

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06.11.2019

JUDGMENT DELIVERED ON : 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A.NOS.161 AND 162 OF 2016
AND
C.M.P.NOS.11414 AND 11415 OF 2016

Atul Kapur ..Appellant in both O.S.As.
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Vs.

1. Arun Kapur
2. Mrs.Vinay Kumari
3. Mrs.Anu Kapur ...Respondents in both O.S.As.

Original Side Appeals filed under Order XXXVI Rule 9 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, against the judgment and decree dated 04.03.2016 passed by the Single Judge, in C.S.No.985 of 2004 on the file of this Court.

For appellant : Mr.T.V.Ramanujam,
Senior Counsel for Mr.C.Rajan
For respondents : Mr.A.Ramesh Kumar for RR-1 and 2
Mr.A.S.Baalaji for R-3

COMMON JUDGMENT

R.SUBBIAH, J

These intra-Court appeals have been filed against the judgment and decree dated 04.03.2016 passed by the learned Single Judge in dismissing the suit in C.S.No.985 of 2004 and allowing the counter-claims of the defendants.

2. The said suit in C.S.No.985 of 2004 was filed by the appellant/plaintiff for the following reliefs:

(a) For partition of the immovable property described in the schedule to the plaint and put the plaintiff in separate

possession of 11014/28284 share of the plaintiff by metes and bounds.

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

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

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

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

(c) for costs of the suit.

3. The counter claim made by the defendants 1 and 2 in the additional written statement (2nd) is as follows:

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

(b) to dismiss the suit with costs.

4. The counter claim made by the third defendant in the written statement/additional written statement is as follows:

(i) to direct the plaintiff to hand over the vacant possession of Pent House No.9-A to the third defendant as enumerated in Schedules 'A' and 'B' in the additional written statement of the third defendant, and

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

5. For the purpose of convenience, the parties herein are referred to as per their ranking in the suit as plaintiff and defendants. The appellant will be referred to as plaintiff and the respondents 1 to 3 as defendants 1 to 3.

6. The case of the plaintiff, as in the amended plaint, is as follows:

(a) The first defendant is the plaintiff's elder brother. The second defendant is their mother. The third defendant is the wife of the first defendant. The suit property being house, ground and premises bearing Corporation Door No.52 (Old Door No.15), Taylors Road, Kilpauk, Chennai-600 010, belongs to Late Ved Prakash Kapur, the father of the plaintiff and the first defendant, and the husband of the second defendant. By a deed of settlement, dated 31.03.1972, registered as Document No.1983 of 1972 in the Office of the Sub-Registrar of Periamet, the plaintiff's father settled a portion of the said property in favour of the plaintiff. By a deed of settlement, dated 09.06.1972, registered as Document No.2917 of 1972 in the Office of the Sub-Registrar of Periamet, the plaintiff's father settled another portion of the said property in favour of the first defendant. The plaintiff's father Ved Prakash Kapur died on 24.07.1998 leaving behind him the plaintiff and the defendants 1 and 2 as his legal heirs and the remaining portion of the premises No.52, Taylors Road, Chennai, without any Will.

(b) While so, the first defendant being the eldest male member in the family, suggested the idea of developing the said property as "Joint Venture", and the plaintiff and the defendants being the joint owners of the property, agreed for the same and the matter was entrusted entirely at the hands of the first defendant, with an intent that the constructed flats would be distributed equally according to their respective shares of the undivided land. An agreement, dated 22.04.1999 was executed between the parties to share the flats to be constructed equally. Three Pent Houses in the IXth floor would be taken by each of the parties. It was agreed that Pent House No.9-A, 9-C and 9-E would be allotted to the plaintiff, second defendant and first defendant, respectively.

(c) Subsequently, the first defendant brought about various agreements and documents for the purpose of accounting and for tax benefits, all of which the plaintiff signed, placing absolute faith on his elder brother, the first defendant. The first defendant is in possession of all those documents and the plaintiff did not take copies of the same. After completion of the construction, the plaintiff was put in exclusive possession of one of the Pent Houses being No.9-A and the other two Pent Houses continued to be with the first defendant.

(d) On 27.07.2004, the plaintiff received a notice of caveat from the defendants. At that time, the plaintiff did not realise the fraudulent and evil design of the first defendant. On 05.10.2004, when the plaintiff was carrying out work in his Pent House, the first defendant's men created obstacles and the plaintiff gave a complaint to the Kilpauk Police Station and the same is pending investigation.

(e) The document dated 01.04.2002, registered as Document No.646 of 2002 on the file of the Sub-Registrar, Periamet, is the release deed, said to have been executed by the plaintiff in favour of the first and second defendants, which is sham and nominal and without consideration and never intended to be acted upon to transfer the title of the property of the plaintiff in favour of the defendants and the same is liable to be cancelled. The said document dated 01.04.2002 was never executed by the plaintiff as a release deed and not intended to relinquish his undivided share in the said property and had been brought about by fraud and undue influence. The first defendant, by claiming title under the same, had betrayed the trust reposed by the plaintiff on the first defendant and had acted against the original intention of the parties. On false and dishonest representation made by the first defendant, the plaintiff was induced to execute the said release deed of his share of 10,646 Sq.Ft. of undivided land in favour of the defendants for a projected nominal consideration of Rs.5 lakhs, which is grossly under-valued, and even the said amount was also not paid. The entire expenses of registration and stamp duty for the said release deed, were borne by the first defendant. All the monies in respect of the sales of the constructed flats, have been received by the first defendant in trust for the plaintiff to be accounted later, and the plaintiff has not been given any amount towards his share and the first defendant represented that it will be given on final taking of accounts. The plaintiff never intended to relinquish his right on the plaint schedule property and the said document styled as a release deed, is illegal, inoperative and unenforceable and never intended to be a release deed. The said document, dated 01.04.2002, which was sought to be used as a release deed, first became known to the plaintiff only on 25.01.2005 when the xerox copy of the same was directed to be part of the record in the suit, by which the first defendant attempted to use the same against the plaintiff calling it as a release deed.

