

Judgment Reserved on: 13.03.2017

Judgment Pronounced on: 21.03.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Appeal Suit No. 92 of 2010
and
M.P.No.1 of 2010

A.Abdul Rahim .. Appellant

Versus

Dr.Francis Pinto .. Respondent

Appeal Suit filed under Section 96 of Civil Procedure Code against the Judgment and decree dated 06.11.2009 passed by the learned Additional District and Sessions-cum-Fast Track Court-II, Coimbatore, in O.S.No.595 of 2004.

For Appellant .. Mr.N.Anand Venkatesh

For Respondent .. Mr.M.S.Krishnan, Sr.Counsel for
M/s Sarvabhauman Associates.

JUDGMENT

Aggrieved over the dismissal of the suit filed for declaration and recovery of possession of the suit property and also for damages, the

plaintiff has filed the present appeal challenging the judgment and decree of the learned Additional District and Sessions-cum-Fast Track Court-II, Coimbatore.

2. The parties are arrayed as per their own ranking before the trial Court for the sake of convenience.

3(a). The brief facts of the plaintiff's case is as follows:- The suit property consist of vacant land, originally belonged to Dr.J.B.Pinto/ father of the defendant by virtue of a registered sale deed dated 14.12.1966. He put up RCC Roof buildings consisting of ground floor, first floor and second floor and a RCC Roof car shed with compound walls in and over the vacant land after duly obtaining approved building plans in hiss name from the then Coimbatore Municipality. He was running his clinic and hospital in the said premises bearing Old D.No.310C and New D.No.960 now D.No.214, 10th Street, Tatabad, Coimbatore-12. The defendant is the son of Dr.J.B.Pinto and he was assisting his father in the clinic and hospital being run by his father in the suit property by residing in the portion of the suit property along with his father.

3(b). The plaintiff has purchased the property from the Dr.J.B.Pinto, on 6.7.1992, for a valuable sale consideration of Rs.7,70,000/-. Out of the total sale consideration of Rs.7,70,000/-, a sum of Rs.2,38,250/- was received by Dr.J.B.Pinto from the plaintiff and the remaining amount of Rs.5,31,750/- was retained by the plaintiff as per the direction of Dr.J.B.Pinto, to discharge the amount due under promissory notes and an equitable mortgage referred to in the sale deed. The plaintiff was put in symbolic possession of the said property by Dr.J.B.Pinto. The plaintiff has also agreed for the request made by Dr.J.B.Pinto that he would deliver vacant possession of the said property within a period of one year.

3(c). It is further case of the plaintiff that the defendant is aware of the execution of the sale deed dated 6.7.1992. The plaintiff presented the sale deed for registration in the office of the Gandhipuram Sub-Registrar, Coimbatore on 6.7.1992 itself, the same was kept pending in pending registration No.P139/1992 for the sale deed dated 06.07.1992. However, on receipt of notices dated 7.10.1993, 7.11.1993, 8.12.1993, 13.1.1994 and 16.2..1994 from the Sub-Registrar of Gandhipuram, Coimbatore, the plaintiff during his enquiry was informed that no such sale deed dated 6.7.1992 executed

by Dr.J.B.Pinto in favour of the plaintiff was pending for registration. Thereafter the plaintiff sent a notice dated 31.10.2003 to Sub-Registrar Office, Gandhipuram, Coimbatore, marking a copy to the District Registrar (Administration) and Inspector General of Registration Authorities, Coimbatore. Thereafter, pursuant to the directions by the Inspector General of Registration Authorities, Coimbatore, the plaintiff was informed by the Sub-Registrar, Gandhipuram, Coimbatore on 21.4.2004, to pay the deficit stamp duty. Accordingly, on paying necessary stamp duty of Rs.1.00 lakh on 23.4.2004 and a further sum of Rs.1,65,300/- on 27.4.2004, the document was registered as Document No.2161/2004 and returned the same to the plaintiff.

3(d). In the meanwhile, Dr.J.B.Pinto died in the year 1994. Thereafter, the defendant by suppressing the sale made in the name of the plaintiff, has tried to change the property tax assessment in his name on the ground that Dr.J.B.Pinto died intestate and the defendant is the legal heir of Dr.J.B.Pint. Hence, the plaintiff has sent a notice dated 5.7.1994, to the Commissioner of Municipal Corporation, Coimbatore, enclosing a xerox copy of the sale deed dated 6.7.1992 and requested the Commissioner of Coimbatore Corporation to change

the property tax assessment in the name of the plaintiff. The Commissioner of Coimbatore Corporation sent a reply dated 5.10.1994 directing the plaintiff to appear in person and produce the original sale dated 6.7.1992 and in default thereof, orders will be passed on plaintiff's notice dated 5.7.1994. Since the plaintiff was not in custody of the original sale deed, he could not furnish the same to Commissioner of Coimbatore Corporation.

3(e). It is the specific case of the plaintiff that as he became the absolute owner of the property after the execution of the sale deed dated 6.7.1992 by Dr.J.B.Pinto in favour of the plaintiff, Dr.J.B.Pinto along with the defendant were in possession and enjoyment of the property as licensees under the plaintiff on leave and license basis. After the demise of Dr.J.B.Pinto, the defendant is in possession and enjoyment of the suit property under the plaintiff as a licensee. So, the plaintiff has issued lawyer's notice dated 18.05.2004 to the defendant, cancelling the license granted to him and also requested him to vacate and deliver vacant possession of the property, within a week of the receipt of the notice dated 18.05.2004. The defendant after receipt of the notice issued a reply with false and frivolous contentions. The plaintiff has also replied with suitable rejoinder. The

allegation of the defendant that the suit property was the assets of the partnership firm and Dr.J.B.Pinto had no title to the property, to sell the same to the plaintiff. It is further stated by the plaintiff that the alleged transfer of the property in the name of the defendant even assuming to be true, is not valid in law. When he sent legal notice to the defendant, as the defendant has taken the plea of adverse possession thereby created cloud over the title of the plaintiff to the suit property, the plaintiff has filed this suit for declaration.

4(a). The brief facts of the defendant's case is as follows:-
Admitting that the vacant land was purchased by his father Dr.J.B.Pinto by virtue of a sale deed dated 14.12.1966, it is contended by the defendant that his father had put up construction of ground floor and part of the first floor. He did not construct the entire first and second floor as pleaded by the plaintiff. Dr.J.B.Pinto had established his business of Fathima X Ray Institute and Clinical Laboratory and he was the proprietor initially. In the year 1973 he has converted the proprietary concern as a partnership firm taking in the defendant as his partner. A Deed of Partnership was executed between the defendant and his father on 27.6.1973 and thereafter the firm submitted Income Tax Returns throughout from 1973 treating the suit

property as partnership asset. The suit property was contributed by Dr.J.B.Pinto as the capital of the partnership firm. The Fathima X Ray Institute and Laboratory was converted as partnership firm from 1973 till 1986. The defendant completed his M.B.B.S., in the year 1980 and thereafter, he joined his father actively in the business of running a clinical laboratory and both of them were jointly managed the firm. The suit property then consisted of ground floor, part of first floor and the property was used and treated as the partnership property. The firm was duly registered with the Income Tax Department and the business was carried on as the partnership business till 1986 when the defendant's father decided to retire and requesting for settlement of account. The defendant's father retired from the partnership on 31.03.1986 and a Deed of Dissolution was also executed on 21.5.1986.

