



C.S.No.925 of 2010
& Tr.C.S.No.768 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
02.08.2024

Judgment Pronounced on
30.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.S.No.925 of 2010
& Tr.C.S.No.768 of 2013

C.S.No.925 of 2010:

- 1.M.V.Krishna Rao (Deceased)
- 2.Seetharajakumari
- 3.M.B.V.Sathya Sai Prasad
- 4.M.Suriyanarayanamurthy
- 5.M.Bagya Suryalakshmi
- 6.M.B.L.Ragavendra Swamy
- 7.M.Uma Mageswari

.. Plaintiffs

[2nd plaintiff arrayed as 3rd defendant as per order dated 05.12.2014 in A.No.2171 of 2011 and order dated 24.04.2015 in A.No.2969 of 2015 in A.No.2171 of 2011 in C.S.No.925 of 2010]

[Plaintiffs 2 to 7 are impleaded as LR's of the deceased plaintiff, M.V.Krishna Rao as per order dated 19.07.2013 made in A.No.5709 of 2011]

/versus/



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1.K.Shivakumar
2.Meena Shivakumar
3.Murugesan

.. Defendants

[Arrayed as 3rd defendant as per order dated 05.12.2014 made in A.No.2171 of 2011 and the order dated 24.04.2015 made in A.No.2969 of 2014 in C.S.No.925 of 2010]

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) Declaring the registered sale deed document bearing No.976 of 2010 on the file of the Sub-Registrar Office, Kodambakkam, executed by plaintiff in favour of the 1st and 2nd defendants as null and void and not binding on the plaintiff or any person claiming through him and cancel the same;

b) Granting permanent injunction restraining the defendants from alienating or in any manner encumbering the plaint schedule property;

c) Mandatory injunction directing the defendants 1 and 2 to deliver vacant possession of their portion of occupation of the suit schedule of property morefully described in the suit as schedule B property; and

d) Directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 till handing over the Schedule B property being



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the damages for their use and occupation of the Schedule B of the plaint;
and

e) Directing the defendants to pay the cost of the suit.

For Plaintiffs : Mr.N.Jothi
Senior Counsel
for Mr.N.Srinivasulu

For Defendants

For D1 & D2 : Mr.Sadasharam
for Mr.M.V.Venkatasesham

For D3 : Mr.R.Ravi

Tr.C.S.No.768 of 2013:

1.Meena Shivakumar
2.K.Shivakumar

.. Plaintiffs

/versus/

Seetha Rajakumari

.. Defendant

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

a) Directing the defendant to hand over vacant possession of portion under the occupation of the defendant namely the eastern side portion in the 2nd floor situated at new door No.33, old No.35/5/1, 35/5/2, 35/5/3, 35/5/4 and 35/5/5 Akrabad 1st Street, Kodambakkam, Chennai – 600 024, morefully described in the schedule hereunder; and



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b) Directing the defendant to pay the cost of the suit.

For Plaintiffs : Mr.Sadasharam
for Mr.M.V.Venkateseshan

For Defendants : Mr.N.Jothi
Senior Counsel
for Mr.N.Srinivasulu

JUDGMENT

The suit in C.S.No.925 of 2010 has been filed to declare the Sale Deed bearing Doc.No.976 of 2010 on the file of the SRO, Kodambakkam, as null and void and not binding on the plaintiff; for a permanent injunction to restrain the defendants from alienating or encumbering the suit schedule property; for a mandatory injunction directing the defendants 1 and 2 to deliver vacant possession of their portion under their occupation of the suit schedule property; directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 till the date of handing over of the possession of the schedule B property and to the damages to the occupation.



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2.Tr.C.S.No.768 of 2013 has been filed by the defendants 1 and 2 in C.S.No.925 of 2010 seeking recovery of possession of a portion under the occupation of the defendant i.e., the 2nd plaintiff in C.S.No.925 of 2010.

3.The gist of the plaint in C.S.No.925 of 2010 is as follows:

(a) The 1st plaintiff is the absolute owner of the property bearing No.33, Old No.16/5 Akbarabad First Street, Kodambakkam, Chennai – 600 024, he having been declared as such in and by a judgment and decree in O.S.No.2707 of 1998 dated 25.09.2001 on the file of the VI Additional City Civil Court, Chennai. The plaintiff was having serious matrimonial discord with his wife since 2001 and they were living separately in the suit property. The children were living along with the mother. The differences of opinion took a serious turn in 2006 and the elder son of the 1st plaintiff pushed him down supporting his mother, which led to filing of O.P.No.942 of 2006 before the II Additional Family Court, Chennai, seeking dissolution of the marriage on the ground of cruelty.



