



Appeal Suit Nos.79 & 80 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	31.10.2022
PRONOUNCED ON	:	15.11.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit Nos.79 & 80 of 2006

Appeal Suit No.79 of 2006:

1. M.Devadoss
2. T.Velayutham
3. Rathi Tripurasundari

... Appellants

Versus

- 1.P.Bhagyalakshmi (died)
- 2.S.Palanichamy
- 3.M/s.Mahaakshmi Builders
4. P.Naveen Kumar
5. A.Deepa
6. P.Vijayamala

... Respondents

** R1 died. RR 4 to 6 brought on record as Legal Heirs of the deceased R1 vide Court order dated 22.09.2022 made in C.M.P.No.12117 of 2022.*

Appeal Suit No.80 of 2006:

1. M.Devadoss
2. M.Manoharan
3. T. Velayutham
4. Rathi Tripurasundari

... Appellants

Versus



Appeal Suit Nos.79 & 80 of 2006

1. S.Palanichamy (HUF) by
Karthi S. Palanichamy

2. District Registrar,
Chennai (North),
Rajaji Salai, Chennai 600 001

... Respondents

COMMON PRAYER: Appeal Suits are filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 27.02.2003 made in O.S.Nos.12509 & 12499 of 1996 on the file of the Learned V Additional Judge, City Civil Court, Chennai.

In both cases:

For Appellants : Mr.K.V.Sundararajan

For RR 2 to 6 in : Mr.G.Masilamamani, Senior Counsel
A.S.No.79/2006 & Assisted by Mr.V.Sanjeevi
For R-1 in A.S.
No.80/2006

** R1 died in A.S.No.79 of 2006 & R2 Notice Served in A.S.No.80 of 2006*

COMMON JUDGMENT

A. The Appeal Suits :

O.S.No.12499 of 1996 was filed by one *S.Palanisamy*(HUF) for a declaration that the plaintiff is the absolute owner of the land measuring two grounds 1190 sq.ft comprised in *Survey No.158 Part, Thiruvanmiyur Village, Besant Nagar Extension Phase I, Plot No.24* and for a permanent



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injunction restraining the defendants 1 to 4, their men and agents from interfering with the plaintiff's possession and enjoyment of the suit property.

2. One *M.Devadass* was arrayed as the first defendant and his Power of Attorney Agent one *Manoharan* was arrayed as the second defendant and the purchasers of the property through the said Power of Attorney namely *T.Velayutham* and *Rathi Tripurasundari* were arrayed as defendants 3 and 4 and the District Registrar Madras (North) was arrayed as defendant no.5 in the said suit.

3. The first defendant in the above suit namely *M.Devadoss*, third defendant namely *Velayutham* and the fourth defendant namely *Rathi Tripurasundari* filed O.S.No.12509 of 1996 in respect of the same suit property for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. In the said suit, one *Bhagyalakshmi*, *S.Palanisamy*, the plaintiff in O.S.No.12499 of 1996 and *M/s.Mahalakshmi Builders* represented by *S.Palanisamy* were arrayed as the defendants. Since both suits related to the same property and were claiming cross titles, they were taken up for joint trial and were disposed of by a common judgment and decree dated 27.02.2003, decreeing the suit filed by *S.Palanisamy* in O.S.No.12499 of



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1996 and dismissing the other suit in O.S.No.12509 of 1996. Aggrieved by the same, these Appeal Suits in A.S.Nos.79 and 80 of 2006 are laid before this Court and as such, the same are taken up for disposal by way of this common judgment. The parties are referred to as per their array in O.S.No.12499 of 1996 to avoid confusion.

B. The facts of the Case :

4. The case of the plaintiff is that it was in real estate business, the suit property was purchased by the first defendant by a registered sale deed dated 30.12.1990 from the Tamil Nadu Housing Board. Similarly, one *V.Thilagam* was the owner of the adjacent plot bearing Plot No.23. The plaintiff, the first defendant and the said *Thilagam*, entered into a Partnership Agreement dated 01.04.1991 constituting the Firm in the name and style *M/s.Mahalakshmi Constructions*, for the purpose of developing the said property. As per the Partnership Deed, the plaintiff's stake was 50% and the plaintiff invested a sum of Rs.9,00,000/- as cash. The stake of the first defendant is 25% and the first defendant brought in the suit property which is valued at Rs.4,50,000/-. Similarly, the said *Thilagam's* stake was 25% and she brought her property, being the adjacent plot, which was also valued at Rs.4,50,000/-. However, within a short period, it was found that



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the business could not be continued as such and the parties mutually agreed to dissolve the Firm with effect from 10.07.1991 and accordingly, entered into a Deed of Dissolution of the Partnership. As per the same, the parties divided the assets of the Firm and it was agreed that in respect of their 25% share, the first defendant and the said *Thilagam* agreed to receive a sum of Rs.4,45,000/- each. They were paid the said sum of Rs.4,45,000/- by way of cheques in two installments. As a result, the plaintiffs became the absolute owner of both the plot Nos.23 & 24 and were in possession and enjoyment of the same and a patta was also granted in favour of the plaintiffs on 11.12.1991.

