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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO. 302 OF 2013
IN
SUIT NO. 695 OF 2012**

1. Mr. Labh Singh Daya Singh]
Aged about 71 years, Indian]
Sikh Inhabitant of Mumbai]
Occupation : Business, Residing]
at 91, Vallabh Apartments,]
Warden Road, Mumbai-400006,]
State - Maharashtra.]Applicant
]Plaintiffs
]
]
2. Smt. Surjit Kaur Darshan Singh]
Aged about 81 years,]
Indian Sikh Inhabitant of]
Mumbai, Occupation: Housewife,]
residing at 91, Vallabh Apartments]
Warden Road, Mumbai-400 006]
State-Maharashtra.]
(Deleted since deceased)]

Versus

1. Kurian Thomas,]
Age : Unknown, Indian Christian]
Residing at : No.5,]
Mohammedbhai Mansion, 3rd Fl,]
N.S. Patkar Marg, Kemps Corner,]
Mumbai - 400 036.]
]
]

2. Puthenveedu Joseph Mathew]
 Aged : 65 years, Indian]
 Christian inhabitant, Occupation]
 : Business, Having office at: 2nd Fl,]
 Afzal Mansion B. Bharucha Marg]
 Kalaghoda, Fort, Mumbai-400 001]
3. Zainab R. Shaikh, Aged about]
 30 years, Occ: Not known, Indian]
 Sunni Muslim Inhabitant of]
 Mumbai, Resi at Yusuf Manzil]
 2nd Floor, Room No. 42,]
 Peerkhan Street, Sophiazubir] Defendants
 Road, Nagpada, Mumbai-400008.]

**ALONG WITH
 NOTICE OF MOTION No. 987 of 2014.
 IN
 SUIT No. 717 of 2013.**

Puthenveedu Joseph Mathew]
 Aged : 65 yrs, Occu: Business,]
 having his office at: 2nd Floor,]
 23/25, Ambala Doshi Marg,]
 Earlier known as Hamam Street,]
 Near Stock Exchange Post Office]
 Fort, Mumbai - 400 023.]Applicant.
]Orig. Plaintiff

In the matter between:-

Puthenveedu Joseph Mathew]
 Aged : 65 yrs, Occu: Business,]
 Having his office at: 2nd Floor,]
 23/25, Ambala Doshi Marg,]
 Earlier known as Hamam Street,]
 Near Stock Exchange Post Office]
 Fort, Mumbai - 400 023.] Plaintiff

Versus

1. Kurian Thomas,]
Aged about ____yrs, Occu: Business]
Residing at : No.5,]
Mohammedbhai Mansion, 3rd Fl.]
N.S. Patkar Marg, Kemp's Corner,]
Mumbai - 400 036.]
2. Labh Singh]
S/o. Daya Singh, Aged about 68 years]
Occu: Business, Indian inhabitant]
of Mumbai, having his address]
at Office No. 2A, Building known]
as "Singh House, 2nd Floor,]
Hamam Street, 23/25, Ambala]
Doshi Marg, Near Stock Exchange]
Post Office, Fort, Mumbai - 400 001.]
3. Zainab R. Shaikh, Aged about]
30 years, Occ: Not known, residing]
Yusuf Manzil, 2nd Floor, Room No. 42]
3rd Peer Khan Street, Sophiazubir]
Road, Nagpada, Mumbai - 400 008.]Defendants

Mr. Simil Purohit a/w Mr. Arshil Shah, Mr Pariket Shah, Ms. Sneha Vani, Ms Jaini Shah and Mr Vishal Raman i/b Mr. E.A. Sasi for defendant No.2 in S/695/2012, and for Plaintiff in S/717/2013 / Applicant in NMS/987/2014.

Ms. Tanmayi Rajadhyaksha a/w Mr. Dinesh Parmar i/b DSR Legal for Plaintiff in S/695/2012, for Defendant No. 2 in S/717/2013 / Applicant in NMS/302/2013.

Mr. Vijay S. Kurle for defendant no. 3 in both Suits.

Mr. N.A. Bandodkar, Ind Asstt to Court Receiver present.

Ms. Zainab R. Shaikh, Defendant No 3 in both Suits present in-person.

CORAM : B. P. COLABAWALLA, J.
DATED :- 4th July, 2019 and 5th July, 2019.

ORAL ORDER :-

1. Notice of Motion No. 302 of 2013 has been filed by the plaintiff – owner seeking relief that pending the hearing and final disposal of the suit, defendant Nos. 1 to 3 be directed to pay to the plaintiff monthly compensation/royalty @ Rs.3,39,000/- per month. A prayer for appointment of a Court Receiver and injunction is also sought with reference to the suit premises. The suit premises have been described in Paragraph 3 of the plaint in Suit No. 695 of 2012 being an area of approximately 1130 square feet (carpet area) on the 2nd floor of the building known as “**Singh House**”, Ambalal Doshi Marg, Fort, Mumbai-400 023 (for short “**the suit premises**”).

2. As far as Notice of Motion No. 987 of 2014 is concerned, the same has been filed by one Puthenveedu Joseph Mathew, who is the plaintiff in Suit No. 717 of 2013 and defendant No.2 in Suit No. 695 of 2012. In this Notice of Motion also the appointment of a Court Receiver is sought

with reference to these very suit premises and for a direction that the plaintiff (namely, P. J. Mathew) be put in possession of an Agent of the Court Receiver without the payment of royalty or on such other terms and conditions as this Court may deem fit and proper.

3. When Notice of Motion No.302 of 2013 had come up before this Court at the ad-interim stage, this Court by its order dated 19th December, 2011 prima facie came to the conclusion that considering allegations in both the above suits, it was necessary to protect the rights of all the parties. In these circumstances, this Court appointed the Court Receiver, High Court Bombay as Receiver of the suit premises. However, since this was only at the ad-interim stage, this Court ordered that the Court Receiver shall appoint defendant No.3 in Suit No. 695 of 2012 as his agent without the payment of any royalty or security. The further direction passed was till the Court Receiver takes the possession of the suit premises all the parties shall maintain status-quo in respect of the suit premises. This order further recorded that both these Notice of Motions were to be heard together. It is in

these circumstances that both the Notice of Motions have now come up before me.

