, the plaintiffs preferred a claim in E.A.No.810/1998. The said claim made on the basis of the alleged partnership dissolution deed was rejected and the claim application was dismissed by the above said executing court. The decision of the executing court operates as a res judicata and the plaintiffs will be estopped from claiming title over the suit property based on the alleged dissolution deed. The deed of Special Power of Attorney dated 12.12.1985 is a fabricated document and the same is not legally valid. The undertaking letter dated 11.12.1985



WEB C

relied on by the plaintiffs is also a fabricated one. Using the fabricated Deed of Dissolution, the plaintiffs got mutation of their names in public records. The averment that Dr. Shenoy, who was a tenant in respect of a portion of the suit property, was paying rent by way of cheque to the plaintiffs till he vacated the premises in 2004 is false. Without the consent of late V.S. Thangavel and the defendants 1 to 5 and using forged signatures and exerting influence on the authorities, the plaintiffs got the electricity service connection transferred to their names.

iii) Sale Agreements dated 05.03.2002 and 08.04.2004 will confirm the fact that the suit property remained with late V.S. Thangavel and defendants 1 to 5 and the contrary allegations as if those agreements were cancelled after the plaintiffs raised objections in O.S.No.184/2002 are also false. The plaintiff allegations made in respect of the agreement dated 03.11.2004 and its alleged cancellation are also false. It is not correct to state that defendants 1 to 5 fraudulently created a mortgage in favour of defendants 9 and 10 for a sum of Rs.10.00 Lakhs. Being the owners of the suit property, defendants 1 to 5 have every right to deal with the suit property. It is also false to contend that the defendants had set up M.K. Vetrivel and Palanisamy to file O.S.No.271/2007 claiming tenancy rights. The further averment that Thangamuthu was forcibly evicted by the defendants is also false. Using false and fabricated documents, the plaintiffs were able to get mutation of their names in the public records, but at no point of time, the plaintiffs were in possession and enjoyment of the property.

iv) Since the partnership firm has not been registered, the suit for declaration that the Dissolution Deed is not valid is not maintainable and the same is barred by Section 69 of the Indian Partnership Act, 1932. Instead of seeking declaration of their title in respect of the immovable property in which case they have to pay court fee on the ad valorem value of the suit property, the plaintiffs have adopted an ingenious method of seeking a declaration that the partnership dissolution deed is legal and valid. Since the partnership dissolution deed is a document affecting an immovable property situated at Erode, the same should have been registered at Erode. The very fact that it was registered at North Madras will show that the document is fabricated. Even then the suit for such a declaration should have been filed within three years from the date of the alleged execution of the Deed of Dissolution, since at no point of time, the defendants admitted the execution and validity of said document. As such the suit filed by the plaintiffs is barred as per Article 58 of the Limitation Act, 1963.

v) Since a mere injunction has been sought for without seeking declaration of title when the title to the suit property is hotly contested, the suit is not maintainable under Section 34 of the Specific Relief Act, 1963. The valuation of the prayer made under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is not correct. Hence the suit shall be dismissed with cost.



7. The 13th defendant filed a written statement and the same was adopted by defendants 11, 12, 14 and 15. The contents of the said written statement can be summarised as follows:

The suit as framed is not maintainable. When the property was brought for sale by a Creditor, the plaintiffs filed E.A.No.810/1988 based on the alleged right derived under the dissolution deed dated 11.12.1985. In the said claim petition, the validity of the dissolution deed was not upheld and the claim petition came to be dismissed. As against the order of the executing court, the plaintiffs did not initiate further proceedings. Hence the present suit is barred by res judicata. As the suit for declaration has been filed beyond three years from the date of dismissal of the claim application, the suit is barred under Article 58 of the Limitation Act, 1963. The firm "Marappan Commercial Complex" is not a registered firm. Hence the suit for declaration about the validity of the dissolution is not maintainable under Section 69(2) of the Indian Partnership Act, 1932. The suit has not been properly valued and proper court fee has not been paid. Mutation of the names effected by the plaintiffs in respect of the plaintiffs was fraudulent and the same will not be binding on the defendants. The plaintiffs were never in possession of the suit property and on the other hand, defendants 11 to 15 are bonafide purchasers having purchased the same for valuable consideration. Hence the suit should be dismissed with cost.

8. Based on the pleadings of the parties, as many as 10 issues were framed and the issues framed by the trial court are as under:

- 1) Whether the suit property was the joint family property of V.S.Thangavel?
- 2) Whether the dissolution deed is true and genuine?
- 3) Whether the order in S.A.No.810 of 1988 in E.P.R.No.107 of 1986 operates as res judicata?
- 4) Whether the plaintiffs got transfer of the property by committing forgery of the signatures of V.s.Thangavel?
- 5) Whether the plaintiffs were not in possession of the property?
- 6) Whether the suit is barred by limitation?
- 7) Whether the suit is bad for not claiming declaration of the title to the suit property?
- 8) Whether the plaintiffs are entitled to the relief of declaration of the partnership dissolution deed dated 11.12.1985 is true, valid and binding on the defendants and for consequential permanent injunction?
- 9) Whether the plaintiffs are entitled for permanent injunction restraining the defendants from trespassing into the suit property?
- 10) To what relief the parties are entitled?

9. In the trial that took place, two witnesses were examined as PWs.1 and 2 and 75 documents were marked as Exs.A1 to A75 on the side of the plaintiffs, whereas two witnesses were examined as DWs1 and 2 and 41 documents were marked as Exs.B1 to B41 on the side of



the defendants. The learned trial Judge, at the conclusion of trial, heard the arguments advanced on both sides, considered the pleadings and evidence in the light of the points urged in the arguments, upon such consideration, held that the plaintiffs failed to prove their case and dismissed the suit with cost by a judgment and decree dated 07.12.2009. The said decree of the trial court dated 07.12.2009 is challenged in the present appeal suit on various grounds set out in the Memorandum of Grounds of Appeal.

10. The arguments advanced by Mr.R.Subramanian, learned counsel for the appellants and by Mr.S.V.Jayaraman, learned senior counsel appearing for Mr.R.Karthikeyan, learned counsel for the respondents were heard. The pleadings, evidence (both oral and documentary), the judgment of the court below and the grounds of appeal were perused and this court paid its anxious consideration to the same. This court also reappraised the evidence in the light of the arguments advanced by the learned counsel appearing on both sides.

11. The points that arise for consideration in the appeal suit are as follows:

(1) Whether the finding of the trial court that the suit property was the joint family property of V.S.Thangavel is wrong?

(2) Whether the suit is barred by res judicata?

(3) Whether the suit is barred by Section 69(1) and (2) of the Indian Partnership Act, 1932?

(4) Whether the suit as framed is not maintainable and whether the suit has not been properly valued ? Whether the court fee paid is not correct?

(5) Whether the suit is barred by limitation?

(6) Whether the suit for declaration regarding the legality of Ex.A4 without seeking a declaration of title to the suit property is not maintainable? Whether the plaintiffs are entitled to a declaration that Ex.A4-Dissolution deed dated 11.12.1985 is genuine, valid and binding on defendants?

(7) Whether the plaintiffs are entitled to an injunction as prayed for?

Point No.1

12. The suit property situates on the northern row of Brough Road, Erode and it is comprised in T.S.No.2767/3 with north-south measurement on the west 130', north-south measurement on the east 131', east-west measurement on both sides 45'. The said property came to be purchased by one Subbaraya Mudaliar S/o.Chenniappa Mudaliar under a registered sale deed dated 22.07.1940 bearing Document No.2604/1940 registered on the file of Sub Registrar, Erode. The sale deed has been marked as Ex.A1. In a partition that



took place among the said Subbaraya Mudaliar, his only son V.S.Thangavel, born through his first wife and his four other sons born through his second wife (V.S.Paramasivan, V.S.Loganathan, V.S.Shanmugam and V.S.Rajagopalan) under the registered partition deed dated 12.12.1953 bearing document No.1412/1953. Not only his ancestral properties, but also the acquisitions made by him in his own name by Subbaraya Mudaliar, were made the subject matter of the said partition. In the said partition deed, the properties purchased in the name of Subbaraya Mudaliar were referred to as the properties purchased using the joint family funds and the income derived from the joint family nucleus and hence they also were the joint family properties of Subbaraya Mudaliar and his sons. Thus the suit property purchased by Subbaraya Mudaliar under Ex.A1 was treated as joint family acquisition, in which his sons had acquired equal right, by birth. Even otherwise, it could be taken as a separate property thrown into the hotch pot, whereupon it acquired the characteristics of a joint family property and was made one of the subject matters of the partition effected under the partition deed dated 12.12.1953. A certified copy of the same has been produced as Ex.A2. Thus the property purchased under Ex.A1 by Subbaraya Mudaliar came to be allotted to the share of late V.S.Thangavel under the partition deed dated 12.12.1953, a certified copy of which is Ex.A2.