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(b) The 1st plaintiff was a chronic diabetic patient and already underwent amputation of left foot big toe in 2003 and further, both kidneys failed in 2007 and he has been on dialysis, twice a week. The 1st plaintiff needs constant medical attention and because his family neglected him, he relied upon his trusted friends. Even for food and medical assistance. The 1st plaintiff was unable to meet the expenses and he had to borrow monies from his trusted loyal friends even the rental income accruing from the suit property was appropriated by his wife and not given to the 1st plaintiff. In order to tide over the burden of loans, the plaintiff decided to sell the suit property, for which his family were not agreeable with him. Disputes arose and the 1st plaintiff walked out of the house and started staying in a hotel. Then he came into contact with the 1st defendant through a common friend by name, Ramki @ Ramakrishnan. The 1st defendant introduced himself as a practicing lawyer and it was represented that he would solve the plaintiff's legal problems. The plaintiff trusted the words of his friend, Ramki @ Ramakrishnan and disclosed all his problems to the 1st defendant. The 1st defendant drafted a complaint dated 18.03.2009 for the 1st plaintiff to present it before the police. The 1st defendant also organised media



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coverage on the issue since the 1st plaintiff was connected to cine Superstar Rajnikanth, being his Manager. Kumudam Tamil weekly magazine in their issue dated 25.03.2009 also carried a lead story and the 1st defendant was even quoted by the columnist in the said story stating that the 1st plaintiff was entitled to deal with the property as per his wish, to any person he wanted.

(c) The 1st plaintiff further stated that the 1st defendant provided advice to the 1st plaintiff that the 1st defendant could enter into the house as a tenant which would enable him to confront the 1st plaintiff's wife and family members, in order to control them and enable sale of the property. Pursuant to the same, the 1st plaintiff executed a registered Lease Deed on 02.04.2009 in favour of the 1st defendant, as if a portion of the suit property was leased out to him. However, no consideration passed under the said Lease Deed and it was a sham document to enable the 1st defendant to enter into the house which was strictly out of bounds because of the 1st plaintiff's wife's objection and attitude. However, the plan of the 1st defendant also was spoiled and nothing turned out as planned.



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(d) The 1st plaintiff's wife filed a suit in O.S.No.44 of 2010 on the file of the II Additional Family Court, Chennai, seeking an injunction to restrain the plaintiff from selling the suit property. She had also put up a notice board in the property regarding the said suit, which further made things difficult for the 1st plaintiff to sell the property. At that point, the 1st defendant using his clout and domination over the 1st plaintiff as his lawyer, misused his relationship with the 1st plaintiff and based on trust the 1st plaintiff had on the 1st defendant and believing the 1st defendant's words to get over the suit filed by the 1st plaintiff's wife in O.S.No.44 of 2010 and also to inspire confidence in prospective buyers and to overcome the hurdles, the 1st defendant suggested a Sale Deed to be executed in his favour. As the 1st plaintiff was in dire need of money, he accepted the 1st defendant's advice, without realizing the scheming nature of the 1st defendant. Owing to his old age and fragile health condition, the 1st plaintiff had no occasion to even get any outside advice in this regard.

(e) In fact, the 1st plaintiff suggested sale in favour of his trusted friends by name, Narayanan, Achuthalingam and Murugesan, but



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all these friends declined to oblige and at that juncture, considering the 1st defendant's promise that he would take care of any unforeseen risk and as prospective buyer, sell the property and settle the accounts. In fact, the 1st defendant promised on his wife, child and family deity that he would not go back on his words. The 1st plaintiff agreed to execute the Sale Deed in favour of the 1st defendant without any consideration and as per the understanding between the 1st plaintiff and the 1st defendant.

(f) On the advice of the 1st defendant, the 1st plaintiff also cancelled the mortgage on the suit property in favour of his friend, Achuthalingam. His friend also obliged on the hope that his monies would be settled in due course after sale of the property. Both the Lease Deed and the cancellation of mortgage were executed on 15.03.2010 and in fact, even the stamp paper and registration charges were borne only by the 1st plaintiff's friend and the 1st defendant was not even in a position to arrange for the same.