4. I must mention that Notice of Motion No. 302 of 2013 had come up before me in February, 2019 when it was extensively argued by the erstwhile Advocate of defendant No.3. However, I could not dispose of Notice of Motion No. 302 of 2013 as both the Notice of Motions were to be heard together. It was in these circumstances that the matters were adjourned from time to time and have now come up before me. Now it appears that defendant No.3 has changed her Advocate. She has now engaged Mr Vijay Kurle to represent her. There was another Notice of Motion No. 643 of 2018 in Suit No.717 of 2013 which was filed by defendant No.3 for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 and which was heard and disposed of by me on 3rd July, 2019. At that time, no objection whatsoever was taken either by defendant No.3 or her Advocate for me to hear these matters. In fact, these matters were kept today specifically at the request of Mr. Vijay Kurle as he was not ready to argue these Notice of Motions yesterday. (3/7/2019).

5. Today, Mr. Kurle has tendered a letter dated 4th July, 2019 addressed to the Prothonotary and Senior Master requesting that these suits be transferred to any other Bench on the ground that defendant No.3 is apprehensive that I am biased and prejudiced against her thereby causing grave injustice. For this purpose the Prothonotary is asked to seek directions from the Hon'ble Chief Justice to have these matters transferred. By a separate order passed today (4th July, 2019) in Notice of Motion No.1515 of 2019 in Suit No.695 of 2012 (filed by defendant No.3 for rejection of the Plaint under Order VII Rule 11), I made it clear that I am not adjourning these matters as this letter was written only to delay the matter and to try and browbeat the Court into succumbing to the demand of Mr. Kurle to adjourn all these Notice of Motions. I have also issued suo motu contempt notices against defendant No.3 and her Advocate Mr. Vijay Kurle which form the subject matter of the order dated 4th July, 2019 passed in Notice of Motion No.1515 of 2019 in Suit No.695 of 2012.

6. It would not be out of place to mention that this is not the first time that Mr. Kurle has engaged in these kind of tactics. Even against other Judges of this Court as well as Judges of the Hon'ble Supreme Court, he has tried to browbeat the Bench. The only reason why I am narrating these facts is because Mr Kurle refused to argue both these Notice of Motions and hence I have proceeded to hear them in his absence, even though defendant No.3 is present in Court. Be that as it may, in order to make sure that no injustice is done to defendant No.3, I will consider all the arguments that were canvassed before me by her previous Advocate. For the sake of convenience, I shall refer to the parties as they are arrayed in Suit No. 695 of 2012.

7. The learned Advocate appearing on behalf of the plaintiff (in Suit No. 695 of 2012) took me through the plaint as well as the Annexures thereto. She submitted that in the plaint a clear case is made out that the plaintiff is the owner of the building known as "Singh House" in which the suit premises are situated. She pointed out the averments contained in paragraph 4 (a) of the plaint and stated that

initially by an Indenture of Conveyance dated 22nd July, 2014 the Life Insurance Corporation of India sold and alienated the said building (“Singh House”) to M/s Sahib Dittamal & Sons Pvt. Ltd., a Company registered under the Companies Act, 1956 for consideration of Rs.11,13,000/-. The said Sahib Dittamal & Sons Pvt. Ltd. (as a partner of M/s Sahib Enterprises) brought the said building “Singh House” into the hotchpotch of the said partnership vide a Deed of Partnership dated 15th January, 1978. She further pointed out that on 15th April, 1994 there was a Family Settlement Agreement entered into between all the family members of the plaintiff and which was challenged in this Court by filing a Suit being Suit No. 1498 of 1997. That suit came to be settled by filing consent terms dated 29th April, 2005 which inter alia record that M/s Sahib Enterprises is the owner of “Singh House” and that plaintiff No.1 and deceased plaintiff No.2 have accepted the said building “Singh House” towards full settlement of their rights and share in the said firm and in all its assets and credits, as their share on retirement. It is pursuant to these consent terms read with the deed of retirement that plaintiff No.1 and deceased plaintiff No.2 have become the absolute

owners and landlords of the building known as “Singh House”. It was brought to my notice that plaintiff No.2 expired on 27th January, 2013 (during the pendency of this suit) leaving behind plaintiff No.1 as her only heir and legal representative. In these circumstances, the name of plaintiff No.2 was deleted pursuant to an order of this Court (Shri S.J. Kathawalla,J) dated 18th February, 2013. Hence original plaintiff No.1 is now the sole plaintiff prosecuting the suit.

8. It was then submitted on behalf of the plaintiff that defendant Nos. 1 to 3 have not claimed any title to the suit premises. Further, they have not been able to establish in what capacity they are in possession and occupation of the suit premises.

9. The learned Advocate submitted that after this suit was filed, the above Notice of Motion No.302 of 2013 was pressed for ad-interim reliefs. At the ad-interim stage, this Court was pleased to appoint a Court Receiver in relation to the suit premises. Considering that it was at the ad-interim stage, this Court allowed defendant No.3 (who claims to be in

occupation of the suit premises), as an agent of the Court Receiver without payment of any royalty and security. Now Notice of Motion No. 302 of 2013 has come up for hearing and final disposal and the order of appointment of Court Receiver ought to be confirmed and defendant No.3 should be directed to pay security and royalty as per the prevailing market value, was the submission. The learned Advocate submitted that it cannot be that pending the hearing and final disposal of the suit, defendant No.3 and who is a rank trespasser, is allowed to occupy the suit premises free of cost. In the event the plaintiff fails in the suit, the Court at that time can always pass such further orders with reference to the royalty paid and to whom it should be refunded. In these circumstances, she submitted that the receiver be directed to fix the payment of security and royalty by defendant No.3 for the purpose of occupying the suit premises and as an agent of the Court Receiver.

10. On the other hand, this Notice of Motion is resisted by Defendant No.3 on the ground that the plaintiff, not having any title, does not have any locus to file the present suit. The

suit is filed for possession and injunction and defendant No.3, in her written statement as well as in the additional written statement, has expressly disputed the plaintiff's title. This being the case, there was no question of continuing the order appointing the Court Receiver in respect of the suit premises. Since the plaintiff's title was under a cloud and admittedly the possession of the suit premises is not with the plaintiff, the plaintiff is required to file a suit for declaration of title and for seeking possession. Since the plaintiff has deliberately failed and neglected to seek declaration of his title, the present suit is not maintainable.

