IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2016

(Judgment Reserved on 01.09.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.985 of 2004

Atul Kapur

.. Plaintiff

Vs.

1. Arun Kapur
2. Mrs.Vinay Kumari
3. Mrs.Anu Kapur

(Third defendant impleaded as per order dated 28.07.2009 in A.No.4505 of 2008) ... Defendants

Plaint filed and numbered as Civil Suit under Order IV, Rule 1 of the Madras High Court Original Side Rules read with Order VII, Rule 1 of the Civil Procedure Code, praying for a judgment and decree against the defendants:

(a) For partition of the immovable property described in the schedule hereunder and put the plaintiff in separate possession of 11014/28284 share of the plaintiff by metes and bounds:

(aa) for a declaration that the release deed dated 01.04.2002 registered as Document No.646 of 2002 in the office of the Sub-Registrar, Periamet, is brought about by fraud and undue influence and is illegal, inoperative and unenforceable and not intended to be a release deed, for cancellation of the said document, and direction to the Sub-Registrar, Periamet, to make entry of such cancellation in the Register. (Amended as per order dated 05.01.2006 in A.No.1638 of 2005)

(aaa) Permanent injunction restraining Mrs.Anu Kapur not to interfere with the plaintiff's possession of the pent house 9-A at 52 Taylors Road, Kilpauk, Chennai - 10 and also restraining the defendants from in any way encumbering or alienating the property pent house 9-A situated at 52 Taylors Road, Kilpauk, Chennai - 10. (Amended as per order dated 23.10.2009 in Application No.5470 of 2009).

(b) Directing the first defendant to render true and correct account of the income from the said property, collected by the first defendant.

(bb) for a permanent injunction restraining the defendants from alienating or encumbering in any manner, pet house 9-C and 9-E situated at 52 Taylors Road, Kilpauk, Chennai-10. (Amended as per order dated 23.10.2009 in Application No.5470 of 2009)

and

(c) for costs of this suit.

Plaint - Schedule of Property

All that land and buildings bearing Door No.52 (Old Door No.16), Taylors Road, Kilpauk, Chennai - 10 bounded on the East by Taylors Road, bounded on the West by PLot No.7, in the lay out No.15 Taylors Road, Kilpauk, Chennai, bounded on the North by Old No.17, Taylors Road, South by Old No.15, Taylors Road, and bearing O.S.No.47 to 51, and part of 50 and 56, R.S.No.138 comprised in C.C.No.2778, measuring 11 grounds 1837, sq. feet, and situated in Registration District of Madras and Sub-District of West Madras.

Counter claim by defendants 1 and 2 in additional written statement (2nd):

(a) for directions to hand over the original documents of the suit property which the plaintiff has taken from the Indian Overseas Bank, namely (1) Doc.No.2732 of 1961, dated 6.11.1961, (2) Doc.No.1983 of 1972, dated 31.3.1972 and (3) Doc.No.2917, dated 09.06.1972, and

(b) to dismiss the suit with costs.

Counter claim by third defendant in the written statement/additional written statement:

(i) to direct the plaintiff to hand over the vacant possession of the pent house 9-A to the third defendant as enumerated in Schedules 'A' and 'B' in the additional written statement of the third defendant, which are detailed below:

Schedule 'A'

Property at No.52, Taylors Road, Kilpauk, Chennai-600 010, measuring 11 grounds 1837 Sq.Ft. and situate in the Registration District of Chennai-Central, and Sub-Registration District of Periamet Chennai, bearing O.S.Nos.47 to 51 and part of 50 and 46, Resurvey No.138, comprised in C.C.No.2778, in Egmore Village, bounded on the--

East by : Taylors Road
West by : Plot No.7 in the lay-out No.15, Taylors Road, Kilpauk, Chennai-600 010
North by : No.53, Taylors Road, and
South by : No.51, Taylors Road.

Schedule 'B'

Pent House '9A' situated in extreme West and West of Pent House '9C', measuring about 5000 Sq.Ft. of super built area along with undivided share of land of 1050 Sq.Ft. with 2 covered and 2 open car parks and appurtenant Terrace in the 9th and 10th floors of the multi-storied building known as 'Ved Nivas' at No.52, Taylors Road, Kilpauk, Chennai-600 010, morefully described in Schedule 'A'.

and (ii) to dismiss the suit filed by the plaintiff with costs.

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For Plaintiff : Mr.T.V.Ramanujan, Senior Counsel for Mr.C.Rajan

For Defendants 1&2 : Mr.A.Ramesh Kumar

For Defendant No.3 : Mr.A.S.Baalaji



JUDGMENT

The Civil Suit is filed by the plaintiff praying for judgment and decree against the defendants:

(a) for partition of the immovable property described in the schedule hereunder and put the plaintiff in separate possession of 11014/28284 share of the plaintiff by metes and bounds:

(aa) for a declaration that the release deed dated 01.04.2002 registered as Document No.646 of 2002 in the office of the Sub-Registrar, Periamet, is brought about by fraud and undue influence and is illegal, inoperative and unenforceable and not intended to be a release deed, for cancellation of the said document, and direction to the Sub-Registrar, Periamet, to make entry of such cancellation in the Register. (Amended as per order dated 05.01.2006 in A.No.1638 of 2005)

(aaa) For Permanent injunction restraining Mrs.Anu Kapur not to interfere with the plaintiff's possession of the pent house 9-A at 52 Taylors Road, Kilpauk, Chennai - 10 and also restraining the defendants from in any way encumbering or alienating the property pent house 9-A situated at 52 Taylors Road, Kilpauk, Chennai - 10. (Amended as per order dated 23.10.2009 in Application No.5470 of 2009).

(b) Directing the first defendant to render true and correct account of the income from the said property, collected by the first defendant.

(bb) for a permanent injunction restraining the defendants from alienating or encumbering in any manner, pet house 9-C and 9-E situated at 52 Taylors Road, Kilpauk, Chennai - 10. (Amended as per order dated 23.10.2009 in Application No.5470 of 2009)

and

(c) for costs of this suit.

2. The case of the plaintiff, as stated in the plaint, (Amended as per order dated 05.01.2006 in A.No.1638 of 2005 and order dated 23.10.2009 in A.No.5470 of 2009) is as follows:-

(a) The first defendant is the plaintiff's elder brother and the second defendant is his mother. The suit property belonged to late Ved Prakash Kapur, father of the plaintiff and the first defendant and husband of the second defendant. By a Deed of Settlement dated 31.03.1972 registered as Document No.1983 of 1972 in the office of the Sub-Registrar, Periamet, the plaintiff's father settled a portion of the said property in favour of the plaintiff. By a Deed of Settlement dated 09.06.1972 registered as Document No.2917 of 1972 in the office of the Sub-Registrar, Periamet, the plaintiff's father settled another portion of the said property in favour of the first defendant. The plaintiff's father Ved Prakash Kapur died on 29.07.1998 leaving behind him, the plaintiff and the defendants as his legal heirs and the remaining portion of the suit property, without any Will.

(b) With the suggestion of the first defendant for developing the suit property as joint venture, the plaintiff and the second defendant agreed for the same and entrusted the matter with the first defendant for constructing flats and for equal distribution according to respective shares of undivided land. An agreement dated 22.04.1999 was executed between the parties for the said purpose. Three pent houses in the ninth floor would be taken by each of the parties. It was agreed that pent house No.9-A was allotted to the plaintiff, pent house No.9-C to the second defendant and pent house No.9-E to the first defendant. The first defendant is in possession of all the documents. After completion of construction, the plaintiff was put in exclusive possession of pent house 9-A and other two pent houses continued to be with the first defendant.

(c) On 27.07.2004, the plaintiff received a notice of caveat from the defendants and at that time, the plaintiff did not realize the fraudulent and evil design of the first defendant. On 05.10.2004, when the plaintiff was carrying out work in his pent house, the first defendant's men created obstacles. The plaintiff gave a complaint to Kilpauk Police Station, which is pending investigation. A document dated 01.04.2002 registered as Document No.646/2002 on the file of the Sub-Registrar, Periamet, is sham and nominal, is without consideration and never intended to be acted upon to transfer the title of the property of the plaintiff in favour of the defendants and is liable to be cancelled. The said document dated 01.04.2002 was never executed by the plaintiff as a Release Deed and was not intended to relinquish his undivided share in the said property and has been brought about by fraud and undue influence. On false and dishonest representations made by the first defendant, the plaintiff was induced to execute the said Release Deed of his share of 10,646 sq. ft. of undivided land in favour of the defendants for nominal consideration of Rs.5 Lakhs, which was not paid and grossly undervalued.

(d) The said document dated 01.04.2002 sought to be used as Release Deed, first became known to plaintiff only on 25.01.2005 when the Xerox copy of the same was directed to be part of the record in this suit. The first defendant brought another document dated 26.06.2008 styled as Settlement Deed purporting to settle pent house 9-A and 9-C in favour of his wife Mrs.Anu Kapur and the said document is registered as Document No.1309 of 2008 on the file of the Sub-Registrar, Periamet. In the said document, the first defendant referred the document dated 01.04.2002 and made false statement that he is the owner seized and possessed of the pent house No.9-A, which is in the possession of the plaintiff. The said document dated 26.06.2008 is finding place in the encumbrance certificate as Document No.1309 of 2008 in the office of the Sub-Registrar, Periamet. The first defendant brought about the said document fraudulently in the name of his wife, and the same is illegal, invalid and not binding upon the plaintiff. Since the document will be used by the wife of the first defendant to interfere in plaintiff's possession, the plaintiff seeks for the relief of declaration and injunction as prayed for in the plaint.

(e) The first defendant has been receiving all the money in respect of the sales of the flats, which has been done at the price of not less than Rs.2,000/- per sq. ft. and no money has been paid to the plaintiff nor any flats given to him, except the aforesaid pent house which is in the possession of the plaintiff, even though the plaintiff is having absolute right of more than 11,014 sq. ft. of undivided land in the said property. The plaintiff owns the corresponding area of built of area of over 44,000 sq. ft. plus corresponding car park area. The first defendant is bound to render true and correct accounts as to the amounts received by him for and on behalf of the plaintiff.