4(b). Thereafter, the defendant took over the assets and liabilities of the Fathima X Ray Institute and Clinical Laboratory and became its proprietor with effect from 01.04.1986. From the date of dissolution of the firm, the defendant's father did not have any interest in the property of the firm which became the property of the defendant. The only right which the retiring partner had, was a charge

over the assets for payment of the instalments and he was put as adviser to the firm for a period of two years or until the residential house which jointly belonged to the defendant and his father was disposed off. The defendant paid 33 monthly instalments of the accounts settled to his father as set out in Clause V of the Deed of Dissolution and unfortunately his father started to lead a wayward life and started contracting debts for illegal purposes. The defendant's father issued a public notice on 11.02.1988 for sale of the suit property. Immediately, the defendant also issued a publication on the next day. The defendant's father appears to have gone and entrusted the prior title deeds of the property with one Natarajan and started to borrow money and using it for illegal purposes. The defendant's father was spent-thrift, was spending the money in horse racing and started to sign any document indiscriminately and started to defeat the right of the defendant. Therefore, the defendant filed a suit O.S.No.815 of 1985 against his father and the said Natarajan for declaration that the suit property is not liable for any mortgage debt and for consequential injunction to restrain the said Natarajan from bringing the suit property for sale and for mandatory injunction to direct his father to produce the original document of title in court. The defendant in spite of his father's activities, has spent nearly Rs.4.00 lakhs towards his

medical expenses when he suffered heart ailment and for all his needs. He is in absolute and exclusive possession and enjoyment of the property from the year 1986. The defendant has put up further construction in the first floor and put up a second floor and improved the property in the year 1990. He has also obtained proper building plan duly approved. The property tax for the suit property is being paid by the defendant only. Hence the allegation that the defendant was living as a licensee is also denied.

4(c). It is further contention of the defendant that the plaintiff is not a bona fide purchaser. Dr.J.B.Pinto did not possess any title to transfer and consequently the plaintiff cannot claim to be the alleged transferee of the suit property from Dr.J.B.Pinto. The alleged sale deed is not supported by any consideration and it is a sham and nominal document. The plaintiff is known to dabble and speculative litigation and in eyeing for disputed property to knock it down for value which is next to nothing and litigate with true and lawful owners and extract money out of the transaction. The allegation that the defendant is aware of the execution of the sale deed is false. The defendant's father fell into the evil company of the plaintiff and he was a name lender to execute some kind of a document for the purpose of defeating the

right of the defendant. The defendant and his father were not in talking terms from the date of dissolution of the firm and he was residing elsewhere. It is further stated by the defendant that the plaintiff has no title to the suit property as the transferor had divested himself of title to the property by forming partnership and by subsequently retiring and dissolving firm. None of the debts quoted in the sale deed have discharged. The defendant is not a licensee and he is the lawful owner of the suit property. The registration cannot date back to 1992. The defendant has also perfected title by adverse possession and has been in open, exclusive and continuous enjoyment of the suit property from 1.4.1986 by paying all taxes and by improving the property by putting up additional construction in the first floor and a second floor measuring 1000 sq. ft., in his own right to the knowledge of J.B.Pinto and also the plaintiff. The suit is abuse of process of Court. Hence, he prays for dismissal of the suit.

5. On the basis of the above pleadings the following issues were framed by the learned trial Judge:-

1. Whether the sale deed dated 6.7.1992 is valid?
2. Whether the plaintiff is entitled for declaration and possession?
3. What relief the plaintiff is entitled to?

6. After hearing the arguments on both sides on 17.9.2009 the following additional issues were framed by the learned trial Judge:-

1. Whether the sale deed dated 6.7.1992 is true and valid and the plaintiff has become the owner of the property?
2. Whether the suit property has become the property of the partnership firm and on that basis Dr.J.B.Pinto did not have any title to the suit property?
3. Whether the suit property has been brought up as the property of the partnership firm as per the document under Ex.B3?
4. After the retirement of Dr.J.B.Pinto from the partnership firm whether the defendant has become the owner of the property of partnership firm?
5. As per the Deed of Dissolution of partnership firm dated 21.05.1986, whether the suit property has been handed over to the defendant?
6. Whether the Xerox copy of Exs. B3 and B18 documents are admissible in evidence?
7. Whether Dr.J.B.Pinto had title over the suit property on the date of sale and if so, whether the sale is valid?
8. Whether defendant is binding on the debts borrowed by Dr.J.B.Pinto? and whether the same would create any liability over the suit property?
9. Whether the sale deed dated 6.7.1992 is for valid consideration ?
10. Whether the defendant is in possession of the suit property on the basis of his title over the suit property? Whether the defendant is liable to hand over the suit property?

11. Whether the defendant has adverse possession over the suit property?

7. On the side of the plaintiff P.W.1 to P.W.3 were examined and marked documents Exhibits A.1 to A43. Ex.A1 is the sale deed dated 6.7.1992 executed by Dr.J.B.Pinto in favour of the plaintiff; Exs.A2 and A3 are the notices sent by Sub-Registrar to the plaintiff; Ex.A4 is the letter dated 31.10.2003 sent by the plaintiff to the Sub-Registrar; Exs.5 and 6 are Postal Acknowledgement cards; Ex.A7 is the letter dated 3.11.2003 sent by the Deputy Inspector General of Registration to the District Registrar; Ex.A8 dated 27.4.2004 is the Debit chit; Ex.A9 is the application dated 13.1.1994 sent by plaintiff to the Commissioner of Municipal Corporation, Coimbatore; Ex.A10 dated 5.7.1994 is the copy of application sent by the plaintiff to the Commissioner of Municipal Corporation, Coimbatore; Ex.A11 dated 10.10.1994 is the letter sent by the Commissioner of Municipal Corporation, Coimbatore to the plaintiff; Ex.A12 is the copy of legal notice sent by the plaintiff to the defendant; Ex.A13 is the Postal Acknowledgement Card; Ex.A14 dated 7.6.2004 is the reply sent by the defendant to the plaintiff; Ex.A15 is the copy of rejoinder sent by the plaintiff to the defendant; Exs. A16 and A17 are Acknowledgement Cards; Ex.A18 and Ex.A19 are the Encumbrance Certificate regarding

the suit property; Ex.A20 to A27 are all the Receipts dated 11.7.2006 and Ex.A28 is the receipt dated 20.8.2007; Ex.A29 is the copy of plaint in O.S.No.305/1988; Ex.A30 is the copy of Written Statement in O.S.No.305/1988; Ex.A31 is the copy of the plaint in O.S.No.815/1989; Ex.A32 is the copy of letter dated 23.12.1991, attested by Notary, sent by Dr.J.B.Pinto to the defendant; Ex.A33 is the copy of letter dated 30.12.1991, attested by Notary, sent by defendant to Dr.J.B.Pinto; Ex.A34 is the sale deed dated 14.12.1966; Ex.A35 is the legal notice dated 22.2.1988 sent by Dr.J.B.Pinto to the plaintiff; Ex.A36 is the copy of plaint in O.S.No.594/1995; Ex.A37 is the copy of the plaint in O.S.No.595/1995; Ex.A38 is the copy of the plaint in O.S.No.596/1995; Ex.A39 is the copy of the plaint in O.S.No.596/1995; Ex.A40 is the copy of the plaint in O.S.No.599/1995; Ex.A41 is the copy of the plaint in O.S.No.600/1995; Ex.42 is the copy of the plaint in O.S.No.601/1995; Ex.A43 is the copy of the plaint in O.S.No.3253/1996.