5. While so, during April 1994, the defendants attempted to break open the eastern side compound wall of the suit property and there were mutual police complaints against each other and therefore, the suit was filed by the plaintiff in O.S.No.12499 of 1996 for the relief of declaration and permanent injunction.

6. The case of the defendants is that the first defendant purchased the property from the Tamil Nadu Housing Board by a registered sale deed dated 13.12.1990. Thereafter, the first defendant constituted the second defendant as his Power of Attorney so as to sell the suit property. Thereafter,



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through a Power of Attorney, the first defendant sold the suit property by dividing it into two extents of 2995 sq.ft each by way of two registered sale deeds dated 11.03.1994 for a sale consideration of Rs.1,00,000/- each. When the documents were pending registration before the Sub Registrar on dispute as to stamp duty, the plaintiff made an untenable claim regarding the ownership of the property as if there was a Partnership Deed and as if there was a Dissolution Deed. The same is absolutely not true and the said deeds are created by forging the signatures of the first defendant.

7. It is also the case of the defendant that the first defendant had some other transaction with the plaintiff and in connection with the said transaction, signatures of the first defendant were obtained by the plaintiff on some blank papers and the same have been illegally misused by the plaintiff as if the defendant had entered into Partnership Deed. Since the defendants were in possession of the property and the plaintiff suddenly tried to interfere, the first defendant and the subsequent purchasers had filed O.S.No.12509 of 1996 for permanent injunction. The parties had filed their respective written statements in the counter suits on the same lines.

C. The Issues & Trial :

8. On the strength of the pleadings in O.S.No.12499 of 1996, totally



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six issues were framed (four original issues and two additional issues),

which are as follows:-

“(i) Whether the plaintiff is entitled to be declared as the owner of the suit property?”

“(ii) Whether the plaintiff is entitled for permanent injunction?”

“(iii) Whether the third defendant had purchased the property from the first defendant for a valid consideration on 03.04.1994?”

“(iv) To what reliefs the plaintiff is entitled to?”

“(v) Whether the first defendant had entered into a Partnership Deed on 01.04.1992 in the name and style M/s Mahalakshmi Constructions?”

“(vi) Whether the first defendant had given the said property as his share capital to the said partnership firm M/s Mahalakshmi Constructions?””

As far as O.S.No.12509 of 1996 is concerned, the following issues

were framed:-

“(i) Whether the plaintiff is entitled for the relief of permanent injunction?”

“(ii) To what relief?”

9. On the said reliefs, the plaintiff examined himself as P.W.1 and one

Thilagam was examined as P.W.2. On behalf of the plaintiff, Exhibits **Ex.A1**



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to **Ex.A14** were marked. On behalf of the defendants, the Power of Attorney of the first defendant namely *Manoharan*, who is the second defendant examined himself as P.W.1 and the third defendant was examined as D.W.2. On behalf of the defendants, exhibits **Ex.B1** to **Ex.B15** were marked. The Income Tax returns of the said *Thilagam* and the letter written by the said *Thilagam* to the Income Tax Department were marked as Court exhibits **Ex.X1** and **Ex.X2**.

D. Finding & Decision of the Trial Court :

10. The Trial Court, thereafter proceeded to consider the pleadings and evidences adduced by the parties. By the judgment dated 27.02.2003, considering the the evidence of P.W.1 and P.W.2 and the documents produced on behalf of the plaintiff, especially the Deed of Partnership, Deed of Dissolution, bank statements and the cheques showing the payment and acceptance of Rs.4,45,000/- by the said *Thilagam* and the first defendant and the Income Tax Accounts of the said *Thilagam* and the evidence of the said *Thilagam* as P.W.2, the Trial Court found the facts that the first defendant *Thilagam* and the plaintiff constituted a Partnership Firm, and thereafter dissolved the same and that the property was allotted to the plaintiff in the said transactions.



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11. The trial Court found that when the first defendant has denied the said documents as forged ones, the first defendant did not get into the box and the second defendant, who is his Power of Attorney, had no personal knowledge about the said transactions. He has clearly deposed that he knew only about his constitution as the Power of Attorney agent and his sale to the other defendants. Therefore, the trial Court held that the defendants failed to prove their objections.

12. Further, the Trial Court considered the other documents of the plaintiff, including the certified accounts of the Auditor, cheques and the realisation of the amount and held that the plaintiff's case is acceptable. The Trial Court, further found that the first defendant did not give any explanation as to how his original documents came into the possession of the plaintiff. The Trial Court further found that the Deed of Dissolution of Partnership Firm, is not a compulsorily registrable document and the objections in this regard are unsustainable.