13. It is obvious from Ex.A2 that the suit property, as a vacant site, was allotted to the share of late V.S.Thangavel and it was incorporated in Schedule 'B' to the said partition. Neither in Ex.A1 nor in Ex.A2 any building was shown to be in existence. As such it shall be quite obvious that the superstructures, which were found at the time of filing of the suit came to be put up by late V.S.Thangavel after the said property was allotted to his share under the original of Ex.A2. Late V.S.Thangavel himself has got the property as a coparcener in the partition with his father and brothers. The said partition took place prior to Hindu Succession Act, 1956 coming into force. Nevertheless, the said property allotted to late V.S.Thangavel under the above said partition deed was his ancestral property, in which his sons got equal rights by birth. Thus late V.S.Thangavel and his sons, who are the defendants 1 to 5, had become coparceners in respect of the suit property. There is no quarrel over the fact that the suit property was owned by a Hindu Undivided Family consisting of late V.S.Thangavel and his sons, namely defendants 1 to 5 as coparceners.

14. It is also a fact admitted by the plaintiffs that when they wanted to have a partnership business with plaintiffs, late V.S.Thangavel and his sons, namely defendants 1 to 5, informed that they had no cash to be invested towards their share capital and that they agreed to bring in the suit property, in which all the six had equal shares, towards their share capital in the partnership business. In the light of the above said facts, there cannot be any dispute regarding the character of the suit property as a property owned by Hindu Undivided Family. Hence the first



issue was unnecessarily framed by the trial court. The question whether the suit property was the property belonging to the Hindu Undivided Family consisting of V.S.Thangavel and defendants 1 to 5 as coparceners did not arise at all for consideration. Still, the learned trial Judge chose to frame such an issue and answered in the affirmative. As pointed out supra, since the status of the suit property as a joint family property is an admitted one and not a disputed one, though the issue may be unnecessary, the finding of the trial court cannot be said to be incorrect or defective.

Point Nos.3 and 4:

15. The next question that arises for consideration is whether the suit as framed is not maintainable? The maintainability of the suit has been challenged on two grounds: (1) The suit being one filed in respect of the contract of partnership and the alleged rights flowing from the same, the maintainability of the suit is hit by Section 69(2) of the Indian Partnership Act, 1932 on the ground that the partnership firm concerned in this case is not a firm registered with the Registrar of Firms in accordance with Section 58 of the Indian Partnership Act, 1932; and (2) the second contention is that since the claim of the plaintiffs is nothing but a claim of title in respect of the suit property (immovable property), it is vehemently opposed by the defendants contending that the suit should have been filed for declaration of the alleged title of the plaintiffs in respect of the suit property and for consequential reliefs, in which event, the valuation of the suit should have been made under section 25(b) and not under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

16. Let us now consider the sustainability of otherwise of the above said contentions raised by the defendants. Ex.A3 is the partnership deed dated 12.08.1995. There is no dispute regarding the fact that the plaintiffs, late V.S.Thangavel and defendants 1 to 5, as parties to the said deed executed the same on 12.08.1985 and thereby agreed to do a partnership business in the name of "Marappan Commercial Complex". Though the said partnership deed came to be executed on 12.08.1985, the said document was presented for registration only on 02.12.1985. A stamp duty of Rs.8,075/- was collected in the form of a Non-Judicial stamp papers to the value of Rs.65/- and cash payment of Rs.8,010/-. The registration of Ex.A3-partnership deed was made in compliance with the provisions of the Indian Registration Act, 1908. Section 69 is not concerned with the registration of the documents under which the parties entered into a contract of partnership. On the other hand, it contemplates registration of the partnership firm under the Indian Partnership Act, 1932. Section 58 provides the procedure to be followed for registration of the firm and the same reads as follows:

"58. APPLICATION FOR REGISTRATION. (1) Subject to the provisions of sub-section of sub-section (1A), the registration of a firm effected by sending by post or delivering to the Registrar of the area in which any part of business of the firm is situated or proposed



WEB COPY

to be situated, a statement in the prescribed form and accompanied by the prescribed fee and a true copy of the deed of partnership stating :

- (a) the firm-name,
- (aa) the nature of business of the firm;
- (b) the place or principal place of business of the firm,
- (c) the names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(1A) The statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm :

Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984, such statement shall be sent or delivered to the Registrar within a period of one year from such date.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm shall not have any of the names or emblems specified in the Schedule to the Emblems and Names (Prevention of Improper Use) Act, 1950, or any colourable imitation thereof, unless permitted so to do under that Act, or any name which is likely to be associated by the public with the name of any other firm on account of similarity, or any name which, in the opinion of the Registrar, for reasons to be recorded in writing, is undesirable : Provided that nothing in this sub-section shall apply to any firm registered under any such name before the date of the commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984.

(4) Any person aggrieved by an order of the Registrar under sub-section (3), may, within 30 days from the date of communication of such order, appeal to the officer not below the rank of Deputy Secretary to Government authorised by the State Government in this behalf, in such manner, and on payment of such fee, as may be prescribed. On receipt of any such appeal,



the authorised officer shall, after giving an opportunity of being heard to the appellant, decide the appeal, and his decision shall be final."

WEB COPY

According to the said section, the registration of the firm can be made at any point by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form accompanied by the prescribed fee stating the following particulars : (a) the firm name; (b) the place or principal place of business of the firm; (c) the names of any other places where firm carries on business; (d) the date each partner joined the firm; (e) the names in full and permanent addresses of the partner and (f) the duration of the firm. It also provides that the form containing the statement should be signed by all the partners or by their agents personally authorised in this behalf. A consideration of the said section will make it clear that the registration of the firm contemplated under Section 58 has nothing to do with the registration of the Partnership deed in accordance with the provisions of the Registration Act, 1908.

17. Section 69 of the Indian Partnership Act, 1932 reads as follows:

"69. EFFECT OF NON-REGISTRATION. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Registrar of Firms as a partner in the firm : Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Registrar of Firms as partners in the firm.

(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Registrar of Firms as a partner in the firm :



WEB COPY

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.

(3) The provisions of sub-sections (1), (2) and (2A) shall apply also to a claim of set-off or other proceedings to enforce a right arising from a contract but shall not affect (a) the firms constituted for a duration upto six months or with a capital upto two thousand rupees; or; (b) the powers of an official assigned, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This section shall not apply (a) to firms or partners in firm which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 this Chapter does not apply, or (b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

18. A conjoint reading of Sections 58 and 69 will show that registration of the partnership deed under the provisions of the Registration Act will not amount to registration of the firm under Section 58 of the Indian Partnership Act, 1932. It is made clear in *Girdharilal vs. Spinning A.T.C. Co.* reported in AIR 1954 Himachal Pradesh 52 that registration under the Partnership Act is different from registration under the Indian Registration Act, 1908. There is nothing on record to show that the partnership firm "Marappan Commercial Complex" was registered with the Registrar of Firms. Though the defendants had taken a specific plea that the suit is not maintainable in view of the provision under Section 69(2) of the Indian Partnership Act, the plaintiffs had not chosen to contend that the said firm was registered with the Registrar of Firms nor did they produce any document showing the registration of the firm "Marappan Commercial Complex" with the Registrar of Firms .

19. The disabilities attached to the non-registration of the firm are enumerated in Section 69 of the Indian Partnership Act, 1932. Clause (1) says that no suit to enforce a right arising



from a contract or conferred by the Indian Partnership Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any other person alleged to be or to have been a partner in the firm, unless the firm is registered and the person is or has been showing in the Registrar of Firms as a partner in the firm. Sub clause (2) says that no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of the firm against third party unless the firm is registered and the persons suing have been shown in the Registrar of Firms as partners in the firm.

20. In the case on hand, it is an admitted fact that "Marappan Commercial Complex" has not been registered with the Registrar of Firms. According to the plaintiffs, they could not carry on the partnership business and hence they decided to dissolve the partnership, which resulted in the execution of Ex.A4-Partnership dissolution deed. Now what the plaintiffs have chosen to do is to seek a declaration that the partnership dissolution deed marked as Ex.A4 is genuine, valid and binding on the defendants. The very prayer made is for a declaration that the partnership has been dissolved by a document and such a document dissolving the partnership is genuine and legally valid. Such a prayer squarely comes within the prohibited area contemplated under Sections 69(1) and (2) of the Indian Partnership Act. Hence the finding of the trial court that the suit is barred by Section 69(1) and (2) of the Indian Partnership Act, 1932 cannot be said to be either defective or infirm warranting interference by this court. The said finding of the trial court deserves confirmation.