11. The next contention raised by defendant No.3 is that the plaintiff is claiming title to the building known as "Singh House" (and consequently to the suit premises) under the consent terms dated 29th April, 2005. The contention basically is that since the plaintiff is claiming title to the building known as "Singh House" (and consequently to the suit premises) under these consent terms, the same have to be registered under the provisions of Section 17 of the Registration Act, 1908. Since these consent terms admittedly

are not registered, they can confer no title on the plaintiff. If this be the case, the question of continuing the appointment of a Court Receiver is wholly unwarranted as no prima facie case whatsoever is made out by the plaintiff.

12. Mr. Purohit, the learned Advocate appearing on behalf of defendant No.2 in Suit No. 695 of 2012 and for the plaintiff in Suit No. 717 of 2013 submitted that even defendant No.2 (the plaintiff in Suit No. 717 of 2013) is seeking the appointment of a Court Receiver. He submitted that the suit premises were transferred by one Kurian Thomas (through his constituted attorney Mr. Manohar Dwarkadas Rattan) to defendant No.2 under a Memorandum of Understanding dated 5th July, 1996 (for short **“MoU-1”**). Thereafter, possession was also handed over to defendant No.2 on 10th July, 1996 and which is evidenced by a possession receipt. He thereafter brought to my attention that this MoU-1 has been confirmed by Mr. Kurian Thomas on 18th February, 1997. It is the case of defendant No.2 that they were in possession of the suit premises till 21st August, 2011 when they were illegally dispossessed by defendant No.3. It is in these circumstances

that Suit No. 717 of 2013 was lodged in this Court on 26th August, 2011 under Section 6 of the Specific Relief Act. Mr. Purohit submitted that if anybody should continue in occupation as the Agent of the Court Receiver, it should be defendant No.2 (plaintiff in Suit No. 717 of 2013) and not defendant No.3.

13. To substantiate this argument, Mr. Purohit brought to my attention that the alleged Memorandum of Understanding dated 28th November, 2008 (for short “**MoU-2**”) executed between defendant No.3 on the one hand and one Mr. Arvind Rattan as the alleged Constituted Attorney of Mr. Manohar Dwarkadas Rattan on the other (and who in turn was the Constituted Attorney of the said Mr. Kurian Thomas). Mr. Purohit submitted that this alleged MoU-2 has been entered into on blank paper. It does not even have a nominal stamp. He further submitted that as can be seen from this MoU-2, the Constituted Attorney of Mr. Kurian Thomas was Mr. Manohar Dwarkadas Rattan. This MoU-2 has not been executed by Mr. Manohar Dwarkadas Rattan but in fact by Arvind M. Rattan who is the son of said Mr.

Manohar Dwarkadas Rattan. Mr. Arvind Rattan claims to have power to enter into this MoU-2 on the basis of a Power of Attorney dated 8th August, 2008 and which was supposedly executed by Mr. Manohar Dwarkadas Rattan in favour of Arvind M. Rattan. Mr. Purohit submitted that the Power of Attorney that was given to Mr. Manohar Rattan in fact does not even have a clause which would allow him to delegate his powers to his son or anyone else. That apart, Mr. Purohit submitted this document (the alleged POA executed by Manohar Rattan in favour of Arvind Rattan) is also highly suspicious because till date the alleged Power of Attorney executed in favour of Arvind M. Rattan has not been brought on record by defendant No.3.

14. Then Mr. Purohit took me through the recitals in this MoU-2 wherein the MoU-1 dated 5th July, 1996 entered into by Kurian Thomas (through his constituted attorney Mr. Manohar Dwarkadas Rattan) with defendant No.2 is expressly mentioned. It is also mentioned that the aforesaid MoU-1 with defendant No.2 was terminated on the said date (meaning thereby 26th November, 2008). Mr. Purohit

submitted that on the basis of what is stated in this MoU-2, it is quite clear that even according to defendant No.3 it was defendant No.2 who was in possession of the suit premises. In fact, Mr. Purohit pointed out that possession of the suit premises was given to defendant No.2 as far back on 10th July, 1996 pursuant to a possession receipt issued by Manohar Dwarkdas Rattan as the Constituted Attorney of Mr. Kurian Thomas. He submitted that this MoU-2 is completely silent as to when the said Mr. Arvind Rattan got possession of the suit premises from defendant No.2 and which was supposedly handed over to defendant No.3 on 29th November, 2008. Mr. Purohit submitted that there are gaping holes in the story of defendant No.3 regarding her being in possession of the suit premises. Mr. Purohit brought to my attention the averments made in the plaint in Suit No. 717 of 2013 and more particularly from paragraph 21 onwards and submitted that defendant No.2 was dispossessed from the suit premises by defendant No.3 on 21st August, 2011 at about 7:10 p.m. How defendant No.2 was dispossessed has also been set out in the subsequent paragraphs. Immediately after his dispossession, a police complaint was also filed by defendant No.2 on the

very same day and five days later Suit No. 717 of 2013 came to be lodged in this Court. He submitted that all the contemporaneous correspondence and the record would clearly show that defendant No.3 has illegally dispossessed defendant No.2 from the suit premises. He submitted that this apart, even before the police, the owner (the plaintiff in Suit No. 695/2012) has given a statement that the suit premises were in occupation of defendant No.2 and the owner does not know who defendant No.3 is. This was a statement given to the police by the owner on 29th October, 2011. This was another factor which clearly showed that defendant No.2 was in possession of the suit premises and who was illegally dispossessed on 21st August, 2011.

15. I must mention that Mr. Purohit brought to my attention an affidavit filed by one Tukaram Dhondur Kalambe who has been doing tea/coffee business since the last 35 years from the 3rd floor of "Singh House". According to Mr. Purohit, this affidavit is contrary in terms. It is stated that defendant No.3 has been in use, occupation and possession of the suit premises and the said Tukaram Dhondur Kalambe has been

supplying tea regularly to her for the last three years. This affidavit is executed on 25th August, 2011. If this statement was to be believed, then according to this affidavit, defendant No.3 ought to be in possession from August, 2008 and not from 29th November, 2008 as she claims. Mr. Purohit further pointed out to me that though this affidavit is dated 25th August, 2011, under the explanation and identification clause, the date mentioned is 25th July, 2011 which is one month prior to the execution of the affidavit itself. He submitted that this affidavit along with some other affidavits relied upon by defendant No.3, have clearly been procured by defendant No.3 to somehow try and establish her case that she was in physical possession of the suit premises all along. This, according to Mr. Purohit, is not only contrary to the record but wholly unbelievable and therefore, it is defendant No.2 who should be put in occupation of the suit premises as an Agent of the Court Receiver but without the payment of any royalty or security.