13. The Trial Court also found that when the guideline value of the property itself was Rs.3,00,000/- (Rupees Three Lakhs only) and the property has been sold by the first defendant to the third and fourth defendants for only a sum of Rs.1,00,000/- (Rupees One Lakh only) and



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D.W.2 had even admitted that he did not even see the original documents at the time of purchase. When the evidence of the defendants is contradictory regarding the custody of the original documents and the manner in which the sale has taken place, held that the transaction itself is doubtful.

14. The Trial Court also rejected the objections of the defendants that in view of the clause in the sale deed that if at all the property can be conveyed by the first defendant within a period of three years from the date of sale deed (i.e.) from 13.12.2019, it can only be given back to the Housing Board. Therefore, the Trial Court answered all the issues in favour of the plaintiff and against the defendants and decreed the suit for declaration and the permanent injunction filed by the plaintiff in O.S.No.12499 of 1996 while dismissing the other suit in O.S.No.1209 of 1996. Aggrieved by the same, the present Appeal Suits are laid before this Court.

E. The Submissions :

15. *Mr.K.V.Sundarajan*, the learned counsel appearing on behalf of the appellants, taking this Court through the pleadings and evidence on record, would submit that in this case, the first defendant had categorically denied the execution of the Partnership Deed as well as the Dissolution Deed. When the said Deeds have been denied as forged, the plaintiff has not



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taken any steps to prove the same as genuine. Secondly, the plaintiff has not approached this Court with clean hands as it became clear during trial that, before the alleged transactions, the first defendant had executed a Power of Attorney in Exhibit **Ex.B6** dated 15.03.1990 in favour of the wife of the plaintiff namely one *Bhagyalakshmi*. The said power was not even cancelled. Therefore, when the first defendant has given the Power of Attorney as on the alleged date of the execution of the Partnership Deed, the first defendant cannot deal with the property.

16. The learned counsel would further submit that in any event, when the first defendant purchased the property from the Tamil Nadu Housing Board, a clear and categorical clause is there in the sale deed that the first defendant cannot sell or alienate the suit property within a period of 3 years and if he desires to do so, it can only be in favour of the Housing Board. Therefore, when both the Deed of Partnership and the Deed of Dissolution are within the period of 3 years, the same are null and void in view of the prohibition contained in **Ex.A1/ Sale Deed** itself.

17. The learned counsel would further submit that the defendant Nos.3 and 4 have in any event purchased the suit property for a valid consideration and the said sale deeds not being set aside by any specific



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relief prayed for by the plaintiff, then the relief as prayed for declaration cannot be granted.

18. The learned counsel would further submit that in any event, without a registered document, the title in respect of the suit property which is vested with the first defendant, cannot vest in the plaintiff as the Deed of Dissolution of the Partnership, has not been registered. The plaintiff is only claiming title by virtue of an unregistered document and therefore, his suit is bound to fail.

19. The property was only a vacant land as on date of the suit and it is only thereafter the plaintiff tried to put up a construction which was injuncted by the Court and therefore, once the title is declared in favour of the defendants, they are entitled for the peaceful possession and enjoyment of the suit property and therefore, their counter suits should be decreed.

20. In support of his contentions, the learned counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Ratan Lal Sharma versus Purushottam Harit***¹, more specifically, relying upon paragraph nos.4, 5 & 6 of the judgment, in support of the proposition that the Dissolution Deed, if results in vesting of the property of one partner to the other, it is

¹ (1974) 1 SCC 671



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compulsory registrable in view of Section 17 of the Registration Act.

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21. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *S.V.Chandra Pandian and Ors versus S.V.Sivalinga Nadar and Ors*², more specifically relying upon paragraph nos. 6 and 7 and would contend that ultimately, this Court has to construe whether the Dissolution Deed results in vesting of the property of one partner to another and if so, then the same is compulsorily registrable. The learned counsel relied upon the judgment in *Chinde Gowda vs. Puttamma*³, more particularly on paragraph no.7 to contend that if there is a restrictive covenant which is present in the Sale Deed, then the same would be binding on the first defendant and any violation thereof, the transaction should be treated as void.

22. The learned counsel further relied upon the judgment of the Hon'ble Supreme Court of India in *Union of India and Ors. versus Vasavi Cooperative Housing Society Limited and Ors*⁴ more fully relying upon

²(1993) 1 SCC 589

³(2007) 12 SCC 618

⁴(2014) 2 SCC 269



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paragraph no.15 to contend that the plaintiff has to prove his own case and cannot get the relief of declaration on the weakness of the case of the defendants and submitted that without independently proving his title, the plaintiff is only harping upon the fact that the first defendant did not let in evidence. For all the above reasons, the learned counsel would pray that the appeal suits be allowed.