(f) The plaintiff is entitled to partition and separate possession of 44,000 sq. ft. of building corresponding to his undivided share of 11,014 of undivided interest in the suit property, out of the total built of area of 1,12,000 sq. ft. The plaintiff's requested the defendants for partition and separate possession of his share by metes and bounds and to render true and correct accounts and payment of his share of the amounts received by the first defendant from the sale of the flats after defraying his share of the expenses. The first defendant has not given the same. Hence, the plaintiff has filed this suit for the reliefs stated supra.

3. The first and second defendants have filed written statement stating as follows:-

(a) There is no such agreement dated 22.04.1999 executed between the parties to share the flats and three pent houses to be constructed equally. The plaintiff released all his rights in the suit property by way of Release Deed dated 01.04.2002 in favour of the defendants. It is not correct to state that the first defendant brought various agreements and documents all of which the plaintiff signed. It is not correct to state that after completion of construction, the plaintiff was put in exclusive possession of pent house No.9-A. All the three pent houses are in possession with the defendants. The defendants filed caveat petition against the plaintiff and on receipt of the same, the plaintiff, along with rowdy elements, is trying to enter into the defendants property and disturbing the peaceful possession of their property. The defendants lodged police complaint with Inspector of Police, Kilpauk, Chennai, against the plaintiff on 11.10.2004 for trespassing and the said complaint was received and receipt given.

(b) Electricity connections are in favour of the defendants. The first defendant is paying maintenance charges for all the three pent houses. The plaintiff has no right in the said property. Originally, an unregistered joint venture agreement was entered with M/s.Sukrit Construction, Mrs.Sujatha Hariharan, Mr.Rishi Kapur, S/o. Arun Kapur and Mrs.Ritu Kapur, W/o. Atul Kapur, as the partners of M/s.Sukrit Construction to develop the suit property and the said joint venture agreement was nullified and fresh memorandum of understanding and memorandum of agreement was entered on 14.12.2001 on fresh terms and conditions. The plaintiff's wife released her right in respect of the partnership firm on her retirement on

31.03.2002 and Atul Kapur (Plaintiff) has released his right on 01.04.2002 by way of registered Release Deed in favour of the defendants. While registering undivided share of land in some Sale Deed as and when required by the buyers, the plaintiff has signed as a confirming party that he has no right in the said property. The plaintiff is not entitled to partition and separate possession of building corresponding to his share and the defendants prayed for dismissal of the above suit.

4. The defendants have filed additional written statement stating as follows:-

(a) The plaintiff released all his rights in favour of the first and second defendants in respect of the property by registered Release Deed dated 01.04.2002 bearing Document No.646 of 2002 with the Sub-Registrar Office, Periamet. The plaintiff informed the promoters M/s.Sukrit Construction by letter dated 02.04.2002 confirming the said Release Deed. After the release, the plaintiff has confirmed the release in 11 registered Sale Deeds of various dates in 2002 and 2003 in respect of the undivided share of the land in the said property and he has signed as a confirming party and he executed registered Power of Attorney in favour of first defendant's wife, admitting the release and having no further rights in the said property.

(b) The plaintiff was given another firm business including its goodwill, machinery and properties and stock situated at Nelson Manickam Road, Chennai-29 and the same was given to him and transferred to his nominees, namely his wife and daughter. On 21.10.1968, the Company was started in the name of M/s.Jai Dayal Pran Nath Kapur by Mr.Arun Kapur and Mrs.Vinay Kumari as two partners, who are defendants herein. On 21.01.1971, by registered sale deed, the property at Nelson Manickam Road, was bought in the name of the firm, in which the plaintiff's wife and daughter were taken as additional partners. On 02.03.2002, both the original partners, who are defendants 1 and 2 herein, resigned without any payment. On 01.04.2002, the plaintiff executed the abovesaid release deed. From 27.08.2003, the plaintiff started selling the undivided share of land in the property situated in Nelson Manickam Road and the same being executed by his nominees, namely wife and daughter. The allegation that the release deed was grossly under-valued, is denied. The allegation that Rs.5 lakhs was not paid, is contrary to the facts, as the receipt of the said amount is acknowledged in the release deed. The plaintiff has not come with clean hands before this Court and the defendants prayed for dismissal of the suit.

5. The defendants 1 and 2 have filed second additional written statement stating as follows:

(a) After executing the registered release deed dated 01.04.2002, the plaintiff subsequently acted upon it and executed (jointly with the defendants 1 and 2) a sale deed dated 10.06.2002, registered as Document No.1097 of 2002 and subsequent ten sale deeds as a confirming party, confirming the release spread over a period of eight months. The first defendant could sell the flats only on the strength of the release deed, which gave the first defendant the title to the property. The settlement deed in Document No.1309 of 2008, dated 22.06.2008 had been executed on the strength of the release deed. The plaintiff's accusations and prayer for injunction are baseless. The plaintiff has tried to project as if the Release Deed was executed without his free consent.

(b) A perusal of the family agreement, dated 22.04.1999 between the plaintiff and the defendants 1 and 2, shows that the family had two immovable properties, namely (i) the suit property at Taylors Road and (ii) No.61, Muthukrishnan Road, Aminjikarai, Chennai, and family business and machinery, all of which were to be divided equally among all the three, namely the plaintiff and defendants 1 and 2. There is no mention of any pent house in it. The plaintiff released his rights in the suit property on Taylors Road in favour of defendants 1 and 2 and in return, got the other property at No.61, Muthukrishnan Road, Aminjikarai, Chennai (of an area of more than 10 grounds) together with the family business along with the machinery, all of which were transferred to his nominees, namely the plaintiff's wife and daughter. Besides the notional value of Rs.5 lakhs enumerated in the Release Deed, the plaintiff also got the other property of more than 10 grounds, which the plaintiff has already developed and encashed and also got the family business. The plaintiff suppressed the facts in the plaint.

(c) About ten months after executing the said Release Deed, the plaintiff has also executed a registered Power of Attorney in Document No.58 of 2003, dated 24.01.2003 in favour of the third defendant (wife of the first defendant), wherein also he has confirmed the release. The plaintiff has also developed and encashed the property at No.61, Muthukrishnan Road, Aminjikarai, Chennai, which came to his share. Sharing of family assets is done with the free consent of all parties and it has also already been acted upon by them. The plaintiff had no objection to the sales of his share of flats by the first defendant. Without admitting, his only grievance was that he had not been paid his share of the sale proceeds (though there was no such agreement or understanding). Sales could be done by the first defendant only on the strength of the Release Deed. The plaintiff's grievance is only concerning the subsequent acts of defendants 1 and 2 after the Release Deed was executed and acted upon when the sale of flats took place. The Release Deed is entirely unconditional and unqualified and it cannot be cancelled on the subsequent actions of the releasees (defendants 1 and 2) whatsoever. The plaintiff signed as a confirming party in the subsequent sale deeds after the Release Deed was executed.

(d) The plaintiff was a partner of the firm, namely M/s.Jain Dayal Kapur Distributing Company, which had taken loan from Indian Overseas Bank, Chintadripet Branch, Chennai, against which, the suit property was given as collateral security and original documents were kept by the Bank. After the loan had been discharged, the plaintiff collected the original documents from the Bank and is not handing over the same to the defendants, though as per the

Release Deed, the same are to be with the releasees. The defendants 1 and 2 raise cross claim for handing over the said documents of the suit property and prayed for dismissal of the suit.

6. The third defendant has filed written statement/additional written statement, reiterating the averments of the defendants 1 and 2 in their written/additional written statement/second additional written statement. The third defendant further stated that the second defendant settled her rights in the suit property in favour of the first defendant by Settlement Deed, dated 28.02.2003 and handed over possession to the first defendant. The third defendant also stated that she is the owner of pent house Nos.9-A and 9-C, the same having been settled in her favour by the first defendant by the settlement deed dated 26.06.2008. The third defendant is the owner of pent house No.9-A and the plaintiff is illegally occupying the same and prayed for handing over the vacant possession of pent house No.9-A.

7. The plaintiff has filed written statement (by way of reply), to the counter claims of defendants 1 to 3 filed along with additional written statement, stating that there cannot be any counter claim in the additional written

statement. Since the defendants have created a document in favour of the third defendant, during the pendency of the suit, this Court permitted the plaintiff to amend the plaint. The plaintiff in his reply, denied the averments made by the defendants 1 to 3 in their written statement and additional written statement. The plaintiff further stated that he never released all his rights in the property for a price of Rs.5 Lakhs stated to have been paid by defendants 1 and 2 as consideration for such release. The Release Deed is the subject matter of the suit, wherein the validity of the same is challenged. The plaintiff reiterated the averments made in the plaint. The plaintiff further set out in detail the terms and conditions on which the family arrangement, dated 26.08.1999, which refers to the agreement dated 22.04.1999, has been arrived at. He prayed for decreeing the suit.

8. This Court, by order dated 19.4.2010, framed the following issues:-

"(i) Whether the plaintiff is entitled to partition and separate possession ?

(ii) Whether the deed of release dated 01.04.2002 is sham and nominal and executed without consideration and brought forth by fraud?

(iii) Whether the consideration of Rs.5

Lakhs stated in the deed of release actually passed on?

(iv) Whether the defendants are liable to account for the monies received by them by the sale of the flats ?

(v) Whether the settlement deed executed by the first defendant in favour of the third defendant dated 26.06.2008 is liable to be set aside ?

(vi) Whether the third defendant is entitled to a decree for recovery of possession of Flat No.9-A in the suit property ?

(vii) Whether the plaintiff is entitled to a decree for permanent injunction, and

(viii) To what relief, the plaintiff and/or the third defendant is entitled to, if any ? "

9. This Court, by order dated 22.09.2011, framed the following additional issue:

"Whether the valuation made by the third defendant in the counter claim is correct and whether the court fee paid thereon is proper ? "

10. During the course of trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-26. On the side of the defendants, the first defendant examined himself as D.W.1 and the third defendant was examined as D.W.2 and Exs.D-1 to D-33 were

marked.