8. On the side of defendant D.W.1 and D.W.2 were examined and marked Exhibits B1 to B69. Ex.B1 is the copy of affidavit in I.A.No.1992 of 1994 in O.S.No.1540 of 1993; Ex.B2 is the copy of letter dated 2.4.1987 sent by the defendant to one Natarajan; Ex.B3 is

the copy of the Partnership Deed dated 27.6.1973; Ex.B4 is the copy of letter dated 1.1.1986 sent by Dr.J.B.Binto to the defendant; Ex.B5 is the copy of Statement of Accounts and the Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1975; Ex.B6 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1979; Ex.B7 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1980; Ex.B8 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1981; Ex.B9 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1982; Ex.B10 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1983; Ex.B11 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1984; Ex.B12 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1985; Ex.B13 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1986; Ex.B14 is the copy of Statement of Accounts and Auditor's

Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1988; Ex.B15 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1989; Ex.B16 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1990; Ex.B17 is the copy of Statement of Accounts and Auditor's Report of Fathima Institute and Clinical Laboratory for the year ended 31.3.1991; Ex.B18 is the copy of Deed of Dissolution dated 21.5.1986; Ex.B19 is the Certificate for Registration of firm dated 12.7.2006; Ex.B20 is the Form No.5, dated 21.5.1986; Ex.B21 is the lawyer's notice dated 27.1.1988 issued by the father of the defendant to the defendant; Ex.B22 is the reply dated 12.9.1988 sent by the defendant to the said lawyer's notice; Ex.B23 is the publication dated 11.2.1988; Ex.B24 is the publication in the Malai Murasu Tamil Newspaper; Ex.B25 is the copy of the plaint in O.S.No.305 of 1988; Ex.B26 series is the letters sent by the father of the defendant to the lawyer of the defendant dated 24.2.1988; Ex.B27 is the lawyer's notice dated 10.11.1992 sent by the defendant to the defendant's father and plaintiff; Ex.B28 is the certified copy of receipt dated 11.11.1992; Ex.B29 is the postal acknowledge card; Ex.B30 is the returned cover; Ex.B31 is the lawyer's notice sent by the defendant to Natarajan;

Ex.B32 is the copy of the plaint in O.S.No.815 of 1989; Ex.B33 is the letter sent by defendant's father to the defendant; Ex.B34 is the letter from the Commissioner of Municipal Corporation, Coimbatore, addressed to the defendant; Ex.B35 is the letter along with licence from the Commissioner of Municipal Corporation, Coimbatore to the defendant; Ex.B36 is the building plan; Ex.B37 is the building plan for the year 1991; Ex.B38 is (2) photos with negatives; Ex.B39 is the photo with negative; Ex.B40 to B48 are the letters from the defendant's father to the defendant; Ex.B49 and B50 are the Registered Posts from the defendant's father to the defendant; Ex.B51 is the letter sent by the defendants father to the Bangalore Race Club; Ex.B52 is the ledger; Ex.B53 is the page 9 of the ledger; Ex.B54 is the page No.25 of the ledger; Ex.B55 is the copy of Income Tax Returns of Fathima X Ray Institute and Clinical Laboratory for the year ended 31.3.1973; Ex.B56 is the ledger; Ex.B57 is the pages 6 and 7 of the ledger; Ex.B58 is the letter dated 22.10.1990 sent by the defendant's father; Ex.B59 is the ledger; Ex.B60 is the page 23 of the ledger; Ex.B61 is the rejoinder sent by the defendant's lawyer to the defendant's father; Ex.B62 is the page No.24 in Ex.B52 ledger; Ex.B63 is the page No.26 in Ex.B59 ledger; Ex.B64 is the copy of affidavit in I.A.No.319/1988 in O.S.No.305 of 1988; Ex.B65 is the copy of

I.A.No.319/1988 in O.S.No.306/1988; Ex.B66 is the copy of the judgment in O.S.No.3255 of 1996; Ex.B67 is the copy of Suit Register in O.S.No.3255 of 1996; Ex.B68 is the copy of Deed of Partnership firm; Ex.B69 is the copy of Deed of Dissolution of Partnership firm.

9. One Court Witness was also examined as C.W.1., and marked Exhibits X1 to X5. Ex.X1 is the complaint dated 18.9.1989 by the defendant's father; Ex.X2 is the Registered Post sent to R.Rajamani-Auditor; Ex.X3 and Ex.X4 are the letters sent by R.Rajamani-Auditor; Ex.X5 is the Registered Post sent by Senior Deputy Secretary to R.Rajamani.

10. On the basis of the oral and documentary evidence the learned trial Judge has dismissed the suit filed by the plaintiff with costs. As against the same, the present appeal came to be filed.

11. Learned counsel appearing for the appellant assailing the judgment and decree of the learned trial Judge, has submitted that admittedly Dr.J.B.Pinto-father of the defendant/respondent is the owner of the suit property by virtue of a registered sale deed dated

14.12.1966. The plaintiff has purchased the property from Dr.J.B.Pindo, under Ex.A1 dated 6.7.1992. The sale deed was registered and kept pending in the Registration Department as Pending Document No.P139/199, for payment of deficit Stamp Duty. Having received Exs. A2 and A3 dated 13.1.1994 and 16.2.1994 from the Registration Authorities, though the plaintiff had attended the enquiries conducted by the Registration authorities regarding payment of deficit stamp duty, the plaintiff was informed that no such sale deed dated 6.7.1992 was pending for registration and thereafter, it has been traced out and the document has been registered in the name of the plaintiff after making payment of the deficit stamp duty. Therefore, there was a delay in registration and hence, the registration relates back to the date of execution. It is further submitted that Ex.A1 also clearly narrated the nature of the consideration paid to the vendor and also to his creditors. The conveyance itself was registered by Dr.J.B.Pinto only in order to clear the debts he owed to various creditors at the relevant time. Hence, it is the contention of the learned counsel for the appellant that the plaintiff having become the owner of the suit property, is entitled to recovery of possession. In reply to the legal notice issued by the plaintiff to the defendant, as the defendant has taken the plea of adverse possession thereby created

cloud over the title of the plaintiff to the suit property, the plaintiff has filed this suit for declaration. It is further contention of the appellant counsel that admittedly, J.B.Pinto was running the hospital and X ray clinic in the suit premises. In the year 1973, at the time of entering into partnership between Dr.J.B.Pinto and his son, the suit property has not been brought to the partnership firm. There is no mention whatsoever in the partnership deed to show that the suit property was treated as partnership property. A reading of the partnership deed coupled with the dissolution deed, it can be easily seen that the suit property was never brought into the partnership firm. The partnership firm was dissolved in the year 1986. There is no evidence to show that the suit property was all along treated as partnership property. Hence, it is the contention of the learned counsel for the appellant that in the absence of any agreement, the separate property belonging to a person on his entering into a partnership with others will not become the property of the firm merely because it is used for the business of the partnership. Hence, it is the contention of the learned counsel for the appellant that merely because the partnership business run by the father and son in the property owned by the father cannot be treated as partnership asset. There is no specific agreement between the father and son to treat the property as partnership property. Hence, it

is the contention of the learned counsel for the appellant that the contention of the defendant/respondent that there was an implied agreement between the parties to treat the suit property as partnership property from the very inception, cannot be countenanced at all.