(f) The first defendant has now brought about another document, dated 26.06.2008, styled as a settlement deed, purporting to sell Pent house Nos.9-A and 9-C in favour of his wife Mrs.Anu Kapur (third defendant), which document is registered as Document No.1309 of 2008 on the file of the Sub-Registrar's Office, Periamet. In this document, the first defendant has relied and referred to the document styled as release deed, dated 01.04.2002, registered as Document No.646 of 2002 on the file of the Sub-Registrar, Periamet. He has also made a false statement that he is the owner seized and possessed of the Pent House No.9-A, which is in possession of the plaintiff. The document purporting to be a settlement deed, dated 26.06.2008, is finding place in the Encumbrance Certificate as Document No.1309 of 2008 in the Office of the Sub-Registrar, Periamet. The first defendant has brought about

this document fraudulently in the name of his wife to create confusion and to bring about multiplicity of proceedings. This document is illegal, void, not valid and not binding upon the plaintiff. This document will be used by the wife of the first defendant to interfere in the plaintiff's possession.

(g) The first defendant had been receiving all the monies in respect of the sales of the flats, which had been done at the price of not less than Rs.2,000/- per Sq.Ft. No money had been paid to the plaintiff, nor any flat(s) is given to him, except the aforesaid Pent House which is in possession of the plaintiff, even though the plaintiff is having absolute right to more than 11,014 Sq.Ft. of undivided land in the said property. The plaintiff owns the corresponding built up area of over 44,000 Sq.Ft. plus corresponding car park area. The first defendant is also bound to render true and correct accounts as to the amounts received by him for and on behalf of the plaintiff.

(h) The plaintiff states that he is entitled to partition and separate possession of 44,000 Sq.Ft. of building corresponding to his undivided share of 11,014 of undivided interest in the schedule mentioned property, out of the total built up area of 1,12,000 Sq.Ft. The plaintiff had been requesting the defendants for partition and separate possession of his share by metes and bounds and also requesting the first defendant for rendering true and correct account and payment of his share of the amounts received by the first defendant from the sale of flats, after defraying his share of the expenses and that the first defendant had not so far given the same, which had driven the plaintiff to file the suit. For all the above reasons, the plaintiff has filed the suit for the reliefs stated supra.

7. Countering the above averments made in the plaint by the plaintiff, the defendants 1 and 2 have filed written statement, stating as follows:

(a) It is not correct to state that the agreement, dated 22.04.1999 was executed between the parties to share the flats and three Pent Houses to be constructed equally, and in fact, there was no such agreement between them. The plaintiff had released all his rights in the property at No.52, Taylors Road, Kilpauk, Chennai-10, by way of registered release deed No.646 of 2002, dated 01.04.2002 in favour of the defendants. It is not correct to state that the first defendant brought about various agreements and documents, all of which the plaintiff signed. It is also not correct to state that after completion of construction, the plaintiff was put in exclusive possession of Pent House No.9-A. All the three Pent Houses are in possession of the defendants. The defendants filed a caveat petition against the plaintiff and on receipt of the same, the plaintiff, along with rowdy elements, is trying to enter into the

defendants' property and disturbing the peaceful possession of the defendants. Hence, the defendants lodged a Police complaint with the Inspector of Police, Kilpauk, Chennai, against the plaintiff on 11.10.2004 for trespassing. The said complaint was received and the receipt bearing Nos.313/G3 PS/04 was also given by the Police authorities.

(b) The electricity connections are in favour of the defendants. The first defendant is paying maintenance charges for all the three Pent Houses. The plaintiff had released his rights in respect of the property "Ved Nivas" situated at No.52, Taylors Road, Kilpauk, Chennai-10, by way of registered release deed No.646 of 2002, dated 01.04.2002 and therefore, the plaintiff has no right in the said property. The plaintiff and defendants are not in joint possession of the property and the first and second defendants had become the absolute owners of the said property ad-measuring about 11.5 grounds after the plaintiff released all his rights.

(c) Originally, an unregistered Joint Venture Agreement was entered with M/s.Sukrit Construction to develop the suit property and Mrs.Sujatha Hariharan, Mr.Rishi Kapur, S/o Arun Kapur (first defendant) and Mrs.Ritu Kapur, W/o Atul Kapur (plaintiff), are partners of M/s.Sukrit Construction. The said Joint Venture Agreement was nullified and fresh Memorandum of Understanding and Memorandum of Agreement were entered on 14.12.2001 on fresh terms and conditions. On 31.03.2002, the plaintiff's wife retired from the partnership firm M/s.Sukrit Construction and executed retirement deed and the remaining partners Mrs.Sujatha Hariharan and Mr.Rishi Kapur continued with the partnership firm. The plaintiff's wife had released her rights in respect of the partnership firm and the plaintiff herein had also released his rights in favour of the defendants 1 and 2 in respect of the suit property by way of registered release deed, dated 01.04.2002 bearing Document No.646 of 2002 with the Sub-Registrar Office, Periamet. Hence, the plaintiff has no right in the said property. While registering the undivided share of the land in some sale deeds as and when required by the buyers, the plaintiff had signed as a confirming party that he had no rights in the suit property. Therefore, the plaintiff is not entitled for partition and separate possession of building corresponding to his share. Hence, the defendants 1 and 2 prayed for dismissal of the suit.

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

(a) The plaintiff released all his rights in favour of the first and second defendants in respect of the property by registered Release Deed dated 01.04.2002 bearing Document No.646 of 2002 with the Sub-Registrar Office, Periamet. The plaintiff informed the promoters M/s.Sukrit Construction by letter dated 02.04.2002 confirming the said Release Deed. After the release,

the plaintiff has confirmed the release in 11 registered Sale Deeds of various dates in 2002 and 2003 in respect of the undivided share of the land in the said property and he has signed as a confirming party and he executed registered Power of Attorney in favour of first defendant's wife, admitting the release and having no further rights in the said property.