11. Learned Senior Counsel appearing for the plaintiff contended that the entire suit property belonged to the plaintiff's father late Ved Prakash Kapur; the plaintiff acquired a portion of the suit property by way of settlement deed executed by his father in Ex.P-2, dated 31.03.1972 and another portion of the suit property was settled in favour of the first defendant, by way of settlement deed Ex.P-3, dated 09.06.1972. He further contended that since it was not feasible to enjoy the suit property in common, the plaintiff requested the defendants for partition, but the defendants were not amenable for division of the suit property and hence, the plaintiff has filed the suit for partition. Learned Senior Counsel appearing for the plaintiff further submitted that during the pendency of the suit, the first defendant, by way of settlement deed, dated 26.06.2008, settled some portions of the property in favour of his wife, the third defendant and the same is illegal and invalid and not binding on the plaintiff. Therefore, by way of amended prayer, the plaintiff also seeks for permanent injunction restraining the third defendant from interfering with the plaintiff's possession of the pent house 9-A and also restraining the

defendants from in any way encumbering or alienating the same. Learned Senior Counsel appearing for the plaintiff further contended that the plaintiff came to know that the first defendant created a document, which is purporting to be the release deed, dated 01.04.2002, executed by the plaintiff in favour of the defendants 1 and 2, by fraud and undue influence and the same was never intended to be acted upon and no right flows from the same and the same is without consideration. He further contended that the amount of Rs.5 lakhs mentioned in the said release deed was never paid by the plaintiff and hence, the plaintiff amended the prayer in the suit by adding the prayer of declaration to declare that the release deed, dated 01.04.2002 is brought by fraud and undue influence and the same is illegal, inoperative and unenforceable and for cancellation of the said document.

12. Learned Senior Counsel appearing for the plaintiff further contended that the plaintiff and the defendants 1 and 2 earlier entered into an agreement in Ex.P-5, dated 14.12.2001, with the construction Company and there was also a letter of arrangement between the parties, which is marked as Ex.P-7 dated 14.12.2001. Learned Senior Counsel appearing for the plaintiff further contended that the

plaintiff and the defendants 1 and 2 sent a letter to CMDA, Chennai on 25.07.2002 (Ex.P-8) enclosing regularisation fee, etc., for the construction. Ex.P-9, dated 13.07.2001 is the letter addressed by the Architect to M/s.L & T and Ex.P-10 series are the letter addressed by the Architect to the first defendant, with plan. Ex.P-11 is the letter addressed by the first defendant to the Architect. Learned Senior Counsel further submitted that after the construction is over, the plaintiff is enjoying Door No.9-A house continuously and also paying property tax and Ex.P-15 series are the property tax demand card, etc., Ex.P-16 series are the security guard payment receipts, Ex.P-20 is the E.B., and Ex.P-22 series are the copies of the fire insurance policies and Ex.P-23 series are the membership fee payment proof for Ved Nivas Apartment Owners' Association, maintenance charges, etc. Since the defendants are interfering with the plaintiff's possession of the suit property, the plaintiff gave complaints (Ex.P-12 series and Ex.P-13 series) to Kilpauk Police Station, Chennai and he also complained to the Commissioner of Police, Egmore, Chennai, in Ex.P-14. Learned Senior Counsel further contended that Ex.P-17 legal notice was sent by the Advocate of M/s.L & T to the plaintiff's wife. Learned

Senior Counsel appearing for the plaintiff further submitted that since the plaintiff was not able to get the registered copy of the alleged release deed, dated 01.04.2002, the plaintiff preferred a compliant (Ex.P-21) to the Inspector General of Registration, Santhome, Chennai.

13. Learned Senior Counsel appearing for the plaintiff further submitted that since there was no partition between the plaintiff and the defendants 1 and 2, the plaintiff is entitled to half-share in the undivided share in the suit property, but the joint venture construction Company sold some portion of the property through the defendants to different persons and the plaintiff's share amount was not given and hence, the plaintiff also seeks for rendition of true and correct account of the income from the said property, collected by the first defendant. He further contended that since the plaintiff filed the suit for partition and separate possession of his share, the alleged settlement deed executed by the first defendant in favour of the third defendant in Ex.D-33 dated 26.06.2008 is not valid, as the third defendant has no right or interest over the settled property. Hence, the counter claim filed by the third defendant for recovery of possession of Door No.9-A from the plaintiff, is liable to be dismissed as not

maintainable. Learned Senior Counsel also submitted that the cross-claim of the defendants 1 and 2 for handing over the original documents obtained by the plaintiff, is also not maintainable. Learned Senior Counsel further submitted that the plaintiff is the joint owner of the suit property and he is entitled to his share in the suit property and hence, the plaintiff has filed the above suit for partition to divide the property. For all the above reasons, learned Senior Counsel appearing for the plaintiff prayed that the suit may be decreed as prayed for.

14. Learned counsel appearing for the defendants 1 and 2 contended that since the plaintiff, on 01.04.2002 executed a release deed in favour of the first and second defendants, voluntarily, after receiving Rs.5 lakhs, and thereby, released his entire right in the suit property and the said release deed was acted upon on that day itself and only after the release deed, he signed as witness in the subsequent sale deeds and the relevant copies of the sale deeds are produced on the side of the defendants. He further submitted that the plaintiff confirmed the release deed and also executed General Power of Attorney in favour of the third defendant, to sign in the sale deeds.

15. Learned counsel for the defendants 1 and 2 further

submitted that the plaintiff has filed the suit for partition in respect of Door No.52 (Old Door No.16), Taylors Road, Kilpauk, Chennai, but he was already given the property with business including goodwill, machinery, properties and stock situated in Nelson Manickam Road, Chennai, in which, the plaintiff's wife and daughter were partners and the defendants 1 and 2 retired as partners, which is evident from Ex.D-20. The copy of receipt issued by Registrar of Firms, Madras (North), is marked as Ex.D-21. He further contended that the partners sold some properties, which is evident from Exs.D-22 and D-23 and Ex.D-24 series are the Encumbrance Certificates. Ex.D-25 is the letter sent by the Indian Overseas Branch, Asset Recovery Management Branch, Central Office, Anna Salai, Chennai-2 to the first defendant, intimating that the original documents specified therein, were returned to the plaintiff, after the loan account was settled. The certified copies of the release deed, dated 01.04.2002, executed by the plaintiff in favour of the defendants 1 and 2, are marked as Exs.D-1 and D-27. Ex.D-33 dated 26.06.2008 is the certified copy of the settlement deed executed by the plaintiff in favour of the third defendant. Ex.D-16 and Ex.D-30, which are dated 24.01.2003, are the certified copies of the General Power of Attorney executed by the plaintiff, appointing the third defendant as his Power of Attorney. Ex.D-15 and Ex.D-31, which are dated 14.02.2003, are the certified copies of the sale deed executed by the plaintiff and the defendants 1 and 2 in favour of Darendra Kumar Golchha and Mrs.D.Pusha Golchha. Thus, it is clear that the plaintiff was given the entire property in Nelson Manickam Road and they have been dealing with the same. Learned counsel for the defendants 1 and 2 further submitted that since the plaintiff released the entire share in the Taylors Road property, i.e. the suit property, the same is in enjoyment of the defendants 1 and 2. The plaintiff has no right, title or interest in the suit property after the execution of the release deed, dated 01.04.2002, marked in Ex.D-1, as the suit property is in possession and enjoyment of the defendants. He further submitted that the plaintiff's possession and enjoyment in Door No.9-A is also illegal and the plaintiff is liable to hand over the property in Door No.9-A to the third defendant, instead, the plaintiff has filed the suit on the ground that Ex.D-1 release deed was obtained by fraud and undue influence.

16. Learned counsel for the defendants 1 and 2 further

submitted that the plaintiff is a Graduate and doing business and is well-versed in the business transactions and therefore, he cannot be unduly influenced by the defendants 1 and 2 and the first defendant is also having separate business. Hence, the allegation of the plaintiff that he was unduly influenced and and the release deed was obtained by fraud committed by the first defendant, is not true, and the plaintiff voluntarily executed the release deed in favour of the defendants 1 and 2 after the plaintiff got the property in Nelson Manickam Road, along with his family members. Therefore, the learned counsel appearing for the defendants 1 and 2 contended that the plaintiff is liable to hand over the possession of the property in Door No.9-A to the third defendant, who is the owner of the same. If the plaintiff has obtained original documents from the Indian Overseas Bank, since he has already released his share in the entire suit property, he has to hand over the original documents to the defendants 1 and 2 and the learned counsel for the defendants 1 and 2 prayed that the counter claim may be allowed. Since the plaintiff has no right or interest over the suit property, he prayed for dismissal of the suit. In support of his submissions, learned counsel appearing for the defendants 1 and 2 relied on the following decisions of the Supreme Court:

(a) 1990 (3) SCC 68 (Manibhai Vs.Hemraj):

"20. .... ... It may be mentioned at the outset that the very approach of the High Court in considering transaction Ex.48 dated April 22, 1948 as well as the other transactions of February 11, 1953 being part of the same transaction, is not correct. It is necessary to examine each transaction independently and then to arrive at a conclusion whether such a transaction or alienation can be held to be valid or not. ... ....

21. Mulla in "Principles of Hindu Law" (15th edn.) in paragraph 295 has dealt with the question of sale or mortgage of coparcenary property for payment of antecedent debt as under:

"The father of a Jonit Hindu Family may sell or mortgage the joint family property including the sons' interest therein to discharge a debt contracted by him for his own personal benefit, and such alienation binds the sons, provided--(a) the debt was antecedent to the alienation, and (b) it was not incurred for an immoral purpose.