12. It is the contention of the learned counsel for the appellant that though the defendant has relied upon the evidence of DW1-the Auditor and ledger entries and also Income Tax Returns said to have been filed by them to show that the suit property is also partnership property, D.W.1-Auditor has been testified to prove that the suit property also treated as partnership property. The evidence of D.W.1 cannot be given much credence in view of the fact that Dr.J.B.Pinto has already given a complaint against D.W.1 before the Council of Institute of Chartered Account of India regarding fabrication of document. Hence, no importance can be given to the evidence of D.W.1. Ex.B14 is the first time Income Tax Return filed in the name of the defendant on 26.7.1988. Similarly Ex.B55 is the first time Income Tax Return in respect of Fathima Institute of X-Ray and Clinical Laboratory for the year ended 31.3.1973. Earlier ledger of the year 1986 has not been produced by the defendant. It is further contention of the learned counsel for the appellant that absolutely none of the

documents available to show that only the suit property alone was treated as partnership property. In the absence of any specific evidence to prove the fact that the suit property was treated as partnership property, mere contention of the defendant alone will not help his case. In the earlier litigations pending between the father and son in O.S.No.305 of 1988 and also in O.S.No.815 of 1989, it was a specific case of the defendant's father that he never treated the suit property as a partnership property. When that is being so, the defendant cannot take a stand that the suit property is a partnership property. The further contention of the learned counsel for the appellant that various correspondence between the father and son after dissolution of the partnership firm clearly show that the suit property was never treated as partnership property and similarly the earliest ledgers have not been filed and the document exhibited before the court are created only to non-suit the plaintiff. Hence, it is the contention of the learned counsel for the appellant that the learned trial Judge has not considered the entire evidence and decided the suit as against the plaintiff. Hence, praying to set aside the judgment and decree of the learned trial Judge by allowing the appeal.

13. In support of his arguments, the learned counsel for the

appellant placed reliance on the judgments reported in:

- (i)(1969) 3) SCC 555 - Arjun Kanoji Tankar v. Santaram Kanoji Tankar**
- (ii)(1987) 3 SCC 538 - Helper Girdharbhai v. Saiyed Mohd.Mirasaheb Kadri**
- (iii) (2003) 6 SCC 423 - ARM Group Enterprises Ltd., v. Waldorf Restaurant and others.**
- (iv) (2010) 2 SCC 407 - Mohammad Laiquiddin & another v. Kamala Devi Misra and others.**

14. Learned Senior Counsel appearing for the Respondent/Defendant submitted that the suit property was also brought into the partnership business and all along it was used as partnership property from the date of formation of partnership. The father of the Respondent while entering in to the partnership with his son, in fact brought the suit property as partnership property. The Income Tax Return submitted by him just prior to the formation of the partnership firm would clearly vouch safe the fact that the buildings and house sites were shown as the partnership property. Only on the basis of his Income Tax Returns, entries were carried out in the ledgers at the relevant time. The land and building value has been

carried forward in the income tax return of every assessment year taking into consideration of the depreciation value of the building. These are the true entries with regard to the suit properties and partnership assets. Therefore, it is the contention of the learned senior counsel that merely because the defendant's father has sent a complaint against the Auditor-DW1 itself cannot be a ground to conclude that all the entries found in the ledgers are fabricated one. It is further contention of the learned senior counsel that the father of the defendant himself is aware of the entries made in books of account of the partnership with regard to the suit properties. The same are evident from his earlier pleading in O.S.No.305 of 1988. Clause (ii) of Ex.B18 dissolution deed also clearly show the suit property as capital assets of the partnership firm. The Income Tax Returns and Books of Account maintained at the relevant time clearly show that there was an implied agreement between the father and son to treat the suit property as a partnership property. Hence, it is the contention of the learned senior counsel that suit property has already become partnership assets and the partnership was also dissolved only in the year 1986 and thereafter it has become proprietary concern. After 1986 the defendant's father did not have any title to the suit property. Hence any document registered for conveying the said property in

favour of the plaintiff cannot be valid in the eye of law. It is further contention of the learned senior counsel for the Respondent that the plaintiff in the suit is only a court-bird and taking advantage of the difference of opinion between the father and son, the plaintiff being the speculative purchaser of the property which are always under litigation grab-situation and obtain some document without any valid consideration. The alleged sale deed is a sham and nominal. The consideration said to have been paid under the document itself also highly doubtful. The alleged discharge of loans after a gap of 20 years is also create serious doubt. The alleged promissory notes pleaded in the plaint and the sale deed are not genuine. No document whatsoever has been filed to show that the alleged debts were cleared by the plaintiff.

15. It is further contention of the learned senior counsel that the defendant's father after his retirement from the partnership, started leading wayward life and frequent visitor to the horse racing, taking advantage of the same, the sham and nominal document has been created by the plaintiff. It is further contention of the learned senior counsel that the conduct of the plaintiff in registering the document after keeping it pending as as Pending Document No.P139/1992

paying necessary deficit stamp duty of Rs.1.00 lakh on 23.4.2004 and a further sum of Rs.1,65,300/- on 27.4.2004, getting registered as Document No.2161/2004 itself clearly show that the sale deed is nothing but sham and nominal document. Hence, submitted that the judgment and decree of the learned trial Judge is well balanced and does not require any interference. In support of his arguments learned senior counsel for the Respondent also placed reliance upon the judgment cited by the appellant herein in **(2003) 6 SCC 423- ARM Group Enterprises Ltd., v. Waldorf Restaurant and others**. Apart from that he also relied upon the judgment reported in: **1982 L.W. 321-The Chief Controlling Revenue Authority v. Chidambaram (Full Bench Judgment of this Court)**.

16. In the light of the above submissions, now the points arise for consideration are:-

- (i) Whether the suit properties were treated as assets of the partnership after entering into the deed of partnership between Dr.J.B.Pinto and the Respondent herein?
- (ii) Whether Dr.J.B.Pinto had absolute title over the suit property at the time when he executed sale deed in the year 1992?
- (iii) Whether the sale deed dated 6.7.1992 is true and valid?
- (iv) To what relief?

17. Points 1 and 2:- The plaintiff claims to have purchased the suit property by virtue of a sale deed dated 6.7.1992 said to have

been executed by Dr.J.B.Pinto, who is the father of the defendant for a total sale consideration of Rs.7,70,000/-. As the defendant has taken the plea of adverse possession thereby created cloud over the title of the plaintiff to the suit property, the plaintiff has filed this suit for declaration of his title to the suit property. It is the contention of the defendant that his father Dr.J.B.Pinto, running X-Ray Institute and Clinical Laboratory in the suit property as the proprietary concern initially and thereafter in the year 1973, he had converted the proprietary concern as a partnership firm taking the defendant as partner in the firm and the partnership was continued from the year 1973 till 1986. The suit property at the time of proprietary concern consists of Ground Floor and part of First Floor and the property was used and treated as partnership property and the same was contributed by Dr.J.B.Pinto as the capital of the partnership firm and it was treated only as a partnership business asset. Hence, it is the contention of the defendant that the partnership was dissolved in view of the retirement of Dr.J.B.Pinto on 31.03.1986 and a deed of dissolution also executed on 21.05.1986. After the dissolution of the partnership firm the defendant became its proprietor with effect from 1.4.1986. Hence, it is the contention of the defendant that his father had no title to the property, to execute the sale deed to the plaintiff at

the relevant time. It is further contention of the defendant that his father is in the habit of losing money in the horse racing and at that time he started to sign many documents indiscriminately. When there was a dispute between the father and son after the dissolution of the partnership firm, the sale deed came to be executed. The same is not for any consideration but only to defeat the rights of the defendant. In the above background and the rival contentions, now it has to be analysed whether the suit property was contributed by Dr.J.B.Pinto as a capital assets of the partnership firm which was formed in the year 1973. It is not in dispute that originally the property was purchased as vacant site by Dr.J.B.Pinto in the year 1966 and thereafter, he put up construction of ground floor and part of the first floor. Ex.B3 a copy of the partnership deed and Ex.B18 a copy of the dissolution deed have been filed to show that there was a partnership and thereafter, there was dissolution of the said partnership firm. In the course of his evidence, as D.W.2, the defendant has also given explanation for non-filing the original documents as the same were lost in the Advocate's office while shifting the office. However, he has submitted that in the Advocate's office the copy of the documents attested by Notary Public has been traced out and he has filed those documents. In this regard, the Notary Public who attested the documents was also examined as