(g) The sham Sale Deed was executed for a purported consideration of Rs.1,21,50,000/- on 19.03.2010. Though the 1st



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defendant had conned the 1st plaintiff that he would come in as a tenant in a portion of the building at a monthly rent of Rs.12,000/- and also support the 1st plaintiff by providing food and taking care of his all medical needs and other expenses will be offset against the rent, after the Sale Deed executed by the 1st plaintiff in his favour, the 1st defendant, using his men and muscle power, forcibly entered into the 1st floor portion of the property, despite resistance put by the 1st plaintiff's wife and only with the blessings of the 1st plaintiff.

(h) The 1st defendant also organized a police complaint on 24.03.2010 in the 1st plaintiff's name against his wife, alleging attempt to murder on the defendants 1 and 2, purchasers. The 1st defendant also organized for filing a criminal original petition before this Court for registering FIR on the above said complaint. Even in the said criminal original petition, the 1st plaintiff, under the bonafide impression that the 1st defendant would solve all the 1st plaintiff's financial problems sided with the 1st defendant and not with his wife.

(i) The 1st plaintiff also alleges that the 1st defendant took his



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signatures in several papers and forms and the 1st defendant also mutated revenue records in his favour and his wife's favour. The 1st plaintiff also came to know that the 1st defendant did not pay rents to the 1st plaintiff from the plaintiff's tenant and even filed a rent control petition against his tenant and a civil suit against 1st plaintiff's wife. By such series of acts, the 1st defendant had exposed his motive to entrench himself as a lawful owner and thereby swindle the hard earned property of the 1st plaintiff. The defendants 1 and 2 also stopped supporting the 1st plaintiff's food and medical needs, which necessitated the 1st plaintiff to further borrow loans from his friends.

(j) As the 1st defendant has exploited the trust of the 1st plaintiff as his advocate and misused his position and also incapacitation of the 1st plaintiff due to old age and sickness, family isolation, social deprivations, impoverishment and also used the 1st plaintiff's estrangement with his wife and children, deceived the 1st plaintiff and therefore, the 1st plaintiff was constrained to issue a lawyer's notice on 15.10.2010 to the defendants, calling upon the defendants 1 and 2 to acknowledge the understanding and circumstances under which the Sale



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Deed was executed in Doc.No.976 of 2010 on the file of the SRO, Kodambakkam, and also calling upon the defendants not to alienate the property. However, no reply was sent by the defendants and therefore, the 1st plaintiff sent an affidavit cum complaint dated 15.10.2010 through his advocate on 29.10.2010 to various authorities to render justice to him. Having no other option, the 1st plaintiff has filed the suit for the above mentioned reliefs.

4. Written statement filed by the 1st defendant in a nutshell:

(a) The 1st defendant states that the 1st plaintiff is a person involved in cine field and the 1st defendant has also been a member of South Indian Artist Association (Nadigar Sangam) as also South Indian Cine Artists and Dubbing Union since 1994, knew the 1st plaintiff well. The 1st defendant is a practicing advocate in High Court, Madras as well as in Madurai Bench and in Subordinate Courts for the past 10 years and he was in search of a residential house for his family in 2009, when the plaintiff offered to lease out a portion of the suit property. Only under such circumstances, a Lease Deed dated 02.04.2009 came to be executed in his favour, by the 1st plaintiff, for which the 1st defendant paid



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Rs.5,00,000/- as advance and fixed the monthly rent of Rs.2000/-. The 1st defendant duly paid the same as well. The ground floor portion was leased out to Software Company run by the elder son of the 1st plaintiff in partnership with third party and the other tenants occupying other portions of the suit property and the 1st plaintiff himself requested them to pay rents to the 1st defendant, after execution of the Sale Deed. Only in view of the tenants declining to do so, the 1st defendant had to initiate rent control proceedings against the said tenants. The western side of the second floor was occupied by the 1st plaintiff himself.