The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the sons to discharge his father's debt not tainted with immorality. The more circumstance, however, of a pious obligation does not validate the alienation. To validate an alienation so as to bind the son, there must also be an antecedent debt. Generally, there is no question of legal necessity in such a case. 'Antecedent Debt' means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transaction impeached. A borrowing made on the occasion of the grant of a mortgage is not an antecedent debt.

To constitute a debt an "antecedent" debt it is not necessary that the prior and subsequent creditors should be different persons. All that is necessary

is that the two transactions must be dissociated in time as well as in fact."
"

(b) AIR 1963 SC 1279 (Ladli Prashad Jaiswal Vs. The Karnal Distillery Co. Ltd, Karnal and others):

"20. Order 6 Rule 4 Civil P.C. provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix, particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with trial of the suit, insist upon the particulars, which give adequate notice to the other side of the case intended to be set up."

(c) 2008 (15) SCC 673 (Ranganayakamma Vs. K.S.Prakash):

"40. When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed."

(d) 1982 (1) SCC 223 (Chhaganlal K.Mehta Vs. P.N.Haribhai):

"22. It may be pointed out that estoppel deals with questions of facts and not of rights. A man is not estopped from asserting a right which he had said that he will not assert. It is also a well-known principle that there can be no estoppel against a statute. After the death of Motibhai his son Chimanrai succeeded in law.

23. To bring the case within the scope of estoppel as defined in S.115 of the Evidence Act: (1) there must be a representation by a person or his authorised agent to another in any form--a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) Only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

(e) 2007 (12) SCC 27 (Kamakshi Builders Vs. Ambedkar Educational Society):

"23.Acquiescence on the part of Respondent

No.1, as has been noticed by the High Court, did not confer any title on Respondent No.1. Conduct may be a relevant fact, so as to apply the procedural law like estoppel, waiver or acquiescence, but thereby no title can be conferred.

24. It is now well-settled that time creates title.

25. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other.

26. It may be true that Respondent No.1 had constructed some buildings; but it did so at its own risk. If it thought that despite its status of a tenant, it would raise certain constructions, it must have taken a grave risk. There is nothing on record to show that such permission was granted. Although Respondent 1 claimed its right, it did not produce any document in that behalf. No application for seeking such permission having been filed, an adverse inference in that behalf must be drawn."

17. Learned counsel appearing for the third defendant contended that after the arrangement between the family members, the release deed (Ex.D-1) was executed by the plaintiff in favour of the defendants 1 and 2 on 01.04.2002 and subsequently, settlement deed dated 28.02.2003 (Ex.D-32) was executed by the second defendant in favour of the first defendant, who also executed a settlement deed, dated 26.06.2008 (Ex.D-33) in favour of the third defendant and the settlement deeds have been acted upon and the third defendant accepted the settlement and she is in possession of her settled property and the plaintiff has no right, title or interest over the suit property, more

particularly, in Door No.9-A and the plaintiff is deemed to be in unlawful possession of the property and he is liable to hand over the same to the third defendant. Learned counsel for the third defendant prayed that the counter claim of the third defendant for handing over the possession of the property in Door No.9-A may be allowed, by virtue of the settlement deed executed by the first defendant in favour of the third defendant. Since the plaintiff has no right to file the suit questioning the settlement deed executed by the first defendant in favour of the third defendant, the suit may be dismissed.

18. Heard the learned counsel appearing for the parties and perused the materials available on record.

19. The following facts are admitted by both sides:

The entire suit property originally belonged to the deceased Ved Prakash Kapur, the father of the plaintiff and the first defendant. The second defendant is the wife of the deceased Ved Prakash Kapur. The third defendant is the wife of the first defendant. By Ex.P-2 settlement deed, dated 31.03.1972, the deceased Ved Prakash Kapur settled a portion of the suit property, in favour of the plaintiff. By Ex.P-3 settlement deed, dated 09.06.1972, the deceased Ved Prakash Kapur settled another portion of the suit property in favour of the first defendant. The plaintiff's father Ved Prakash Kapur died on 29.07.1998, leaving behind him the plaintiff and the defendants 1 and 2 as his legal heirs. The deceased Ved Prakash Kapur did not execute any Will regarding the suit property. There was a family arrangement in Ex.P-6 dated 26.08.1999 between the plaintiff and the first and second defendants.

20. It is seen that the plaintiff initially filed the suit on 28.10.2004 with the relief of partition of the immovable property described in the schedule and for separate possession of his share, namely 11014/28284th share, by metes and bounds, and also for a direction to the first defendant to render true and correct account of the income from the said property, collected by the first defendant and for costs of the suit. Though initially the plaint was presented on 28.10.2004, the plaintiff has not averred anything in the plaint regarding the release deed dated 01.04.2002 obtained by the first defendant by fraud and undue influence. In this regard, it is useful to refer paragraph 11 of the plaint initially presented on 28.10.2004, which reads as follows:

> "11. The plaintiff states that though the plaintiff has faithfully executed whatever documents as instructed by his brother the first defendant with the specific understanding that his share of the constructed flats would be given to him on final

settlement of accounts."

21. Except the above bald averment, there is no averment regarding the release deed alleged to have been obtained from the plaintiff by playing fraud and undue influence upon him. It is seen that the plaintiff has not issued any legal notice before filing the suit for partition. With regard to the "cause of action" for filing the suit, the plaintiff has stated in paragraph 15 of the plaint as follows:

> "15. The cause of action for this suit arose at Chennai where the immovable property is situate, initially on 28.07.1998 when plaintiff's father died and the plaintiff and defendants became joint owners of the property, on 22.04.1999 when the agreement was executed between the plaintiff and defendants, and subsequently when the plaintiff demanded partition and separate possession and account of the collections made by the defendant from the tenants in respect of the said property and pay to the plaintiff his share of the same, within the jurisdiction of this Honourable Court."

22. Except the above averments in the paragraph relating to the "cause of action" for filing the suit, there is no date mentioned in the plaint as to when the plaintiff demanded partition and rendition of accounts, as stated in the above paragraph relating to the "cause of action" for filing the suit.

23. Before filing the suit, the plaintiff has preferred a complaint on 05.10.2004 (marked as Ex.P-12) to the Inspector of Police, Kilpauk Police Station, Chennai, i.e. three weeks before filing the suit, the relevant portion of which reads as follows:

> "5th October 2004
>
> From
> Atul Kapur (52 years)
> S/o V.P.Kapur,
> No.74, Halls Road,
> Kilpauk, Chennai-600 010.
>
> To
> The Inspector of Police,
> G-3 Kilpauk Police Station,
> Chennai-600 010.
>
> Sir,
>
> I like to bring the following facts for your kind notice and necessary action.
>
> I am the owner of 9-A (Pent-House) 9th Floor, 52, Taylors Road, Chennai-10, the property having been originally owned by my father late V.P.Kapur, who passed away about 5 years back.
>
> While distributing the undivided shares the above pent house was allotted to me and my mother's undivided share also was agreed to be given to my wife Mrs.Ritu Kapur. This is evidenced by the agreement dated 1st April 2002 executed by my mother Mrs.Vinayakumari and my wife, wherein my brother and myself have signed as witnesses.
>
> On the same day, i.e. on April 1, 2002, I was induced to execute a Deed of Release in favour of my mother and my brother Mr.Arun Kapur, in respect of my undivided share, which was registered on the promise mentioned in the said agreement of my getting the pent house and balance money to equalize my share payable to me in addition to the pent house.
>
> I am now surprised to find that contrary to the

understanding, my brother Arun Kapur has brain-washed and induced my mother to execute and register a deed of settlement of her entire share putting the value as Rs.50,000/- and later got her entire share registered in favour of my brother Arun Kapur, behind my back.

Today (5th October 2004) at abut 10 a.m., my brother with the help of his men created obstacles for me to work in the pent house, which has been in my possession from the date of the agreement.

I submit that my brother Mr.Arun Kapur has dishonestly induced me to execute and register the Release deed with the intention of causing wrongful loss to me and wrongful gain to himself, on the promise which he did not intend to honour. But for the promises held out by him, I would not have registered the release deed.

I therefore request you to kindly direct investigation into the matter, and take necessary action and also give me police protection of my person and property.

Yours truly,

Sd/-
(Atul Kapur)"

24. Subsequently, on 11.10.2004, the plaintiff has given another complaint (Ex.P-13) to the Inspector of Police, G-3 Kilpauk Police Station, Chennai-600 010, relevant portion of which reads as follows:

"11th October 2004

From
Atul Kapur (52 years)
S/o V.P.Kapur,
No.74, Halls Road,
Kilpauk, Chennai-600 010.

To
The Inspector of Police,

G-3 Kilpauk Police Station,
Chennai-600 010.

Sir,

This has reference to my complaint dated 05.10.2004.

Today at about 12 noon my brother Arun Kapur came along with some persons and asked my Senior Supervisor and family friend Mr.Raj Kumar to vacate the Pent House No.9-A, which is in my occupation and went away hurling abusive words.

Again at about 5.30 p.m., the said Arun Kapur, and his two sons Rishi Kapur and Deepak Kapur came and threatened my supervisor Raj Kumar that they would break his legs and also cause bodily injury to me and the members of my family stating that he has got a full force of rowdies in their control and he has very good influence.

I am afraid that they would carry out their threat. I therefore request you to kindly take immediate action and render police protection, so as to avoid any untoward incidents.

Yours truly,

Sd/-
(Atul Kapur)"

25. Thereafter, on 26.11.2004, after filing the suit, the plaintiff has preferred a complaint (Ex.P-14) to the Commissioner of Police, Egmore, Chennai, stating as follows:

"26th November 2004

From
Atul Kapur (52 years)
S/o V.P.Kapur,
No.74, Halls Road,
Kilpauk, Chennai-600 010.

To
The Commissioner of Police,
Egmore, Chennai-600 008.

Sir,

I like to bring the following facts for your kind notice and necessary action.

I am the owner of 9-A (Pent House) 9th Floor, 52, Taylors Road, Chennai-10, the property having been originally owned by my father late V.P.Kapur, who passed away about 5 years back.