Court Witness. In her evidence, the Notary Public has stated that she has attested the copy of the documents after comparing with the original documents. Her evidence was not even disputed in the cross-examination. Therefore, the trial Judge after considering the satisfactory evidence for loss of original, has allowed to mark the documents as secondary evidence. The above aspect has not been disputed or challenged in the appeal. In the above back ground, now Ex.B3 copy of the partnership deed when carefully seen, a partnership was entered into between the defendant and his father on 27.06.1973. Ex.B3 clearly show that before entering into the partnership the defendant's father was carrying on X-Ray Institute and Clinical Laboratory in the suit property as proprietary concern initially in the name of Fathima X Ray Institute and Clinical Laboratory at Door No. 310, Crosscut Road, 10th Street, Gandhipuram, Coimbatore-12. Subsequently, the above proprietary concern has become partnership firm as could be seen under Ex.B3 and the partnership shall be deemed to have commenced on the 1st April 1973 and shall be AT WILL. Originally, the capital of the firm was Rs.25,000/- wherein Dr.J.B.Pinto contributed Rs.20,000/- and the defendant herein contributed Rs.5,000/-. Clause 6 of the partnership deed reads as follows:-

"6. If at any time further capital shall be required for the purpose of the partnership, the same shall unless agreed, be contributed by the partners in the said proportions."

Clause 9 reads as follows:-

"9. On the first party becoming a partner to the newly constituted firm, the excess of net assets passed on to the firm over and above his capital of Rs.20,000/- contributed to the newly constituted firm shall be treated as a loan to the said firm and shall also carry an interest at such rate as the partners may decide from time to time."

18. Clause 6 and 9 agreed between the partners when read together, would clearly show that the parties agreed that excess of net assets passed on to the firm shall be treated as loan to the said firm and the above Clause clearly indicate that even though the partners contributed the capital of Rs.25,000/- the father of the defendant in fact agreed in the event of excess of any share of his own shall be treated as loan to the said firm. The specific Clause entered in to between the parties clearly show that in fact there was an intention on the part of the defendant's father to throw his other individual assets to the partnership and the same shall be treated as a loan to the firm.

In the above background of the partnership in this regard it is useful to extract Section 14 of the Indian Partnership Act, 1932, which is as follows:-

"14. The property of the firm:- Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business."

A careful perusal of the above Section, it is clear that the property of the person entering into partnership does not become the property of the partnership merely because it is used for the business of the partnership. However, such property will become the property of the partnership if there is an agreement between the partners. The above Section does not indicate that only express agreement is required between partners, to bring any property to partnership business.

19. In this regard, the Judgment reported in **1969 (3) SCC 555-Arjun Kanoji Tankar v. Santaram Kanoji Tankar**, it has been held as follows:

" 13. Counsel for the defendant contends that in

any event by virtue of [Section 14](#) of the Partnership Act, 1932, all the assets with aid of which the business was carried on by the plaintiff must be deemed in law to have become partnership assets, under the deed of partnership, dated March 16, 1953. [Section 14](#) of the Partnership Act, 1932, provides:

“Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.”

Property belonging to a person, in the absence of an agreement to the contrary, does not, on the person entering into a partnership with others, become the property of the partnership merely because it is used for the business of the partnership. It will become property of the partnership only if there is an agreement express or implied at the property was, under the agreement of partnership, to be treated as the property of the partnership.

In Lindley on Partnership, 12th Edn., it is stated at p. 365:

“Again, it by no means follows that property used by all the partners for partnership purposes is

partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to lease to the firm, or without any lease at all. If, however, a partner brings such property into the common stock as part of his capital it becomes partnership property, and any increase in its value will belong to the firm.

... the only true method of determining as between the partners themselves what belongs to the firm, and what not, is to ascertain what agreement has been come to upon the subject. But this is by no means always an easy matter."

20. Similarly in **1982 L.W. 321-Chief Controlling Revenue Authority v. Chidambaram**, a Full Bench of this Court held as follows:

" Upon this, we are of the view that this is not a conveyance, and cannot be construed as such. It is only a deed of partnership and, as such, it is dutiable under [Article 46](#) of Schedule I of the Stamp Act. There are two related aspects of reasoning, upon which this matter must be held conclusively determined. First of all, as we earlier observed, under [Section 14](#) of the Partnership Act, it is always possible for a partner to bring into the partnership, property belonging to him

by the evidence of his intention to make it part of the assets of the partnership. There is a very early decision of the English Courts, namely, *Robinson v. Ashton* L.R. 20 Equity Cases, 25, which embodies this principle, where a man became a member of a partnership, and the agreement was that the business should be conducted at the mill belonging to him, and he was credited in the books of the partnership with the value of the mill. Jessel, M. R. said that it made no difference that his contribution was in the form of mill and machinery, and not in the form of money. The property, thereafter, became the property of the partnership. On the same principle of [Section 14](#), we have the decision of the Full Bench of the Calcutta High Court in *Prem Raj Brahmin v. Bhani Ram Brahmin* I.L.R. (1946) 1 Cal. 191, and the learned Judges pointed out that, by virtue of [Section 14](#), property could be thrown into the partnership stock without any formal document, and would, thereafter, become the property of the firm."

21. In **1987 L.W. 325-Helper Girdharbhai v. Saiyed Mohd.Mirasaheb Kadri**, a Division Bench of this Court in para 4 held as follows:-

" In [Commissioner of Income-tax v. Janab N. Hyath Batcha Sahib](#), [1969] 72 ITR 528 (Mad) it has been held that when a partner brings in certain items into the partnership at the time of its formation, such

items become the property of the partnership and that such change of ownership is brought about not by any transfer, but by the very intention of the parties to treat such property belonging to one or more of the members of the partnership as that of the firm. The learned judges in that case referred to [Section 14](#) of the Indian Partnership Act in support of the said view. [Section 14](#) states that " the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm". In [Chief Controlling Revenue Authority v. Chidambaram](#), a Division Bench of this court took the view that no document is necessary when a partner brings into the partnership some of his assets with an intention to treat the same as partnership assets, that by virtue of [Section 14](#) of the Partnership Act, property could be thrown into the partnership stock without any formal document, so as to make it the property of the firm. The contention of the assessee that unless there is a document of transfer, the immovable properties in question cannot be treated as partnership assets, cannot, therefore, be accepted."

22. In **(2003) 6 SCC 423-ARM Group Enterprises Ltd., v. Waldorf Restaurant and others**, it has been held as follows:

"Under [Section 14](#) of the Partnership Act 1932, property exclusively belonging to a person, in the

presence of an agreement to the contrary, does not, on the person entering into partnership with others, become a property of the partnership merely because it is used for the business of the partnership. Such property will become property of the partnership only if there is an agreement - express or implied- that the property was, under the agreement of the partnership, to be treated as the property of the partnership."