(b) According to the 1st defendant, the 1st plaintiff had orally promised at the time of sale that he would vacate and hand over the possession within two months. As the 1st plaintiff did not vacate as promised, the 1st defendant issued a notice 27.07.2010 and also filed a Ejectment suit in No.12 of 2010 on the file of the III Court of Small Causes, Chennai. The Eastern side of the second floor is occupied by the wife of the 1st plaintiff and she is a permissive occupant. Ejectment suit in No.11 of 2010 has been filed against the 1st plaintiff's wife. Both the 1st plaintiff and his wife have not chosen to contest the ejectment suit and they remained exparte. Thus, right from the date of purchase, the 1st



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defendant has exercised his right of ownership to the full knowledge of the 1st plaintiff.

(c) On 24.03.2010, the 1st plaintiff has lodged a complaint before the Commissioner of Police and also filed CrI.O.P.No.8915 of 2010, where also the 1st plaintiff categorically admits having sold the property to the 1st defendant. The 1st plaintiff's wife filed M.P.Nos.530 and 531 of 2010 on the file of the XVII Metropolitan Magistrate, Saidapet, under the Domestic Violence Act. Even in the counter in the said M.P.Nos.530 and 531 of 2010 filed in August 2010 also, the 1st plaintiff has clearly admitted the factum of sale of the suit property in favour of the 1st defendant.

(d) Offering explanation for the source of funds of the 1st defendant, the 1st defendant has stated that he has reasonable practice in criminal and writ side of the Madras High Court and his wife is also a post graduate and serving as Higher Secondary Teacher in a Private School. Thereafter, she resigned and she has been running two businesses as proprietary under the name and style of M/s.Muthumuruga Enterprises at their native place, Sholavandan and also a travel agency at



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Egmore. Thus, according to the 1st defendant, he has sufficient means to pay the consideration.

(e) It is also stated that the defendants have paid Rs.5,00,000/- as advance under the Lease Deed and also cleared the simple mortgage of Rs.15,00,000/- besides also clearing another borrowing of the 1st plaintiff to the tune of Rs.30,00,000/-. This amount was paid in cash to the 1st plaintiff on the date of registration. The younger brother-in-law of the 1st defendant, who is a permanent resident of Singapore also advanced Rs.15,00,000/- and the father-in-law of the 1st defendant, who is a retired Signal Inspector of Railways, advanced Rs.10,00,000/-. The 1st defendant also sold 70 sovereigns of gold jewels owned by his wife, the 2nd defendant, from and out of which, he was able to realize Rs.10,00,000/-. The younger brother of the 1st defendant, by name, Saravanan who is a Marine Engineer and Naval Commando (Retd) advanced Rs.10,00,000/- and the 1st defendant's friend, S.Jagatheesan of Vandavasi also advanced Rs.5,00,000/- through Shriram Chits, T.Nagar and from and out of all these funds, the 1st defendant purchased the suit property.



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(f) The 1st defendant alone purchased stamp papers for Rs.2,50,000/- and also arranged for payment of registration fee of Rs.1,21,620/- by Demand Draft. The balance stamp duty was also paid by way of Demand Draft for Rs.7,49,060/-. The Sub Registrar directed the 1st defendant to pay additional stamp duty of Rs.1,81,530/- and additional registration fee of Rs.22,695/- which is also paid by the 1st defendant from and out of current account of M/s.Muthumurugan Enterprises run by the 2nd defendant. The 1st defendant paid the entire sale consideration by cash only to enable the 1st plaintiff to settle several creditors who had in fact compelled the 1st plaintiff to sell the property and it was only the 1st plaintiff who requested that the entire sale consideration was to be paid in cash.

(g) According to the 1st defendant, the entire payments were made in the presence of witnesses and according to the 1st defendant, even the Sub Registrar was initially hesitant, however, after verifying with the 1st plaintiff whether he received entire sale consideration, the registration formalities were completed.



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(h) The 1st defendant has denied the claim of the 1st plaintiff

that he was introduced by a common friend, Ramki @ Ramakrishnan as the 1st defendant knew the 1st plaintiff in view of their involvement in the cine field much earlier. With regard to the legal assistance rendered as an advocate to the 1st plaintiff in so far as the disputes between the 1st plaintiff and his wife, the defendant admits that the complaint was published in Tamil Weekly, Kumudam. The 1st defendant also admits that before publishing the article, a reporter by name, Pushcin Rajkumar from the said Tamil Weekly had interviewed the 1st defendant and as the 1st defendant was certain about the 1st plaintiff's title and he had given statement that the 1st plaintiff has every right over the suit property. The allegations regarding the sham Lease Deed are totally denied by the 1st defendant. The allegation that the 1st defendant misused the client-lawyer relationship is totally denied. False allegations are made in the plaint by the 1st plaintiff against the 1st defendant and the same are also denied.