16. I have heard the learned Counsel for the plaintiff in Suit No. 695 of 2012 and the plaintiff in Suit No. 717 of

2013 (defendant No.2 in Suit No. 695 of 2012). Since Mr. Kurle, the learned Advocate, appearing on behalf of defendant No.3 (in both the above suits), refused to address this Court, no oral arguments have been canvassed on behalf of defendant No.3. However, the contentions of defendant No.3 I have already recorded in the earlier part of this order and to ensure that the contentions of defendant No.3 are considered by this Court, I shall now deal with the same. Considering that defendant No.3 has raised the issue of registration of the consent terms dated 29/4/2005 under which the plaintiff claims title to the building known as “Singh House” (and consequently to the suit premises), I shall deal with this issue first.

17. It is the contention of defendant No.3 that since the consent terms dated 29th April, 2005 create an interest in the building known as “Singh House” (and consequently to the suit premises) and which interest is in an immovable property the value of which is more than Rs.100/-, the same would require registration. If it is not registered then clearly the plaintiff gets no title in the suit premises and would

therefore certainly not be entitled for an appointment of a Court Receiver as they have not made out a prima facie case. To understand this contention, one would have to refer to the provisions of Section 17 of the Registration Act, 1908. Section 17 reads thus :-

“17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such

Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement

Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(x-a) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

(emphasis supplied)

18. On a plain reading of the aforesaid Section it is

clear that Section 17(1) stipulates that the documents and instruments listed in clauses (a) to (e) shall be compulsorily registrable as set out therein. Section 17(1)(b), and which according to defendant No.3 would apply to the facts of the present case, contemplates compulsory registration of other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. Section 17 (1-A) provides that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of Section 53-A. Then comes Section 17(2). Section 17(2) stipulates that nothing in clauses (b) and (c) of sub-section (1) shall apply to certain transactions. Section 17(2)(vi), and which is relevant for our

purposes, stipulates that nothing in clauses (b) and (c) of subsection (1) shall apply to any decree or order of a Court except a decree or order expressed to be made on a compromise and compromising of an immovable property other than which is the subject-matter of the suit or proceedings. In other words, Section 17(2)(vi) stipulates that a decree or order of a Court even if purporting to create a right in an immovable property above the value of rupees hundred would not require registration unless it is a decree or order expressed to be made on a compromise and comprising of immovable property other than that which is the subject-matter of the suit or proceeding. It is therefore, clear that if a compromise decree of a court comprises of an immovable property that forms the subject-matter of the suit or proceeding, then such a compromise decree would not require registration. This is clear from the plain language of Section 17(2)(vi).

19. Having analyzed the provisions, I shall now examine whether the building “Singh House” (and which forms part of the consent terms filed in Suit No. 1498 of 1997)

was the subject-matter of the aforesaid Suit No. 1498 of 1997. This suit was originally filed by the plaintiffs herein challenging the family arrangement, the date of which was left blank and the aggregate and lump sum amounts to be paid thereunder were also left blank. Along with the family arrangement, several other documents were also challenged as more particularly set out in Exh-“W” to the plaint (in Suit No.1498 of 1997). The plaintiffs were a party to this family arrangement. This family arrangement makes a specific reference to the firm called M/s Sahib Enterprises (paragraph 10 of the family arrangement) and the share of the plaintiffs herein in the said firm. It also refers to the assets of M/s Sahib Enterprises including the ownership of immovable property at Bombay (“Singh House”) and records that the assets held by the said Firm are outside the purview of this family arrangement and notwithstanding anything contained the said firm of M/s Sahib Enterprises continues to subsist with the plaintiffs having a 13% share in the said Firm and its assets. Clause 13 of this family arrangement further records an agreement that in respect of the Partnership Firm M/s Sahib Enterprises, the partners of the said Firm shall admit

and do agree to admit their respective legal representatives as the partners in the event of demise of any one of partners of the said Firm or any of them. As mentioned earlier, this family arrangement was specifically challenged by the plaintiff herein in Suit No. 1498 of 1997. This suit was thereafter compromised by entering into the aforementioned consent terms dated 29th April, 2005.

20. As far as the building "Singh House" is concerned, the consent terms dated 29th April, 2005 provide for the same in clause 8 thereof which reads as under :-

- 8.(a) "The Plaintiff Nos. 1 and 2, along with Sardar Tarasingh (since deceased) and, on the death of the said Sardar Tarasingh, Defendant Nos. 1(a) and (b) along with Defendant Nos. 4 and 29 (a) to (d) i.e. Mr. Gurpreet Singh, Mr. Harpreet Singh, Mr. Surjit Singh, Mrs. Devinder Kaur, Mr. Gurpreet Singh Tarlochan Singh, Mr. Jatinder Singh Tarlochan Singh. Mrs. Pramila Kaur carried on business in partnership in the firm, name and style of M/s Sahib Enterprises.**
- (b) Plaintiff Nos. 1 and 2 do and they hereby declare that they have retired from M/s Sahib Enterprises with effect from 1st April, 2005 and the remaining partners ("the continuing partners") have continued the said firm of M/s Sahib Enterprises. The accounts of the firm have been made up as on 31st March, 2005 and the continuing partners**

have taken over all the assets and liabilities of the firm except the property mentioned herein-below which Plaintiff Nos. 1 and 2 have received as their share in the said firm on retirement. The Continuing Partners hereby agree to indemnify and keep indemnified and hold harmless the Plaintiff Nos. 1 and 2 in relation to all claims and demands that may arise from third parties in respect thereof.

- (c) All the partners of M/s Sahib Enterprises hereby declare that the immovable property consisting of land and building lying and situate at 23-25, Haman Street (Ambalal Doshi Marg) Fort, Mumbai 400 023 and more particularly described I Annexure "E" hereto is an asset of the M/s Sahib Enterprises and the documents of title relating to this property are lost and/or misplaced.
- (d) Defendants Nos. 1 (a) and (b) and Defendant Nos. 29 (b) to (d) and (8) do hereby give and Plaintiff Nos. 1 and 2 accept the said property described in Annexure "E" hereto towards full settlement of all their rights and share in the said firm of M/s Sahib Enterprises and in all its assets and credits as their share on retirement. This immovable property shall hereinafter vest in and absolutely belong to the Plaintiff Nos. 1 and 2 as tenants in common in equal shares and the Continuing Partners shall have no right, title, interest or claim or demand of any nature whatsoever in respect thereof.
- (e) The Continuing Partners have paid all the taxes, outgoings and maintenance charges in respect of the said building described in Annexure "E" hereto up to 31st March, 2005 and all taxes, maintenance and other charges payable in respect of the said building with effect from 1st April, 2005 shall be borne and paid by the plaintiff nos.

