

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.03.2017

PRONOUNCED ON: 15.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.1048 of 2009

1. G.Venkataraman
2. K.Guruvaan

Plaintiffs

Vs

1. N.Rajeswari
2. M.Narayanan

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiffs : Mr.K.Jenitha for M/s.P.Madhan

For Defendants : Mr.B.Ullasavelan

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree,
against the Defendants:-

- (a) for declaration that the superstructure on the B-Schedule land belongs to the 1st Plaintiff absolutely.
- (b) for permanent injunction against the Defendants from disposing of the superstructure on the B-Schedule property or interfering with the possession and enjoyment of the 1st Plaintiff of the superstructure on the B Schedule land or otherwise meddle with it in any manner whatsoever, either by the Defendants or by their agents or servant or anybody claiming any right through them in any manner whatsoever.
- (c) directing the Defendants to pay the costs of the suit.

2. **Plaint:-** The 1st Plaintiff and the 1st Defendant are husband and wife. The 2nd Plaintiff is the father of the 1st Plaintiff and the 2nd Defendant is the father of the 1st Defendant. The 1st Plaintiff and the 1st Defendant were married on 5.7.2000 at Vellore. They also have a female child Keerthana, who was aged 9 years at the time of institution of the suit. The wife of the 2nd Defendant had settled in favour of the 2nd Defendant, by a registered settlement deed, a vacant piece of land, measuring 3612 sq.ft. at Plot No.10, Kannagi Street, Choolaimedu, Chennai-94. The 2nd Defendant had in turn settled a portion of the vacant site, measuring 1680 sq.ft. to the 1st Defendant on 13.3.2003 and possession was also handed over to her. It had been stated that the 2nd Plaintiff being the father of the 1st Plaintiff, decided to provide a residential accommodation for the 1st Plaintiff and the 1st Defendant. Consequently, he invested money for construction of a storeyed building on the said land. The total area constructed in the ground floor and the first floor measured about 1225 sq.ft. In the second floor, there was a constructed portion of 320 sq.ft.

3. It had been stated that the cost of the construction in the year 2003 was Rs.28 lakhs. It had been stated that the 2nd Plaintiff was a retired Superintending Engineer (PWD) in the Government and consequently, he had supervised the construction work. Moreover, the mother of the 1st Plaintiff Mrs.Pakkiri Ammal had contributed a sum of Rs.5 lakhs to the 1st Plaintiff by cheque and the 1st Plaintiff had contributed Rs.7 lakhs by selling his share of the property at Cuddalore and he had also contributed cash of Rs.3 lakhs, the income from his business in dealing with second hand cars. The 2nd Plaintiff

had contributed Rs.3 lakhs from his pensionary benefits. The 1st Plaintiff had also obtained a loan of Rs.9 lakhs from the Indian Overseas Bank, Aminjikarai, Chennai, which was given on the security of the said land. The mother of the 1st Plaintiff, by selling her gold jewels and silver articles, had contributed a further sum of Rs.1 lakh towards the construction. It had been stated that masons and workers were brought from Cuddalore. The wood work was also done at Cuddalore and transported by lorries. Grill work was also done at Cuddalore. The other building materials like, steel, cement, bricks and marbles were purchased at Madras and some materials from Cuddalore on hire basis. The building has RCC framed structure. The main door was made up of teak wood with ornamental works and mirror finish plastering was done. The flooring was done with marbles. Over head tank had also been constructed. It had been stated that the 1st Defendant under the instigation of the 2nd Defendant picked up a quarrel with the 1st Plaintiff on 14.5.2009. In this connection, a complaint was also lodged by her with the Thousand Lights Women Police, Chennai, but after enquiry, it was found that the complaint was false. Owing to marital differences, the 1st Plaintiff had shifted to a temporary residence at No.23, Surya Flats, Kamaraj, 3rd Street, Choolaimedu, Chennai and the 1st Defendant had occupied the suit property.