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

9. Originally, the suit was filed as against the defendants 1 and 2. Subsequently, the wife of the first defendant, was impleaded as third defendant on 28.07.2009 in A.No.4505 of 2008 and the plaint was amended. In the written statement filed by the third defendant, she has specifically stated that the plaintiff released all his rights in the suit property in favour of the defendants 1 and 2, vide release deed dated 01.04.2002 in Document No.646 of 2002. The release deed shows that the stamp paper on which it is executed, is in the name of the plaintiff and that the plaintiff has acknowledged the receipt of total consideration of Rs.5 lakhs in the release deed itself. It is further stated in the written statement filed by the third defendant that the release deed is transacted between the family members and the plaintiff has handed over the possession of all his share of the suit property to the defendants 1 and 2. After execution of the release deed, the plaintiff has executed jointly 11 registered sale deeds of the undivided share of the land in the said property, in which he has signed as a confirming party, confirming the release. Further, nearly nine months after executing the release deed, the plaintiff has executed a registered Power of Attorney, dated 24.01.2003,

registered as Document No.58 of 2003 at the Office of the Sub-Registrar, Periamet, Chennai, in favour of the third defendant, to sign and confirm the release in the sale deeds of the undivided share of land to the buyers of the flats in the suit property as his Power of Attorney. The plaintiff has confirmed the release deed, dated 01.04.2002 bearing Document No.646 of 2002 executed by him and admitted therein that he has released all his rights in favour of the defendants 1 and 2 and that he has no further rights in the suit property.

10. It is further stated in the written statement filed by the third defendant that on the strength of the abovesaid registered Power of Attorney, she has jointly executed a sale deed registered as Document No.327/2003, dated 14.02.2003 in respect of the undivided share of land in the said property confirming the release. The balance sale deeds of the undivided share of land for the flats, were executed by the defendants 1 and 2 jointly and by the first defendant and his Power of Attorney holder. The plaintiff, after executing the release deed in respect of all his interest and share in the said property, absolutely has no rights in the property, but the plaintiff had illegally got into Pent House No.9-A in the said property during April 2005. The above said registered Power of Attorney was cancelled on 14.09.2005, i.e. after the present suit was filed. It is further stated that the plaintiff had no objection to the sale of flats in the said property and he had only claimed that he had not received his share of the sale proceeds from the defendants 1 and 2. It is also stated by the third defendant that if the release deed is cancelled, she will be put to lot of harm and litigation from the buyers of the undivided share of land in the suit property which she has sold jointly on the basis of the said Power of Attorney and confirmed the release deed and the release on behalf of the plaintiff to the purchasers of flats. The plaintiff has filed the suit with mala-fide intention to make wrongful gains. Further, the second defendant had settled her rights in the suit property in favour of the first defendant by settlement deed, dated 28.02.2003, registered as Document No.447 of 2003 at the Office of the Sub-Registrar, Periamet, Chennai and handed over the possession to the first defendant. It is the further stand of the third defendant in the written statement that she is the owner of Pent House Nos.9-A and 9-C, as the same had been settled in her favour by her husband, the first defendant, by way of settlement deed in Document No.1309 of 2008, dated 26.06.2008 and the plaintiff is illegally occupying Pent House No.9-A and he should vacate the same and deliver vacant possession. Thus, the third defendant had made cross-claim in the written statement seeking to direct the plaintiff to hand over the vacant possession of Pent House No.9-A.

11. The defendants 1 and 2 have filed second additional written statement and the third defendant has filed additional written statement. Since the averments made in the additional written statement of the third defendant and the second additional written statement of the defendants 1 and 2, are almost same, we are discussing only certain relevant portions of the second additional written statement of the defendants 1 and 2 as follows:-

The plaintiff has tried to project as if the release deed was executed without his free consent. The plaintiff has made accusations of undue influence. No specific averments are made regarding the above accusations, except stating that the plaintiff and the defendants are relatives. The family agreement, dated 22.04.1999 between the plaintiff and the defendants 1 and 2 shows that the family had two immovable properties, namely, (i) suit property and (ii) No.61, Muthukrishnan Road, Aminjikarai, Chennai. The family business and machinery were to be divided equally among all the three, namely the plaintiff and the defendants 1 and 2 and there is no mention of any Pent Houses in it. The plaintiff has released his rights in the suit property situated in Taylors Road in favour of the defendants 1 and 2, and in return, got the other property at No.61, Muthukrishnan Road, Aminjikarai, Chennai, of an area of more than 10 grounds, together with the family business along with the machinery, all of which were transferred to his nominees, namely the plaintiff's wife Mrs.Ritu Kapur and the plaintiff's daughter Ms.Preetika Kapur, by the defendants 1 and 2. As such, besides the notional value of Rs.5 lakhs enumerated in the release deed, the plaintiff also got the other property of more than 10 grounds, which the plaintiff had already developed and encashed and also got the family business. The plaintiff had suppressed all these facts in the plaint. The defendants 1 and 2 further state that the plaintiff was the partner of the firm, namely M/s.Jai Dayal Kapur Distributing Company, which had taken loan from the Indian Overseas Bank, Chintadripet Branch, Chennai, against which the suit property was given as the collateral security and original property documents were kept by the Bank. After the loan had been discharged, the plaintiff collected the original documents from the Bank and is not handing over the same to the defendants, though as per the release deed, the same are to be with the releasees. These documents, namely (i) Doc.No.2732 of 1961, dated 06.11.1961, (ii) Doc.No.1983 of 1972, dated 31.03.1972 and (iii) Doc.No.2917, dated 09.05.1972 are to be handed over to the defendants. Thus, the defendants 1 and 2 raise cross-claims praying for direction to hand over the above said documents.

12. The plaintiff has filed reply statement denying the averments made by the defendants 1 to 3 in their written statement and additional written statement. The plaintiff

further stated that he never released all his rights in the property for a price of Rs.5 Lakhs stated to have been paid by defendants 1 and 2 as consideration for such release. The Release Deed is the subject matter of the suit, wherein the validity of the same is challenged. The plaintiff reiterated the averments made in the plaint. The plaintiff further set out in detail the terms and conditions on which the family arrangement, dated 26.08.1999, which refers to the agreement dated 22.04.1999, has been arrived at. The plaintiff prayed for decreeing the suit.

13. The learned Single Judge, on the pleadings of the parties, framed eight issues and one additional issue. During the course of trial, on the side of plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-26. On the side of defendants, the first defendant examined himself as D.W.1 and the third defendant was examined as D.W.2 and Exs.D-1 to D-33 were marked. After analysing the entire evidence, the learned Single Judge, by judgment and decree, dated 04.03.2016, had dismissed the suit in C.S.No.985 of 2004 and allowed the counter-claim of the defendants, holding as follows:

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

Challenging the abovesaid judgment and decree of the learned Single Judge, the present O.S.As. have been filed by the plaintiff.