21. Moreover the Partnership dissolution deed marked as Ex.A4 contains a 'B' schedule with the following recitals after the description of the immovable property.

"இந்த சொத்தின் மதிப்பு, ரூ.6,00,000/- கூட்டு வியாபாரத்தின் தற்போதைய ஆஸ்தி மதிப்பு, ரூ.6,00,000/- பொறுப்புகள் ரூ.3,00,000/- நிகர ஆஸ்தி ரூ.3,00,000/-, இந்தப்படி சம்மதித்து எட்டு பார்ட்டிகளும் ஏகமனதாக இதில் கையொப்பமிட்டிருக்கிறார்கள். "

A reading of the same will go to show that though in the body of the document it has been stated that they wanted to dissolve the partnership, due to the failure of the tenants to vacate the suit property and since difference of opinion arose between the partners on some other grounds also, the arrangement made therein is that the entire suit property valued at Rs.6.00 Lakhs would go to the plaintiffs alone and that the amounts allegedly paid to late V.S.Thangavel and defendants 1 to 5 earlier and the amounts allegedly paid on the date of execution of the document accounted for Rs.6,00,000/- paid to them.

22. It is not the case of the plaintiffs that the plaintiffs contributed anything more than Rs.2.00 Lakhs which is found noted as their contribution in Ex.A3-Partnership Deed so as to infer that V.S.Thangavel and defendants 1 to 5 could have been paid a total



WEB COURT

amount of Rs.6,00,000/- towards the return of their share capital. In fact PW1, the first plaintiff, in his evidence has admitted in clear terms that the partnership business was a non-starter and within a period of one month from the date of execution of Ex.A3-partnership deed, all the partners realised that they could not continue the partnership business and they decided to cause dissolution of the partnership. It is also his clear evidence that neither he, nor the second plaintiff contributed any extra amount than what has been noted as their contribution towards share capital in Ex.A3 for the running of the partnership business. The same is the reason why value of the suit property taken as Rs.6,00,000/- was shown to be the value of the assets of the partnership firm and deducting Rs.3,00,000/- towards liabilities the net asset was shown to be Rs.3,00,000/- in Ex.A4.

23. Even if it is assumed for argument sake that the suit is one for establishment of the title of the plaintiffs pursuant to the dissolution of the firm effected by Ex.A4-Partnership Dissolution Deed, it should have been filed for a declaration of title in respect of the suit property claimed by the plaintiffs. If such a prayer has been made together with a consequential prayer for injunction, then the suit should have been valued under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The dissolution deed, according to the plaintiffs, came to be executed on 11.12.1985. At that point of time, the value of the suit property was shown as Rs.6,00,000/-. After a lapse of nearly 22 years from the date of Ex.A4, the present suit came to be filed. By the time the suit came to be filed, the value of the suit property had got increased manifold. However with a view to evade payment of court fee under Section 25(b) of Tamil Nadu Court Fees and Suits Valuation Act, 1955, plaintiffs have chosen to adopt an ingenious method of seeking a declaration under Section 25(d) to the effect that the partnership dissolution deed dated 11.12.1985 is valid and genuine. The same itself shows that the plaintiffs adopted such an ingenious method in order to avoid proper valuation and payment of correct court fee. On that ground also the suit filed by the plaintiffs should be held not maintainable.

24. In addition, it is quite obvious that apart from the prayer for declaration that Ex.A4-dissolution deed is binding on the defendants, the plaintiffs have sought a permanent injunction in respect of the suit property which is an immovable property. It is quite obvious that their title in respect of the suit property has been denied and disputed by the defendants. The plaintiff averments themselves show that the title claimed by the plaintiffs in respect of the suit property is denied by the defendants. As such, even if it is assumed that the suit for a bare injunction in respect of the immovable property can be maintained, the suit should have been valued under Section 27(a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 in which event also, the plaintiffs should have paid court fee on one half of the market value of the suit property as on the date of plaint. As it was not done, the same also affects the maintainability of the suit.



Point No.2:

25. It is the contention of the defendants that the present suit for declaration that Ex.A4-Partnership Dissolution Deed is valid and binding on the defendants is barred by res judicata, since a claim made by the plaintiffs in E.A.No.810/1988 in E.P.R.No.107/1986 in O.S.No.1309/1982 on the file of District Munsif, Erode was negatived by the executing court and the claim was dismissed. PW1 has admitted in clear terms that their claim application in E.A.No.810/1988 was dismissed by the executing court and that thereafter they paid the entire decree amount for which execution was levied and saved the property from court auction sale. It is an admitted fact that before entering into the Partnership Deed, V.S.Thangavel had borrowed some amount. In 1982 one Sundarrajan & Co. obtained a money decree against V.S.Thangavel in O.S.No.1309/1982 and levied execution by filing E.P.No.107/1986 in which the suit property was attached. The plaintiffs filed a claim petition in E.A.No.810/1988 and the same was dismissed after enquiry. But the plaintiffs did not file any appeal. However they prevented the suit property from being auctioned by making payment of the decree amount and obtaining Full Satisfaction under the F.S.memo, marked as Ex.A15. The same is quite obvious from the evidence of PW1. From the same, it is quite obvious that the claim made by the plaintiffs based on Ex.A4-Dissolution Deed was negatived by the Executing Court in E.A.No.810/1988. The claim of the plaintiffs therein should have been that the attachment of the property for the amount due from V.S.Thangavel would not bind them, since they became absolute owners of the suit property by virtue of Ex.A4-Partnership Dissolution Deed.

26. Ex.A4 came to be executed on 11.12.1985. The suit filed by Sundarrajan & Co. came to be filed in 1982. The particulars of the date of decree and date of attachment have not been furnished by either party. From the said document it is seen that the property had been attached on 21.04.1986, namely subsequent to the date of Ex.A4. However, the executing court, without upholding the claim of the plaintiffs, chose to hold that the claim of the plaintiffs herein for releasing the suit property from attachment could not be sustained. It is an admitted fact that after hearing, the said claim application was dismissed. As the claim made by the plaintiffs to the effect that they became absolute owners of the suit property based on Ex.A4-Dissolution Deed was negatived by the Executing Court, they ought to have challenged the said order in the manner known to law. Without making such challenge, they paid the decree amount to release the property from attachment. Having suffered such an order negating their claim of title based on Ex.A4-Dissolution Deed, the plaintiffs have not chosen to prefer any appeal and pay the amount during the pendency of the appeal. Had they done so, then they could have averted the decision in the claim petition operating as res judicata. Since the plaintiffs have not done so and on the other hand, they chose to make payment of the decree amount, the question regarding the validity of the



transfer made under Ex.A4 and the claim of title made by the plaintiffs based on Ex.A4 had been negatived by the order of the executing court, the same may attract the bar of res judicata. However there is nothing on record to show that V.S.Thangavel was resisting the claim application and the issue regarding validity of Ex.A4 was decided as a contested issue. The contest seems to have been between the decree holder and the claimant. Ultimately the executing court held that Ex.A4 would not be projected as a hurdle for the valid attachment. The same led to the plaintiffs opting to make payment of the decree amount and get full satisfaction recorded. Therefore, this court is of the view that there is lack of evidence to show that a contested decision was taken regarding the genuineness and validity of Ex.A4 in the claim petition. Hence the said decision cannot be projected as one attracting the bar of res judicata in the present suit.

27. The defendants have also contended that the suit is barred by Order 23 Rule 1(4) CPC, since previous suit O.S.No.184/2002 filed for bare injunction by the plaintiffs on the file of District Munsif Court, Erode in respect of the very same suit property against Pankajam and the defendants not to disturb their alleged peaceful possession and enjoyment of the suit property, was withdrawn by the plaintiffs and it was dismissed as withdrawn on 19.12.2006. In fact the plaintiffs had filed an application under Order 23 Rule 1(3) seeking permission to withdraw the suit with liberty to file a fresh suit in respect of the very same subject matter. The said application was allowed permitting the plaintiffs to withdraw the said suit granting the liberty as sought for. In view of the dismissal of the suit granting the liberty to file a fresh suit in respect of the very same subject matter, the present suit in respect of the same suit property, is not barred by Order 23 Rule 1(4) C.P.C.