4. It had been further stated that the Defendants were trying to dispose of the property. It had been stated that the 1st Plaintiff was the absolute owner of the entire superstructure. He, therefore, issued a notice on 4.8.2009. He let out the ground floor to a Bank Manager and also let out one portion in the first floor to another tenant. The 2nd floor portion was also let out to another

tenant. He was also repaying the loans and monthly instalments to the IOB. It had been further stated that in 2005, the 2nd Defendant came from Vellore and picked up a quarrel with the 1st Plaintiff and also lodged a complaint under Section 307 of IPC in the Choolaimedu Police Station. It had been further stated that the 2nd Defendant introduced a young man into the house and encouraged the 1st Defendant to converse with the said young man on phone during nights. When this was questioned, the 1st Defendant picked up a quarrel and filed another complaint against the 1st Plaintiff in the Thousand Lights Women Police Station. In the said strained circumstances, the Plaintiffs have come forward with this suit seeking a declaration that the superstructure belongs to the 1st Plaintiff and for permanent injunction restraining the Defendants from disposing of the superstructure or from interfering with the 1st Plaintiff's peaceful possession and for costs.

5. **Written Statement:-** In the written statement, the Defendants have denied all the allegations. It had been stated that the 1st Plaintiff was not at all residing in the suit property. He was actually staying with the 2nd Plaintiff at Manjakuppam, Cuddalore District. The marriage between the 1st Plaintiff and the 1st Defendant was admitted. The birth of the child was also admitted. The execution of the settlement deed by the 2nd Defendant in favour of the 1st Defendant with respect to the property described as Schedule-B to the plaint, over which the disputed superstructure rests, is also admitted. It had been stated that the Plaintiffs misrepresented the position of the 1st Plaintiff at the time of the marriage. Soon after the marriage, it was realised that the 1st Plaintiff had no avocation at all and his only interest was to extract dowry from

the 2nd Defendant. When this was not possible, he started to torture the 1st Defendant. He also levelled false allegations. It had been stated that the Plaintiffs are attempting to grab the property, to which they have no right, title or interest. The 1st Defendant is a Professor at Government College, Chennai, affiliated to the University of Madras and drawing a salary of Rs.35,000/- per month and earns an additional income of Rs.25,000/- per month as a Tutor in the Private Educational Tutorials.

6. It had been further stated that the 1st Defendant had studied M.A. and M.Phil and was also doing Ph.d and is also an income tax assessee. The 1st Defendant applied for a term loan for construction of a house under Subha Graha scheme on 12.5.2003 for a total sum of Rs.9 lakhs. This loan was sanctioned on the source of income of the 1st Defendant. The 1st Plaintiff being the husband of the 1st Defendant stood as a surety. The loan repayable in 180 monthly instalments. The 1st Defendant constructed the house with ground floor and first floor out of her personal savings as well as the term loan funds. She had purchased all the materials, such as sand, cement, bricks, steel, wood, grills and other sanitary items and also paint. The bills stood in her name. The property was assessed and property tax and water and sewerage tax are in the name of the 1st Defendant and she is paying the necessary taxes. The 1st Defendant and her child are living in one portion of the first floor and is collecting the monthly rent from the tenants in the ground floor, first floor portion and second floor. The building plan was sanctioned in the name of the 1st Defendant. The term loan was repaid from her salary. She had given standing instructions for deduction towards the term loan from her salary. The

allegations that the Plaintiffs constructed the house by investing a sum of Rs.28 lakhs by receiving from the mother Rs.5 lakhs, by sale of property at Cuddalore Rs.7 lakhs, by personal savings of Rs.3 lakhs, pensionary benefits of the 2nd Plaintiff of Rs.3 lakhs and bank loan of Rs.9 lakhs and Rs.1 lakh by sale of gold jewels and silver articles, have been specifically denied as false and untrue.

7. It had been stated in the written statement that the 1st Plaintiff is addicted to alcohol and has illicit relationship with another lady called Parvathy. He has abandoned the matrimonial home and is living with the said lady. Disputes between the 1st Plaintiff and the 1st Defendant increased day by day and consequently, a police complaint was given in the year 2005 before the Choolaimedu Police Station and a case has been registered against the 1st Plaintiff under Section 307 of IPC. The 1st Plaintiff persuaded the 1st Defendant to transfer the suit property to his name and also beat her. The 1st Defendant had filed a petition for divorce under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act in the I Additional Family Court, Chennai in OP.No.2879 of 2009. It had been stated that the 1st Defendant is in peaceful possession and enjoyment of the suit property. The 1st Plaintiff has no right, title or interest. It had been further stated that there is no intention to sell the suit property as there is no necessity for the same. It had been further stated that there is no cause of action for the suit and consequently, the Defendants prayed that the suit must be dismissed.