14. The learned Senior Counsel appearing for the appellant/plaintiff submitted that the suit property is 11 grounds and 1837 Sq.Ft. and it belonged to the father (Late Ved Prakash Kapur) of the appellant and the first respondent. Out of 11 grounds and 1837 Sq.Ft., the father settled 3 grounds in favour of the appellant by way of registered settlement deed, dated 31.03.1972, which came to be marked as Ex.P-2. The father has executed another settlement deed, dated 09.06.1972 (Ex.P-3) in favour of the first respondent settling about 4 grounds and the exact extent is now stated as 4 grounds and 33 Sq.Ft. Further, after deducting these two extents, the father retained 4 grounds and 1837 Sq.Ft. as one unit. The area of about 3 grounds settled in favour of the appellant/plaintiff is a specified extent within stated boundaries and as such, the appellant is the absolute owner of the same. Likewise, under Ex.P-3, the first respondent/first defendant became the owner of 4 grounds and 33 Sq.Ft. within stated boundaries. What remained with the father was also within stated boundaries. Therefore, this would show that the appellant and the first respondent are independent owners of their respective extents and not joint owners and the father continued to be the owner of the remaining extent. While so, on 24.07.1998, the father died, leaving behind the appellant, first respondent and second defendant as his sole legal heirs and as such, by operation of law by succession, the appellant, first respondent and second respondent became entitled to 1/3 share in the remaining extent of 4 grounds 1837 Sq.Ft. left behind by the father. Regarding the extent of 4 grounds 1837 Sq.Ft., the appellant, first respondent and second respondent may be called as co-owners/joint owners.

15. The learned Senior Counsel appearing for the appellant further submitted that on the date of death of the appellant's father, there was also business concern with property at No.61, Muthukrishnan Road (Nelson Manickam Road), Chennai. After the demise of the father in July 1998, the appellant, first respondent and second respondent entered into an agreement dated 22.04.1999 marked as Ex.P-4. From a reading of Clause 1 of the said agreement, it could be seen that the immovable properties belonging to all the three parties shall be shared equally. Therefore, it is incorrect to state that the plaintiff was given property at No.61, Muthukrishnan Road, Chennai, in lieu of his share in the property at No.52, Taylors Road, Chennai. In fact, the source of title of the property at No.61, Muthukrishnan Road, Chennai, is different. It is traced to Ex.P-6, which is the family arrangement between the appellant, first respondent and second respondent. The arrangement in respect of the property at No.52, Taylors Road, Kilpauk, Chennai is different. The learned Senior Counsel appearing for the appellant further submitted that a confusion is sought to be created by trying to link the property at Muthukrishnan Road (Nelson Manickam Road)

with the suit property being No.52, Taylors Road, Kilpauk, Chennai. Further, a reading of the family arrangement Ex.P-6 would show that the property at No.61, Nelson Manickam Road, is given to the plaintiff with all as such and liabilities, and the plaintiff is to pay Rs.1,03,00,000/- to the first defendant and 5150 Sq.Ft. of built up area in the suit property after development valued at Rs.1,03,00,000/-, which will be charged. In this regard, the learned Senior Counsel appearing for the appellant invited the attention of this Court to Clauses 4 to 9 of Ex.P-6 family arrangement and submitted that absolutely, there is no evidence available to connect these transactions.

16. The learned Senior Counsel appearing for the appellant further submitted that the defendants have been harping upon Ex.D-1 document, styled as release deed, stating that the plaintiff has released his share, but Ex.D-1 is not supported by any consideration. The learned Senior Counsel also invited the attention of this Court to the expression used in Ex.D-1 "for a consideration of Rs.5 lakhs only", and submitted that this expression made in Ex.D-1 would mean that it is only cash consideration. The further recital in the release deed is "releasor acknowledges the receipt of this SUM at the time of his executing the deed of release". Further, in Clause 1, the expression used is in consideration of the 'release money'. No other consideration is recited in Ex.D-1. Admittedly, no consideration as recited in Ex.D-1, had been paid, either by cash or by cheque. In fact, in paragraph 11-A of the plaint, the plaintiff has stated that the document dated 01.04.2002 (Ex.D-1) is sham and nominal and is without consideration and never intended to be acted upon to transfer the title of the property of the plaintiff in favour of the defendants and is liable to be cancelled. In the second additional written statement of the defendants 1 and 2, they have dealt with this aspect in paragraph 8 stating that, ".... The plaintiff released his rights in the suit property on Taylors Road in favour of the 1st and 2nd defendants and in return got the other property at No.61, Muthukrishnan Road, Aminjikarai, Chennai As such besides the notional value of Rs.5,00,000/- enumerated in the release deed, the plaintiff also got the other property of more than 10 grounds which the plaintiff has already developed and encashed and also got the family business." This pleading runs contrary to the written terms of Ex.D-1 release deed, and absolutely, there is no recital in Ex.D-1 to the effect that the plaintiff released his share and rights in the suit property. The release deed shows as if the plaintiff has released 10,646 undivided Sq.Ft. of land in the property in favour of the releasees for a consideration of Rs.5 lakhs. But the plaintiff denies receipt of Rs.5 lakhs. In the proof affidavit of the first defendant, in paragraph 20, it is stated by the first defendant that, "I submit that the allegation that the said

amount of Rs.5,00,000/- was not paid is contrary to the facts as the receipt of the said amount is acknowledged in the release deed. Hence, it is totally misleading and contrary to the facts and circumstances." In the cross-examination, the first defendant had admitted that the consideration was not paid by way of cheque or by cash and it was adjusted in the accounts. He further admitted in the cross-examination that he had not filed any document to show that the consideration of Rs.5 lakhs for the release deed, dated 01.04.2002, was adjusted in the accounts. Therefore, it is clear that Ex.D-1 is not supported by consideration of Rs.5 lakhs as recited in it. The first defendant is trying to plead some other consideration and trying to give evidence contrary to the written terms of Ex.D-1, which is not permissible in law, in view of Section 91 and first proviso to Section 92 of the Indian Evidence Act. Even the plea that there was some other consideration, is not supported by any other evidence, and there is no counter claim. But the learned Single Judge has erroneously come to the conclusion that there was a partnership deed Ex.D-19, under which Ritu Kapur and Preethika, i.e. wife and daughter of the plaintiff became partners of M/s.Jai Dayal Pranath Kapur and the defendants 1 and 2 retired from the partnership as per Ex.D-20. Thereafter, the plaintiff's wife and daughter were admitted as partners and by virtue of retirement of the defendants 1 and 2, the entire property in Nelson Manickam Road came into the hands of the wife and daughter of the plaintiff and they became the owners of the same. There was no consideration paid as per the partnership deed.