Point No.6:

28. Apart from raising the plea of maintainability of the suit, the bar of res judicata and also the bar under Order 23 Rule 1(4) C.P.C., the defendants have contended that, on merits also, the plaintiffs cannot succeed. It is an admitted fact that the suit property was allotted to late V.S.Thangavel in a partition under a registered partition deed dated 12.12.1953 bearing document No.1412/1953 registered in the office of the Sub Registrar, Chennimalai. A certified copy of the said partition deed has been marked as Ex.A2. The suit property had been purchased by Subbaraya Mudaliar under a sale deed dated 22.07.1940 registered as document No.2604/1940 on the file of the Sub Registrar, Erode. Original sale deed has been produced and marked as Ex.A1. Though the suit property was purchased in the name of Subbaraya Mudaliar, admitting the same to be a purchase made for the joint family consisting of himself and his sons out of the joint family income, he partitioned the same with his sons under the original of Ex.A2. In the said partition, the suit property, as a vacant site, was allotted to late V.S.Thangavel s/o.Subbaraya Mudaliar, born through his first wife. Thereafter, V.S.Thangavel put up constructions. Thus the suit



WEB COPY

property in the hands of V.S.Thangavel was no doubt his ancestral property in which his sons got a right by birth as coparceners. It has also been admitted that V.S.Thangavel and his five sons, namely defendants 1 to 5 were coparceners and each one of them was entitled to 1/6th share in the suit property. V.S.Thangavel and his sons, namely defendants 1 to 5 entered into a partnership with the plaintiffs 1 and 2 to venture a partnership business in the name and style of "Marappan Commercial Complex". For the said purpose they entered into a partnership deed under Ex.A3 on 12.08.1985. Though the partnership deed was executed on 12.08.1985, it came to be presented before the Registering Authority for registration only on 02.12.1985. However the said document came to be registered only on 30.12.1985 as seen from the registration endorsement found therein. According to the terms of Ex.A3, the plaintiffs 1 and 2 contributed a sum of Rs.1,00,000/- each towards their share capital in the partnership business. Late V.S.Thangavel and defendants 1 to 5 expressed their inability to contribute money towards their share capital and brought in the suit property to the partnership business as their share capital. It was valued at Rs.6,00,000/- and the said property was accepted as the partnership property, whereby the contribution by V.S.Thangavel and defendants 1 to 5 to the extent of their shares in the said property, namely Rs.1,00,000/- each as their share capital was accepted. The above said partnership contract was entered into for the purpose of developing the suit property into a commercial complex. However, according to the plaintiffs' case, the partnership did not last long and on the other hand, it had to be dissolved due to the fact that the tenants did not vacate the portions in their occupation and also due to difference of opinion among the partners. The plaintiffs claimed that the partnership was dissolved by a Deed of Dissolution of partnership dated 11.12.1985. The same has been marked as Ex.A4. According to the plaintiffs, accounts were settled by adjusting the payments made to defendants 1 to 5 by way of five cheques bearing Cheque Nos.266252 to 266256 each one for a sum of Rs.85,000/- issued on 02.12.1985, by the payment of a sum of Rs.5,000/- each to defendants 3 to 7 on 12.09.1985 and by payment of a sum of Rs.10,000/- each to defendants 4 to 8 by way of cheque bearing Nos.266257 to 266262 drawn on Lakshmi Vilas Bank. It is also the case of the plaintiffs that on the date of execution of the dissolution deed, a cash payment of Rs.90,000/- was made to late V.S.Thangavel and the balance amount of Rs.10,000/- was paid by way of a cheque bearing cheque No.266257. Accordingly, the plaintiffs have made their attempt to show that a total sum of Rs.6,00,000/- was paid to the defendants 1 to 7 and late V.S.Thangavel being equivalent to their contribution towards share capital of the partnership business.

29. On the contrary, it is the contention of the defendants that the partnership was not dissolved as contended by the plaintiffs; that Ex.A4 is not genuine and the same was fabricated by the plaintiffs with the help of one Somasundaram Chettiar, who had introduced the plaintiffs to V.S.Thangavel and defendants 1 to 5; that the confidence they reposed in Somasundaram Chettiar was exploited by the plaintiffs who devised a method to grab the suit property in connivance with the said Somasundaram Chettiar and that



WEB C

thus Ex.A4-Dissolution Deed was brought into existence fraudulently. In view of the above said contention of the defendants that Ex.A4-Partnership dissolution deed is not genuine and on the other hand the same was fraudulent and a fabricated document, the burden of proving Ex.A4 shall heavily lie on the plaintiffs. In this regard, the evidence of the first plaintiff as PW1 makes it clear that pursuant to Ex.A3-Partnership Deed, nothing was done towards the accomplishment of the purpose for which the partnership firm was floated. Ex.A3-Partnership deed is dated 12.08.1985. According to the testimony of PW1 (the first plaintiff) the tenants occupying portions of the suit property did not vacate and hence the partnership business could not be started. According to his further testimony, within a month from the date of Ex.A3, the partnership business was stopped. PW1 has also admitted that on 12.09.1985 itself they realised that the partnership business could not be carried on. That being so, it is quite surprising as to how Ex.A3-Partnership Deed was presented for registration on 02.12.1985. Ex.A3 remained unregistered when the partners realised before 12.09.1985 according to PW1's evidence, that the partnership business could not be carried on. What was the necessity for getting the partnership deed registered thereafter has not been explained. They could have very well brought into existence the Dissolution Deed without going for registration of Ex.A3-Partnership deed. If at all the partners had realised that they could not carry on the partnership business 2½ months prior to 02.12.1985, it is not made clear as to how the partners would have gone for registration of the partnership deed. No acceptable explanation is forthcoming from the plaintiffs for opting to register the partnership deed under Ex.A3. Two reasons were assigned for the inability to start the partnership business. They are (1) the tenants did not vacate the portions in their occupation and (2) certain difference of opinion arose between the plaintiffs and the defendants. What are the difference of opinion that arose between the plaintiffs and the other partners have not been elaborated. So far as the other reason, namely the failure of the tenants to vacate and hand over vacant possession is concerned, it cannot be reasonably expected that a tenant in occupation of the premises will vacate within a month or two. Further the simple fact that the tenants had not vacated the premises shall not be an impediment for applying to the concerned authorities for planning permission for the demolition of the existing building and construction of a new commercial complex. Hence the said reasons assigned by the plaintiffs for not proceeding with the partnership business is far from being convincing.

30. It is pertinent to note that Ex.A3-Partnership deed was registered in the office of the District Registrar, Erode only on 30.12.1985, even though it was presented in the office for registration on 02.12.1985. The document came to be executed on 12.08.1985 itself. Paradoxically, the plaintiffs contend that the partners realised that they could not carry on the business on 12.09.1985 itself. If it was so how and for what purpose Ex.A3-partnership deed would have been presented for registration on



12.12.1985? Though the document was said to be received on 02.12.1985 for registration, there is no acceptable reason for the delay in registration and assignment of a document number till 30.12.1985. Ex.A4, the deed of dissolution of partnership is said to have been executed on 11.12.1985. From the same, it will be obvious that before ever the partnership deed was given a document number on its registration in the office of the District Registrar, Erode, the deed of dissolution was allegedly executed. Ex.A4-Deed of dissolution is dated 11.12.1985. It does not state the place wherein the same was executed. According to the evidence adduced on the side of the plaintiffs, Ex.A4-Dissolution deed was executed at Erode. However, no reason is assigned by the plaintiffs as to why the same was not registered at Erode. The only reason sought to be assigned on the side of the plaintiffs is not convincing. According to them, since the office of the Registrar of Firms was at Madras, Ex.A4 was registered in the office of the Joint Sub-Registrar, Madras North. The said answer is far from being convincing or believable. We have already seen that the firm itself has not been registered with the Registrar of Firms. That being so, there cannot be any question of taking the dissolution deed to Madras(Chennai) for its registration on the premise that the office of the Registrar of Firms is at Chennai.