8. The Plaintiff has also filed a reply statement. The 1st Plaintiff claimed that he is residing in the suit property. It was claimed that the property was settled in the name of the 1st Defendant for the benefit of both the 1st

Plaintiff and the 1st Defendant. It had been stated that the 2nd Plaintiff and the 2nd Defendant are close relatives and they knew about the 1st Plaintiff even prior to the marriage. The contribution of the Plaintiff and the mother of the 1st Plaintiff towards the construction of the house has been reiterated. It had been denied that the Plaintiffs had misrepresented the economic status of the 1st Plaintiff before the marriage. Demand of dowry, threat and torture were also denied. The fact that the 1st Defendant constructed the house was also denied. The allegations raised by the Defendants in the written statement regarding the character and conduct of the 1st Plaintiff was also denied. It had been stated that the 1st Defendant was collecting the rents illegally. It had been stated that the 2nd Defendant who was a retired Deputy Superintendent of Police, was instigating the 1st Defendant against the 1st Plaintiff. It had been stated that the 2nd Plaintiff has been sending money to the 1st Defendant and the 1st Plaintiff's brother was also providing financial assistance. It had been reiterated that the suit must be decreed as prayed for.

9. On the basis of the above pleadings, by order dated 20.2.2014, this court had framed the following issues:-

1. Whether the suit B-Schedule property is the absolute property of the first Plaintiff?
2. Whether the suit B-Schedule property has been constructed with the fund of the first Defendant?
3. Whether the Plaintiffs are entitled to grant of injunction as prayed for?
4. To what other reliefs the Plaintiffs are entitled to?

10. **Trial:** - To substantiate their rival contentions, the 1st Plaintiff

was examined as PW.1 and the 2nd Plaintiff was examined as PW.2 and an Assistant Manager of the IOB, Aminjikarai Branch, Chennai was examined as PW.3. The 1st Defendant was examined as DW.1 and the uncle of the 1st Defendant was examined as DW.2. The 1st Plaintiff during his chief examination had marked Ex.P1 to Ex.P12. The 2nd Plaintiff had marked Ex.P13 to Ex.P14 documents. PW.3 had marked Ex.P15 (series) and Ex.C1. DW.1 had marked Ex.D1 to D12 documents. No document was marked through DW.2. The documents marked on the side of the Plaintiffs and the Defendants are as follows:-

S.No	Exhibit	Description	Date
1	Ex.D. 1	Original IOB housing loan payment challan	
2	Ex.D. 2	Original IOB housing loan account no.000503350300005 transaction information	1/1/2009 to 11/1/2016
3	Ex.D. 3	Original IOB housing loan account no.0005033500013 transaction information	1/1/2009 to 11/1/2016
4	Ex.D. 4	Original IOB savings bank account no.005010000322995	1/1/2009 to 11/1/2016
5	Ex.D. 5	N.Rajeswari (1 st Defendant) saving bank pass book	21/10/2002 to 9/10/2003
6	Ex.D. 6	Original IOB housing loan statement of N.Rajeswari	1/4/2003 to 31/3/2008
7	Ex.D. 7	Original CSRF-5 Choolaimedu Police Station N.Rajeswari	16112009
8	Ex.D. 8	Original Corporation of Chennai Sanctioned Plan	23122002
9	Ex.D. 9	Original N.Rajeswari Job certificate DKM College for Women, Vellore	26092006
10	Ex.D. 10	Original N.Rajeswari Job Certificate Arignar Anna Government Arts College for Women, Walajapet, Vellore District	31102016
11	Ex.D. 11	Original N.Rajeswari Job Certificate Ethiraj College for Women	22082008
12	Ex.D. 12	Original estimate for the construction by Panel Valuer for IOB	10052003