17. The learned Single Judge came to the conclusion that the argument of the learned Senior Counsel appearing for the plaintiff that the plaintiff has not received any consideration for Ex.D-1 release deed and the release deed is not supported by consideration, is not acceptable. Attacking the said finding of the learned Single Judge, the learned Senior Counsel appearing for the plaintiff submitted that the entire findings of the learned Single Judge in paragraph 37 of the judgment, are contrary to the terms of Ex.D-1 and the said findings are not based upon any evidence. Thus, the learned Senior Counsel submitted that the learned Single Judge has connected two separate transactions to come to the conclusion that the release deed is supported by consideration, which is not legally sustainable. Since it is not proved that Ex.D-1 release deed is supported by any consideration, Ex.D-1 is not a valid document. But the learned Single Judge, even in paragraph 49 of the judgment, has given a finding that the release deed is valid and also gave a finding that the plaintiff has received the consideration of Rs.5 lakhs as stated in the release deed, which finding is also not correct.

18. With regard to the prayer of permanent injunction sought for by the plaintiff, restraining the third respondent/Mrs.Anu Kapur from interfering with the plaintiff's possession of Pent House No.9-A in the suit property, the learned Senior Counsel appearing for the appellant/plaintiff submitted that the plaintiff is in possession of Pent House No.9-A, but the respondents/defendants claim that they are in possession of the same from the date of filing of the suit, but they have not produced any document or proof for the same. On the other hand, the appellant/plaintiff has produced the key of Godrej lock and the appellant has locked Pent House No.9-A and had the key with him. This key was also produced before the Police. Even though in the cross-examination of the plaintiff, a question was asked that the key number was written in a different ink, no suggestion was put if the respondents had any other key. Further, no suggestion has been put forward that the key produced by the appellant is not the key of Pent House No.9-A. In fact, on 05.10.2004, the Pent House was not complete. The appellant was residing at No.74, Halls Road, Kilpauk, Chennai-600 010 and the respondents were residing at Queens Court B-2, II Floor, 28/21, Dr.Guruswami Road, Kilpauk, Chennai-600 010. During the pendency of the suit, Pent House No.9-A was completed. While connected O.S.A.No.90 of 2005 was pending, the appellant was permitted to carry out the work in Pent House No.9-A and subsequently he got the electricity connection transferred in his name and has also paid property tax. Thus, the appellant has been in possession and later shifted in 2005 when the construction work was complete. Therefore, the learned Senior Counsel appearing for the appellant/plaintiff submitted that the appellant is in possession of Pent House No.9-A and is entitled to injunction. The respondents 1 and 2 came forward with a false case as if the appellant entered possession after getting an order of injunction in A.No.1519 of 2006 in the present suit in C.S.No.985 of 2004. The appellant has established possession on the date of filing of suit that he is a co-owner and thus he is entitled to continue in possession of Pent House No.9-A. Admittedly, the appellant is in possession, and though the third respondent claims to be the settlee of Pent House No.9-A from the first respondent, the appellant is entitled to injunction as prayed for. The third respondent has filed cross claim in her written statement seeking direction to hand over the possession of Pent House No.9-A. In this regard, the learned Senior Counsel appearing for the appellant/plaintiff submitted that during the pendency of the suit, by a purported settlement deed, dated 22.06.2008, the first defendant had settled Pent House No.9-A in favour of his wife, the third defendant. The first respondent himself had no title to Pent House No.9-A. Hence, the question of settling the same in favour of the third respondent does not arise. According to the appellant, he is in possession of Pent House No.9-A and he is

entitled to injunction and hence, there cannot be any recovery of possession in respect of Pent House No.9-A from the plaintiff by the third respondent/third defendant, as she has no cause of action. Therefore, the impugned judgment of the learned Single Judge allowing the cross-claim (counter-claim) sought for by the third respondent, is liable to be set aside and the cross-claim is hit by the Doctrine of Lis-Pendens.

19. The learned Senior Counsel appearing for the appellant/plaintiff further submitted that one of the prayers made in the suit is to declare that the release deed dated 01.04.2002 - Ex.D-1, is illegal, inoperative and unenforceable. If the release deed is declared as illegal and is set aside, the prayers made in the cross-appeal of the defendants will automatically fall to the ground. Thus, the learned Senior Counsel appearing for the appellant/plaintiff sought for allowing the O.S.As. by setting aside the judgment and decree of the learned Single Judge.

20. Countering the above submissions, the learned counsel appearing for the respondents 1 and 2/defendants 1 and 2 submitted that the appellant/plaintiff executed a registered release deed to and in favour of the defendants 1 and 2, vide document dated 01.04.2002, relinquishing his share in the subject property. The appellant/plaintiff is the author of the said document and the defendants 1 and 2 have no role to play in executing the same. Based on the said release deed, subsequently, several sale deeds were executed in respect of third parties and those documents were marked as Exs.D-4 to D-14. In all these sale deeds, the plaintiff has signed as a confirming party confirming the release deed. Further, the plaintiff is a businessman and a graduate and he can clearly understand as to what he is executing and further confirms and acts on the same by way of Exs.D-4 to D-14.

21. The learned counsel appearing for the respondents 1 and 2 further submitted that it is incorrect to state that Ex.D-1 release deed was not supported by consideration. D.W.1 (first defendant) in his cross-examination has stated that the consideration was not paid by way of cheque or cash, but it was an adjustment in the accounts and he further stated that he has not filed any document to show that the consideration of Rs.5 lakhs for the release deed dated 01.04.2002 was adjusted in the accounts. He categorically added in his evidence that all the companies were taken over by the plaintiff and the accounts are with him. Hence, the learned counsel appearing for the respondents 1 and 2 submitted that the plaintiff has to produce the accounts, as the same are with him when he took over the company and land at Nelson Manickam Road, but he has not chosen to produce the accounts.