(i) The 1st defendant also reliably learnt that the 1st plaintiff had executed a registered Will in favour of his close friend, Murugesan on 24.12.2009, registered as Document No.127 of 2009 on the file of the



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SRO, Kodambakkam. However, in view of the sale in favour of the 1st defendant, the said Will automatically got nullified. According to the 1st defendant, the suit has been filed only at the instigation of the said beneficiary, Murugesan, who has lost the benefit under the said Will of the 1st plaintiff.

(j) According to the 1st defendant, the Sale Deed is not a sham arrangement but a valid transaction between the 1st plaintiff and the 1st defendant. The allegation that the stamp duty and registration charges were met by the 1st plaintiff is also denied. The 1st defendant never promised to come in as a tenant on a monthly rent of Rs.12,000/- and also undertaking to attend to the food and medical needs of the 1st plaintiff. The allegations to the contrary made in the plaint are denied by the 1st defendant. The allegation that the 1st defendant forcibly trespassed into the suit property is also denied and it is stated that the 1st defendant was already in occupation as a tenant under the registered Lease Deed. Pursuant to the Sale Deed, the 1st defendant has mutated all revenue records and the 1st defendant, as lawful owner, is entitled to enjoy the suit property. The 1st defendant denies that he has exploited the trust reposed



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by the 1st plaintiff and that the 1st plaintiff caused lawyer's notice dated 15.10.2010. According to the 1st defendant, she never received such notice and acknowledgement dated 18.10.2010 is a rank forgery. The 1st defendant has reiterated that the suit is only at the instigation of said Murugesan and even the Court fee paid is incorrect and therefore, the suit is liable to be dismissed.

5. Pending the suit, the plaintiff, M.V.Krishna Rao died and claiming as beneficiary under his Will dated 24.12.2009, Murugesan claimed to implead himself as the plaintiff. The wife and children of M.V.Krishna Rao also sought to implead themselves as plaintiffs. Initially, in and by an order dated 19.10.2011 in A.No.2171 of 2011, Murugesan was impleaded as the 2nd plaintiff in the suit. However, subsequent to the objections raised by the legal representatives of M.V.Krishna Rao, Murugesan was transposed as the 3rd defendant and the wife of M.V.Krishna Rao was impleaded as the 2nd plaintiff and her children were impleaded as plaintiffs 2 to 7 the suit in pursuance of order dated 19.07.2013 in A.No.5709 of 2011. The plaint was also amended at the instance of the legal representatives of the original plaintiff,



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M.V.Krishna Rao.

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6.The following reliefs were introduced by way of amendment:

The suit superstructure was built using the resources of the 1st plaintiff and the 2nd plaintiff. The 2nd plaintiff hails from a very rich family in Godawari District in Andhra Pradesh and her parents had given her 60 sovereigns of gold jewellery at the time of marriage and also Rs.1,00,000/- as dowry as per the custom and tradition in the family. Right from 1972, the plaintiffs 1 and 2 settled down in Chennai. The children of the plaintiff were educated and brought up by providing good education and their marriages were also celebrated in grand manner. The 2nd plaintiff along with the 6th plaintiff started business in the name of M/s.M.S.R.Exports dealing in export of Indian Cinematograph Films, etc., in India as well as abroad and from and out of said business, the 2nd plaintiff has gained substantial profit. Therefore, the suit property was developed mostly out of the income of the 2nd plaintiff. In fact, the relief of mandatory injunction directing the defendants 1 and 2 to vacate and also pay damages for possession and occupation was introduced by way



of amendment only.

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7.Meeting the amended pleadings, the defendants 1 and 2

filed their additional written statement:

The 2nd plaintiff has not produced any document to establish that she purchased or contributed for the development of the suit property. The suit property is self acquired property of the 1st plaintiff and no claim can be made by the 2nd plaintiff over the same. The amendments are only after thought and despite M.V.Krishna Rao having died on 21.12.2010, the plaintiff's wife took no steps to implead herself as legal heirs until 2015.