23. In **2010 (2) SCC 407-Mohammad Laiquiddin and another v. Kamala Devi Misra and others**, it has been held as follows:

"[Section 14](#) of the Partnership Act talks about the property of the firm. It reads as follows:

"Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

24. From the above judgments cited at the Bar, one thing is very clear that if there is implied agreement between the partners treating their individual property as partnership property, there is no need for any formal agreement to prove whether the property of individual has been blended with the partnership firm. To ascertain whether the suit property in this case was treated as the property of the partnership firm, the conduct of the parties treating the property assume significance in this case. As per Clause (9) of Ex.B3-partnership deed it is specifically agreed by the defendant's father that in the event of excess capital assets in favour of the partnership, the same shall be treated as loan. It is not in dispute that the partnership was continued between the defendant and his father till the dissolution of the firm. In Ex.B4 dated 1.1.1986, the defendant's father tendered his resignation from the partnership firm with effect from 1.4.1986 and requested the defendant for settlement of his account. In this regard Ex.B18 is a copy of the deed of dissolution dated 21.05.1986, signed by both parties. In Clause (3) of the deed, it is specifically agreed by the defendant's father to receive sum of Rs.1,86,110.21 towards capital amount, current account, loan account and goodwill and Clause (4) provides that in addition to the dues mentioned in Clause (3) the defendant's father is entitled compensation of Rs.3.00 lakhs for

relinquishment of his share of interest in the capital asset of the firm. Clause (5) provides that the above amount shall be paid in 60 equal monthly instalments together with 12% simple interest per annum commencing from 1.7.1986. The specific Clause contained in the deed of dissolution to receive compensation for relinquishment of his share of interest in the capital asset of the firm in fact clearly indicate that the capital assets only mean to the property where the partnership firm was all along run from the year 1973. From the records it is not in dispute that the firm was running at Door No. 310, Crosscut Road, 10th Street, Gandhipuram, Coimbatore-12, which is the suit property. From the dissolution deed Ex.B18, it can be seen that in fact the father of the first defendant herein has agreed to receive compensation towards his share in the capital assets. In the above background when other documents particularly Ex.B5 to B20 and Ex.B55 to B60 if carefully analysed, Ex.B5 is the assessment order passed by the Income Tax Department for the year 1974-75 along with Statement of the Auditor signed by the Auditor as well as Dr.J.B.Pinto the father of the defendant. This is with regard to the report on the working of the firm for the year ended 31.03.1974. The assets and liabilities are clearly set out in that document and not only signed by the Auditor of the firm Mr.R.Rajamani, examined as D.W.1, but also the father of the

defendant. The land value was shown as Rs.20,351.50. Similarly, in Schedule III the building value is given as Rs.41,979/- after depreciation value. These documents have been signed not only by the Auditor but also the father of the defendant. Admittedly, the firm was run in the suit property bearing Door No. 310, Crosscut Road, 10th Street, Gandhipuram, Coimbatore-12 at the relevant time. Separate Income Tax Returns were filed by the defendant's father wherein he has included the immovable properties land and building of the partnership firm. Ex.B52, B53, B54 and B62 are ledger entries. All the particulars found in the Income Tax Returns were also brought forward in the ledger entries. In Ex.B6 the Income Tax Returns for the year 1979-80 the address of the firm was mentioned as Door No. 310, Crosscut Road, 10th Street, Gandhipuram, Coimbatore-12 and the defendant's father has also signed the Return. In that Return also the land and building value has been brought into partnership account. Ex.B7 to Ex.B12 are the Income Tax Returns for the Assessment Years 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 and 1984-85. In all the assessment years, the father of the defendant has shown the value of the building of the partnership property. All these documents were also signed by the defendant's father and the Auditor at the relevant time which clearly indicate that the individual property of Dr.J.B.Pinto

was brought into partnership firm and it was all along treated as property of partnership firm. Ex.B13 is also similar Assessment Order wherein also the property namely the land and building were shown as partnership property. In this regard, it is useful to see Ex.B55-Income Tax Return filed by the defendant's father, just prior to the formation of the partnership firm. This account is related to the period ended 31.03.1973. He has filed the Income Tax Returns for the property situate at Door No. 310, Crosscut Road, 10th Street, Gandhipuram, Coimbatore-12, where the firm was run. Here also he has shown the value of the buildings and house sites. The old house site value shown as Rs.20,351.50 and old building value shown as Rs.43,055/- . This Ex.B55 is filed by the defendant's father which is prior to the formation of the partnership. Whereas subsequent to the formation of the partnership on 27.06.1973 when he filed the Income Tax Return for the Firm under Ex.B5 for the year 1974-75 he has included only old house site which was valued for a sum of Rs.20,351.50 under Ex.B13 which is just prior to the formation of the partnership. This fact clearly indicate that only the building situate in the suit property where the firm was run was included in the firm account. Similarly, old building value mentioned in Ex.B13 alone was carried forward to the partnership account under Ex.B5, B6, B7, B8, B9, B10, B11, B12

during the subsistence of the partnership firm. This fact clearly indicate that there was an implied agreement between the partners to treat their own property as the partnership firm property at the relevant time i.e., only these entries were carried forward in the ledgers. In this regard D.W.1 - Auditor R.Rajamani was examined. He has also categorically stated that only on the basis of the entries and Returns filed by Dr.J.B.Pinto, the entries were made in the ledgers.

25. It is the contention of the learned counsel for the appellant that Dr.J.B.Pinto, father of the defendant has already given a complaint against the Auditor before the Council of Institute of Chartered Account of India. Therefore, his evidence cannot be relied upon and the possibility of creating the ledger at subsequent stage also cannot be ruled out. In this regard, Ex.X1 when carefully perused, that a complaint was filed by Dr.J.B.Pinto in the year 1989 alleging that the Auditor has given a false certificate stating that the property belonged to the firm. Therefore, sought action against him. As against which explanation was called for from D.W.1 under Ex.X2 and the same was properly explained under Ex.X3 and subsequently the complaint has been closed. It is to be noted that this complaint was filed only in the year 1989 long after the dissolution of the partnership

firm. After dissolution of the partnership firm it appears that there were strained relationship between the father and son and there were exchange of notices between them, only at that stage in the year 1989, the complaint has been filed against D.W.1. Therefore, it cannot be stated that the entire entries in the Income Tax records and ledgers which were filed from 1974 to 1986 have been created only by the Auditor and he has given a false evidence.

26. As already discussed above under Ex.B55, Dr.J.B.Pinto himself has given a statement and subsequently under Ex.B5 and B6 immediately after formation of the partnership he himself submitted Income Tax Returns and based on that an assessment order has been passed wherein he has included the property. Though in an individual Return of Fathima X Ray Institute and Clinical Laboratory for the year ended 31.3.1973 under Ex.B55 he has shown two sites one is old and the other is new and two buildings one is old and the other is new, after formation of the partnership firm he has carried forward only land which is valued at Rs.20,351.50 and building valued at Rs.43,055/- in subsequent Returns. These facts clearly indicate the contention of the learned counsel that the Auditor has fabricated the documents cannot be countenanced for the simple reason that till dissolution of the