22. With regard to the submission made by the learned Senior Counsel appearing for the appellant/plaintiff that the source of title of the property at No.61, Nelson Manickam Road, is different and therefore, the transaction with regard to the subject property cannot be linked with the property at No.61, Nelson Manickam Road, which is different, the learned counsel appearing for the respondents 1 and 2 / defendants 1 and 2 replied that the property at No.61, Nelson Manickam Road, is a partnership property, from which the defendants 1 and 2 retired and the plaintiff's wife and daughter were made as partners and the said property consists of 10 grounds and this property was sold and encashed by the plaintiff. The consideration was not paid as per the partnership deed to the defendants 1 and 2, which is evident from the declaration of retirement of the partners in respect of the partnership deed, dated 02.03.2002 (Ex.D-20). Though there is recital in Ex.D-20 to the effect that the plaintiff's daughter and plaintiff's wife were made as partners in the partnership firm and also with regard to the release of their shares, but the fact remains that the plaintiff has sold 10 grounds of the property and encashed money. It could be easily presumed that the appellant/plaintiff has not come forward to answer as to why he has given 10 grounds of the property at Nelson Manickam Road. Therefore, according to the learned counsel appearing for the defendants 1 and 2, only in lieu of release of their shares, the property at Nelson Manickam Road was given to the plaintiff and the plaintiff's wife and daughter were made as partners of the firm without any consideration. Thus, the learned counsel appearing for the respondents 1 and 2/defendants 1 and 2 submitted that by deeply analysing all the above aspects, the learned Single Judge had rightly dismissed the suit and allowed the counter-claim of the defendant(s), which needs no interference and therefore, he prayed that both the O.S.As. may be dismissed.

23. The learned counsel appearing for the third defendant also made elaborate arguments on the factual aspects of the matter, particularly, he argued that the suit was filed in October 2004. In fact, the plaintiff, in his oral evidence, had admitted that he was not in possession of Pent House No.9-A at the time of filing the suit. Subsequently, he got into the property. The first defendant had settled Pent House Nos.9-A and 9-C in favour of the third defendant, by way of settlement deed, dated 26.06.2008 (Ex.D-33). Thus, it is established that the third respondent/third defendant is the legal owner of Pent House No.9-A. Further, the second defendant, by settlement deed, dated 28.02.2003 (Ex.D-32), had settled all her rights in the suit property in favour of the first defendant. Thus, the learned counsel appearing for the third respondent/third defendant submitted that the learned Single Judge had considered all the factual aspects of the matter and had rightly dismissed

the suit and allowed the counter-claim of the defendant(s). Hence, he prayed for dismissing both the O.S.As.

24. Keeping in mind the submissions made on either side, we have perused the materials available on record. Since we have dealt with the facts in detail as above, we refrain ourselves from reiterating the same, but the facts which are germane alone, are discussed hereunder.

25. In view of the submissions made by the learned counsel appearing for the parties, the following questions arise for consideration:

(i) Whether the release deed dated 01.04.2002 (Ex.D-1 = Ex.D-27), executed by the plaintiff in favour of the defendants 1 and 2, was obtained from the plaintiff by fraud and undue influence ?

(ii) Whether the release deed dated 01.04.2002 is supported by any consideration ?

(iii) Whether the release of share in the said release deed, dated 01.04.2002, is having a link with the transaction in respect of the property at No.61, Nelson Manickam Road ? and

(iv) Whether the third defendant is entitled for recovery of possession of Pent House No.9-A ?

26. As questions (i) to (iii) are inter-related to each other, they are taken up together for discussion hereunder.

27. It is admitted that the immovable property being house and ground and premises bearing Corporation Door No.52, Taylors Road, Kilpauk, Chennai-600 010, belonged to Late Ved Prakash Kapur, who is the husband of the second defendant and the father of the plaintiff and the first defendant. The suit property is 11 grounds and 1837 Sq.Ft. Out of 11 grounds and 1837 Sq.Ft., the father settled 3 grounds in favour of the appellant by way of registered settlement deed, dated 31.03.1972, which came to be marked as Ex.P-2. The father has executed another settlement deed, dated 09.06.1972 (Ex.P-3) in favour of the first respondent settling about 4 grounds. The remaining extent of the property was retained by the father of the plaintiff and the first defendant. While so, the father died on 24.07.1998, leaving behind him the plaintiff and the defendants 1 and 2 as his legal heirs. The first defendant suggested an idea of developing the property as Joint Venture to share the suit property equally. Accordingly, an agreement dated 22.04.1999 (Ex.P-4) was executed between the plaintiff and the defendants 1 and 2, whereby it was agreed that the immovable properties belonging to all the three parties shall be shared equally. The property at No.52, Taylors Road, and the property at No.61, Nelson Manickam Road (Muthukrishnan Road) were agreed to be shared equally. Further, a family arrangement dated 26.08.1999

(Ex.P-6) was entered into between the plaintiff and the defendants 1 and 2, by which it was agreed between the parties to give the property at No.52, Taylors Road, Kilpauk, Chennai-600 010 for promotion as Joint Venture. It is the case of the plaintiff that he is entitled for partition of 11001/27272 undivided share of the land of the suit property. The value of the suit property at that time, fetches more than Rs.1 crore. It is the case of the defendants 1 and 2 that by release deed dated 01.04.2002 (Ex.D-1 = Ex.D-27), the plaintiff released all his rights in the suit property in favour of the defendants 1 and 2 and got the other property at No.61, Muthu Krishnan Road (Nelson Manickam Road) together with the family business along with machinery, all of which were transferred to his nominees, namely the plaintiff's wife Mrs.Ritu Kapur and the plaintiff's daughter Ms.Preetika Kapur, by the defendants 1 and 2.