31. It is also pertinent to note that Ex.A4-Partnership Dissolution Deed was not presented within a few days after its execution for registration. More than two months time was taken for presenting the said document for registration. It was presented in the office of the Joint Sub-Registrar, Madras North for registration only 21.02.1986. The document was presented not by all the partners but by the first plaintiff Marappan alone in his capacity as a partner and also in his capacity as power agent of all other partners, namely second plaintiff, defendants 1 to 5 and late V.S.Thangavel. For presenting the document for registration, Late V.S.Thangavel, defendants 1 to 5 and the second plaintiff were said to have executed a registered Special Power of Attorney in favour of Marappan, the first plaintiff. The special Power of Attorney is dated 12.12.1985. Though it contains authentication endorsement made by the Joint Sub Registrar No.1, Erode, it is quite obvious that Ex.A3-partnership deed dated 12.08.1985 was presented for registration on 02.12.1985 and it was released on 30.12.1985 after registering it as document No.6069/1985. The typed contents of Ex.A4 does not contain the document number of Ex.A3-Partnership Deed. However, in page 4 of Ex.A4 (deed of dissolution) an interpolation was made with ink pen and the fact that Ex.A3 was registered as Document No.6069/1985 by the District Registrar, Erode has been noted. As pointed out supra Ex.A3 was released after registration only on 30.12.1985 and document number came to be assigned only on that date. Hence at the time of execution of Ex.A4 on 11.12.1985, the document number of the partnership deed would not have been known to the parties. The very fact that the document number has been noted with interpolation in Ex.A4 at page 4 will make it clear that Ex.A4 has been materially altered. Similar is the addition at the end of the document, which is to the following effect.



"இந்த சொத்தின் மதிப்பு, ரூ.6,00,000/- கூட்டு வியாபாரத்தின் தற்போதைய ஆஸ்தி மதிப்பு, ரூ.6,00,000/- பொறுப்புகள் ரூ.3,00,000/- நிகர ஆஸ்தி ரூ.3,00,000/-"

WEB COPY

32. What was authorised under Ex.A5-Special Power of Attorney was to present Ex.A4-Dissolution Deed for registration. No authorisation for altering the contents came to be made under Ex.A5. However, the above said alterations came to be made at the time of presentation of Ex.A4 for its registration. PW1 himself has clearly admitted that such alterations by pen were made on the date of registration of the document and that it was done by their auditor on the instructions of the Registrar. The said auditor Lakshmanan has signed as the first attestor, whereas Somasundaram Chettiar has signed as the second attestor. From the above said evidence of PW1 itself, it is quite clear that even if it is assumed that Ex.A4 was executed by V.S.Thangavel and defendants 1 to 5, as the same has been materially altered, the plaintiffs cannot rely on the same in support of their claim.

33. Further Ex.A4 is said to have been executed on 11.12.1985. On the very next day, the second plaintiff and defendants 1 to 5 were available before the Joint Sub Registrar No.1, Erode for executing and for authentication of Ex.A5-Power of Attorney. Ex.A5 contains three sheets. In all the three sheets signatures of the executants are found. Date has been noted below the first and last signatures. However, the date has been written on the right side of the signatures of the other executants. A perusal of the figures written therein shows that all the dates were written by one and the same person.

34. According to Section 33(1) (a) of the Registration Act, the special power of attorney for the purpose of Section 32 of the Registration Act, namely for presenting a document for registration before the Registering Authority, should be executed before the Registrar or Sub Registrar within whose district or sub district the principal resides and that such Registrar or Sub Registrar, as the case may be, shall authenticate the same. For better appreciation section 33(1) (a) is reproduced here under.

"33. Power-of-attorney recognisable for purposes of section 32

(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognised, namely:-

(a) if the principal at the time of executing the power-of-attorney resides in any part of 18[India] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;"



Of course, the Joint Sub Registrar-I, Erode has authenticated Ex.A5-Special Power of Attorney with the following endorsement:

"1985ம் வருஷத்திய எண்

1985ம் வருஷம் டிசம்பர் மாதம் 12ந் தேதியாகிய இன்றைக்கு என் முன்னிலையில் திருவாளர்கள் கந்தசாமி 1.வி.எஸ்.தங்கவேல், 2.வி.எஸ்.டி.செங்கோட்டையன், 3.எஸ்.டி.சேகர், 4. வி.எஸ்.டி.சுரேஷ், 5. வி.எஸ்.டி.நாகேஷ், 6. மற்றும் வி.எஸ்.டி. சுந்தர் 7 ஆகியவர்களால் கையெழுத்து செய்யப்பட்டது. இவரை இன்னாரென்று நிரூபித்தவர்கள்.

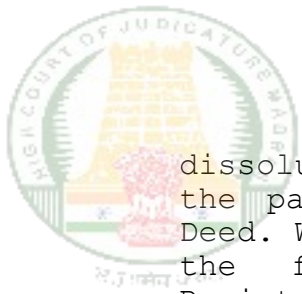
(1) signed Lakshmanan s/o.Chinnakuppan Chettiar (2) signed s/o Muthu Gounder. Signed 1ம் எண் இணை சார்பதிவாளர். "

35. Rule 46(1) of Registration Rules reads as follows:

"If a document is presented for registration under a Special Power of Attorney, the power shall be retained and filed in the office. "

The rule does make it clear that when a special power of attorney has been executed for presenting a document for registration and such power of attorney is presented by the agent along with the document for registration, the Registering Authority shall not return the Special Power of Attorney and on the other hand, shall retain it and file it in his office. If at all Ex.A4 was properly registered based on the Special Power of Attorney, the original Special Power of Attorney will not be available with the plaintiffs. It should have been retained and filed in the office of the Registering Authority. Surprisingly, the original special power of attorney itself has been produced by the plaintiffs and the same has been marked as Ex.A5. Hence the said document has to be construed as one that has not come from proper custody. Apart from the same, it does not contain any endorsement to the effect that it was produced before the Registering Authority for the registration of Ex.A4-Dissolution deed.

36. As pointed out earlier, neither Ex.A3-Partnership deed nor Ex.A4-Dissolution deed needed compulsory registration, if they were partnership deed simpliciter and Dissolution deed simpliciter. On the other hand, Ex.A3 came to be registered because, the plaintiffs wanted to make it beyond doubt that transfer of rights, creation of rights and restriction of rights in immovable property were made under the said document. When such is the case, the document should have been registered before the jurisdictional registrar or jurisdictional sub registrar. Of course Ex.A3-partnership deed has been registered in the office of the jurisdictional Registrar. There is no dispute regarding the registration of the same. By the execution of the said document and registration of the same, the suit property got converted into the property of the partnership firm called "Marappan Commercial Complex". Thereafter on



WEB COPY

dissolution, when the partnership properties were distributed among the partners, there is no need for registering the Dissolution Deed. What is required under the Partnership Act is registration of the firm and intimation of the dissolution of the firm to the Registrar of Firms.

37. In the case on hand, the firm has not at all been registered, particulars of partners have not been intimated to the Register of Firms. The alleged dissolution was not intimated to the Registrar of Firms. Hence the only purpose sought to be accomplished by the registration of Ex.A3 was to convert the joint family property of V.S.Thangavel and defendants 1 to 5 into the property of the partnership firm "Marappan Commercial Complex" and the same has been properly done by the execution and registration of Ex.A3-Partnership Deed. However, grave suspicions surround the alleged execution of Ex.A4-Partnership Dissolution Deed, Ex.A5-Special Power of Attorney for presenting Ex.A4 before the Registering Authority for registration and also Ex.A6, the alleged undertaking letter. It is the contention of the defendants that in the guise of doing partnership business, the first plaintiff, with the help of PW2-Somasundaram Chettiar, obtained signatures in many papers and used them for creation of Ex.A4 to A6 documents. It is their further contention that at the time of registering Ex.A3 - Partnership deed, plaintiffs might have obtained the signatures in the papers used for the fabrication of Exs.A4 to A6. Moreover, as pointed out supra, there are corrections and interlineations at page Nos.4 and 6 of Ex.A4 -Partnership Dissolution Deed. Admittedly the corrections and the interlineations were not made at the time when the defendants 1 to 5 and V.S.Thangavel signed the document. PW1 has clearly admitted that those corrections were made by their auditor Lakshmanan at the instruction of the Registrar, at the time of registration of the document. It is pertinent to note that though Ex.A3 was registered in the office of the District Registrar, Erode, who exercised jurisdiction over the area in which the suit property situates, the plaintiffs have chosen to take Ex.A4-Dissolution deed to Madras (North) for its registration. The suit property does not come under the jurisdiction of the Registrar, Madras (North). The only purpose for which Ex.A4 seems to have been registered is to show that the joint title of V.S.Thangavel and defendants 1 to 5 as partners of "Marappan Commercial Complex" got extinguished and the entire property got vested with the plainfiffs. That being so, the document could have been very well registered in the office of the District Registrar/Sub Registrar at Erode.