S.No	Exhibit	Description	Date
1	Ex.P. 1	Original counterfoil of cheque no.A186380764 for a sum of Rs.5,00,000/-	04092002
2	Ex.P. 2	Original loan sanction order issued by the IOB, Chennai	06102003
3	Ex.P. 3	Copy of divorce petition filed by the 1st Defendant against the 1 st Plaintiff	
4	Ex.P. 4	original State Bank of India pass book in the name of plaintiff's mother.	
5	Ex.P. 5	Certified copy of the sale deed executed by G.Packiri Ammal in favour of N.Ravikumar and his wife R.Kanimozhi.	08052002
6	Ex.P. 6	Original Cement bills to the year 2002 to 2003	
7	Ex.P. 7	Original bills for the purchase of bricks to the year 2002 to 2003	
8	Ex.P. 8	Original sand and jelly bills pertaining to the year 2002-2003	
9	Ex.P. 9	Original bills for the purchase of steel pertaining to the year 2002-2003	
10	Ex.P. 10	Original bills for the purchase of paint and electronics pertaining to the year 2002-2003	
11	Ex.P. 11	original bills for the purchase of plumbing, hardwares and electrical items pertaining to the year 2002-2003	
12	Ex.P. 12	Original bills for the purchase of wood, marbles bills and labour works bills to the year 2002-2003	
13	Ex.P. 13	SBI pass book	
14	Ex.P. 14	Construction log book of labour materials and expenditure	
15	Ex.P. 15	Entire records in A.No.966 of 2015 relating to cheque No.380778 issued by G.Pakkiriyammal, loan accounts register regarding loan account no.350300005 and the loan account	04092002

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S.No	Exhibit	Description	Date
1	Ex.C 1	ID produced by PW.3	

11. This court heard the learned counsel on either side and also perused the materials placed on record.

12. **Issues (1) and (2):-** These issues relate to whether the suit B-schedule property is the absolute property of the 1st Plaintiff and also whether the suit B-schedule property had been constructed with the funds of the 1st Defendant. These issue arises from the first prayer in the plaint, which is for declaration that the superstructure on the B-Schedule property belongs to the 1st Plaintiff absolutely and on the basis of the contention in the written statement. In the suit, the entire extent of property is given in the A-Schedule, which is as follows:-

“A-Schedule: TOTAL PROPERTY:-

All that piece and parcel of the property, measuring an extent of 3612 sq.ft. bearing Plot No.10, Kannagi Street, Choolaimedu, Chennai-94, comprised in TS.No.139, as per Patta T.S.No.139/6, Block No.10, bearing Patta CS.No.401/83-84, situated at No.109, 'Puliyur Village, Egmore, Nungambakkam Taluk, Chennai.

Bounded on the

North by : Property belonging to Murugappa Maistry.
 South by : 25'ft. Road (Kannagi Street)
 East by : Plot No.11
 West by : Plot No.9

measuring on this

East to West on the Northern side : 42 ft.
 Southern side : 42 ft.

North to South on the	Eastern side	:	86 ft.
	Western side	:	86 ft.

In all total extent of 3612 sq.ft. within the Registration District of Central, Chennai and Registration Sub District of Kodambakkam."

In that A-Schedule, B-Schedule property is given as follows:-

"Superstructure measuring 1225 sq.ft. out of 1680 sq.ft of land which is a portion of 3612 sq.ft land and ½ undivided share of land in 460 sq.ft. common passage, in all total extent of 1910 sq.ft. land with building, bearing Plot No.10/B, Kannagi Street, Choolaimedu, Chennai -94, comprised in TS.No.139 as per Patta T.S.No.139/6, Block No10, bearing Patta CA.No.401/83-84, situated at No.109, Puliur Village, Egmore, Nungambakkam Taluk, Chennai District (coloured 'Blue' in the annexed plan).

Bounded on the

North by	:	Property belonging to Murugappa Maistry.
South by	:	Plot No.10/A, and 10"ft. Common passage
East by	:	Plot No.11
West by	:	Plot No.9

Within the registration District of Central Chennai and registration sub District of Kodambakkam.

13. The 1st Plaintiff has sought seeks a declaration that he is the

absolute owner of the superstructure in the B-schedule property. However, a careful perusal of the B schedule property reveals that it includes not only the superstructure measuring 1225 sq.ft. out of 1680 sq.ft. of land, but also includes one half undivided share of land in 460 sq.ft. common passage, in all to a total extent of 1910 sq.ft. of land. In the first breath, it is seen that the relief sought is for superstructure and the court fees paid is also on the value of the superstructure. However, in the schedule, the entire land is actually included. The Plaintiffs have come to the court seeking a relief very carefully wording it as if they are restricting their claim to the superstructure alone, but at the same