23. Per Contra, *Mr.G.Masilamani*, learned senior counsel representing on behalf of the respondent/ plaintiff would submit that the plaintiff has filed the suit for declaration and permanent injunction. In order to prove the same, the plaintiff has examined himself as P.W.1. The said *Thilagam*, the adjacent plot owner was examined as P.W.2. Among other documents, the Partnership Deed was produced as *Ex.A.2* and the Dissolution Deed was produced as *Ex.A5*. The documents in *Ex.A.6* to *Ex.A.10* further corroborate and prove the payment of the consideration as per *Ex.A.5*. The documents in *Ex.A.11* to *Ex.A.14* and *Ex.X.1* and *Ex.X.2* further prove the transactions. Therefore, the plaintiff has proved his case beyond any doubt. On the contrary, in this case, the written statement of the first defendant is nothing but a bald denial. When the first defendant chose to contend that he had handed over the blank signed papers in respect of some



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other transactions, no details of that transaction has been provided and hence, the denial is bald. The written statement filed by the first defendant is also verified only by the Power of Attorney Agent and not by himself.

24. The learned senior counsel relied upon ***Order VI Rule 15*** of the **Civil Procedure Code** to contend that when the Power of Attorney Agent is not acquainted with the facts of the case, the verification itself is bad in law. The learned senior counsel, after taking this Court through the written statement filed by the first defendant, would rely upon Order VIII Rule 14 and 15 of the Civil Procedure Code to contend that the denial in this case is only an evasive denial and especially, the first defendant having received certain sum of money, he has not even explained as to for what purposes, the said money was received. Hence, the denial should be taken as evasive or no denial at all and if there is no denial, the plaintiff's case is deemed to have been admitted. Therefore, he would contend that firstly the plaintiff has categorically proved his case and in any event and the same is deemed to be admitted by the first defendant on the facts and circumstances of the case.

25. The learned Senior Counsel would rely upon the evidence of D.W.1 *Manoharan*, who has categorically admitted in the cross examination that he is not concerned with the parties and his role started only with the



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power of attorney and he knew only about the sale to the other defendants.

The learned Senior Counsel would submit that this is a case of sale by the Housing Board and there cannot be any restrictive covenant about alienation. A proper reading of the concerned clause in **Ex.A1** / Sale deed is nothing but a right of pre-emption in the matter of re-purchase which is granted to the housing board. The said right of pre-emption is exercisable by the Housing Board and the Housing Board has not taken any objection whatsoever in respect of the conduct of the first defendant and therefore, the said contention is not available to the defendants herein. In any event, the first defendant, who himself had violated the condition of the said sale by throwing his property into the Partnership's asset, cannot take advantage of his own violation in this proceedings to contend that his own action was null and void.

26. The learned Senior Counsel would further submit that the law as it stood is of the year 1991, the Partnership Deed as well as the Dissolution Deed were not compulsorily registrable. When the dissolution takes place, after the consideration of the profit and loss, the balance should be treated as a residue of the Partnership. The 'residue' in law should only be



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construed as a movable property and all the immovable properties which are left as 'residue' should be valued in terms of money and if the property is allotted in proportion to the share of a partner, then even if the property which belongs to one partner ultimately vests with the other, the same would not require compulsory registration.

27. The learned senior counsel would rely upon the judgment in ***S.V. Chandra Pandian's*** case (cited supra) in support of the said proposition. The learned senior counsel also relied upon the judgment of Hon'ble Supreme Court in ***Khadervali Saheb (dead) by lrs and another vs. Gudu Sahib (dead) and ors⁵***, more specifically, paragraph no.3 in which the Hon'ble Supreme Court had again followed the dictum of ***S.V. Chandra Pandian's*** case (cited supra). The learned Senior Counsel also relied upon the order of the Madurai Bench of this Court in W.P.(MD) number 13896 of 2019 in ***K.Krishnan vs. the Inspector General of Registration and another***, more specifically paragraph Nos.14 to 16 to contend that the non-registration will not have any effect on the title and once the decree which is granted in the present suit is registered, even the anomaly of non registration will be cured.

28. The learned Senior Counsel also relied upon the judgment of the

⁵ (2003) 3 SCC 229



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Hon'ble Supreme Court of India in *Addanki Narayanappa and another*

*versus Bhaskara Krishnappa (dead) and his legal heirs*⁶, morefully referring to paragraph nos.2 and 5 in support of his proposition that the unregistered Deed is admissible as evidence, in respect of the fact that the partnership owned the immovable property. The learned Senior Counsel would rely upon the Division Bench judgment of this Court in *Mrs.Taraben Pravainlal madhvani versus Santokben Vallabhdas Madhvani and 5 other*⁷, more specifically to paragraph nos.13, 14, 44 and 63 to contend that it is the intention of the parties to treat their properties as that of the Partnership, which is essential and any registered deed is not required for transferring of ownership in favour of the Firm.

29. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in *Janki Vashdeo Bhojwani and another vs. Indusind Bank and ors*⁸, relying upon paragraph nos.10 to 15, 17 to 20 that the Power of Attorney Agent can depose only in respect of the acts of

⁶AIR 1966 SC 1300

⁷100 Law Weekly 95

⁸(2005) 2 SCC 217



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the principle done by him. For the same proposition, the learned Senior

Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in *Man Kaur (dead) by lrs vs. Hartar Singh Sangha*⁹, more specifically paragraph nos.11 to 18. For the very same purpose, the judgment in *S.Kesari Hanuman and Goud vs Anjum Jehan and ors*¹⁰, more particularly, paragraph no.23 was relied upon. In support of his proposition that the written statement filed by the first defendant is nothing but an evasive reply and would amount to admission of the plaintiff's case, the learned Senior Counsel would rely upon the judgment in *Balraj Taneja and another vs Sunil Madan and another*¹¹. The learned Senior Counsel also relied upon the judgment of this Court in *Arjunan vs. Arunachala Gounder and ors*¹² and *Nandhini vs. M/s.Vinayaga Textiles*¹³, in support of the proposition that the power of attorney cannot depose about the facts not within his personal knowledge.

⁹ (2010) 10 SCC 512

¹⁰(2013) 12 SCC 64

¹¹(1999) 8 SCC 396

¹²2006 SCC Online Madras 845

¹³2015 SCC Online Madras 8304



F. The Points for consideration & Answer:

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30. I have considered the rival submissions made on either side and perused the material records of this case. Upon consideration of the same, the following points arise for consideration in this case.

1. *Whether the plaintiff has proved that the first defendant had executed **Ex.A2** Partnership Deed and **Ex.A.4** Dissolution of the Partnership Deed?*
2. *Whether the plaintiffs' title can be declared, irrespective of the fact that **Ex.A2** and **Ex.A5** not being registered documents?*
3. *Whether **Ex.A2** and **Ex.A5** ought to have been declared as void in view of the restrictive covenant contained in **Ex. A1** /sale deed?*
4. *Which of the parties are in possession and enjoyment of the suit schedule property and what reliefs should be granted in respect of possession?*
5. *Whether the plaintiff's suit is bad for not specifically assailing the sale deed in favour of the defendants 3 and 4?"*

31. Question No.1: *Whether the plaintiff has proved that the first defendant had executed **Ex.A2** Partnership Deed and **Ex.A.4** Dissolution of the Partnership Deed?*



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To answer this question, there is no quarrel over the proposition submitted by the learned counsel for the appellants that it lies on the plaintiff to make out and establish a clear case for granting the declaration. On a cumulative reading of the oral evidence of PW1, the plaintiff, the evidence of the said *Thilagam*, the owner of the adjacent plot, who had also categorically admitted about the transaction of constitution of Partnership and Dissolution Deeds and acceptance of the consideration and the overwhelming documentary evidence produced by the plaintiff, namely the Partnership Deed in *Ex.A2*, the Dissolution Deed in *Ex.A5*, the proof of the payment of the consideration as per *Ex.A5* in two instalments by way of cheques, which are marked as *Ex.A6* to *Ex.A9*, the bank statement which is marked evidencing the realisation of the cheques by the first defendant in *Ex.A10* and the plaintiffs' own income tax accounts in *Ex.A11* to *Ex.A14* coupled with the income tax accounts of the said *Thilagam* in *Ex.X1* and *Ex.X2*, categorically prove the case of the plaintiffs.

On the contrary, the first defendant has taken inconsistent pleas in the written statement. Firstly, it is his contention that the partnership deed and dissolution deed are rank forgery of his signatures. But however, he has also contended that his signatures were misused. Therefore, there is no categorical stand by the first defendant. This apart, in respect of the money



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received by him, there is no explanation by the first defendant. As a matter of fact, even in respect of the signatures, the first defendant's attempt is to deny by contending that it is for some other transaction. No particulars as to what were those other transactions are pleaded. In view thereof, I hold that the written statement of the first defendant is nothing but an evasive denial and does not amount to denial at all and therefore amounts to admission of the case of the plaintiff. Further, even in the written statement, it was not verified by the first defendant. The first defendant also did not get into the box and adduce evidence. Therefore, the very written statement is improperly verified and is not even verified in terms of Order VI Rule 15 of the Civil Procedure Code. Therefore, the dictum of the Hon'ble Supreme Court of India as relied upon by the learned senior counsel in ***Balraj Taneja's case*** (cited supra) applies to the present case in all force. Similarly, the dictum of the various judgments relied upon by the learned senior counsel for the proposition that the evidence of D.W.1 is no evidence at all, as he had no personal knowledge about the transactions about the entering into Partnership and Dissolution deed etc., and thus, as far as this question as to the proof of ***Ex.A2*** and ***Ex.A5*** are concerned, even though an ostensible contest is made by the defendants, it is a case of no contest. In any event as found by me supra, the plaintiffs have also proved their case



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beyond doubt and accordingly, this question is answered.