38. It is also pertinent to note that in the form of Ex.A6, an undertaking letter was obtained from V.S.Thangavel and defendants 1 to 5 to the effect that they were ready to come and get the dissolution deed dated 11.12.1985 registered. The said document was attested by auditor Lakshmanan and PW2-Somasundaram Chettiar. It was executed on 12.12.1985, the very next day after Ex.A4-dissolution deed was allegedly executed. When both the documents



were executed at Erode, this court is at a loss to understand why the plaintiffs did not go for registering the dissolution deed on the same day. Of course it may be assumed that on 11.12.1985 there would have been some impediment for the parties to go to the office of the Registering Authority at Erode for the registration of Ex.A4-Dissolution deed, which necessitated the obtaining of Ex.A6-consent letter. But Ex.A5-Special Power of Attorney is dated 12.12.1985, the very next day after the alleged execution of Ex.A4 and A6. The stamp papers used for Ex.A5 is said to have been purchased in the name of Marappan on 07.08.1985 from one P.M.Govindarajan, Stamp Vendor at Komarasamy Patti, Salem-7. The document Ex.A5 is dated 12.12.1985. But it is curious to note that the stamp papers were issued from the Treasury only on 1st October 1986. Therefore it shall be quite obvious that Ex.A5 cannot be true and it has been brought into existence by fabrication. The same will show that the Joint Sub Registrar No.1, Erode, who was amenable to the plaintiffs, had chosen to authenticate the said document. The document was said to be authenticated by the said joint Sub Registrar on 12.12.1985.

39. It is also an admitted fact that plaintiffs 1 and 2 were residing at Karattupalayam village, Tiruchengode TTaluk, Salem District. The same has been admitted by PW1. However the special power of attorney by the second plaintiff also came to be executed at Erode and authenticated by the Joint Sub Registrar No.1, Erode. Hence the execution of the special power of attorney by the second plaintiff is also against Section 33(1)(a) of the Registration Act. Above all, the very fact that stamp papers came to be issued by the treasury only in October 1986, in which, the document dated 12.12.1985 came to be prepared and it was authenticated by the Joint Sub Registrar will show the extent to which the plaintiffs had gone towards fabrication of documents to grab the suit property.

40. If at all V.S.Thangavel and defendants 1 to 5 and also the second plaintiff along with the first plaintiff were present before the Joint Sub Registrar No.1, Erode for authentication of the Special Power of Attorney under Ex.A5, there could have been no impediment for them to get Ex.A4-Dissolution Deed registered on 12.12.1985 itself. The very fact that they have not chosen to do it and on the other hand, the plaintiffs have chosen to get Ex.A4 registered in the office of the Joint Sub-Registrar, Madras (North) will make it clear that Ex.A4 is not genuine and it has been fabricated. It is quite obvious that Ex.A4 should have been antedated. In addition, there are material alterations by deletions, additions and interlineations at Page Nos.4 and 6 of Ex.A4, which were not authenticated by the executants of the documents. Hence, the same becomes invalid and the plaintiffs cannot rely on Ex.A4 for establishment of their right in respect of the suit property.



WEB C

41. At the helm of affairs is the demonstration by the defendants that the corrections and interlineations were not there at the time of registration of the document in the office of the Joint Sub-Registrar, Madras (North) and they were made subsequently. The defendants have produced a certified copy of the dissolution deed registered as document No.572/1985 on the file of the Joint Sub Registrar No.2 in the rank of District Registrar, Madras (North) and the same has been marked as Ex.B3. A comparison of Exs.A4 and B3 will show that the interlineation and additions made using ink pen at Page Nos.4 and 6 of Ex.A4 were not there in the document when it was registered by the Registering Authority.

42. It has been admitted by the plaintiffs through PW1 that the entire account was maintained by the first plaintiff. As it was found out that the venture was a misadventure since they could not get the possession of the property from the tenants, they decided within a month do dissolve the partnership. It is also his clear admission that except Rs.1,00,000/- paid by each one of the plaintiffs, which accounted for a sum of Rs.2,00,000/- no other amount was contributed by them towards the share capital of the partnership firm. If it was so, where from the amount came for disbursement of a total sum of Rs.6,00,000/- to V.S.Thangavel and defendants 1 to 5. There is no acceptable explanation. In addition, the net value of the partnership asset has been noted as Rs.3,00,000/- in Ex.A4. The only asset available to the partnership firm at the time of alleged dissolution was the suit property. Its value was taken as Rs.6,00,000/-. Liabilities of the partnership firm was taken as Rs.3,00,000/- and the net asset was noted as Rs.3,00,000/-. If at all the net asset of the partnership as on the date of dissolution was to be apportioned among the partners, the said amount Rs.3,00,000/- ought to have been divided by 8 as the plaintiffs two in number, V.S.Thangavel and defendants 1 to 5 were the partners having equal interest in the partnership firm. The money value of the share of each of the partners would be only Rs.37,500/-. Because of evasiveness in tallying the shares of the partners at the time of alleged dissolution with the net asset of the partnership firm, this court is perplexed to understand as to how the plaintiffs chose to account for the payment of a sum of Rs.1,00,000/- to each one of V.S.Thangavel, and defendants 1 to 5.

43. Furthermore under Ex.A4-DissolutionDeed, V.S.Thangavel and defendants 1 to 5 were said to be paid the following amounts:

V.S.Thangavel	Lakshmi Vilas Bank	Rs.10,000/-
	Cheque No.266257	
V.S.Sengottayan	Lakshmi Vilas Bank	Rs.10,000/-
	Cheque No.266258	
S.T.Sekar	Lakshmi Vilas Bank	Rs.10,000/-
	Cheque No.266259	
V.S.T.Suresh	Lakshmi Vilas Banki	Rs.10,000/-
	Cheque No.266260	



WEB COPY

V.S.T.Nagesh

Lakshmi Vilas Banki Rs.10,000/-

Cheque No.266261

V.S.T.Sundar

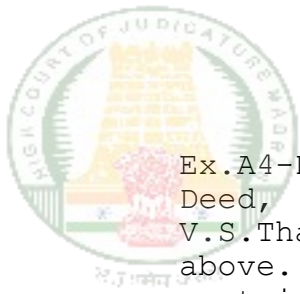
Lakshmi Vilas Banki Rs.10,000/-

Cheque No.266262

Total

Rs.60,000/-

Apart from the same, no other payment has been indicated in Ex.A4. The only averment found there in is that the parties 3 to 8 (referring to V.S.Thangavel and defendants 1 to 5) were paid Rs.10,000/- each after adjusting their share capital, current account and credit and debit account. The details of the same have not been furnished. In paragraph 6 of the plaint the plaintiffs have stated that the defendants 3 to 7 received Rs.5,000/- each on 12.09.1985. It is pertinent to note that the said receipts marked as Exs.A7 to A12 were obtained from V.S.Thangavel and defendants 1 to 5. But the plaintiffs had stated in paragraph 6 of the plaint that Rs.5,000/- each was paid to defendants 3 to 7. There is no scrap of paper to show any payment having been made to D6-Nirmala and D7-Kalpana. Counterfoil of the cheque book has been produced as Ex.A13. Cheque Nos.266252 to 266256 are said to have been issued to V.S.T.Sengottayan, S.T.Sekar, V.S.T.Suresh, V.S.T.Nagesh and V.S.T.Sundar each one for a sum of Rs.85,000/-. They are dated 02.12.1985. The signatures of those persons are not found in the counterfoil. On the other hand for the amount of Rs.10,000/- allegedly paid on 11.12.1985 by way of cheques bearing Nos.266257 to 266262 to V.S.Thangavel and defendants 1 to 5, their signatures were obtained on the back side of the counterfoil. The statement of accounts showing payment for the said cheques has been produced as Ex.A14. Of course the plaintiffs, who were operating the partnership firm accounts, issued certain cheques for withdrawal of money from the bank. Those withdrawals have been sought to be shown as payments made to V.S.Thangavel and the defendants 1 to 5 for being adjusted towards the share capital of the said defendants and V.S.Thangavel. It is quite obvious that Cheque No.266251 had been written on 02.12.1985 in the name of V.S.Thangavel, but the same was cancelled. The reason for the same has not been furnished by the plaintiffs. V.S.Thangavel was said to have been paid a cash of Rs.90,000/- on 12.09.1985. If at all a cash payment of Rs.90,000/- had been made to V.S.Thangavel on 12.09.1985 itself (the date on which the parties decided to give up the partnership venture) on 02.12.1985, cheque No.266251 could not have been written in his favour for Rs.85,000/- to be cancelled. In all other receipts dated 12.09.1985 documents marked as Exs.A7, A9, A10 to A12, evidencing payment of Rs.5,000/- each, the date has been typed as 12.09.1985. In Ex.A8 contents of which have been typed, the date of receipt alone has been written in ink. While other receipts contain the typed date of execution, why Ex.A8 alone differs has not been explained. If at all such payments were made on 12.09.1985 itself, leaving only a balance of Rs.10,000/- to be paid to each one of



WEB C

Ex.A4-Dissolution Deed. As they are not found in Ex.A4-Dissolution Deed, the contention of the plaintiffs that the deceased V.S.Thangavel and defendants 1 to 5 were made payments as indicated above. The signatures obtained in the counterfoil also do not contain the dates. All these will go to show that right from the beginning, the plaintiffs acted with a malafide intention of grabbing the suit property and the manifestation of such malafide intention is found in all the above said documents and that it reached its culmination in Ex.A4-dissolution deed and Ex.A5 - special power of attorney.