1 to 2 who shall hold the continuing partners indemnified and save harmless in respect thereof.

- (f) Plaintiff Nos. 1 and 2 do and hereby undertake to this Hon'ble Court to execute a Deed of Retirement from the said firm of M/s Sahib Enterprises as per Annexure "F" hereto.**
- (g) The Continuing Partners agree and undertake to this Hon'ble Court to sign and deliver all necessary papers, applications and forms or writings/assurances as may be reasonably required by the Plaintiff Nos. 1 and 2 for having the said property described in Annexure "E" hereto transferred in the government and municipal records subject however to payment by plaintiff Nos. 1 and 2 of all costs, charges, expenses including the stamp duty, if any, in respect thereof.**
- (h) The Continuing Partners shall address letters of attornment to all the tenants/occupants occupying tenements in the property described in Annexure "E" hereto, notifying the change in ownership and the Continuing Partners shall cease and desist from collecting any rent/compensation from tenants/occupants payable from 1st April,2005.**
- (i) All arrears of rent for the period prior to 1st April,2005 in respect of immovable property described in Annexure "E" hereto shall belong to the Continuing Partners. The retiring partners undertake to pay over the same to the Continuing Partners if and when the same are recovered.**
- (j) The Continuing Partners shall also hand over quiet, vacant and peaceful possession to Plaintiff Nos. 1 and 2 of one room admeasuring about 100 sq. ft. on the 2nd floor of the said building described in Annexure "E" hereto currently in**

joint control of the Plaintiff No. 2 and the Continuing partners in the said property.

- (k) Plaintiff Nos. 1 and 2 hereby release all their right, title interest and share whatever in the partnership firm of M/s Sahib Enterprises including in the remaining two immovable properties of the said firm described I Annexure “G” hereto in favour of the Continuing Partners.
- (l) The Plaintiff Nos. 1 and 2 agree and undertake to this Hon'ble Court to sign and deliver all necessary papers, applications and forms or writings / assurances as may be required by the Continuing Partners for having the said properties described in Annexure “G” hereto above transferred in the government and municipal records in the name of the Continuing Partners and for deletion of the names of Plaintiff Nos. 1 and 2 therefrom subject however to payment by the Continuing Partners of all costs, charges, expenses including the stamp duty, if any, in respect thereof being borne by the Continuing Partners.
- (m) The Plaintiff Nos. 1 and 2 hereby agree, declare and confirm that they have no claim of any nature whatsoever against the Continuing Partners including for accounts of the said firm of M/s Sahib Enterprises and that none of the Continuing Partners are liable to render any accounts of the said firm of M/s Sahib Enterprises to Plaintiff Nos. 1 and 2 or any of them.
- (n) The Continuing Partners and the Plaintiff Nos. 1 and 2 shall sign and execute necessary forms and inform the Registrar of Firms of the Retirement of Plaintiff Nos. 1 and 2 from the said Firm. The Continuing Partners shall publish the notice in newspaper and the Government Gazette of retirement of the Plaintiff Nos. 1 and 2 from the

firm of M/s Sahib Enterprises.”

(emphasis supplied)

21. On a composite reading of the family arrangement and the consent terms (reproduced above), it is quite clear that the partnership firm M/s Sahib Enterprises and the building it owned, namely, “Singh House” was very much the subject-matter of the family arrangement which was challenged in the earlier Suit No.1498 of 1997. It therefore cannot be said that “Singh House” was not the subject-matter of Suit No. 1498 of 1997. As mentioned earlier, this suit was then compromised by entering into consent terms dated 29th April, 2005. These consent terms clearly record in clause 8 (b) that plaintiff Nos. 1 and 2 (plaintiff No.1 and deceased plaintiff No.2 herein) do declare that they have retired from M/s Sahib Enterprises with effect from 1st April, 2005 and the remaining partners (“the continuing partners”) have continued the said Firm of M/s Sahib Enterprises. Clause 8 (c) inter alia stipulates that M/s Sahib Enterprises is the owner of the land and building lying and situate at 23-25, Hamam Street (Ambalal Doshi Marg), Fort, Mumbai-400 023 which is the building known as “Singh House”. Clause 8 (d)

provides that defendant Nos.1 (a) and (b) and defendant Nos. 2 (b) to (d) and 8 do hereby give and Plaintiff Nos. 1 and 2 accept the said property described in Annexure “E” thereto (namely, “Singh House”) towards full settlement of all their rights and share in the said firm of M/s Sahib Enterprises and in all assets and credits as their share on retirement. This immovable property (namely “Singh House”) shall hereinafter vest in and absolutely belong to plaintiff Nos. 1 and 2 as tenants in common in equal shares and the Continuing Partners of M/s Sahib Enterprises shall have no right, title, interest or claim or demand of any nature whatsoever in respect thereof. This being the factual position, it is at least prima facie clear that the immovable property “Singh House” formed the subject-matter of Suit No. 1498 of 1997 and which was then compromised by entering into consent terms dated 29th April, 2005. This being the position, as per the provisions of Section 17 (2) (vi) of the Registration Act, 1908 these consent terms did not require registration as it clearly fell outside the exception as set out in Section 17 (2) (vi) of the Registration Act, 1908. I therefore find that the contention canvassed by defendant No.3 that these consent

terms would not confer any title on the plaintiff because they were compulsorily registrable, to be wholly without merit.

22. Even otherwise, I find that these consent terms, at least in relation to the building “Singh House”, did not require any registration. This is for the simple reason that the plaintiffs herein were the original partners of the firm M/s Sahib Enterprises and who was the owner of the said building “Singh House”. It was the partnership firm that owned the said building. The plaintiffs retired from M/s Sahib Enterprises with effect from 1st April, 2005 and the remaining partners continued to be the partners of the said Firm. Since the accounts had to be settled and drawn up, they were done so as on 31st March, 2005 and the continuing partners had taken over all the assets and liabilities of the Firm, except the immovable property consisting of land and building known as “Singh House” and which was given to the plaintiffs in lieu of their share in the partnership firm on their retirement. This is clear from clauses 8 (a) to 8(f) of the consent terms.