While distributing the undivided shares the above pent house was allotted to me and my mother's undivided share also was agreed to be given to my wife Mrs.Ritu Kapur. This is evidenced by the agreement dated 1st April 2002 executed by my mother Mrs.Vinayakumari and my wife, wherein my brother and myself have signed as witnesses.

On the same day, i.e. on April 1, 2002, I was induced to execute a Deed of Release in favour of my mother and my brother Mr.Arun Kapur, in respect of my undivided share, which was registered on the promise mentioned in the said agreement of my getting the pent house and balance money to equalize my share, payable to me in addition to the pent house.

I am now surprised to find that contrary to the understanding, my brother Arun Kapur has brain-washed and induced my mother to execute and register a deed of settlement of her entire share putting the value as Rs.50,000/- and later got her entire share registered in favour of my brother Arun Kapur, behind my back.

Today (5th October 2004) at abut 10 a.m., my brother with the help of his men created obstacles for me to work in the pent house, which has been in my possession from the date of the agreement.

I submit that my brother Mr.Arun Kapur has dishonestly induced me to execute and register the Release deed with the intention of causing wrongful loss to me and wrongful gain to himself, on the promise which he did not intend to honour. But for the promises held out by him, I would not have registered the release deed.

I have given a complaint dated 05.10.2004 in respect of the above matter to the Inspector of Police, Kilpauk Police Station.

I therefore request you to kindly direct investigation into the matter, and take necessary action and also give me police protection of my person and property.

Yours truly,

Sd/-
(Atul Kapur)"

26. On a reading of the above three complaints given by the plaintiff to the Police, two of which were given before filing the suit and one, after filing the suit, it is clear that the plaintiff has executed the release deed, dated 01.04.2002, as the same is admitted in those complaints. It is further clear that the plaintiff has executed the release deed for proper consideration in respect of his undivided share in the suit property. In the above said complaints, the plaintiff has not stated anything about the fraud or undue influence, alleged to have been committed by the first defendant in execution of the above said release deed, dated 01.04.2002 (Ex.D-1), though it is stated in the above complaints that he was induced / dishonestly induced. The only allegation in the above complaints, is that, some false promise was given by

the first defendant at the time of execution of the release deed.

27. It is admitted that the plaintiff and the defendants 1 and 2 have entered into a memorandum of agreement - Ex.P-5, dated 14.12.2001, with the construction Company, namely M/s.Sukrit Constructions, for construction of flats, by promoting the lands into flats and allot some flats to the land owners, with further terms stated therein. It is further admitted that Mrs.Sujatha Hariharan, Rishi Kapur and Ritu Kapur have entered into a letter of arrangement - Ex.P-7, dated 14.12.2001, with the plaintiff and the defendants 1 and 2. It is also admitted that the plaintiff and the defendants 1 and 2 sent a letter - Ex.P-8 to CMDA on 25.07.2002. It is further admitted that there was a family arrangement - Ex.P-4, dated 22.04.1999, entered into between the plaintiff and the defendants 1 and 2 and the relevant portion of the same reads as follows:

> "This agreement is entered into at Chennai on this the 22nd day of April, 1999, amongst -
>
> (1) Mrs.VINAY KUMARI KAPUR, wife of Late Ved Prakash Kapur, aged about 69 years, residing at No.52, Taylors Road, Kilpauk, Chennai-600 010, hereinafter called the PARTY OF THE FIRST PART.
>
> (2) Mr.ARUN KAPUR, son of Late Ved Prakash Kapur, aged about 49 years, residing at No.52, Taylors Road, Kilpauk, Chennai-600 010, hereinafter called the PARTY OF THE SECOND PART.
>
> (3) Mr.ATUL KAPUR, son of Late Ved Prakash Kapur, aged about 46 years, residing at No.52, Taylors Road, Kilpauk, Chennai-600 010, hereinafter called the PARTY OF THE THIRD PART,

WITNESSETH AS FOLLOWS:

WHEREAS the PARTY OF THE FIRST PART is the wife and the PARTIES OF THE SECOND AND THIRD PARTS are the sons of Late Ved Prakash Kapur, who passed away on 24.07.1998 and

WHEREAS THE PARTIES OF THE FIRST, SECOND AND THIRD PARTS are carrying on business and have assets and liabilities pertaining to various business and

WHEREAS with a view to keep family amity and good relationship and on the advice of well wishers the following agreement is made:

(i) The immovable properties belonging to all the three parties shall be shared equally. The following are the immovable properties, which are considered as detailed below:

(a) Property at No.52, Taylors Road, Kilpauk, Chennai-600 010, owned by all the three parties jointly or severally shall belong to all the three parties equally and on promotion of flats the area constructed shall also taken over equally.

(b) The property at No.61, Muthukrishnan Road, Chennai-600 020, shall also be shared jointly by all the three parties inspite of the fact that the same is in the name of M/s.Jai Dayal Prannath Kapur, the firm in which the PARTIES OF THE FIRST AND SECOND PARTS are the Partners.

(ii) The Machineries of the firm M/s.Jai Dayal Kapur Distributing Co., M/s.Jai Dayal Prannath Kapur, and M/s.Prestige Paper Industries (P) Ltd., shall be owned by all the three parties equally.

(iii) All movables, including stock, sundry debtors, advances of the firm M/s.Jai Dayal kapur Distributing Co., M/s.Jai Dayal Prannath Kapur, M/s.Prestige Paper Co., and M/s.Prestige Paper Industries (P) Ltd., shall be shared equally.

(iv) All the Bank liabilities, trade liabilities, private borrowings of the firm, M/s.Jai Dayal Kapur Distributing Co., M/s.Jai Dayal Prannath Kapur, M/s.Prestige Paper Co., and M/s.Prestige Paper Industries (P) Ltd., shall be borne by all the three partners equally.

(v) Any tax liabilities, statutory liabilities and contingent liabilities pertaining to all the three firms shall be meet by all the three parties equally. ...."

28. As per the above family arrangement (Ex.P-4), the property at No.52, Taylors Road, Kilpauk, Chennai-600 010, owned by all the three parties jointly or severally, shall belong to all the three parties equally and on promotion of flats, the area constructed shall also taken over equally. It is further agreed in Ex.P-4 family arrangement that the property at No.61, Muthukrishnan Road, Chennai-600 020, shall also be shared jointly by all the three parties, inspite of the fact that the same is in the name of M/s.Jai Dayal Prannath Kapur, the firm in which the defendants 1 and 2 are the partners.

29. The plaintiff (P.W.1) admitted in his cross-examination that the property at Door No.61, Nelson Manickam Road, was around 10 grounds and it was in the name of M/s.Jai Dhayal Pranath Kapur, in which the defendants 1 and 2 are partners and the value of the said property was around Rs.30 lakhs per ground in 1999. P.W.1 further admitted in his cross-examination that the said Company has liability of about Rs.75 lakhs. It is further admitted by the plaintiff in his cross-examination that in M/s.Jai Dhayal Kapur Distributing Company, the plaintiff and his father were partners. It is further admitted by the plaintiff in his cross-examination that in M/s.Prestige

Paper Industries Pvt. Ltd., the plaintiff's father, the plaintiff's elder brother and the plaintiff were the Directors and his father was the Chairman.

30. The first defendant (D.W.1) stated in his cross-examination as follows:

> " ... We have not filed any statement with regard to sale of flats in the project. We have not acted upon clause 3 of Ex.P6, deed of family arrangement, dated 26.08.1999. As per clause 4 of Ex.P6, the entire business of M/s.Jai Dayal Prannath Kapur with all its stock, lock and barrel along with all the immovable property at No.61, Nelson Manickam Road (Muthukrishna Street), Aminjikarai, Chennai-29 shall be taken over by the plaintiff Mr.Atul Kapur and he was also entitled to all the receivables, machineries, furniture attached to the business. I agree with the contents of clause 5 of the deed of family arrangement, Ex.P6 dated 26.08.1999. As per clause 6 of the said arrangement, Ex.P6 dated 26.08.1999, in the event of the plaintiff exercising his option to nominate his wife and/or daughter, then the provision regarding a charge over the property at No.61, Nelson Manickam Road (Muthukrishnan Salai), Aminjikarai, Chennai-29 mentioned in clause 5 supra, shall also apply to them and the said clause shall be incorporated in the respective partnership deed. In case of non fulfilment of the plaintiff's obligation under clause 5, then the charge over the property at No.61, Nelson Manickam Road will continue on the plaintiff or his nominees. It is correct to state that apart from this, I shall be allotted additional 5150 sq.ft. of area in the property at No.52, Taylors Road, out of the 1/3rd share of flat allotted to plaintiff in terms of the arrangement with M/s.Sukrtith Constructions, as per the agreement Ex.P6 dated 26.08.1999. Clause 7 of the family arrangement dated 26.08.1999 also provides that I am entitled to make arrangement to sell or deal with such manner and the plaintiff shall have no right, title or interest on the same and shall also execute necessary documents in discharge of this obligation. As per clause 8 of the deed of family arrangement dated 26.08.1999, apart from the allotted of 5150 sq.ft. in the property at No.52, Taylors Road,

> Kilpauk, Chennai, I am also entitled to have a charge to the value of Rs.1,03,00,000/- in the property at No.61, Nelson Manickam Road. I agree with clause 9 of the family arrangement (Ex.P6) dated 26.08.1999. The liabilities of M/s.Jaidayal Kapur Distributing Company shall be met by the plaintiff. The loan due to the Indian Overseas Bank, Chindadripet Branch shall be borne by myself, my mother and brother equally. It is correct to state that the income tax and wealth tax liabilities including the personal tax liabilities of myself and my mother upto the assessment 1999-2000 shall be met by the plaintiff. According to clause 12 of the deed of family arrangement (Ex.P6) 26.08.1999, the income tax/wealth tax liability of the firms M/s.Jai Dayal Prannath Kapur and M/s.Jai Dayal Kapur Distributing Company including commercial tax, excise duty, PF, ESI etc. shall be met by the plaintiff."