8.The allegations made by the 2nd plaintiff by way of amendment are clearly false since the 2nd plaintiff, in her own suit in O.S.No.44 of 2010, filed against her husband, has admitted that the suit property belongs only to her husband, M.V.Krishna Rao. The defendant further states that they were not put in possession in pursuance of the Sale Deed but already entered into the possession as tenant under rental agreement dated 02.04.2009 and therefore, the relief of mandatory injunction cannot be granted. That apart, late M.V.Krishna Rao himself



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has brought on record the fact that he is the absolute owner of the suit property and therefore, the defendants sought for dismissal of the suit.

9. The 3rd defendant, Murugesan who was being transposed from 2nd plaintiff to the 3rd defendant has filed a written statement and the gist of which is hereunder:

The 3rd defendant is a loyal friend of the deceased, 1st plaintiff and he was thickly associated with him for the last 15 years of his life. The bondage between the 3rd defendant and the deceased, 1st plaintiff was like son and father and the 3rd defendant rendered unstinted service to the deceased, 1st plaintiff and earned his love and affection. Considering that the plaintiff was neglected by his own family, the 1st plaintiff executed a Will in favour of the 3rd defendant on 24.12.2009. The 1st plaintiff had to borrow heavily to even survive and to meet his medical expenses and under such circumstances, the 1st plaintiff decided to sell the property. It was only at that time, the 1st plaintiff came under the grip of the 1st defendant. The 3rd defendant echoes the allegations made by the 1st plaintiff against the 1st defendant. The 3rd defendant has denied the amended pleadings introduced by the 2nd plaintiff contrary to the



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pleadings made by the 1st plaintiff originally.

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10.It is also contended by the 3rd defendant that the 2nd plaintiff cannot set up converse case by way of amendment and therefore, the amended pleadings were non-est in the eye of law. The claims of having contributed for purchase or development of the property are totally denied and made only to defeat the Will of the deceased, 1st plaintiff. According to the 3rd defendant, the property vests with him pursuant to the Will of the deceased, 1st plaintiff dated 24.12.2009 and the 3rd defendant is therefore true the owner of the suit property and he has also taken steps for obtaining probate of the said Will. The 3rd defendant has therefore prayed for decree being passed in favour of the 3rd defendant overlooking amended pleading introduced by the 2nd plaintiff, except the relief portion and allow the suit in favour the 3rd defendant provisionally subject to production of probate of Will dated 24.12.2009 executed by the deceased, 1st plaintiff.

11.In Tr.C.S.No.768 of 2013, the plaintiffs have approached the Court on the strength of the following claims:



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The plaintiffs are originally tenants under M.V.Krishna Rao, the 1st plaintiff in C.S.No.925 of 2010 in the year 2010. Their vendor, M.V.Krishna Rao, offered to sell the property to the plaintiffs and accordingly, the plaintiffs have purchased the suit property for a valuable consideration in and by a registered Sale Deed dated 19.03.2010 vide Document No.976 of 2010. The plaintiffs were put into actual possession of the suit property, excepting the portions under the occupation of the wife of the 1st plaintiff in C.S.No.925 of 2010, the defendant in the present suit. The plaintiffs also effected mutation of revenue records in their name. The defendant's husband, M.V.Krishna Rao died after the execution of the Sale Deed in favour of the plaintiffs and the defendant was only a permissive occupant of the suit property. In fact, the defendant requested for one month time to vacate and hand over possession and the plaintiffs also considered the defendant's request and permitted her to occupy the eastern side portion in the second floor of the suit property as a permissive occupier on permission basis. However, the defendant has not vacated and even went to the extent of interfering with the plaintiffs' possession which necessitated the plaintiffs to file a suit in O.S.No.3932 of 2010 before the VI Assistant City Civil Court, Chennai



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for permanent injunction. The Civil Court was also pleased to grant an interim injunction against the defendant. The defendant is refusing to vacate the suit property because of the filing of the said suit and the plaintiffs caused a lawyer's notice dated 10.06.2010, directing the defendant to vacate and hand over possession. However, despite receipt of the said notice, the defendant neither sent any reply nor came forward to vacate and hand over possession. Having no other option, the plaintiffs have preferred the suit seeking recovery of possession from the defendant.