44. There is no evidence to show that accounts were taken and after accounts were taken the amounts due to V.S.Thangavel and plaintiffs were settled. In fact PW1 would say that there was no loss and no profit, since the business was not conducted. He also admits that there was no accounts maintained for the partnership business. Hence the contention of the plaintiffs that the accounts were settled based on which Ex.A4-dissolution deed came to be executed cannot be believed. Though an attempt was made by PW1 that the amounts borrowed by the defendants from third parties had been paid by the plaintiffs, the plaintiffs were not able to account for the same. It is the evidence of PW1 that he did not remember who were all the creditors of the defendants and the year in which the defendants had borrowed from them. It is his further evidence that the plaintiffs repaid Rs.50,000/- borrowed by the defendants. But he was not in a position to say who was the creditor and to whom they made payment. The decree amount payable under the decree in O.S.No.1309/1982 was paid by the plaintiffs and the suit property was saved from court auction sale. A sum of Rs.11,195/- was paid by the plaintiffs in full satisfaction of the decree claim as evidenced by Ex.A15-Full satisfaction memo in E.P.R.No.107/1986 in O.S.No.1309/1982.

45. Admittedly the suit property was the joint family property of the defendants 1 to 5 and late V.S.Thangavel. They threw the said property into the common stock of the partnership firm at the beginning of the partnership itself as evidenced by Ex.A3-Partnership Deed. By virtue of the terms of Ex.A3-Partnership Deed the suit property, which had been the coparcenary property of late V.S.Thangavel and his sons, namely defendants 1 to 5, came to be converted into the property of the partnership firm. Section 14 of the Partnership Act reads as follows:

"14. THE PROPERTY OF THE FIRM--Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by the purchase or other-wise, by or for the firm, or for the purposes and in course of the business of the firm and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with



money belonging to the firm are deemed to have been acquired for the firm."

By virtue of Section 14, a property can be thrown into the partnership stock without any formal document so as to make it the property of the firm as held in Ramanathan Chettiar vs. Controller of Assets reported in (1975) 99 ITR 410. In the absence of a document some difficulty may arise as to whether a property separately owned by a partner at the inception of the partnership firm or subsequently purchased by him has been thrown into the stock of the firm to make it a property of the partnership firm. On the other hand, when there is a document showing that the separate property of a partner was thrown into the common stock of the partnership firm, especially when the partnership deed contains such a recital, then there cannot be any doubt regarding the fact that such property became the property of the partnership firm. Ex.A3 contains a recital to the effect that out of 8 partners, plaintiffs 1 and 2 contributed Rs.1,00,000/- each towards the share capital, whereas late V.S.Thangavel and defendants 1 to 5, each having undivided 1/6th share in the suit property, gave the suit property to the partnership firm towards their share capital. Thus it is obvious that the suit property became the property of the partnership named "Marappan Commercial Complex". Though it is unnecessary that such a document should be registered, the plaintiffs chose to get it registered not on the date of its execution or a few days after its execution, but after they realised that they could not continue the partnership business PW1 made a clear admission that before 12.09.1985 itself i.e. within one month from the date of execution of Ex.A3, all the partners understood that the partnership business could not be carried on. However, Ex.A3 came to be presented for registration on 02.12.1985. Though it was presented on 02.12.1985 for registration it was actually registered and document number was assigned only on 30.12.1985. Registration charge at 1% of the total share capital of the partnership alone was collected.

46. Ex.A4 is produced as the partnership dissolution deed. Though it is said to have been executed on 11.12.1985, it was presented for registration only on 25.02.1986. A sum of Rs.1.798/- came to be collected under Section 41 of the Indian stamp Act, 1899. However a sum of Rs.3,710/- was paid as registration charge. The stamp duty collected under Section 41 of the Indian Stamp Act along with the value of the stamp papers used for writing Ex.A4 account for Rs.1,835/-. How the said stamp duty was calculated is not known. As per Article 46 under Schedule 1 to Indian Stamp Act, 1899, stamp duty should have been collected on the total value of the assets of the firm. Since the plaintiffs were not members of the family of V.S.Thangavel and defendants 1 to 5, it would have attracted Article 46B(i) and not sub clause (ii). The stamp duty leviable under sub clause (i) shall be 12% of the value of Rs.3,00,000/-. As per Ex.A4, the value of the suit property was furnished as Rs.6,00,000/-, liabilities of the firm which was the subject matter of dissolution was noted as Rs.3,00,000/- and the net value of the assets of the partnership firm was shown as



WEB C

Rs.3,00,000/-. If it was so, stamp duty that should have been paid as per Article 46B(i) on the basis of the dissolution deed involving partition of immovable property is 36,000/-. Even if it is assumed that it may attract sub clause (ii), then the stamp duty payable would have been Rs.9,000/-. The collection of stamp duty seems to have been made on the assumption that the document was a partition deed and hence the stamp duty should be paid only on the value of the divided shares. The same seems to be the reason why the payment allegedly made on the date of execution of the dissolution deed namely Rs.60,000/- alone was taken as the divided share to calculate the stamp duty at 3% and thus Rs.1,800/- has been worked out. Stamp duty seems to have been worked out under Article 45 treating the same as an instrument of partition. An instrument between the partners dividing the outstanding of the partnership without dissolving the partnership shall be construed to be a partition deed and not a deed of dissolution of partnership and that such instrument attracts stamp duty under Article 45 of Schedule I of the Indian Stamp Act, 1899. It has been held so by the Bombay High Court in Choturam vs. Ganesh reported in 3 Bombay Law Reporter 132. If it is a division of some of the partnership assets alone without causing dissolution of partnership then only the document come under the purview of Article 45 to attract stamp duty as a partition deed. On the other hand, if it is a deed of dissolution of the partnership and such dissolution involves partition of immovable properties of the firm among the partners, it squarely falls under Article 46B. Even if it comes under Article 46B, then a lesser stamp duty is attracted under Article 46B(2) in respect of partition of the immovable properties of the firm among the partners who are family members. If the dissolution involves partition of immovable properties of the firm among the partners who are not family members it attracts a higher stamp duty under Article 46B(1).

47. As per Section 6 of the Indian Stamp Act, 1899, when an instrument has been so framed to come within two or more of the descriptions in Schedule I and the stamp duty chargeable thereunder are different, it shall be chargeable with highest of such duties. Article 45 deals with partition simpliciter. A deed of dissolution involving partition of immovable properties squarely falls under Article 46B. After amendment of Article 46 by substitution of new sub clause (B) with effect from 01.07.1982. The earlier judgments of the Madras High Court in Secretary, Board of Revenue vs. Alagappa Chettiar reported in AIR 1937 Mad 308 and CCRA vs. Abdullah reported in AIR 1970 Mad 3 (FB) become redundant, wherein it was held that without an instrument whether it would be a deed of dissolution of partnership if it involved partition by virtue of Section 6 it would attract higher stamp duty applicable for partition under Article 45. After amendment dissolution involving partition of immovable properties of a firm among partners has been separately itemised and the stamp duty leviable at a higher rate on the entire property not a divided share alone, a lesser stamp duty is prescribed in case the partners are members of one and the same family. Here also the market value of the total property which is



WEB COPY

partitioned is to be taken, stamp duty payable on the total under partition and not the divided share alone. Hence, this court is the view that Ex.A4 ought to have attracted higher stamp duty as per Article 46B(i) on the total net value of the partnership asset, which was noted as Rs.3,00,000/-. But wrongly treating it as a partition deed, lesser stamp duty came to be collected. Hence Ex.A4 can be construed to be a document not duly stamped.