31. On a reading of the above cross-examination of both P.W.1 and D.W.1., it is clear that the plaintiff and his family are doing business independently. Further, the plaintiff is a B.Com graduate and during the course of studying B.Com., he would have studied 'Law' as one of the subjects, and therefore, he has every capacity of doing business independently. When the facts remain as stated above, it is seen that the plaintiff has executed release deed, dated 01.04.2002 (Ex.D-1 = Ex.D-27) releasing his share in the suit property in favour of the defendants 1 and 2, who are his brother and mother. It is admitted that Ex.D-1 = Ex.D-27 release deed is executed by the plaintiff. But the only contention of the plaintiff is that he was

induced by the defendants 1 and 2 to execute the release deed Ex.D-1 = Ex.D-27 by playing fraud and undue influence. It is clear from the evidence of P.W.1 (plaintiff) that he was doing business along with this father and subsequent to the death of his father, the plaintiff is separately doing business and he is also having Bank Account and also obtained debts from the Bank for his business. Hence, the argument of the learned Senior Counsel for the plaintiff that the plaintiff was unduly influenced by his brother (first defendant) in executing the release deed, cannot be accepted.

32. Further, after executing the said release deed, dated 01.04.2002 (Ex.D-1 = Ex.D-27), the plaintiff with defendants 1 and 2, jointly executed various sale deeds in favour of some parties and the same are marked as Ex.D-4 dated 05.06.2002, Ex.D-5 dated 13.06.2002, Ex.D-6 dated 15.07.2002, Ex.D-7 dated 12.09.2002, Ex.D-8 dated 10.10.2002, Ex.D-9 dated 10.10.2002, Ex.D-10 dated 11.11.2002, Ex.D-11 dated 04.12.2002, Ex.D-12 dated 04.12.2002, Ex.D-13 dated 11.12.2002, Ex.D-14 dated 20.12.2002 and Ex.D-15 dated 14.2.2003. In all these sale deeds, there is a mention with regard to the release deed dated 01.04.2002, and the relevant portion of these sale

deeds reads as follows:

> "WHEREAS in terms of Release Deed dated 1st day of April, 2002, the VENDOR No.(c) Mr.ATUL KAPUR has released his right in favour of VENDORS (a) & (b) registered as Document No.646 of 2002 and VENDOR (c) has joined as a measure of abundant caution though he hold no interest ....."

33. Even though the plaintiff jointly with the defendants 1 and 2, executed the above said sale deeds, there is a mention in the above sale deeds about the release deed executed by the plaintiff in favour of the defendants 1 and 2. Thus, it is clear that the release deed dated 01.04.2002 executed by the plaintiff in favour of the defendants 1 and 2, came into existence and it has been acted upon, and admittedly, there is mention of the said release deed in the above sale deeds. Therefore, the argument of the learned Senior Counsel appearing for the plaintiff that the said release deed has not been acted upon and the plaintiff has no knowledge about the release deed, is not acceptable.



34. After the execution of the above sale deeds, the plaintiff voluntarily executed General Power of Attorney - Ex.D-16, dated 24.01.2003, in favour of the third defendant, who is the wife of the first defendant. In view

of the execution of the said Power of Attorney Ex.D-16, even though it is stated by the learned Senior Counsel appearing for the plaintiff that the release deed was obtained from the plaintiff by playing fraud and undue influence against the plaintiff, he has not stated anything in the plaint about the compulsion or otherwise in executing the above said Power of Attorney executed by the plaintiff in favour of the third defendant. In the said Power of Attorney Ex.D-16, it is clearly mentioned that the plaintiff has already executed release deed in favour of the defendants 1 and 2 and as some purchasers request the execution of the sale deed by the plaintiff as confirming party, to confirm such release, the plaintiff empowers his agent to do all or any of the acts mentioned therein. Therefore, it is clearly proved that after executing the release deed in favour of the defendants 1 and 2, the plaintiff jointly with defendants 1 and 2, executed various sale deeds in Ex.D-4 etc. in favour of third parties. Further, it is contended on behalf of the defendants that after execution of the above said Power of Attorney, the third defendant executed a sale deed.

35. Learned Senior Counsel appearing for the plaintiff contended that for execution of the release deed Ex.D-1 =

Ex.D-27, the plaintiff has not received any consideration and the consideration of Rs.5 lakhs stated in the release deed, is false and no such amount was paid to the plaintiff at any point of time, and therefore, the release deed is not supported by consideration. He further contended that the suit property is valued more than Rs.15 lakhs and the release deed was never acted upon. In this regard, it is useful to refer the relevant portion of the release deed:

> "WHEREAS the releasor and the releasees being family members discussed among themselves and the releasor has agreed to release his remaining 10,646 undivided sq.ft. of land in the property in favour of the releasees herein for a consideration of Rs.5,00,000/- (Rupees five lakhs only) and
>
> WHEREAS the releasor acknowledges the receipt of this sum at the time of his executing this deed of release."

36. From the above contents of the release deed, it is clear that the receipt of Rs.5 lakhs was acknowledged even in the release deed itself. Therefore, there is no question of producing any further proof regarding payment of Rs.5 lakhs by the defendants 1 and 2. Since the parties are family members, the plaintiff has agreed to receive Rs.5 lakhs as consideration for release of his share in the suit property. Hence, the argument of the learned Senior Counsel

appearing for the plaintiff that there is no sufficient consideration in respect of the release deed, is not acceptable.

37. Learned counsel for the defendants contended that admittedly, the property at Nelson Manickam Road, entirely belongs to the plaintiff and subsequent to the family arrangement, the release deed was executed by the plaintiff in favour of the defendants 1 and 2. It is seen that in M/s.Jai Dayal Pran Nath Kapur, originally, the defendants 1 and 2 alone were partners. Subsequently, on 06.11.2001, the plaintiff's wife and daughter, namely, Ritu Kapur and Preetika Kapur, were added as third and fourth partners to the said Company, which is evident from Ex.D-19 partnership deed. It is seen that subsequently, the defendants 1 and 2 retired from the said partnership, which is evident from Ex.D-20 deed of declaration of retirement from partnership, dated 02.03.2002. The above said admission and retirement of partners, had been communicated to the Registrar of Firms and Form-2.A renewal had been made and necessary amounts had been paid, totalling to Rs.4,760/-, which is evident from Ex.D-21 receipt. Thus, it is clear that after admission of the plaintiff's wife and daughter as partners, the plaintiff's mother and brother, i.e. the defendants 1

and 2 retired from partnership. By virtue of the retirement of the defendants 1 and 2, the entire property in Nelson Manickam Road came to the hands of the wife and daughter of the plaintiff and they became the owners of the same. There was no consideration paid as per the partnership deed and the defendants 1 and 2 have not received any consideration for their retirement from the partnership. Hence, the argument of the learned counsel for the defendants is that even though in Ex.D-1 release deed, consideration of Rs.5 lakhs was mentioned, there was a family settlement and the entire property in Nelson Manickam Road was allotted the plaintiff's wife and daughter. Further, after the plaintiff's wife and daughter became the owners of Nelson Manickam Road property, they have subsequently sold some portions of the same on 27.08.2003 and 09.06.2005, which is evident from Exs.D-22 and D-23 sale deeds. Ex.D-24 series are the Encumbrance Certificates. In view of the above discussion, the argument of the learned Senior Counsel appearing for the plaintiff that the plaintiff has not received any consideration for Ex.D-1 release deed and the release deed is not supported by consideration, is not acceptable.

38. It is seen that the plaintiff has amended the

plaint and relevant portion of paragraph 11 (aa) of the amended plaint reads as follows:

> "11(aa): The plaintiff humbly submits that the facts entitling the plaintiff to have this document dated 01.04.2002, sought to be used as a release deed, first became known to him only on 25.01.2005 when the Xerox copy of the same was directed to be part of the record in this suit by which the first defendant attempted to use the same against the plaintiff calling it as a release deed ... ..."

39. From the above averments in the amended plaint, it is seen that the plaintiff came to know about the release deed only on 21.01.2005. But, the plaintiff's own complaints to the Police, are marked as Ex.P-12 series, dated 05.10.2004, Ex.P-13, dated 11.10.2004 and Ex.P-14, dated 26.11.2004. In all these Police complaints, the plaintiff has stated about the release deed and he alleged in these Police complaints that he was induced to execute the release deed. Hence, the averment in the amended plaint that the plaintiff came to know about the release deed only on 25.01.2005 when the xerox copy of the same was filed, is totally false, as the plaintiff already knew about the release deed even on the date of those Police complaints, which are before filing the suit. Hence, the argument of the learned Senior Counsel appearing for the plaintiff that the release deed was never acted upon, has to be rejected.

40. This Court has already held that the execution of

the release deed is subsequently stated in the subsequent documents like sale deeds executed jointly by the plaintiff and the defendants 1 and 2. The plaintiff has already released his entire share in the suit property by virtue of Ex.D-1 = Ex.D-27 release deed, which was acted upon and he is not entitled to any share in the suit property. Therefore, after the above execution of the release deed, the relief of partition prayed for by the plaintiff is liable to be rejected.

41. Since the plaintiff has already released his entire share in the suit property by virtue of the release deed, he has no right, title or interest over the suit property. The claim of the plaintiff in Door No.9-A and also Door Nos.9-C and 9-E and permanent injunction prayed for by the plaintiff with regard to the same, is also liable to be rejected.

42. Learned Senior Counsel appearing for the plaintiff contended that to prove his possession, the plaintiff has produced Ex.P-15 series - property tax demand card, Ex.P-16 series - security guard payment receipt, Ex.P-17 legal notice sent by the counsel for M/s.L & T Ltd. to the plaintiff's wife, Ex.P-20 E.B card, Ex.P-21 complaint to the Inspector General of Registration, Ex.P-22 series -

fire insurance policies and Ex.P-23 receipts, maintenance charges, etc., to the Ved Nivas Apartment Owners Association. All these documents are subsequent to the filing of the suit and hence, no importance could be given to the same.