time are trying to gain title and ownership and possession also of the land which is in the name of the 1st Defendant. This cannot be permitted by this court. Even if it is to be assumed that mentioning one half undivided share of land in 460 sq.ft. common passage, totally measuring 1910 sq.ft. of land is a bona fide mistake on the part of the Plaintiffs, the Plaintiffs have to primarily establish title over the superstructure. Merely contending that they have paid the money towards the construction of the superstructure cannot entitle them to ownership. They can seek for return of the monies spent on the superstructure. Even then they must establish expenditure by them alone. The superstructure and the land over which the superstructure rests go side by side. The value of the superstructure being more than Rs.100 unless it is conveyed through a registered document, title cannot pass. In this case, the 1st Plaintiff has invited the court to presume that since he is the husband of the 1st Defendant, he is entitled for preferential treatment. Nothing can be further, from the evidence recorded. It is the consistent stand of the 1st Defendant that the 1st Plaintiff had misrepresented his economic and social position before marriage. He had mislead the Defendants by stating that he was in a financially sound position. However, it is seen from the evidence that the 1st Plaintiff did not have any permanent avocation. It was the 1st Defendant who was a Lecturer in College. She was a Lecturer in the Government Arts College for Women, affiliated to the Madras University.

14. The Plaintiffs seek title and ownership on the ground that the 2nd Plaintiff is a retired Superintending Engineer in the PWD, Government of Tamil Nadu and consequently, he alone could have supplied all the materials required

for construction. In fact, in the plaint, it has been mentioned that the 2nd Plaintiff supervised the construction and moreover the masons and workers were brought from Cuddalore. Wood work was done at Cuddalore and transported by lorries. Grill work was also done at Cuddalore by employing skilled persons. The other building materials, like, steel, bricks, cement and marbles were purchased at Madras and building accessories were brought from Cuddalore on hire basis. All these aspects, can never confer ownership over the building. Merely because it had been stated that the building was constructed with raw materials brought from Cuddalore, will never entitle the Plaintiffs to seek a declaratory relief. The Plaintiffs have further stated that the mother of the 1st Plaintiff Mrs. Pakkiriammal contributed a sum of Rs.5 lakhs and the 1st Plaintiff himself provided Rs.7 lakhs by selling his share of property at Ramadoss Naidu Street, Cuddalore. They have further contended that he further contributed Rs.3 lakhs by selling second hand cars and the 2nd Plaintiff contributed Rs.3 lakhs from his pensionary benefits and the mother of the 1st Plaintiff sold her gold jewels and silver articles for Rs.1 lakh. When these statements are averred in the plaint, naturally, in the evidence these statements must be substantiated. However, the evidence is wholly lacking in details.

15. The learned counsel for the Plaintiffs drew the attention of this court to Ex.P1, which is the counter foil of cheque no.186380764 for a sum of Rs.5 lakhs, dated 4.9.2002. What has been produced in evidence is a mere counter foil. There is no evidence as to whom the cheque was paid and whether the cheque was actually debited from the account of the drawer and credited to the account of the payee. The learned counsel, to further

substantiate, relied on Ex.P4, which is the original SBI pass book in the name of the mother of the 1st Plaintiff. However, a perusal of the same does not reveal that the money was actually debited and credited to the account of the Defendants. The Plaintiffs then relied on Ex.P6 (series) which are the bills for purchase of cement. These range from the period 2002 to 2003. The name of the purchaser is not given in most of the bills. In the few bills in which the name of the purchaser is given, the name of the 1st Defendant alone is given. As an illustration, in the bill dated 10.1.2003, for purchase of coramandel cement amounting to Rs.630, the name of N.Rajeswari, who is the 1st Defendant, is given. These bills can never imply that the said person is the owner of the property. I hold that mere purchase of cement for construction of a building will not entitle a person to claim ownership of the building. To claim ownership, there has got to be a registered document in the name of the said person.

16. Similarly, Ex.P7 (Series) is a series of bills without any name for purchase of bricks which also cannot be the basis to declare ownership in the name of the 1st Plaintiff over the superstructure in B-Schedule land. Again, Ex.P8 are a similar set of bills for purchase of sand and jelly. Ex.P9 is a series of bills for purchase of steel. These bills have been issued by the South India Corporation (Agency) Limited. Since it is the Company, formal bills had been issued. The names shown in these bills, as a purchaser, is Rajeswari, who is the 1st Defendant herein. Consequently, the Plaintiffs, who claim that the very purchase of raw materials for construction of superstructure would confer title, would have to concede that the purchase of steel being in the name of the 1st Defendant, the title has to pass on to the 1st Defendant alone. The Plaintiffs

have also produced Ex.P10 for paint and electric bills, Ex.P11 for plumbing and Ex.P12 for purchase of wood, marbles and labour works. In all these documents, the common name which is reflected in the bills, is that of the 1st Defendant N.Rajeswari.