23. It is now settled law that a partnership firm is not

a legal entity and it has no legal existence. It is merely a compendious name and hence the partnership property vests in all the partners of the firm. Regardless of its character, the property brought into the stock of the firm or acquired by the firm during its subsistence for the purpose and in the course of the business of the firm, shall constitute the property of the firm, unless the contract between the partners provides otherwise. On dissolution of the firm, each partner becomes entitled to his share in the profits, if any, after accounts are settled in accordance with Section 48 of the Partnership Act, 1932. In the entire assets of the firm, all the partners have an interest, albeit in the proportion to their share and the residue, if any, after the settlement of accounts on dissolution, would have to be divided among the partners in the same proportion in which they were entitled to a share in the profits. Thus, during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution each partner becomes entitled to his share in the profits, if any, after accounts are settled in accordance with Section 48 of the Partnership Act. Since the residue would, in the eyes of law, be movable

property, the same would not attract the provisions of Section 17 of the Registration Act, 1908. Even if it is viewed from another angle, namely that since each and every partner of a firm has an undefined interest in each and every property of the firm and no partner can claim a definite or earmarked interest in one or all of the properties of the firm simply because the interest is a fluctuating one depending on various factors, it cannot be said that unless the accounts are settled in the manner indicated by Section 48 of the Partnership Act, what would be the residue which would ultimately be allocable to the partners. In that residue, which becomes divisible among the partners, every partner has an interest and when a particular property is allocated to a partner in proportion to his share in the profits of the firm, there is no partition or transfer taking place nor is there any extinguishment of interest of the other partners in the allocated property in the sense of a transfer or extinguishment of interest as contemplated under Section 17 of the Registration Act. What I have set out earlier has been succinctly laid down by the Supreme Court in the case of **S.V.Chandra Pandian and Ors vs. S.V.**

Sivalinga Nadar & Ors [(1993) 1 SCC 589]. Paragraph

16 lays down the aforesaid proposition and reads thus :-

“16. From the foregoing discussion it seems clear to us that regardless of its character the property brought into stock of the firm or acquired by the firm during its subsistence for the purposes and in the course of the business of the firm shall constitute the property of the firm unless the contract between the partners provides otherwise. On the dissolution of the firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with Section 48 of the Partnership Act. Thus in the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit. Thus during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any, on settlement of accounts. The mode of settlement of accounts set out in Section 48 clearly indicates that the partnership asset in its entirety must be converted into money and from the pool the disbursement has to be made as set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) and thereafter if there is any residue that has to be divided among the partners in the proportions in which they were entitled to a share in the profits of the firm. So viewed, it becomes obvious that the residue would in the eye of law be moveable property i.e. cash, and hence distribution of the residue among the partners in proportion to their shares in the profits would not attract Section 17 of the Registration Act. Viewed from another angle it must be realised that since a partnership is not a legal entity but is only a compendious name each and every partner has a beneficial interest in the property of the firm even though he cannot lay a claim on any earmarked portion thereof as the same cannot be predicated. Therefore, when any property is allocated to him from the residue it cannot be said that he had only a definite limited interest in that property and that there is a transfer of the

remaining interest in his favour within the meaning of Section 17 of the Registration Act. Each and every partner of a firm has an undefined interest in each and every property of the firm and it is not possible to say unless the accounts are settled and the residue or surplus determined what would be the extent of the interest of each partner in the property. It is, however, clear that since no partner can claim a definite or earmarked interest in one or all of the properties of the firm because the interest is a fluctuating one depending on various factors, such as, the losses incurred by the firm, the advances made by the partners as distinguished from the capital brought in the firm, etc., it cannot be said, unless the accounts are settled in the manner indicated by Section 48 of the Partnership Act, what would be the residue which would ultimately be allocable to the partners. In that residue, which becomes divisible among the partners, every partner has an interest and when a particular property is allocated to a partner in proportion to his share in the profits of the firm, there is no partition or transfer taking place nor is there any extinguishment of interest of other partners in the allocated property in the sense of a transfer or extinguishment of interest under Section 17 of the Registration Act. Therefore, viewed from this angle also it seems clear to us that when a dissolution of the partnership takes place and the residue is distributed among the partners after settlement of accounts there is no partition, transfer or extinguishment of interest attracting Section 17 of the Registration Act.”

(emphasis supplied)

24. I must mention that though this judgment was delivered in the case of a dissolution of a partnership, to my mind, the same principle would equally apply even in the case of retirement of a partner. This, in fact, has been considered by this Court in the case of **Commissioner of Income-tax Bombay City III v. Patel Brothers** [(1984

145 ITR 614): 1982 SCC OnLine Bom 393]. In this decision, a Division Bench of this Court (in the SCC OnLine report) has held thus :-

“31. Therefore, even the Act contemplates that where there is a change in the constitution of the firm, there has to be a fresh registration. It, therefore, appears to be clear and well established that a firm is no distinct legal entity apart from the partners constituting it and though under the I.T. Act a firm is treated as a unit of assessment and it has certain attributes similar to that of a personality, a business carried on by the firm is, in the eyes of law, is a business carried on by the partners collectively.

32. The real question on which the decision of the present reference must turn is what is the effect of the death of the deceased partner or what is the effect of the retirement of a partner. That must necessarily require the determination of the nature of the right of a partner in the partnership. We have already reproduced earlier observations from Lindley on Partnership as approved by the Supreme Court in Narayanappa's case, AIR 1966 SC 1300. It is clear from the decision in Narayanappa's case that during the subsistence of the partnership, no partner can deal with any portion of the property as his own and his right is to obtain such profits as falls to his share from time to time. His further right upon the dissolution of the partnership is to a share in the assets of the firm determined in accordance with the provisions of s. 48 of the Partnership Act. Section 48 of the Partnership Act provides as follows:

“In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies

of capital, shall be applied in the following manner and order:—

- (i) in paying the debts of the firm to third parties;
- (ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
- (iii) in paying to each partner rateably what is due to him on account of capital; and
- (iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.”