28. It is also the case of the defendants 1 and 2 that there was a partnership deed Ex.D-19, under which Ritu Kapur and Preethika Kapur, being the wife and daughter of the plaintiff, became partners of M/s.Jai Dayal Pranath Kapur and the defendants 1 and 2 retired from the partnership as per Ex.D-20. Thus, according to the defendants 1 and 2, in lieu of share in the suit property, the plaintiff was given partnership property measuring about 10 grounds and the consideration for the release deed dated 01.04.2002 (Ex.D-1 = Ex.D-27) was Rs.5 lakhs, whereas, it was adjusted in the accounts, but it is the case of the plaintiff that the source of title of property at No.61, Nelson Manickam Road is totally different from that of the suit property at No.52, Taylors Road, which is separate. However, the defendants are trying to link the transaction in respect of Nelson Manickam Road with the suit property at No.52, Taylors Road, in order to deny the legitimate share of the plaintiff in the suit property at No.52, Taylors Road. It is the further case of the plaintiff that he is entitled for 11001/27272 undivided share of land. The property at No.61, Nelson Manickam Road was given to the plaintiff with all liabilities and the plaintiff has to pay Rs.1,03,00,000/- to the first defendant and 5150 Sq.Ft. of built up area in the suit property after development valued at Rs.1,03,00,000/-, which will be charged. This transaction has nothing to do with the allotment of plaintiff's share from the total vacant land at No.52, Taylors Road, Chennai.

29. It is the further case of the plaintiff that by agreement dated 22.04.1999 (Ex.P-4) entered into between the parties, the flats to be constructed will have to be shared equally and the three Pent Houses in the ninth floor would be taken by each of the parties. It was also agreed that Pent House No.9-A was allotted to the plaintiff, Pent House No.9-C was allotted to the second defendant and Pent House No.9-E was

allotted to the first defendant. Subsequently, the first defendant brought about various agreements and documents for the purpose of accounting and for tax benefits, all of which the plaintiff signed, placing absolute faith in his elder brother, the first defendant. The first defendant is in possession of all those documents and the plaintiff did not take copies of the same. The further case of the plaintiff is that his signature was obtained in Ex.D-1 release deed stated to have been executed by the plaintiff in favour of the defendants 1 and 2, releasing his share, by fraud and undue influence. Secondly, the release deed is not supported by any consideration. Therefore, Ex.D-1 is not a valid document.

30. But, on a careful perusal of Ex.D-1 release deed, dated 01.04.2002, it is seen that it was signed and executed by the plaintiff, and that his wife Ritu Kapur was one of the witnesses who attested the said release deed. In the preamble portion of the said release deed, the plaintiff has admitted with regard to the consideration of Rs.5 lakhs and the relevant portion of the release deed reads as follows:

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

Further, after executing the release deed, the plaintiff also signed as confirming party in about 11 sale deeds being marked as Exs.D-4 to D-14. In the sale deeds, in internal page No.6, it has been stated as follows:

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

WHEREAS the VENDORS have entered into Joint Venture Agreement with M/s.SUKRIT CONSTRUCTIONS in terms of Agreement dated 22nd April 1999, for promotion of flats and accordingly M/S.SUKRIT CONSTRUCTIONS have taken possession of the property and are proceeding with the construction of the flats and .."

31. That apart, subsequently on 24.01.2003, the plaintiff also executed a registered General Power of Attorney (Ex.D-16) to and in favour of the third defendant, confirming the release deed Ex.D-1 = Ex.D-27 executed by him on 01.04.2002.

32. Further, the appellant/plaintiff gave three Police complaints marked as Exs.P-12 to P-14, in which, he had mentioned about the execution of the release deed. In none of the complaints, he has alleged that the release deed was obtained by fraud or undue influence. In all those complaints, he had only made vague allegations complaining as if his brother is inducing to execute the release deed. Therefore, the case of the plaintiff is that it is nothing, but an after-thought created for the purpose of the case.

33. It is further submitted by the plaintiff that he has not received any consideration for execution of the release deed. In order to fortify this submission, the learned Senior Counsel appearing for the plaintiff invited the attention of this Court to the cross-examination of D.W.1 (first defendant), wherein he has stated as follows:

" ... The consideration was not paid by way of cheque or by way of cash, but it was an adjustment in the accounts. I have not filed any document to show that the consideration of Rs.5 lakhs for the release deed dated 01.04.2002 was adjusted in the accounts. Witness adds: All the companies were taken over by the plaintiff and the accounts are with him."

But we find that the release deed was executed by the appellant/plaintiff and the defendants have no role to play in execution of the same. As contended by the learned counsel appearing for the defendants 1 and 2, in the preamble portion of the release deed, the payment of consideration of Rs.5 lakhs had been admitted, in which it is stated that "whereas the releasor acknowledges the receipt of this sum at the time of his executing this deed of release." It is the submission of the learned Senior Counsel appearing for the appellant that D.W.1 had admitted in his cross-examination that the consideration was not paid by way of cheque or by way of cash, but it was an adjustment in the accounts. Therefore, according to the learned Senior Counsel appearing for the appellant, the first defendant is trying to plead some other consideration and trying to give evidence contrary to the written terms of Ex.D-1, which is not

permissible in law, in view of Section 91 and first proviso to Section 92 of the Indian Evidence Act. Even the plea that there was some other consideration, is not supported by any other evidence.

34. On a perusal of the release deed, we find that it was executed by superseding the family arrangement, wherein the author of the release deed (i.e. plaintiff) himself has admitted and acknowledged receipt of Rs.5 lakhs in consideration of execution of the release deed. As stated above, after executing the released deed, the appellant/plaintiff signed as confirming party in about 11 sale deeds being marked as Exs.D-4 to D-14. It is the evidence of D.W.1 that the consideration of Rs.5 lakhs was adjusted in the accounts and he has also stated in his evidence that the accounts are only with the plaintiff. There is absolutely no suggestion put forth to D.W.1 in his evidence that the accounts are only with the defendants and not with the plaintiff and purposely, he is not producing the same. Moreover, as contended by the learned counsel for the respondents, the appellant/plaintiff is a businessman and during the course of studying B.Com., he would have studied 'law' as one of the subjects and therefore, he has every capacity of doing business independently. It is apparent that the plaintiff clearly understands as to what he is executing and further confirms the acts of the same in the release deed. Therefore, as he is an educated man and knows the details of execution of a document and then only, he had executed the release deed (Ex.D-1 = Ex.D-27). Thus, the evidence is clear and cogent that the plaintiff had executed the release deed releasing his entire share in the suit property. Though the plaintiff claims in the plaint that he is entitled to 11014/28284 undivided share of land, the same was made before the execution of the family arrangement. When the release deed was executed by him in the year 2002, he does not speak about the family arrangement executed on 26.08.1999. Therefore, based on the date of executing the release deed, all the earlier understandings between the parties goes.