12. Written statement filed by the defendant in

Tr.C.S.No.768 of 2013 is as follows:

The suit property belonged to the husband of the defendant late, M.V.Krishna Rao and even at the time of the alleged sale, the said M.V.Krishna Rao was in occupation of only one portion in the second floor and consequent to his demise, the defendant is in occupation of said portion. According to the defendant, the suit is not properly valued and the plaintiffs are no way connected with the *inter se* disputes between the defendant and her husband, late, M.V.Krishna Rao. The 1st plaintiff, who



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is a practicing lawyer, has taken advantage of the family disputes between the husband and wife (i.e) the defendant herein and her husband, M.V.Krishna Rao and obtained a Sale Deed in his favour and his wife's favour, without paying a single pie towards the sale consideration. The defendant's husband realized his mistake and has also filed C.S.No.925 of 2010 for necessary declaration and recovery of possession. The defendant's husband died on 21.12.2010 leaving behind the defendant, her son and daughters as his legal heirs. The suit has been filed as against the wife, leaving out the other legal heirs and in any event by virtue of law of the Hindu Marriage Act as well as the Hindu Succession Act, the possession of the defendant is lawful and valid. The suit is barred for non joinder of necessary party, namely, the heirs of M.V.Krishna Rao. According to the defendant, there is no substance in the plaint allegations and the plaintiffs have played fraud on the defendant and her children. Therefore, the defendant sought for dismissal of the suit.

13.After considering the pleadings, the following issues have been framed by this Court on 29.09.2016 in C.S.No.925 of 2010:

“1.Whether the registered Sale Deed dated



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19.03.2010, is null and void and not binding on the deceased first plaintiff?

2.Whether the total consideration for the sale dated 19.03.2010, is received by the deceased first plaintiff?

3.What are the rights of the plaintiffs 2 to 7 to challenge the sale deed?

4.Whether the plaintiffs are entitled to a permanent injunction restraining the defendants from alienating the suit property?

5.Whether the plaintiffs are entitled to legal possession?

6.Whether the plaintiffs are entitled to damages for use and occupation of the suit property?

7.To what other reliefs, the plaintiffs are entitled to?”

14.On 04.01.2012, the following issues were framed by the learned XII Assistant City Civil Court, Chennai in O.S.No.3848 of 2011 (Tr.C.S.No.768 of 2013):

“1.Whether the plaintiff is entitled to the relief of possession of the suit property?

2.Whether this Court has jurisdiction to entertain this suit?



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3.To what relief the plaintiff is entitled to?”

15.On 12.03.2020, the following additional issues were framed by this Court in C.S.No.925 of 2010 and Tr.C.S.No.768 of 2013:

“a.Whether the sale deed is vitiated in view of the fiduciary relationship position of defendant No.1 over the deceased 1st plaintiff as his Advocate?;

b.Whether the sale deed dated 19.03.2010 is tainted with fraud, coercion and undue influence?; and

c.Whether the defendants 1 and 2 have got financial resources so as to give the sake consideration by way of cash with respect to the subject matter of the sale deed?”

16.I have heard Mr.N.Jothi, learned Senior Counsel for Mr.N.Srinivasulu, counsel for the plaintiffs and Mr.Sadasharam, learned counsel appearing for Mr.M.V.Venkateshan, counsel for the defendants 1 and 2 and Mr.R.Ravi, learned counsel for the third defendant.



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17. Issue Nos.1 to 5 & Additional Issues 1 to 3 and Issues 1 & 2 in Tr.C.S No.768 of 2013 are taken up together:

Learned Senior Counsel appearing for the plaintiffs, Mr.N.Jothi would submit that the deceased sole plaintiff M.V.Krishna Rao was a native of Andhra Pradesh and he came and settled down in Chennai. He was the Secretary of leading Cine actor Rajinikanth. In the course of his acquaintance with cine persons, he met the first defendant, who is an actor and member of Association and also a Lawyer. The 1st plaintiff was having marital issue with his wife and he was staying alone in Chennai. The deceased plaintiff was not keeping good health and at that point of time, taking advantage of his feeble mind and mental condition, the first defendant got himself closely acquainted with the deceased first plaintiff and gave him ideas to dispose of the property which would enable him to clear all his dues and also take care of his medical expenses.