43. Learned Senior Counsel appearing for the plaintiff contended that at the time of construction of the property, Architect has sent a letter, which is marked as Ex.P-9 dated 13.07.2001 to M/s.L & T and Ex.P-10 series, dated 15.02.2003 are the letter sent by the Architect to the first defendant with plan. Ex.P-11 dated 24.02.2003 is the letter sent by the first defendant to the Architect, and hence, these documents clearly prove that the plaintiff is in possession of the suit property. With regard to Ex.P-9 dated 13.07.2001, the same is before execution of Ex.D-1 release deed, dated 01.04.2002 and as on 13.07.2001, the plaintiff has not released his share in favour of the defendants 1 and 2 and hence, at that time, he had interest over the undivided share in the suit property. As far as Ex.P-10 series, dated 15.02.2003 is concerned, it is a letter with plan, sent by the Architect to the first defendant, with a copy marked to the plaintiff, and the relevant portion of Ex.P-10 reads as follows:

> "As require by Mr.Atul Kapoor the following changes are required to be executed for the above pent-house as indicated in the enclosed drawing and as listed below ... ..."

44. From the above letter in Ex.P-10, it is clear that earlier, the plaintiff has requested for effecting changes in the plan, for which, the Architect has sent letter to the first defendant intimating the same. In reply to the above said letter in Ex.P-10 dated 15.02.2003, the first defendant has addressed a letter in Ex.P-11, dated 24.02.2003, to the Architect, in which, the first defendant has mentioned some details with regard to the construction work and the first defendant has also marked a copy of the letter to the plaintiff. Even though earlier the plaintiff has given some suggestions to the Architect regarding the construction in the property, it cannot be presumed that the plaintiff has any right or interest over the suit property, that too, when he has executed the release deed in favour of the defendants 1 and 2. There is no other document produced on the side of the plaintiff to prove that the plaintiff was allotted Door No.9-A and he is in possession of the same. Most of the documents, as discussed above, are only after filing of the suit. Therefore, the plaintiff has failed to prove that he has any right, title

or interest over the suit property. Therefore, the plaintiff is not entitled for the reliefs of partition and permanent injunction, as prayed for in the plaint.

45. It is not disputed on the side of the plaintiff that his mother, the second defendant and his brother, the first defendant, executed settlement deeds on 28.02.2003 (Ex.D-32 = Ex.P-18) and on 26.06.2008 (Ex.D-33 = Ex.P-19). It is seen that Ex.D-32 settlement deed, dated 28.02.2003 was executed by the mother (second defendant) in favour of the first defendant and the first defendant in turn executed settlement deed in favour of his wife, the third defendant, in Ex.D-33, dated 26.06.2008. The third defendant has accepted the settlement from the first defendant and she has become owner of Door No.9-A pent house in the suit property. Since the plaintiff has already released his entire share in the suit property in favour of the defendants 1 and 2 and since subsequently, the above settlement deeds (Exs.D-32 and D-33) were acted upon, it is clear that Door No.9-A pent house absolutely belongs to the third defendant. Though according to the plaintiff, he is in possession of suit property in Door No.9-A, he has no right, title or interest over the same and he is liable to hand over the possession to the third defendant. In the

written statement/additional written statement filed by the third defendant, she has sought by way of counter claim, for recovery of possession with regard to Door No.9-A. The third defendant is entitled to the relief as prayed for in the above said counter claim.

46. The learned Senior Counsel appearing for the plaintiff submitted that the third defendant is not entitled to seek for recovery of possession by way of counter claim in the suit and the same is liable to be rejected. Admittedly, the plaintiff has amended the prayer subsequently in 2009 as per the order dated 23.03.2009 passed in A.No.5470 of 2009 in C.S.No.985 of 2004 and by the said amendment, the prayers of declaration and permanent injunction are sought for. The prayer of declaration is to the effect that the document dated 26.06.2008 registered as Document No.1309 of 2008 in the office of the Sub-Registrar, Periamet, styled as deed of settlement, executed by the first defendant in favour of his wife Mrs.Anu Kapur, is illegal, void and not binding on the plaintiff. The prayer of permanent injunction is with regard to pent houses 9-A, 9-C and 9-E. Since the amendment of the plaint was allowed on 23.10.2009, the third defendant has every right to file counter claim

regarding recovery of possession from the plaintiff. Hence, the argument of the learned Senior Counsel appearing for the plaintiff that the third defendant is not entitled to file counter claim, is not sustainable. Since the plaintiff has no right, title or interest over the suit property, he is not entitled for permanent injunction as prayed for in respect of pent houses 9-A, 9-C and 9-E.

47. Learned counsel for the defendants contended that in pursuant to the family arrangement between the parties, since there is some liability with regard to the suit property, the plaintiff has to clear the debts as per the said family arrangement and he has to hand over the original documents which were recovered by the plaintiff from the Bank, to the defendants. Even though the plaintiff has paid the entire amount due to the Bank and got back the relevant documents, the plaintiff has not returned those documents to the defendants. Hence, the defendants 1 and 2, in their additional written statement (2nd), have filed counter claim for direction to the plaintiff to hand over the original documents of the suit property, which the plaintiff has taken from the Indian Overseas Bank, namely (i) Doc.No.2732 of 1961, dated 06.11.1961, (ii) Doc.No.1983 of 1972, dated 31.03.1972 and (iii) Doc.No.2917, dated

09.06.1972. It is argued by the learned Senior Counsel appearing for the plaintiff that the defendants 1 and 2 are not entitled to seek for the counter claim to direct the plaintiff to return those documents, since the plaintiff is also the co-owner of the suit property. This Court has already held that the plaintiff has executed the release deed (Ex.D-1), releasing his rights and share in the suit property in favour of the defendants 1 and 2. Therefore, the plaintiff has no right, title or interest over the suit property and the plaintiff has no right to retain the above documents relating to the suit property. It is seen that as per Ex.D-25 letter, dated 26.2.2008, the Chief Manager of the Indian Overseas Bank, Asset Recovery Management Branch, Central Office, Anna Salai, Chennai, has addressed to the first defendant, stating as follows:

"Release of documents
A/c.Jai Dayal Kapur Distributing Co.
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We refer to your letter dated 26.01.2008 and inform that the following original documents were delivered to Mr.Atul Kapur, one of the partners of the captioned account, on 20.10.2004, after the said loan account was settled.

The sale deed dated 06.11.1961 Regd. Doc.No.2732 of 1961 (13 sheets)
The settlement deed dated 31.03.1972 Regd. Doc.No.1983 of 1972 (8 sheets)
The settlement deed dated 09.06.1972 Regd. Doc.No.2917 of 1972 (7 sheets)."

48. On a reading of the above letter of the Bank, it is clear that the documents were already delivered to Mr.Atul Kapur (i.e. the plaintiff) after the loan account was settled. Hence, it is clearly proved that the plaintiff has received those documents from the Bank on 20.10.2004. It is already held by this Court that by virtue of the release deed executed by the plaintiff, he has no right, title or interest over the suit property and hence, the plaintiff is liable to return the above documents relating to the suit property to the defendants 1 and 2, as the plaintiff has no right to retain the same. Therefore, the defendants 1 and 2 are entitled to the relief sought for in the counter claim made by them in their additional written statement (2nd). Accordingly, the plaintiff is directed to hand over those documents as mentioned in Ex.D-25.

49. After analysing the entire oral and documentary evidence adduced by both parties, this Court is of the considered view that the plaintiff has executed the release deed dated 01.04.2002 (Ex.D-1 = Ex.D-27) and the same is a valid document and had been acted upon, which is confirmed in the subsequent documents (sale deeds) executed by the plaintiff with the defendants 1 and 2 and the

plaintiff has also received the consideration of Rs.5 lakhs as stated in the release deed. Accordingly, issue Nos.(ii) and (iii) are answered against the plaintiff.

50. Since the plaintiff has no right, title or interest over the suit property, he is not entitled to the relief of partition and separate possession and permanent injunction, as prayed for. Issue No.(i) and (vii) is answered accordingly.

51. Learned Senior Counsel appearing for the plaintiff contended that the plaintiff has every right and share in the suit property after execution of the sale deed by the plaintiff along with the defendants 1 and 2, as the plaintiff has not been given any share in the sale price as co-owner and therefore, as prayed for in the plaint by the plaintiff, the first defendant may be directed to render true and correct accounts of the income from the property, collected by him. Per contra, learned counsel for the defendants contended that after execution of the release deed, the plaintiff has no right, title or interest over the suit property and he has also singed the sale deeds confirming the release deed executed in favour of the defendants 1 and 2 and hence, the plaintiff is not entitled to seek for rendition of accounts from the defendants 1 and

2 and the defendants 1 and 2 are not liable to render accounts to the plaintiff. This Court has already held that the plaintiff has duly executed the release deed in favour of the defendants 1 and 2 and after execution of the release deed, the plaintiff has no right, title or interest over the suit property and even not entitled to any share in the suit property. Therefore, the defendants are not liable to render accounts to the plaintiff in respect of the income from the suit property. Hence, the prayer of the plaintiff to direct the first defendant to render true and correct accounts of income from the property, is liable to be rejected. Issue No.(iv) is accordingly answered against the plaintiff.

52. Since by virtue of Ex.D-33 settlement deed executed by the first defendant in favour of the third defendant, the third defendant has accepted the same and she is the owner of the property mentioned in Ex.D-33, she is entitled to a decree for possession of Door No.9-A in the suit property from the plaintiff. Hence, the settlement deed dated 26.06.2008 (Ex.D-33) is not liable to be set aside and it is valid. Issue Nos.(v) and (vi) are answered against the plaintiff and in favour of the third defendant.

53. Even though additional issue was framed with

regard to the valuation made by the third defendant in the counter claim and the Court fee paid thereon, there was no argument adduced by either side on that aspect. Hence, the valuation made in the counter claim is valid and proper and the additional issue is answered accordingly in favour of the third defendant and against the plaintiff.