17. The Plaintiffs also produced Ex.P13, which is the original pass book. This pass book is in the name of the 2nd Plaintiff. A copy of construction log book has also been produced by the 2nd Plaintiff as Ex.P14 and the entire records relating to cheque no.380778 issued by the mother of the 1st Plaintiff had been produced as Ex.P15 (series). These documents as repeatedly pointed out above, cannot confer title or ownership to the suit property. In this connection, the documents filed on behalf of the Defendants would also have to be examined. This is all the more necessary since the Plaintiffs have relied on Ex.P2, which is the original sanction order issued by the IOB dated 6.10.2003. It is the claim of the learned counsel for the Plaintiffs that since the loan was issued in the joint names of N.Rajeswari, G.Venkataraman and K.Guruvaran, who are the 1st Defendant and the Plaintiffs herein, it is to be presumed by this court that the Plaintiffs have contributed towards the construction of the house. The fallacy in this statement is established by a perusal of the documents produced by the Defendants. Ex.D1 is the original IOB housing loan payment challan in the name of the 1st Defendant. Ex.D2 are the transaction information for the period 1.1.2009 to 11.1.2016. It is seen that the 1st Defendant had actually given standing instructions for debiting the monthly repayment towards the loan from her savings bank account. The plan for construction of the house in Ex.D8 is also in the name of the 1st Defendant. The Corporation has issued the plan

in the name of the 1st Defendant because she is the owner of the land.

18. It has also been pointed out by the learned counsel for the Defendants that the Plaint does not reveal the date on which the Plaintiffs commenced construction. It is not mentioned in the cause of action at all. The Plaintiffs examined as PW.3 the Assistant Manager of IOB, Aminjikarai Branch, Chennai. He produced the entire loan documents relating to the construction of the house. He had very clearly stated that the loan was issued by mortgaging the land standing in the name of the 1st Defendant and further stated that if the loan is not repaid they would recover the money by taking proceedings by selling the mortgaged property from the 1st Defendant. He further stated that the saving bank account no.32295 of IOB stands in the name of the 1st Defendant. He also stated that the entire EMI payments towards the loan were made by N.Rajeswari, who is the 1st Defendant. He further stated that the 1st Defendant had paid the loans regularly. PW.1, who is the 1st Plaintiff, during his cross examination, stated that he was not an income tax assessee before his marriage. He stated that the building was constructed under the supervision of the 2nd Plaintiff. He however later stated that the 2nd Plaintiff invested money. Neither statements are true. He further admitted that in Ex.P9 (series) the name of the 1st Defendant is mentioned in all the bills. He also stated that he has not paid the school fees for his daughter. He further stated that he or the 2nd Plaintiff had not produced any document to show that they had repaid the bank loan. The entire cross examination of PW.1 is full of contradictions and vital admissions. He had stated that he filed documents to show that his mother paid a sum of Rs.7 lakhs to him and later he denied the suggestion that he had

not filed any such document and in the very next sentence, he stated that he had not filed any documents. All these aspects very clearly show that the 1st Plaintiff is only a fortune hunter who is attempting to grab the property which is vested in the name of his wife, the 1st Defendant. There are marital differences between the 1st Plaintiff and the 1st Defendant and taking advantage of such situation, the 1st Plaintiff has filed this suit with a mala fide motive to grab the property of the 1st Defendant.

19. The 1st Plaintiff has also admitted during the cross examination that he had not filed any document to show that his mother had sold gold jewels and silver articles for Rs.1 lakh. He further admitted that he had not filed any document to show that he has been paying monthly instalments for the loan obtained in IOB. He has also admitted that he has not filed any evidence to show that he has remitted monthly instalments for the loan even after filing of the suit. A comprehensive reading of the evidence both oral and documentary clearly reveals that the Plaintiffs, more particularly, the 1st Plaintiff are disentitled from seeking any declaration regarding title to the property mentioned in the B-schedule to the Plaintiff.

