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A.Nos.3485 & 3486 of 2022
in C.S.No.229 of 2017

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Reserved On :	04.11.2022
Pronounced On:	111622

G.CHANDRASEKHARAN.J.,

A.No.3485 of 2022 and A.No.3486 of 2022 in C.S.No.229 of 2017 have been filed seeking permission to the applicant/plaintiff to file reply statement to the written statement filed by defendants 1 and 3 respectively.

2.It is submitted by the learned counsel for the applicant that fresh reply statement is filed by the plaintiff in answer to the written statement filed by the first defendant. It is necessitated for the reason that certain new facts, averments and contentions are raised by defendants in their written statement. Therefore, it has become necessary to file a detailed reply statement. Only if the reply statements are permitted to be filed, applicant will be in a position to pursue the suit.



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3.The learned counsel for the first respondent/first defendant strongly opposed this application on the ground that the written statement was filed by the first respondent giving specific answer to the pleadings set forth in the plaint. No new facts or averments have been raised in the written statement. Mere glance of the reply statement would reveal that applicant has sought to introduce altogether a new case, which is different from his original pleadings and it is larger than the original plaint. Applicant filed more documents along with this application. It is not known why these documents are not produced when the suit was filed. The documents filed are manipulated records filed with an attempt to fill with a lacuna in the pleadings and to get over the admissions made by the applicant. Under the guise of filing reply statement, applicant is trying to develop his case or introduce new case and fill up the lacuna. Therefore, he prays for dismissal of these applications.

4.Similarly the learned counsel for the third respondent also opposed this application on the above grounds.



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5.Considered rival submissions and perused the records.

6.This suit is filed by the applicant/plaintiff seeking the relief of partition of suit 'B' schedule property and for other reliefs. The brief case of the plaintiff is that, the Kartas' of plaintiff HUF and first defendant HUF purchased a vacant house site in Aminjikarai on 04.11.1992. Plaintiff HUF is entitled to 50% of the undivided share. Subsequently, plaintiff HUF and first defendant HUF invested their savings and constructed ground floor plus three floors on the vacant site which is described as 'B' schedule property. Thus, the plaintiff HUF is entitled for 50% share in the property. Since 2004, plaintiff HUF is based in Australia, they did not travel to India frequently and were unable to monitor or supervise 'B' schedule property regularly. Recently it came to the knowledge of the plaintiff HUF that 'B' schedule property was fraudulently transferred to defendant No.1 HUF through its Karta by way of a purported release deed dated 19.05.2010, rectification deed dated 02.09.2010, under which second defendant is illegally shown as releasor.



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This is a conspiracy between the first defendant HUF and second defendant. None of the members of plaintiff HUF is a party to release deed dated 19.05.2010. The release deed contains fraudulent statements regarding the share held by the second defendant in 'B' schedule property. It is falsely stated that plaintiff HUF and second defendant were made an oral family arrangement on 26.02.2003, whereby 3/8th undivided share held by the plaintiff HUF had been relinquished in favour of second defendant. A confirmation of oral family arrangement deed dated 31.03.2003 is also created. By virtue of these documents, first defendant HUF claim the absolute ownership of entire 'B' schedule property. Second defendant never had any right in the suit property. She is not member of plaintiff HUF family. 'B' schedule property was illegally leased to third defendant. Karta of the first defendant HUF and his son Rakesh Harlalkahad clandestinely transferred the majority share held by the Pavan Harlalka in his individual capacity as well as in the capacity of Karta of plaintiff HUF in a closely held family company (Triveni Exports Pvt. Ltd.) to themselves by fabricating and falsifying documents. Plaintiff HUF filed criminal complaint before the Commissioner of Police. Under



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these circumstances, the suit is filed.

7.The written statement filed by the first defendant shows that plaintiff and first defendant HUFs constitute joint family consist of mother, the second defendant. These two HUFs were for tax purposes, as otherwise both the HUFs were under same roof. Business of the family was carried on under the name and style of M/s.Triveni Exports Private Limited. In 2003, when the Karta of the first defendant reviewed the accounts of the joint business, he came to know that huge siphoning of funds by Karta of first defendant from joint family business without knowledge of first defendant or the second defendant. When they confronted the plaintiff, the Karta of the plaintiff and his wife started picking up quarrels and set up a separate residence. An oral family arrangement was made among the plaintiff, first defendant and second defendant on 26.02.2003, whereby it was agreed that in lieu of share of the plaintiff, which he relinquished in favour of the second defendant, consideration was paid to him by way of money through four cheques



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dated 26.02.2003, 26.02.2003, 28.03.2003 & 09.04.2003 for Rs.5,00,000/- each. This amount was paid by the second defendant from her account. It was agreed that plaintiff and his two children, the first defendant and his two children will have each one share and mother will have one share each from both the HUFs. Accordingly, suit property was made into 8 shares and 3/8 share was allotted to plaintiff HUF, 3/8 share was allotted to first defendant HUF and 2/8 share was allotted to second defendant. Subsequently, an oral family partition was reduced into writing on 31.03.2004. Plaintiff along with his family members left India during 2004 and thereafter, did not have any kind of relationship with the defendants 1 and 2. Based on the oral family partition, the properties allotted to the mother was released in favour of the first defendant on 19.05.2010. Necessary mutation had been effected in the revenue records in the name of the first defendant. Entire statutory levies including property tax and other taxes are being paid by the first defendant for the past 14 years. Plaintiff lost all his money in abroad and he attempts to make fresh claim in the suit property. Plaintiff did not turn up for past 14 years and right, if any, he has is lost by acquiescence and ouster.



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8.The third defendant also filed written statement stating that it entered into a lease deed dated 19.12.2013 for taking lease of 100 sqft., on the ground floor and 350 sqft., on the rooftop by installing and commissioning different rooftop pole/mast for a period of 20 years on leasehold basis. It is paying rents in terms of the lease agreement. Third defendant has no knowledge about the allegations made by the plaintiff against the defendants 1 and 2. Even if the plaintiff succeeds in the suit, he would be entitled only half the share in the 'B' schedule property. The lease agreement executed by one co-owner will bind on the other co-owner.

9.Reply statement is filed mainly for answering the averments made in the written statement. A reading of the reply statement shows that it only tries to answer and give explanation to the answers, explanation or denial to the averments made in the written statement. Admittedly, it is claimed in the written statement that second defendant is also a member of HUF of plaintiff and first defendant,



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- i)there was a siphoning of funds by the plaintiff
- ii)there was an oral family arrangement on 26.02.2003
- iii)relinquishment of share by the plaintiff in favour of second defendant for consideration of Rs.20,00,000/-.
- iv)division of shares among the plaintiff, first defendant and second defendant
- v)execution of written document on 31.03.2004
- vi)alleged payment of property tax and other statutory levies by the first defendant for 14 years
- vii)the plaintiff lost its claim over the suit property on the ground of ouster and acquiescence.

10.The reply statement is an endeavor to answer all these averments made in the written statement. In the facts and circumstances of the case, where rival claim is made by the parties in respect of the suit property this Court is of the considered view that the plaintiff must be given permission to file reply statement in answer to the averments made in the written statements filed by the defendants 1 and 3. Therefore, both



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the applications are allowed. No costs. The defendants 1 and 3 are permitted to file additional written statements, if any, by 07.12.2022

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Index: Yes/No

Speaking Order: Yes/No

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