33. Under cl. (a), losses including deficiencies of capital have to be first paid out of profits and then out of capital, if necessary, and lastly, if necessary, by the partners individually in the proportions in which they are entitled to share profits. How the assets of the firm are to be applied is specified in cl. (b). The assets of the firm including any sums contributed by the partners to make up deficiencies of capital have first to be applied in paying the debts of the firm to third parties; then in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital; then each partner has to be rateably paid what is due to him on account of capital and if there is any residue, then that residue has to be divided amongst the partners in the proportions in which they are entitled to share the profits. In the case of a retiring partner or an outgoing partner or even in the case of death of a partner, all that the outgoing or the retiring partner or estate of the deceased partner would be entitled to, as pointed out by Lindley, is the proportion of the partnership assets after having been realised and converted into money and all the debts and liabilities of the partnership are paid and discharged. This alone is the content of the right of a retired partner or estate of the deceased partner. What, therefore, happens either on retirement or death of a partner is that his share in the partnership is given back to him and normally by well-accepted commercial methods of valuation the value of his share is quantified in terms of money. It is no doubt true that while making such an account, certain assets may have appreciated in value and those assets have to be valued as appreciated. But the

purpose of making the valuation is to determine the share of the deceased or retiring partner so as to be paid in terms of money, and on such payment the remaining assets of the partnership continue to belong to the surviving partners, but it is difficult for us to see how by this process there is acquisition of any assets by the surviving or the continuing partners. If the only right which the retiring or the deceased partner had was to get his share in the partnership assets as on the date of retirement or death, the moneys which are paid to him by the surviving or remaining partners do not have the nature or character of a payment made to him or his estate in lieu of obtaining something from the retiring or the deceased partner. In substance, the retiring partner walks out of the partnership taking away the value of his share in cash and the assets of the partnership continue to remain with the other partners in the partnership. That alone appears to us to be the true position, not only on first principle but also on the law laid down in several decisions.

34. Before referring to certain decisions, we may with advantage refer to a passage from Lindley on Partnership, 14th edn. at p. 899. The learned author was dealing with the effect of a partnership agreement which provides that the share of a deceased or retiring partner shall accrue to the continuing partners. In this context it is observed as follows:

“It is submitted that the share of that partner in truth comprises a bundle of rights which automatically ceases to have any value on his death or retirement, or, where a payment falls to be made in respect of the accurer, which contracts into the right to that payment on his death or retirement. Similarly, the shares of the other partners comprise bundles of rights which have inherent in them the prospect of an increase in value which will result from the death or retirement of that partner. Accordingly, when that partner retires, there is neither a disposal by him, nor an acquisition by the other partners, and a charge to capital gains tax cannot arise, even though a payment has been made by the continuing partners.”

(Emphasis [Here printed in italics] supplied)

35. We may usefully refer to the decision of the Supreme Court in *CIT v. Dewas Cine Corporation*, [1968] 68 ITR 240. Dealing with the provisions of s. 48 of the partnership Act, the Supreme Court observed as follows (p. 243):

“Section 48 of the Partnership Act provides for the mode of settlement of accounts between the partners. It prescribes the sequence in which the various outgoings are to be applied and the residue remaining is to be divided between the partners. The distribution of surplus is for the purpose of adjustment of the rights of the partners in the assets of the partnership: it does not amount to transfer of assets.”

36. That was no doubt a case of dissolution of partnership but what is important is that the manner in which the rights of a partner on dissolution has to be worked out under s. 48 of the Partnership Act has been described as an adjustment of the rights of the partners in the assets of the partnership.

37. The same view of the effect of dissolution and settlement of accounts was taken by the Supreme Court in *CIT v. Bankey Lal Vaidya*, [1971] 79 ITR 594. That was a case in which on a dissolution of a partnership it was found that a large majority of the assets were incapable of division and it was, therefore, agreed that the assets should be taken over by one partner and the respondent should be paid his share of the value of assets in money and the question was whether a part of the moneys received by the respondent could be brought to tax as capital gains under s. 12B(1) of the Indian I.T. Act, 1922. The Supreme Court held that there was no clause in the partnership agreement providing for dissolution or winding up of the firm and observed as follows (p. 596):

“In the course of dissolution the assets of a firm may be valued and the assets divided between the partners according to their respective shares by allotting the individual assets or paying the money value equivalent thereof. This is a recognized method of making up the accounts of a dissolved firm. In that case the receipt of money by a partner is nothing but a receipt of his share in the distributed assets of the firm. The respondent received the

money value of his share in the assets of the firm; he did not agree to sell, exchange or transfer his share in the assets of the firm. Payment of the amount agreed to be paid to the respondent under the arrangement of his share was, therefore, not in consequence of any sale, exchange or transfer of assets.... In the case in hand there is no sale and payment of price, but payment of the value of share under an arrangement for dissolution of the partnership and distribution of the assets. The rights of the parties were adjusted by handing over to one of the partners the entire assets and to the other partner the money-value of his share. Such a transaction is not in our judgment a sale, exchange or transfer of assets of the firm.”

38. The facts of this case will show that since the assets were not capable of being divided, one of the partners kept the assets and the other person was paid the money value of his share. On principle, in our view, it would make no difference, if a similar adjustment or payment is made on account of the value of a share of a retiring or deceased partner. We shall later consider the argument of Mr. Dastur that it is not his contention that there is any transfer and that these cases would, therefore, not be apposite.”

(emphasis supplied)

i25. This judgment clearly supports the view that I have taken namely, that the principle which would apply on the dissolution of a Firm at least qua registration, would also apply in the case of a retirement of a partner from the partnership. This being the settled position in law, I find that even otherwise the consent terms in so far as it related to the building known as “Singh House” in which the suit premises are situated, did not require registration. I

therefore find that the contention of defendant No.3 that the consent terms cannot confer any title on the plaintiffs and cannot be looked into at all, is without any merit.

26. I must mention that another contention regarding the maintainability of the suit was raised by defendant No.3 on the ground that in the present suit, since defendant No.3 had explicitly denied the title of the plaintiffs, they ought to have sought a declaration of ownership of "Singh House" (and consequently the suit premises). There being no such declaration sought, the suit was not maintainable. This submission, at least prima facie, appears to be without any merit. In the present case, the suit is filed seeking a declaration that defendant Nos.1 to 3 are rank trespassers and for their removal from the suit premises and for handing over possession of the same to the plaintiff. It may be true that no formal declaration has been sought regarding the ownership of title to the suit premises. However, on going through the plaint and reading it as a whole, clearly there are sufficient averments made with reference to the plaintiff's title. This apart, defendant No.3

has never claimed title to the suit premises. They claim to be in possession and occupation of the suit premises by virtue of the MoU-2 in their favour by one Mr Kurian Thomas. Mr. Kurian Thomas also never claimed title to the suit premises and at the highest was a tenant in respect thereof. In these circumstances, therefore, I do not think that defendant No.3 is justified in contending that the suit is not maintainable merely on the ground that no declaration of ownership is sought. In any event, this is something that would be decided at the trial of the suit after evidence is led by both the parties. Today we are at the interim stage and prima facie I find that the plaintiff has been able to establish title in relation to the suit premises. In these circumstances, therefore, I am unable to accept the contention of defendant No.3 that the suit is not maintainable.