Point No.5:

48. The partnership dissolution deed, according to the plaintiffs, was executed on 11.12.1985. It was registered on 21.02.1986. Even prior to the date of Ex.A3-Partnership Deed, one Sundararajan & Co. Ltd had filed O.S.No.1309/1982 and obtained a money decree against V.S.Thangavel. The decree holder therein levied execution by filing E.P.R.No.107/1986 and the suit property was attached in the said execution proceedings. The plaintiffs raised objections for attachment and filed a petition in E.A.No.810/1988 making a claim on the basis of Ex.A4-Partnership Dissolution Deed. The said claim petition was dismissed after contest on 26.09.1996. It is quite obvious that in the said Execution Application, the genuineness and validity of Ex.A4-Partnership Dissolution Deed was challenged. Ultimately, the claim application came to be dismissed on 26.09.1996 upholding the challenge made to the partnership dissolution deed. Having suffered such an order, the plaintiffs could have taken steps without causing delay either to challenge the said order or to file the suit for the declaration as sought for in the present suit. Since the genuineness, legality and binding nature of Ex.A4 was disputed and such a contention disputing Ex.A4 was upheld on 26.09.1996 itself, cause of action for seeking a declaration regarding the validity and binding nature of Ex.A4-Partnership Dissolution deed had arisen long back on 26.09.1996 itself as evidenced by Ex.B9.

49. PW1 has also admitted in his evidence that the claim application filed by them as E.A.No.810/1988 was dismissed after a full-fledged enquiry. The validity of Ex.A4-Partnership dissolution deed came to be disputed and decided in the said above said claim petition. Though cause of action for filing such a suit for declaration regarding the validity of Ex.A4-Partnership dissolution deed might have arisen prior to the dismissal of the execution application, there cannot be any contrary view that at least on the dismissal of the execution application (claim petition), cause of action for seeking declaration regarding the validity of Ex.A4-Partnership dissolution deed had arisen. As per Article 58 of the Limitation Act, 1963, the suit for declaration shall be filed within three years from the date on which the right to issue first accrues. The three years period ended with 26.09.1999. The plaintiffs waited for eight more years after the expiry of the said period of three years and then filed the present suit for declaration regarding the validity of Ex.A4-Partnership dissolution deed. Hence there can be no hesitation in holding that the suit is barred by limitation.



50. In paragraph 10 of the plaint, the plaintiffs have stated as follows:

"In the year 2002 the defendants 1 to 7 with a view to make an unlawful gain surreptitiously brought about an agreement for sale dated 5.3.2002 registered as Doc.No.1005/2002 in respect of the suit property over which they had no title or rights"

It is also quite obvious that the plaintiffs filed a previous suit O.S.No.184/2002 on the file of the District Munsif, Erode for bare injunction. The same will show that cause of action for filing the suit for a declaration regarding the validity of Ex.A4-Partnership Dissolution Deed arose in 2002 itself, whereas the present suit came to be filed nearly after five years, which is beyond the period of limitation of three years prescribed under Article 58 of the Limitation Act, 1963. Of course, the plaintiffs may try to contend that the earlier suit in O.S.No.184/2002 was withdrawn with liberty to file a fresh suit in respect of the very same subject matter. Ex.A73 is the certified copy of the order passed in I.A.No.870/2006 in O.S.No.184/2002 that the said application filed by the plaintiffs seeking leave under Order 23 Rule 1(3) to withdraw the said suit with liberty to file a fresh suit in respect of the same subject matter. The said application seeking permission to withdraw the said suit with liberty to file a fresh suit in respect of the same subject matter was allowed on payment of cost. The contention of the plaintiffs that there was a technical defect in drafting the pleading was accepted and the suit was permitted to be withdrawn with liberty to file a fresh suit in respect of the same subject matter. However liberty granted under Order 23 Rule 1 (3) will not affect limitation which has already started running.

Order 23 Rule 2 reads as follows:

"2. Limitation law not affected by first suit. -
In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted."

It is quite clear that even the earlier suit O.S.No.184/2002 was not filed within the period of limitation, since the cause of action for filing the suit for declaration in respect of Ex.A4 arose in 1996 itself. Even otherwise, if the limitation is to be counted from 2002, the present suit shall stand barred by law of limitation. The learned trial Judge has not committed any error or mistake in arriving at a conclusion that the suit for declaration regarding the validity of Ex.A4 is barred by limitation. There is no scope for interfering with the same and the said finding of the trial court deserves confirmation. Point No.3 is answered accordingly holding that the suit is barred by limitation.

Point No.7:

51. It is the contention raised on behalf of the appellants herein/plaintiffs that right from the date of execution of Ex.A4-



WEB C

Partnership dissolution deed, late V.S.Thangavel and defendants 1 to 7 acquiesced in the title of the plaintiffs in respect of the suit property and that hence they are estopped from disputing the title of the plaintiffs. It is also contended on behalf of the appellants herein/plaintiffs that the numerous documents showing mutation of public records in the names of the plaintiffs and also the documents produced on the side of the plaintiffs in proof of their collecting rent from the tenants and making payment of property tax as well as the electricity charges will show that the plaintiffs alone were in possession and enjoyment of the suit property and the defendants had been excluded from possession. It is the further contention raised on behalf of the appellants herein/plaintiffs that the evidence adduced on the side of the defendants would probablise the case of the appellants/plaintiffs that by consensus, the suit property was allowed to be taken by the plaintiffs towards their share capital in the partnership firm, whereas the deceased V.S.Thangavel and defendants 1 to 5 were paid money equivalent of their contribution in the share capital of the partnership firm. It is the further contention raised on behalf of the appellants/plaintiffs that the fixation of the value of the suit property at Rs.6,00,000/- at the time of dissolution would be probable, if the admissions made on the side of the respondents herein/defendants are taken into account. Learned counsel for the appellants relied on the weaknesses and lacunae found in the evidence adduced on the side of the respondents herein/defendants. He also relied on a number of documents marked as Exs.A21 to A50, A53 and A54 in support of his contention that the plaintiffs were in exclusive possession and enjoyment of the suit property.

52. The revenue records evidencing payment of property tax and electricity charges alone shall not be enough to hold that the suit property vested with the plaintiffs. It is a fact admitted by the plaintiffs that patta for the suit property stands in the name of the defendants. Though it may be possible to hold that the defendants made attempts to create encumbrances by executing mortgages, sale agreements and sale deeds, the same alone shall not be enough to hold that the defendants 1 to 5 and V.S.Thangavel, who gave up the suit property in entirety to the plaintiffs 1 and 2, later on started causing trouble as the price of land has gone up. As we have seen supra, the plea of dissolution of the partnership firm has not been substantiated. The possession of the property belonging to the partnership by one or more of the partners alone will tantamount to the possession of all the partners. A possession by one partner shall be on behalf of the other partners also. In such a case, the plaintiffs cannot seek a decree of prohibitory injunction against the other partners regarding the enjoyment of the property.

53. As pointed out supra, the plaintiffs have not chosen to seek a declaration of title in respect of the suit property. In such a situation, it is unnecessary to go into the question of title. Even then, incidentally, this court can take note of the fact that the suit property, which was originally the joint family property of V.S.Thangavel and defendants 1 to 5, came to be thrown



WEB C

into the common stock of the partnership firm under Ex.A3- Partnership deed and that it remained the property of the partnership firm and it did not lose its character thereafter. The alleged partnership dissolution effected under Ex.A4 has not been substantiated. Therefore, the suit property continues to be the stock of the partnership firm. As such, the appellants herein/plaintiffs cannot succeed in their effort to get a prohibitory injunction against the other partners in respect of the enjoyment of the suit property. Hence the finding of the court below that the plaintiffs have not proved their entitlement to get a decree for permanent injunction as prayed for, cannot be found fault with and the same deserves to be confirmed. Point No.7 is answered accordingly.

54. In view of the answers given to point Nos.3, 4, 5, 6 and 7, this court comes to the conclusion that the decree of the trial court dismissing the suit O.S.No.313/2007 filed by the appellants herein/plaintiffs does not deserve any interference by this court; that there is no merit in the appeal and that the same deserves to be dismissed confirming the decree of the trial court, namely First Additional District Judge, Erode dated 07.12.2009 in O.S.No.313 of 2007.

In the result, the appeal suit is dismissed, confirming the judgement and decree of the First Additional District Judge, Erode dated 07.12.2009 made in O.S.No.313 of 2007. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

asr

To

1. The First Additional District Judge,
Erode

2. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr. R. Subramani, Advocate, Sr. 28362

A.S.No.31 of 2010

PUR (CO)
kk 27/6