35. It is the submission of the learned counsel appearing for the defendants that the property at No.61, Nelson Manickam Road, ad-measuring about 10 grounds, was given to the plaintiff, in lieu of his share in the suit property, by way of inducting partners and also by virtue of retiring partners therein and the property was the valued at more than Rs.1 crore at that time. The said property was given with lock, stock and barrel with all the business assets, and the plaintiff also encashed the same. It is the contention of the plaintiff that the source of title in respect of the property at No.61, Nelson Manickam Road and the property at No.52, Taylors Road, is entirely different and

the defendants are trying to link the same by creating confusion. But we are of the opinion that absolutely there is no explanation from the appellant/plaintiff as to why he was given a larger extent of 10 grounds of property at No.61, Nelson Manickam Road, together with the business in the partnership firm, namely M/s.Jai Dayal Pran Nath Kapur, in which the defendants 1 and 2 were earlier partners and subsequently, the plaintiff's wife and daughter were inducted as partners. Moreover, no consideration was paid by the plaintiff to the defendants 1 and 2 for induction of the plaintiff's wife and daughter as partners in M/s.Jai Dayal Pranath Kapur, which is evident from the declaration of retirement of partners in respect of the partnership deed, dated 02.03.2002 (Ex.D-20). This fact clearly fortifies that the property at No.61, Nelson Manickam Road, Chennai, was given to the plaintiff in lieu of his share in property at No.52, Taylors Road, Chennai. Therefore, on a combined reading of the partnership deed (Ex.D-19) and release deed (Exs.D-1 = Ex.D-27), it clearly gives a presumption that the plaintiff has released his share in the suit property and he was given the property at No.61, Nelson Manickam Road, for consideration of Rs.5 lakhs, which was adjusted in the accounts, which are with the plaintiff. The questions (i) to (iii) are answered in the above terms.

36. With regard to question (iv), namely relating to the entitlement of Pent House No.9-A by the third defendant, we find that Ex.D-1 release deed is a valid document as observed above. On a perusal of the entire evidence and records, it would show that the second defendant had settled all her rights in the suit property in favour of the first defendant by way of settlement deed dated 28.02.2003 (Ex.D-32) and the first defendant had settled Pent House Nos.9-A and 9-C in favour of the third defendant by way of settlement deed, dated 26.06.2008 (Ex.D-33). Therefore, as on date, the third defendant is the owner of Pent House Nos.9-A and 9-C. Absolutely, no evidence is produced to show that the plaintiff is the owner of Pent House No.9-A. Moreover, this Court has already held above that the release deed is a valid document. Hence, the claim of the plaintiff in Pent House No.9-A is not legally sustainable. Question No.(iv) is answered accordingly.

37. In entirety, we do not find any infirmity in the findings rendered by the learned Single Judge in the suit, including the direction issued for recovery of possession to the third defendant in respect of Pent House No.9-A and that the plaintiff is not entitled for the reliefs prayed for in the suit. In all aspects, we find no ground to set aside the findings of the learned Single Judge. There is no merit

warranting to make interference in the impugned judgment rendered by the learned Single Judge. Accordingly, both the O.S.As. are dismissed. The directions issued by the learned Single Judge in paragraph 54 of the impugned judgment shall be complied with. No costs. Consequently, C.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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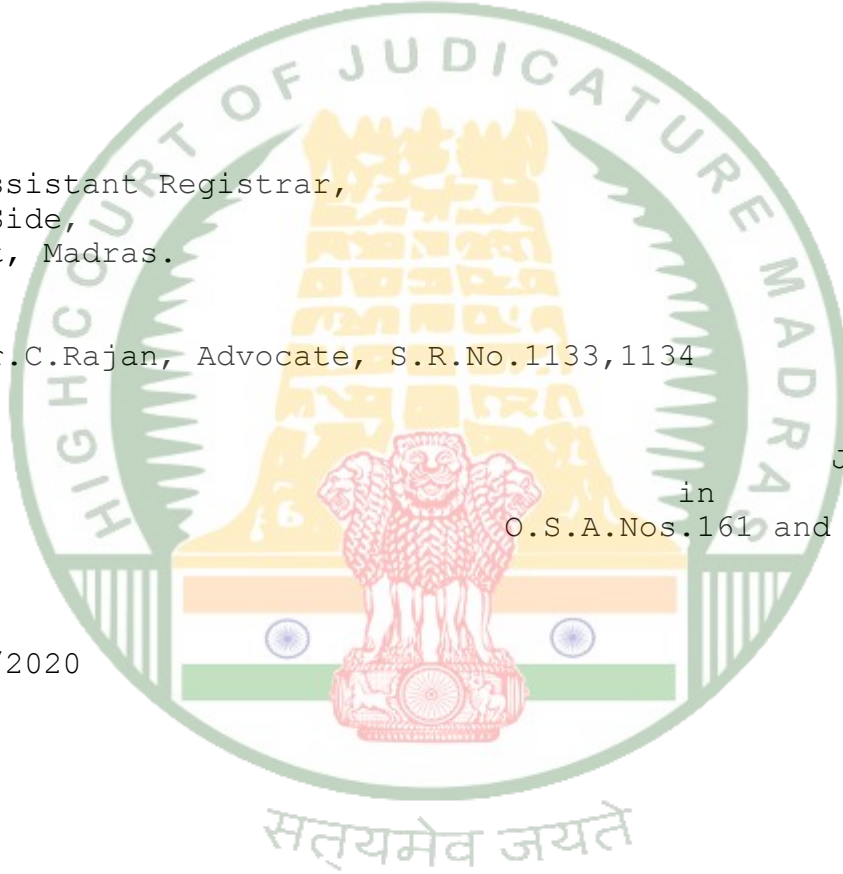
To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to Mr.C.Rajan, Advocate, S.R.No.1133,1134

Judgment
in
O.S.A.Nos.161 and 162 of 2016

SVI (CO)
KKV/24/08/2020



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