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32. Question No.2: *Whether the plaintiffs' title can be declared, irrespective of the fact that **Ex.A5** dissolution deed not being a registered document?*

In order to answer whether the **Ex.A5** Deed of Dissolution of Partnership should have been registered or not, firstly it is to be borne in mind that the present transaction took place in the year 1991. The Deed was not compulsorily registrable. Whether the document needs registration, especially when it results in transfer of the asset of one of the partner to that of the other partner, after the dissolution is dealt with by the Hon'ble Supreme Court of India in the judgment of **Ratan Lal Sharma's** case and **S.V Chandra Pandian and others** case (cited supra) which are relied upon by both side learned counsel.

In **Ratan Lal Sharma's** case, the Hon'ble Supreme Court was concerned with the requirement of compulsory registration of the Arbitral Award by which the Partnership was dissolved. It is useful to extract paragraph no.5 of the said judgment which is as follows:

“5. The word "not" is a slip here. The parties conceded before the learned Single Judge that the award deals with



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immovable property worth above Rs. 100/-. So if it is found by us that the award purports to create rights in. the appellant over immovable property, it would require registration under s. 17 [Registration Act](#). (See [Satish Kumar and others v. Surinder Kumar and others](#) (1). On the dissolution of the partnership or with the retirement of a partner from the partnership the share of the partner in the partnership assets is equal to the value of his share in the net partnership assets after deduction of all liabilities and prior charges. Even during the subsistence of the partnership, he may assign his share to another partner. In that event the assignee partner would get only the right to receive the Share of profits of-the assigner.”

It can be seen that the said judgment is also considered in the judgment in ***S.V.Chandra Pandian's*** case (cited supra) and it is useful to extract paragraph nos.16 and 17 of the said judgment.

“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



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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), (fi) 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 reaslised 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.



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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 of 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



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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.

17. Strong reliance was, however, placed by the learned counsel for the respondents on two decisions of this court, namely (1) [Ratan Lal Sharma v. PurshottamHarit](#), [1974] 3 SCR 109 and (2) [Lachman Das v. Ram Lal](#) andanr, [1989] 3 SCC 99. Insofar as the first mentioned case is concerned, the facts reveal that the appellant and the respondent who had set up a partnership business in December 1962 soon fell out. The partnership had a factory and other moveable and immoveable properties. On August 22, 1963, the partners entered into an agreement to refer the dispute to the arbitration of two persons and gave the arbitrators full authority to decide their dispute. The arbitrators made their award on September 10, 1963. Under the award exclusive allotment of the partnership assets, including the factory, and liabilities was made in favour of the appellant and it was provided that he shall be absolutely entitled to the same in consideration of a sum of Rs. 17,000 plus half the amount of realisable debts of the business to the respondent. The arbitrators filed the award in the High Court on November 8, 1963. On September 10, 1964, the respondent filed an application for determining the validity of the agreement and for setting aside the award. On May 27, 1966, a



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learned Single Judge of the High Court dismissed the application as barred by time but declined to make the award the rule of the court because in his view the award was void for uncertainty and created rights in favour of the appellant over immoveable property worth over Rs. 100 requiring registration. The Division Bench dismissed the appeal as not maintainable whereupon this Court was moved by special leave. Before this Court it was contended (i) that the award is not void for uncertainty-, (ii) that the award seeks to assign the respondent's share in the partnership to the appellant and therefore does not require registration; and (iii) that under [section 17](#) of the Arbitration Act, the court was bound to pronounce judgment in accordance with the award. This court while reiterating that the share of a partner in the assets of the partnership comprising even immoveable properties, is moveable property and the assignment of the share does not require registration under [section 17](#) of the Registration Act. The legal position is thus affirmed. However, since the award did not seek to assign the share of the respondent to the appellant but on the contrary made an exclusive allotment of the partnerShip asset including the factory and liabilities to the appellant, thereby creating an absolute interest on payment of consideration of Rs. 17,000 plus half the amount of the realisable debts, it was held to be compulsorily registrable under [section 17](#) of the Registration Act. The Court did not depart from the