54. Issue No.(viii): In the result, the plaintiff is not entitled to any of the reliefs prayed for in the amended plaint. The suit is dismissed. The defendants 1 and 2 are entitled to the relief sought for in the counter claim made in the additional written statement (2nd) and the third defendant is entitled to the relief sought for in the counter claim made in the written statement/additional written statement. Accordingly, the plaintiff is directed to hand over the original documents, within three months from the date of receipt of a copy of this judgment, i.e. (i) sale deed, Doc.No.2732 of 1961, dated 06.11.1961, (ii) settlement deed, Doc.No.1983 of 1972, dated 31.03.1972 and (iii) settlement deed, Doc.No.2917, dated 09.06.1972, to the defendants 1 and 2. The plaintiff is also directed to hand over the possession in respect of pent house 9-A to the third defendant within three months from the date of receipt of a copy of this judgment. In view of the

relationship between the parties, there shall be no order as to costs.

Witnesses examined on the side of plaintiff:-

P.W.1 - Mr.Atul Kapur (Plaintiff)

List of documents marked on the side of plaintiff:-

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| P.1 | 06.11.1961 | Xerox copy of sale deed executed between K.Venkatapathi Naidu and 2 others and M/s.Jai Dayal Kapur |
| P.2 | 31.03.1972 | Xerox copy of settlement deed executed by Ved Parkash Kapur in favour of Atul Kapur |
| P.3 | 09.06.1972 | Xerox copy of settlement deed executed by Ved Parkash Kapur in favour of Arun Kapur |
| P.4 | 22.04.1999 | Xerox copy of agreement entered into between Vinay Kumari Kapur, Arun Kapur and Atul Kapur |
| P.5 | 14.12.2001 | Xerox copy of memorandum of agreement entered into between M/s.Sukrit Constructions and Vinay Kumari, Arun Kapur and Atul Kapur |
| P.6 | 26.08.1999 | Xerox copy of deed of family arrangement between Vinay Kumari, Arun Kapur and Atul Kapur |
| P.7 | 14.12.2001 | Xerox copy of letter of arrangement between Mrs.Sujatha Hariharan, Rishi Kapur and Ritu Kapur and Vinay Kumari, Arun Kapur and Atul Kapur |
| P.8 | 25.07.2002 | Xerox copy of letter sent by the plaintiff and the defendants 1 and 2 to the CMDA |
| P.9 | 13.07.2001 | Xerox copy of letter sent by Architect to M/s.L & T Ltd. |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| P.10 series | 15.02.2003 | Xerox copy of letter sent by the Architect to the first defendant along with plan |
| P.11 | 24.02.2003 | Xerox copy of letter sent by the first defendant to the Architect |
| P.12 series | 05.10.2004 | Xerox copy of complaint by the plaintiff to the Inspector of Police, Kilpauk Police Station, Chennai, along with the petition receipt |
| P.13 | 11.10.2004 | Xerox copy of complaint by the plaintiff to the Inspector of Police, Kilpauk Police Station, Chennai |
| P.14 | 26.11.2004 | Xerox copy of complaint by the plaintiff to the Commissioner of Police, Egmore, Chennai |
| P.15 series | - | Xerox copy of property tax demand card |
| P.16 series | - | Security guard payment receipts |
| P.17 | 23.03.2005 | Xerox copy of legal notice sent by the counsel for M/s.L & T Ltd. to the plaintiff's wife |
| P.18 | 28.02.2003 | Xerox copy of settlement deed executed by Mrs.Vinay Kumari in favour of Arun Kapur |
| P.19 | 26.06.2008 | Xerox copy of settlement deed executed by Arun Kapur in favour of Mrs.Anu Kapur |
| P.20 | - | E.B. card |
| P.21 | 01.02.2005 | Xerox copy of complaint to the Inspector General of Registration, Santhome |
| P.22 series | - | Renewal of two fire insurance policies |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| P.23 series | 05.05.2005 | Xerox copy of the letter, receipts and cheque and two original receipts |
| P.24 | 01.08.2003 to 31.07.2006 | Certified true copy of Canara Bank Statement |
| P.25 series | 15.03.2005 | Xerox copy of the letter sent by the Indian Bank, Royapettah Branch to the Deputy Commissioner of Police, Central Crime Branch, Chennai, along with Bank statement |
| P.26 | 13.11.2005 | Xerox copy of the letter sent by the plaintiff to the third defendant |

Witnesses examined on the side of defendants:-

D.W.1 - Mr.Arun Kapur (first defendant)

D.W.2 - Mrs.Anu Kapur (third defendant)

Documents marked on the side of defendants:-

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| D.1 | 01.04.2002 | Certified copy of release deed executed by Atul Kapur in favour of Mrs.Vinay Kumari and Arun Kapur |
| D.2 | 23.03.2001 | Certified copy of sale deed executed by Mrs.Vinay Kumari in favour of Mrs.Neelima Varma |
| D.3 | 05.09.2001 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Dinshaw K.Parakh |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| D.4 | 05.06.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, M.Arun Kumar and Atul Kapur in favour of Dr.Mrs.Sumithra Shanmugam and Mr.P.Shanmugam |
| D.5 | 13.06.2002 | Certified copy of sale deed executed by Mrs. Vinay Kumari, Arun Kapur and Mr.Atul Kapur in favour of Ms.S.Akileswari, daughter of Mr.A.Sivalingam, minor, represented by mother and guardian Mrs.Seethalakshmi Sivalingam |
| D.6 | 15.07.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumar, Arun Kapur and Atul Kapur in favour of D.Thamizh Vani, D.Thamizh Kumaran and D.Thamizh Valli, minors, son and daughters of Mr.K.K.Dhandapani, represented by guardian and mother Mrs.D.Dharani Dhandapani |
| D.7 | 12.09.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Raghuraman and Mrs.Rashmi Raman |
| D.8 | 10.10.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Madhusudhan Rao Kudapa, represented by Power of Attorney Holder A.Narasimha Rao |
| D.9 | 10.10.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Thomas Varkey and Mrs.Suneetha Chacko Varkey, both represented by Power of Attorney Holder Mr.I.Varkey |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| D.10 | 11.11.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Mr.C.S.V.Raman, represented by Power of Attorney Mr.C.S.Hariharan |
| D.11 | 04.12.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Deepak Kalrao and Mrs.Pooja Kalro |
| D.12 | 04.12.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Mr.Kunjan Christopher and Ms.Christine Margaret Raj |
| D.13 | 11.12.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Mr.Chandra R.Sureshbabu, represented by Power of Attorney Mr.K.Sreenivasulu |
| D.14 | 20.12.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Mr.Benny Samuel |
| D.15 | 14.02.2003 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Darendra Kumar Golchha and Mrs.D.Pushpa Golchha |
| D.16 | 24.01.2003 | Certified copy of General Power of Attorney executed by Atul Kapur appointing Mrs.Anu Kapur as Power of Attorney |
| D.17 | 21.10.1968 | Notarised xerox copy of partnership deed in between Mrs.Vinay Kumari Kapur and Arun Kapur |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| D.18 | 21.01.1971 | Certified copy of sale deed executed by M.Krishnamoorthy and 6 others in favour of M/s.Jai Dayal Prannath Kapur and another |
| D.19 | 06.11.2001 | Notarised xerox copy of partnership deed among Mrs.Vinay Kumari, Arun Kapur, Mrs.Ritu Kapur and Ms.Preetika Kapur |
| D.20 | 02.03.2002 | Notarised xerox copy of deed of declaration of retirement from partnership executed by Mrs.Vinay Kumari and Arun Kapur as retired partners and Mrs.Ritu Kapur and Ms.Preetika Kapur as continuing partners |
| D.21 | 02.04.2002 | Notarised xerox copy of receipt issued by Registrar of Firms, Madras (North) |
| D.22 | 27.08.2003 | Certified copy of sale deed executed by M/s.Jai Dayal Prannath Kapur, represented by its partners--Mrs.Ritu Kapur, Ms.Preetika Kapur, both represented by their Power of Attorney K.Kannan in favour of Dr.S.Shelley |
| D.23 | 09.06.2005 | Certified copy of sale deed executed by M/s.Jai Dayal Prannath Kapur, represented by its partners--Mrs.Ritu Kapur and Ms.Preetika Kapur, Ms.Preetika Kapur is represented by her Power of Attorney Mrs.Ritu Kapur in favour of Mrs.C.Muthumeenal |
| D.24 series | 22.07.2005 | Encumbrance Certificate |
| D.25 | 26.02.2008 | Letter sent by the IOB, Asset Recovery Management Branch, Central Office, Anna Salai, Chennai-2, to the first defendant |

| *Exhibit No.* | *Date* | *Description of the exhibit* |
|---|---|---|
| D.26 | 31.07.2009 | Encumbrance Certificate |
| D.27 | 01.04.2002 | Certified copy of release deed executed by Atul Kapur in favour of Mrs.Vinay Kumari, Arun Kapur |
| D.28 | 23.03.2001 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Mrs.Neelima Varma |
| D.29 | 05.06.2002 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Dr.Mrs.Sumithra Shanmugam and Mr.P.Shanmugam |
| D.30 | 24.01.2003 | Certified copy of General Power of Attorney executed by Atul Kapur appointing Mrs.Anu Kapur as Power of Attorney |
| D.31 | 14.02.2003 | Certified copy of sale deed executed by Mrs.Vinay Kumari, Arun Kapur and Atul Kapur in favour of Darendra Kumar Golchha and Mrs.D.Pushpa Golchha |
| D.32 | 28.02.2003 | Certified copy of settlement deed executed by Mrs.Vinay Kumari in favour of Mr.Arun Kapur |
| D.33 | 26.06.2008 | Certified copy of settlement deed executed by Arun Kapur in favour of Mrs.Anu Kapur |

**Sd/G.C.J**
04.03.2016



//Certified to be a true copy//

Dated this the day of 2016

S.s/23.05.2016 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.