27. Having said this, I am clearly of the view that in order to protect the suit premises, it would be in the interest of all the parties if the order for appointment of a Receiver as ordered by this Court (at the ad-interim stage) on 19th December, 2011 is required to be confirmed. However, now I

have to examine whether either defendant No.2 or defendant No.3 ought to be put in occupation of the suit premises as the Agent of the Receiver and whether they should pay royalty and security as determined by the Receiver. At the ad-interim stage, this Court allowed defendant No.3 to occupy the suit premises as an Agent of the Court Receiver without the payment of any security or royalty. The learned Advocate appearing on behalf of the plaintiff submitted that neither defendant can be allowed to use the suit premises without payment of any security or royalty. According to the learned Advocate, neither of the defendants have any right, title or interest in the suit premises and therefore cannot be allowed to occupy the same free of cost. I find considerable force in the argument canvassed on behalf of the plaintiff. In this regard, I find that defendant No.3 claims to be in possession pursuant to an unregistered and unstamped MoU-2 (dated 26th November, 2008) that was allegedly entered into between defendant No.3 and one Mr. Arvind Rattan who claims to be the Constituted Attorney of one Mr. Manohar Rattan who in turn is the Constituted Attorney of the said Kurian Thomas.

Defendant No.3 further claims that she has paid full consideration for acquiring the suit premises in 2011. How she has acquired the suit premises and in what capacity has not been explained at all. As mentioned earlier, it is the case of the plaintiffs that defendant Nos. 1 to 3 are rank trespassers in the suit premises and have absolutely no right, title or interest therein. Similarly, even defendant No.2 claims rights in the suit premises pursuant to the MoU-1 (dated 5th July, 1996) executed between defendant No.2 and the said Kurian Thomas. Admittedly, Kurian Thomas has never represented to either of the defendants that he is the owner of the suit premises. I fail to understand how Kurian Thomas could have created any right in favour of either of the defendants, and that too behind the back of the owner (the plaintiff in suit No.695 of 2012). In these circumstances, I do not think that either of the defendants can be allowed to enjoy occupation of the suit premises as an Agent of the Court Receiver free of cost and without the payment of any royalty.

28. This now only leaves me to consider whether

defendant No.2 (plaintiff in Suit No.717 of 2013) or defendant No.3 ought to occupy the suit premises as an Agent of the Court Receiver. In this regard, Mr. Purohit brought to my attention several documents and which I have adverted to earlier, to try and establish that defendant No.2 was in occupation and possession of the suit premises from July, 1996 till 21st August, 2011 when he was illegally dispossessed by defendant No.3. On going through the documents which Mr. Purohit brought to my attention, I find some merit in his arguments. However, at this stage, I cannot with any certainty come to a conclusion whether in fact defendant No.2 was illegally dispossessed or otherwise. If I was to put defendant No.2 in occupation of the suit premises, albeit as an Agent of the Court Receiver, it would virtually amount to decreeing suit No.717 of 2013 in his favour. Another factor that needs to be noted is that defendant No.3 has been in occupation of the suit premises at least since 21st August 2011 (being the date defendant No.2 claims he was illegally dispossessed by defendant No.3) till date. In these circumstances and looking at the totality of the facts of the case and considering the equities of all sides,

I think it would be just if defendant Nos. 2 and 3 are both allowed to bid before the Court Receiver for occupation of the suit premises and the highest bidder shall be appointed as the Agent of the Court Receiver. I think that this arrangement would be in the interest of all parties. In view of the foregoing discussion and considering the totality and the facts and circumstances of the case, the following order is passed :-

(i) The ad-interim order dated 19th December, 2011 passed by this Court appointing the Court Receiver, High Court Bombay as Receiver of the Suit Premises is confirmed;

(ii) The Court Receiver, on a date fixed by him, shall fix an appointment calling upon defendant No. 2 and 3 in Suit No. 695 of 2012 to attend his office for the purposes of bidding. Whoever is the highest bidder shall be appointed as the Agent of the Court Receiver on the payment of royalty which will form the subject-matter of the bid, but without the payment of any security. The successful bidder shall then execute the Agency Agreement with the Court Receiver;

(iii) The royalty collected by the Court Receiver shall be kept by the Court Receiver and be subject to further orders that may be passed in the Suit;

(iv) In the event the successful bidder (namely defendant No.2 or defendant No.3, as the case may be) commits two defaults [not consecutive] in the payment of the royalty, or in executing the Agency Agreement, the Receiver shall then dispossess the said Agent and file a report in this Court for further action to be taken with reference to the suit premises;

(v) In addition to the appointment of the Court Receiver, defendant Nos. 1 to 3 are restrained by an order of injunction of this Court, either through themselves and/or their agents, servants and/or any other person claiming through or under them from disposing of, alienating and/or creating any third party rights and/or interest in respect of the suit premises or any part thereof and more particularly described in Exhibit-A to the plaint;

(vi) It is clarified that any maintenance charges etc., with reference to the suit premises

shall be expended by the Court Receiver from the royalty received either from defendant No. 2 or defendant No.3 as the case may be. It is further clarified that the payment of royalty shall commence from the date of the execution of the Agency Agreement by the Receiver with the successful bidder;

(vii) Needless to clarify that before calling the parties for bidding, the Court Receiver shall fix a reserve price taking into consideration the market-value of the property and other relevant factors and for this purpose, if necessary, the Court Receiver shall call for a valuation report. The charges for this valuation report at the first instance shall be borne by the plaintiff;

(viii) If any licenses are required by the successful bidder for carrying out the business from the suit premises and of which the Court Receiver has already been appointed, the Receiver shall co-operate with the successful bidder. It is clarified that merely obtaining the licenses, if any, shall not in any way alter the status of successful bidder or the nature of the suit premises and no party shall be entitled to claim any equities on the basis of the aforesaid licenses.

29. Both the aforesaid Notice of Motions are disposed of in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

30. Considering that the subject-matter of both the suits is the same and the parties are also common, it would be in the interest of all the parties that both the suits are tagged together and heard finally.

(B.P. COLABAWALLA, J.)