partnership firm, the Returns were filed by Dr.J.B.Pinto and signed by him. The notice of dissolution also signed by Dr.J.B.Pinto as can be seen under Ex.B20. Similarly, the name and address of the partnership firm also found in Ex.B19-Registration Certificate of the partnership firm wherein Door No. 310, Crosscut Road, Gandhipuram, Coimbatore-12, is very much available. Admittedly, the partnership firm was carrying on business in the above address. Therefore, the land and building shown in all the returns of the partnership firm carrying on its business is only in the above property. Hence, the contention of the appellant's counsel that in the absence of specific mention about the suit property, it cannot be inferred that only the above property was transferred to the partnership firm cannot be countenanced at all. When the firm itself was run in the above address and the building and land where the firm was run is shown as partnership property, merely because not mentioning the survey number and description of the property, it cannot be stated that the suit property is not at all included in the partnership firm. Ex.B21 is the legal notice dated 27.1.1988 issued by the defendant's father to the defendant. From this, it is seen that only from 27.1.1988 there was some dispute between the father and son arose with regard to the payment of instalment. The same was replied under Ex.B22 dated 12.9.1988,

wherein the defendant issued notice to his father not to use the name of the firm in the recently started laboratory at Sathyamoorthy Road, Ram Nagar, Coimbatore-12 from that onwards difference of opinion between the father and son arose such a level which led to the strained relationship between them, which resulted in publication issued by the father under Ex.B23, dated 11.02.1988 for sale of the suit property which was suitably replied by the defendant under Ex.B24. Thereafter, under Ex.B25 the suit O.S.No.305 of 1988 was filed by the defendant against his father stating that his father is making nuisance in the property and thereby he filed the suit for injunction against him. Thereafter, again there were exchange of letters as could be seen from Ex.B26 to B31. As could be seen from Ex.B31 the defendant has also issued notice not only to his father but also to Natarajan not to advance further loan to his father. Again under Ex.B40 to Ex.B50 and B58 there were exchange of correspondence between the father and son after the dissolution of the firm. But the fact remains that during the existence of the partnership the property was all along treated as partnership property.

27. The factum of receiving the compensation for the capital assets by the father also further fortified the fact that the suit property was actually blended with the partnership firm and all along treated as

partnership property. Therefore, once the property was treated and thrown into partnership and the business was also running in the same premises, it could be easily understood as implied agreement between the parties to treat the individual property as partnership property. Once an individual property of the defendant's father was thrown to partnership firm and all along shown as partnership property and subsequently the firm was dissolved, he cannot claim that the property thrown into partnership is his individual property. While including the above property towards capital assets, he has agreed to receive compensation in terms of dissolution deed. These facts clearly show that the suit property was all along treated as a partnership property. Merely because there were strained relationship developed between the father and son with regard to financial issues after the dissolution of the partnership firm there were exchange of notices, it cannot be presumed that there was no intention on the part of the defendant's father to treat his separate property as partnership property. The crux of the issue is the intention on the part of the partner to treat the property as the property of partnership firm during the existence of the partnership but not after the dissolution of the firm. Therefore, merely because one of the partners blended and thrown his property in the partnership firm and subsequently after dissolution of the firm he

cannot claim that he never treated the property as a partnership firm property. Subsequent dispute between the father and son will not in any way affect the nature of the agreement and arrangement between the partners during the existence of the partnership firm. Hence this Court is of the view that the individual namely defendant's father having treated his own property as a partnership property and continued to run the firm in the same address after dissolution of the firm agreeing to receive compensation for the capital assets in terms of dissolution deed of partnership and signed the Returns including this property as partnership firm property, cannot take a different stand at a later point of time when there were disputes between him and his son. Hence, this Court is of the view that from the Income Tax Returns for the Assessment Years 1974-75, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 and 1984-85 and ledger entries filed on the side of the defendant clearly proved the fact that the suit property was all along treated as partnership firm property. Subsequent correspondences between the parties and subsequent suits filed between the son and father clearly show that the father was in need of funds to spend sum amounts and it is the contention of the defendant that his father was a spent thrift and used to borrow money and signing the document indiscriminately according to his whims and

fancy to several persons and he was regular visitor of horse racing and to prove the same he has filed Ex.B51. Thus, the contention of the defendant also further probalised by the evidence of P.W.1 that from the year 1989 Dr.J.B.Pinto has contracted heavy debts with various persons and to clear the debts Ex.A1 sale deed came to be executed by him. Ex.A1 sale deed dated 6.7.1992 shows that the defendant's father said to have contracted debts from the year 1987 till 1989. These are all happened after dissolution of the firm and after his retirement from the partnership. Therefore, at this stage, any dispute arose between the partners, the same cannot be a ground to hold that the property was never treated as partnership property.

28. It is further to be noted that in para 13 of the Written Statement filed by the Defendant in O.S.No.305 of 1988 under Ex.A30, he has also pleaded that few book entries were also made in the partnership accounts of the institute regarding the said property and the above entries were made only to get over certain fiscal liabilities. In the rejoinder dated 22.2.1988 the book entries in the partnership account is also admitted by Dr.J.B.Pinto. The specific pleadings of the defendant's father in the above suit also proves the fact that he was also aware of the fact that the suit property was included as

partnership property and the same was only to get over some fiscal liabilities. Once the property was shown as partnership property whether it was for the fiscal liabilities or some other purposes is no matter. The intention of the defendant's father at this point of time was very clear that he treated his individual property as partnership property. Therefore, this Court is of the considered view that the suit property all along during the existence of the partnership was treated as partnership property and in fact thrown into partnership business. Ex.A32 is the letter addressed by the defendant's father on 22.12.1991, claiming amount as per the dissolution deed and also stating that till last instalment is paid and he shall have a charge towards the above due and all the assets of the firm. This fact also clearly show that the suit property was all along treated as partnership firm property. Once the property was thrown into partnership business and partnership was dissolved in the year 1986 itself, by dissolution deed, the defendant's father had no title whatsoever with regard to the suit property. Merely because the sale deed of the year 1966 standing in his favour he has no right to treat the property as his individual property. Accordingly, these points are answered.

29. Point-3:- The plaintiff claiming to be the purchaser of the

suit property on the basis of the sale deed said to have been executed by Dr.J.B.Pinto, he has filed this suit for declaration. A careful perusal of the pleadings found in the plaint, it is seen that though the document Ex.A1 is said to have been executed on 6.7.1992 for the total sale consideration of Rs.7,70,000/- the sale was not registered on the same day. The document was kept as Pending Document No.139/1992. Thereafter, the plaintiff was asked to pay the deficit stamp duty under Ex.A2 and A3 dated 13.1.1994 and 16.2.1994. The deficit stamp duty of Rs.1.00 lakh was claimed by the Registering Authorities. Having received Exs. A2 and A3 dated 13.1.1994 and 16.2.1994, the plaintiff did not take any action. He slept over till 2003 and for the first time under Ex.A4 dated 31.3.2003, he sent a letter to the Registering Authorities as if he was making enquiries about the document and the document was not available. Based on the above letter, under Ex.A7 the Deputy Inspector General of Registration sent a letter to the District Registrar to release the document after collecting the deficit stamp duty. Thereafter, deficit stamp duty of Rs.1.00 lakh on 23.4.2004 and a further sum of Rs.1,65,300/- under Ex.A8 dated 27.4.2004 was paid and the document was released. It is curious to note that from 1992 till 2003 there was no reason as to why the plaintiff all along kept quiet. Whereas the first time under Ex.A4 dated

31.3.2003 he sent a letter as if the document was not available in the Registrar office and he was making frequent enquiries. The manner in which Ex.A4 is addressed to the Registering Authorities clearly indicate one fact that this letter has been addressed for the first time to show as if he was making frequent enquiries about the document. This explanation by the plaintiff is improbable and in fact create serious doubt about the very transaction. If a person purchases the property for true value then the sale is genuine one. Particularly, when the property situate in the heart of the famous city of Coimbatore, no prudent man will allow the document to remain as pending document for 12 years without even knowing the fate of it. This fact amply create serious doubt about the genuineness of the document from the very beginning. This fact also further fortified by the evidence of P.W.1 himself. P.W.1 in the cross-examination has categorically admitted that he is doing business of real estate and used to purchase the properties which are under litigation. These facts clearly indicate that he has purchased the property taking advantage of the dispute between the father and son and his evidence also clearly show that he did not even deny the suggestion that his brother and Dr.J.B.Pinto were friends and they used to go to horse racing.