20. In the first place, the schedule itself has been surreptitiously worded by including not only the superstructure but also the undivided share of land. Moreover, the land stands in the name of the 1st Defendant. At the most, a few bills towards purchase of cement, bricks, etc. could have been in the names of the Plaintiffs, but purchase of cement and bricks can never confer ownership over a two storeyed building. Consequently, I hold that the 1st Plaintiff has not established that he is the owner of the B-schedule property and

I further held that it is further established that the construction in the B-schedule property was made only by the funds of the 1st Defendant. Accordingly, issue (1) is answered against the Plaintiffs and issue (2) is answered in favour of the Defendants.

21. **Issue (3):-** The learned counsel for the Defendants pointed out the address of the 1st Plaintiff given in the plaint. The 1st Plaintiff has claimed that he is residing at Old No.78, New Door No.10B, Kannagi Street, Avvai Nagar, Choolaimedu. However, in the plaint, he has further stated that he has vacated the house and is staying separately at No.23, Surya Flats, Kamaraj Nagar, 3rd Street, Choolaimedu. He has further stated that the 1st Defendant and his daughter are residing in the suit property. When the 1st Plaintiff himself is not residing in the suit property, he cannot seek any injunction against the interference of possession since he is not in possession. Similarly, the land and the building are in the name of the 1st Defendant. The 1st Defendant has every right and the title to convey or deal with the property as and how she pleases. The 1st Plaintiff cannot seek any injunction on that aspect and this issue (3) is answered against the Plaintiff.

22. **Issue (4):-** On consideration of the facts and circumstances and the oral and documentary evidence, I hold that the suit is liable to be dismissed. Since the 1st Plaintiff has indulged in filing this vexatious suit against the 1st Defendant, who is his wife, with a sole intention of grabbing her property, the Defendants are entitled for costs.

23. In the result, this civil suit is dismissed with costs, which is estimated at Rs.50,000/- (Rupees fifty thousand only).

15.03.2017

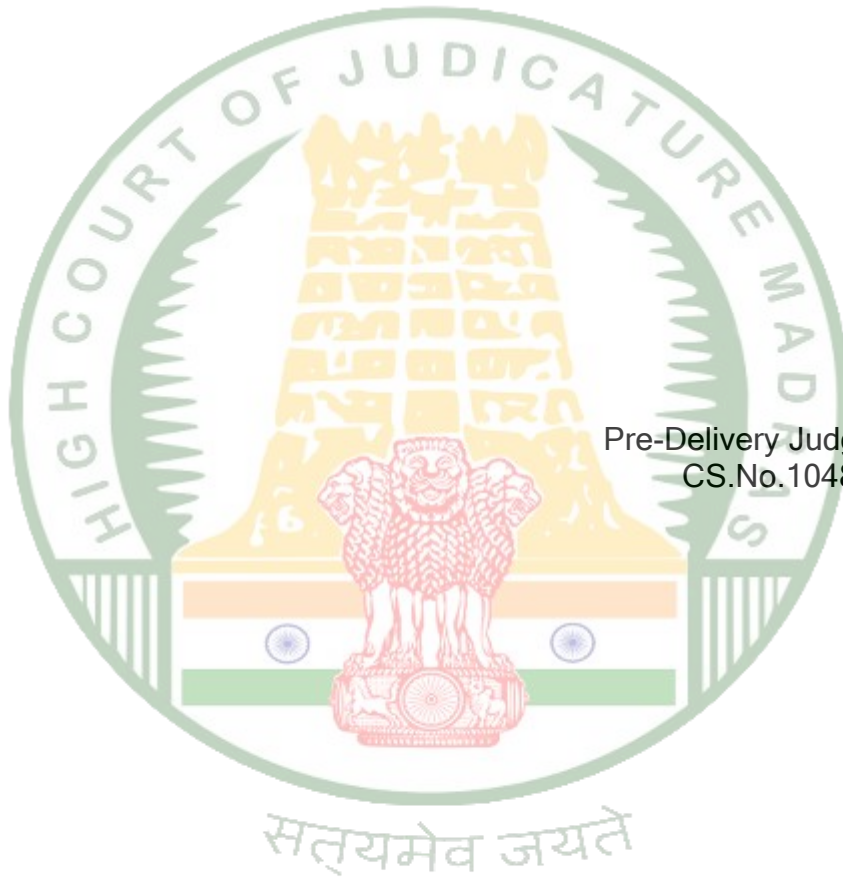
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