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principle that the share of a partner in the asset of the partnership inclusive of immovable properties, is moveable property and the assignment of the share on dissolution of the partnership did not require registration under [section 17](#) of the Registration Act. The decision, therefore, turned on the interpretation of the award in regard to the nature of the assignment made in favour of the appellant. So far as the second case is concerned, we think it has no bearing since that was not a case of assignment of partnership property under a dissolution deed. In that case, the dispute was between two brothers in 2-1/2 killas of land situate in Panipat, Haryana. The said land stood in the name of one brother the appellant. The respondent contended that he was a banamidar and that was the dispute which was referred to arbitration. The arbitrator made his award and applied to the court for making it the rule of the court. Objections were filed by the appellant raising various contentions. The award declared that half share of the ownership of the appellant shall "be now owned by Shri Ram Lal, the respondent in addition to his half share owned in those lands". Therefore, the award transferred half share of the appellant to the respondent and since the value thereof exceeded Rs. 100, it was held that it required registration. It is, therefore, obvious that this case has no bearing on the point in issue herein. "

(emphasis supplied).

Thus, on a reading of the above, it is clear that once the property



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becomes the property of the Firm, all the partners have an interest in proportion to their share. After the settlement of accounts, the property left behind, shall be treated as residue. The residue would be a movable property in the eye of law and so long as this residue is distributed in proportion to their shares, then the same would not attract Section 17 of the Registration Act. In the instant case, when the parties decided to dissolve the Partnership Firm, cash of Rs.9,00,000/- was brought in by the plaintiff and two plots were brought in by the first defendant as well as the said the *Thilagam*, thus formed a 'residue' and both the plots in total accounted to 50 % of the share and cash accounted to 50% of the share and is accordingly divided in the same proportion of 50 % to the plaintiff, 25% to the first defendant and 25% to the said *Thilagam* and therefore, **Ex.A5**, being in the nature of allotting the respective shares in the residue, will not attract Section 17 of the Registration Act and hence, **Ex.A5** is not compulsorily registrable. It can also be seen that the Hon'ble Supreme Court itself had considered **Ratan Lal Sharma's** case (cited supra) wherein after considering the above quoted paragraph no.5 of the said judgment, the Hon'ble Supreme Court had held that even in the said case, principle of vesting of partnership assets in tune with their share in the partnership after reduction of all liabilities and prior charges is considered and accepted and after holding so, **S.V.Chandra**



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Pandian's case (cited supra) holds that the Deed of Dissolution is not compulsory registrable. Accordingly, I hold that **Ex.A2** or **Ex.A5** are not invalid merely because they were not registered and I answered the question accordingly.

33. Question 3: *Whether **Ex.A2** and **Ex.A5** ought to have been declared as void in view of the restrictive covenant contained in **Ex. A1** /sale deed?*

To answer this question, it is necessary to extract the relevant clause in the **Ex.A1**/Sale Deed which reads as follows:

“If the allottee wants to sell the Flat/House/Plot within three years from the date of execution of sale deed by the Tami Nadu Housing Board, such flats/plots/houses should be resold only to Tamil Nadu Housing Board.”

Thus, it can be seen that it is not a restrictive covenant prohibiting any sale but the Housing Board has a right of purchase within a period of three years and as such is in the nature of pre-emption. Therefore, any transaction in violation of the said covenant cannot be held to be void as the useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the case of **KumarGonsusab v. Mohd. Miyan**¹⁴, which is extracted below:

¹⁴(2008) 10 SCC 153



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“19.As already observed, a suit for pre-emption brought on the basis of such an agreement for sale must be held to be without any cause of action as there was no right of pre-emption in the respondents which could be enforced under the law. We should not be unmindful of the fact that there are no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. It is well settled that it would be open to the pre-emptee, to defeat the law of pre-emption by any legitimate means, which is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means.

20. That apart, it is now well settled that the right of pre-emption is a weak right and is not looked upon with favour by courts and therefore the courts cannot go out of their way to help the pre-emptor.”

The Housing Board has not questioned the transactions till date. Thus, it would not lie in the mouth of the defendants to raise the present objection. Secondly, it is the first defendant who claims the title through **Ex.A1** with the above covenant. Therefore, the first defendant himself cannot be permitted to violate the covenant and make a claim that because he himself has violated the covenant, he will take advantage of the sale and sell the property once more after after the expiry of the third year. The first



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defendant cannot be permitted to approbate and reprobate. In this regard, useful reference to be made to Paragraph No.26 of the judgment of Hon'ble Supreme Court in the case of ***Union of India and Others vs. N.Murugesan and Others***¹⁵.