30. It is the further evidence of P.W.1 that six months prior to the sale deed Ex.A1 he has paid Rs.50,000/- as advance. However, he did not get any receipt. He did not even verify the documents of title. This evidence also create some doubt about the honesty of the transaction. Without seeing title deeds and without entering into any agreement the person agreeing the purchase property and paying advance of Rs.50,000/- is also improbable. It is further to be noted that under Ex.A9 and A10 the plaintiff has addressed letters to the Commissioner of Corporation to effect the assessment of the suit property in his name. Thereafter under Ex.A11 letter was sent by the Corporation for his personal appearance along with original document. But he did not appear before the Commissioner. Whereas the plan for constriction of building has been approved only in the name of the defendant. Under Ex.B34 proceedings dated 17.6.1992, the Corporation addressed to the defendant requiring further details from the defendant. Under Ex.B35 dated 26.11.1992 it is stated that the defendant's application dated 28.3.1992 has been approved. Under Ex.B36 and Ex.B37 are the plans for construction of the second floor. These facts in fact clearly indicate only the second floor construction was done by the defendant. Therefore, the contention of the plaintiff that Dr.J.B.Pinto, has put up construction of second floor is also highly

doubtful in view of the Ex.B35 document. First time the plaintiff has sent a legal notice to the defendant on 18.5.2004 contending that the defendant is in permissive occupation and the plaintiff has purchased the property and the permission granted him to reside in the property also over and hence he sought for handing over possession of the property. It has been suitably replied by the defendant. In reply under Ex.A14, it is stated that the second floor has been constructed by the defendant in the year 1991. Ex.A1 is a sale deed dated 6.7.1992 for a total sale consideration of Rs.7,70,000/-. It is stated in the sale deed that advance of Rs.50,000/- has been paid and several times Dr.J.B.Pinto received another sum of Rs.96,000/- and other amounts have to be adjusted towards the debts to the various parties. After payment to various persons the seller said to have received only Rs.92,250/- on the date of the sale. Other amounts agreed to be discharged by the plaintiff. It is to be noted that the pronotes from the year 1987 to 1989 in favour of various persons namely one N.Ananthakumar, Natarajan, Thangamani, Vijayakumar, Sampath, Devarajan, Muthumanickam and one P.Mathusuthanan, for various amounts said to have been executed by the vendor of the Ex.A1 agreed to be discharged by the plaintiff herein. Further, it is curious to show that for balance sale consideration of Rs.1,00,000/- the vendor

said to have obtained two pronotes for Rs.50,000/- each in his name and in the name of his wife respectively. This is also highly doubtful in this regard. After obtaining the pronote from the purchaser and executing the sale deed also creates serious doubt since it is not a normal human conduct. The conduct of the parties, i.e. plaintiff's vendor receiving only paltry sum and executing document and also obtaining pronote for balance sale consideration and allowing the plaintiff to discharge alleged debts to various persons, in fact, forces this court to presume that Ex.A1 transaction is doubtful from the inception under Section 114 of Evidence Act.

30. It is to be noted that this document under Ex.A1 was executed in the year 1992 at the time of difference of opinion between the father and son was in the high pitch. The plaintiff is in fact in the habit of purchasing the property which are under litigation. The plaintiff claims that various amounts towards the debts owed by Dr.J.B.Pinto have been discharged, it is curious to note that he has filed Exs. A20, A21, A22, A23, A24, A25, A26, A27 and A28 original receipts said to have been issued by the creditors in respect of pending suits namely O.S.Nos. 29 of 2008, 30 of 2008, 31 of 2008, 32 of 2008, 595 of 1995, 596 of 1995 and 597 of 1995. All these receipts under

Exs. A20 to A28 are original in nature and Exs. A20 to A27 were obtained on 11.07.2006. Ex.A28 receipt was obtained on 20.08.2007. It is to be noted that the sale deed is of the year 1992. The plaintiff claims to have discharged the amount mentioned in the sale deed of the year 1992, in the year 2006 and 2007. All are original receipts obtained on the same day. If really any amount has been settled, the same should have been settled before the Court when the matters are pending before the Court. Ex.A28 receipt was obtained on 20.08.2007 from N.Thangamani, N.Anbumani and N.Vijayakumar who are said to be the Legal Heirs of Natarajan. Settling the alleged dues to various persons on the same date also create some doubt about the genuineness of the documents. Normally if any amount is settled towards the suit claim, the same should be settled through the Court and normally original receipts will be filed only in the Court for recording satisfaction. Whereas the plaintiff has filed original before this Court. The plaintiff has also filed Ex.A36 to A43 the copy of the plaint in various suits filed against the defendant's father in O.S.No.594/1995, O.S.No.595/1995, O.S.No.596/1995, O.S.No.596/1995, O.S.No.599/1995, O.S.No.600/ 1995, O.S.No.601/1995, O.S.No.3253/1996.

31. It is to be noted that though the suits were filed on the basis

of the alleged pronotes of the year 1988 and 1989 it could be seen from Ex.A40 to A42 the suits were filed on the alleged pronote dated 3.10.1988, 28.3.1988 and 7.12.1988, whereas the suit is filed in the year 1995. In the pleadings it is pleaded as if acknowledgement of the debt was made in writing on 16.11.1991, making such averments suits were taken on file beyond the period of limitation. These facts also clearly indicate that even after the expiry of three years period of limitation for the alleged pronotes, the suits were filed as if acknowledgement was made on 16.11.1991 and there was a cause of action for filing the suits. All these facts clearly show that the entire transaction and alleged payment made by the plaintiff on the Ex.A1 sale deed is highly unbelievable and create serious doubt about the very nature of the transaction. When the defendant has filed a suit against his father and one Natarajan, the said Natarajan has admitted in his written statement which is marked as Ex.A43 that his sons have advanced loan of Rs.2.00 lakhs on pronotes to the father of the defendant on 14.1.1987. That being the case, when the suit is already filed by the defendant the said Natarajan's Legal Heirs again advancing alleged amounts on various subsequent dates also highly unbelievable. All these facts clearly probabalize the contention of the defendant that the plaintiff is in the habit of purchasing the property and speculative

purchaser. The sale consideration set out in the sale deed highly artificial and not proved to the satisfaction of this Court. In any event, Ex.A1 dated 6.7.1992 sale deed cannot make out any title to the purchaser as the vendor himself has divested his title, in fact he has thrown the suit property into the partnership firm in the year 1973 itself. Therefore, any purchase made by the plaintiff subsequently that too in the year 1992, will not convey any title to the plaintiff. Accordingly, this point is answered against the appellant/plaintiff.

32. Therefore, this Court does not find any infirmity in the judgment and decree rendered by the learned trial Judge dismissing the suit. Accordingly, all these points are answered against the appellant.

33. In the result, the appeal is dismissed with costs. Connected MP is dismissed as unnecessary.

21.03.2017

Index:Yes/No
Internet:Yes/No
gr.

N.SATHISHKUMAR, J

gr.

PRE DELIVERY JUDGMENT
IN A.S.No.92 of 2010

21..03..2017

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