34. The judgment relied upon by the learned counsel for the appellant in ***Chinde Gowda's*** case (cited supra), relates to the case of the Government Grant. There is no quarrel over the proposition that while a Grant is being made by the Government, the imposition of the restrictive covenant on the grantee is binding and valid and any transaction in violation of the said restrictive covenant is not only void but will also entitle the Government to resume the land or the property in question. But, however, the said proposition is not applicable to the instant case which is a sale transaction and in a sale transaction where the Housing Board sells the property for market value, such a restrictive covenant cannot be imposed and the covenant imposed is not any restriction on alienation but is only a right of pre-emption, which can be exercised only by the Housing Board. Therefore, the contentions of the learned counsel for the appellant in this regard are without any merits. Accordingly, I answer this question in favour of the respondents.

¹⁵(2022) 2 SCC 22



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35. Question 4: *Which of the parties are in possession and enjoyment of the suit schedule property and what reliefs should be granted in respect of possession?*

It can be seen that as on the date of the suit, the property is a vacant land and there was a scramble for possession leading to complaint and counter complaint and claim of having putting up compound wall etc. The subsequent putting up of any super structure will not alter the scenario in any manner. Therefore, the property in question being a vacant land, the possession would go with the title and since I have answered that the plaintiff has established the ownership of the property by virtue of **Ex.A2** and **Ex.A5**, I find that the plaintiff is in possession of the suit property and accordingly reliefs have to be granted on that premise and the question is answered accordingly.

36. Question No.5: *Whether the plaintiff's suit is bad for not specifically assailing the sale deed in favour of the defendants 3 and 4?*

It can be seen that as on date of **Ex.B5**, the first defendant's title stood extinguished in the year 1991 itself. As a matter of fact, he has received the second instalment of payment in the year 1992. Thereafter, after keeping quiet for almost two years, in the year 1994, the first defendant again had



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constituted the second defendant as his power of attorney and tried to deal with the suit property. Therefore, being the second transaction, the same is per se void. On top of the same, the first defendant had evaded to come before the Court. Neither he has chosen to verify his plea, nor let in evidence by getting into the witness box. Only on account of his double alienation, he had avoided the witness box. This apart, when the first defendant had declared that the value of the property is Rs.4,50,000/- as per **Ex.A2 /Partnership Deed**, and when he has got a sum of Rs.4,45,000/- as consideration, even by the Dissolution Deed, selling the property in the year 2004 when the value has been sky rocketing and increasing, especially in an area like Besant Nagar, only for a sale consideration of Rs.1,00,000/- clearly demonstrates that the transaction was only sham and nominal and it was not a *bonafide* sale. Therefore, the sale deed being a void document, and also a sham and nominal transaction, will not create any semblance of right in favour of the defendants 3 and 4 and there was no necessity or to specifically pray for any relief against the sale deed, especially when a relief of declaration in respect of the suit property has been prayed for by valuing the entire suit property.

37. Therefore, as rightly contended by the learned Senior Counsel, any

skirmish arising out of the registration of the sale deed in favour of the



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defendants 3 and 4 and non-registration of the Dissolution Deed by the plaintiff, can be undone by registering the copy of this judgment before the appropriate Registering Authority by payment of appropriate charges in view of the decision relied upon by the learned Senior Counsel in W.P.(MD) No.13896 of 2019 (cited supra).

G. Answer to the issues framed in the Trial Court:

38. In view of the answers to the above points for consideration, I answer the Issue no.1 in O.S.No.12499 of 1996 that the plaintiff is entitled for the relief of declaration in respect of the suit property. I answer the Issue no.2 that the plaintiff is entitled for the relief of permanent injunction. I answer the Issue no.3 that the sale deed dated 3.04.1994 are void and sham and nominal and not for appropriate consideration. I answer the Issue No.4 in terms of the decree of the trial Court. I also answer the Issue no.5 that the first defendant had entered into a Partnership into the name and style of *M/s.Mahalakshmi Constructions* and has executed the Partnership Deed dated 01.04.1991. I also answer the Issue no.6 that the first defendant had contributed the suit schedule property as his share towards the asset of the Partnership Firm. In respect of O.S.No.12509 of 1996, I answer the issue



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that the plaintiff in the said suit are not entitled for the relief of permanent injunction and they are not entitled for any reliefs in the said suit.

I. The Decree:

39. In the result,

(i) The appeal suits in A.S.Nos.79 and 80 of 2006 are dismissed;

(ii) The Judgment and Decree of the learned V Additional Judge, City Civil Court, Chennai dated 27.02.2003 in decreeing O.S.No.12499 of 1996 and dismissing the O.S.No.12509 of 1996 is confirmed.

(iii) The respondents are entitled for costs throughout.

15.11.2022

Index : yes
Speaking order

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To:



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1.The V Additional Judge, City Civil Court, Chennai
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2.The Section Officer, V.R. Section, High Court of Madras.



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Appeal Suit Nos.79 & 80 of 2006

D.BHARATHA CHAKRAVARTHY, J.,

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Common Judgment made in
Appeal Suit Nos.79 & 80 of 2006

Dated:
15.11.2022