18.According to the learned Senior Counsel, the first defendant professionally misconducted himself and made the plaintiff to dance to



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his tunes. According to the learned Senior Counsel for the plaintiffs, the idea of creating documents was made only by the first defendant and he himself offered to be the purchaser under the guise of creating title by way of registered document and the first defendant made the deceased plaintiff to believe that once there is a registered document in respect of the suit property, it would be easier for the deceased plaintiff to find a good buyer. Further, the plaintiff did not have any reason to disbelieve the words of the first defendant and instead he has placed full trust and faith as his lawyer. Therefore, the deceased plaintiff readily agreed for the execution of the sale deed, believing the words of the first defendant that the property would be sold and the sale consideration would be transferred to plaintiff's account. According to the learned Senior Counsel, the sale deed itself was a sham document and therefore directly hit by Transfer of Property Act as well Registration Act. Learned Senior Counsel would further submit that the first defendant claims to be a bonafide purchaser. However, he has not been able to establish any bonafides during the course of the trial of the suit. Learned Senior Counsel would also submit that the first defendant forcibly entered into the suit property, for which, more than sufficient documentary evidence



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has been produced on the side of the plaintiffs and the alleged sale deed in favour of the first defendant was clearly against the requirements of Section 54 of Transfer of Property Act defining a “sale”. Learned Senior Counsel would further submit that beyond a sum of Rs.20,000/-, no cash transaction is permitted and the first defendant claims to have paid the entire sale consideration of Rs.1,21,51,000/- by way of cash and it remains unsubstantiated even after full fledged evidence. Though the first defendant claims that he has borrowed money from the third parties, he has not let in evidence whatsoever and it is only a clear conspiracy hatched by the first defendant to usurp the suit property, taking advantage of the fiduciary capacity and relationship of the client-lawyer between the deceased plaintiff and the first defendant.

19. Learned Senior Counsel would further state that the plaint itself is a kind of dying declaration under Section 32 of the Indian Evidence Act, 1872 because even at the time of drawing of plaint, the plaintiff's health was sinking and he was not alive to lead evidence at the trial of the suit.



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20. Learned Senior Counsel would further contend that prior to the sale deed, the first defendant entered into a lease agreement with the deceased sole plaintiff and even the said lease deed dated 02.04.2009 (Ex.B.25) was never intended to be acted upon. Equally, he attacked the Mortgage Deed. He would draw the attention to the document marked by the first defendant himself to show possession was never handed over to the first defendant under the said lease deed. He would fortify his submissions regarding possession not being with the first defendant at any point of time by contending that even possession under lease was not established by production of any rental receipt or gas payment bills or gas connection or other public records. He would also refer to the oral evidence with regard to the first defendant forcibly entering into the property. Relying on the same, the learned Senior Counsel submits that if really the first defendant had already been in possession under the lease agreement, there was no necessity for him to get into possession forcibly. In this regard, he would also place reliance on the sale deed in Ex.P.10, where also, the address of the defendants 1 and 2, who are husband and wife is only mentioned as Kakkan Colony, Nungambakkam, Chennai-600 034. Learned Senior Counsel submits that if really the first defendant



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was in occupation of the suit property, as claimed under the rental agreement, the address mentioned in the sale deed would not have been their Nungambakkam address.

21. The learned Senior Counsel would further submit that all the persons involved in bringing about the document including Ex.P.10 sale deed were close associates of the first defendant and they all acted in connivance to defeat the plaintiff's rights.

22. Learned Senior Counsel would also take me through the written statement of the defendants 1 and 2 and contend that the defendants have accounted only for a sum of Rs.80,00,000/- out of Rs.1,21,51,000/- and even in so far as the said amount of Rs.80,00,000/-, learned Senior Counsel would take me through the evidence of the defendants and more specifically D.W.5, from whom, the defendants 1 and 2 claim that they have borrowed a sum of Rs.30,00,000/-. Even in respect of other amounts mentioned in the written statement, learned Senior Counsel submits that there is no proof forthcoming from the defendants 1 and 2 and therefore, the learned Senior Counsel would contend that the defendants failed to establish the payment of even a



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single rupee out of the entire sale consideration.

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23. Learned Senior Counsel would attack the evidence of D.W.4, as being interested witness, since D.W.4 was admittedly a close associate of the first defendant. Even with regard to the claim of sale of 70 sovereigns of Gold jewels, learned Senior Counsel submits that no original receipt was filed and Ex.D.35, a photo copy was filed and that too, being only an Estimate and not a Receipt and does not prove the contention of the defendants that they have actually sold 70 sovereigns of gold and appropriated sale proceedings, which, according to the defendants, was paid as part of the sale consideration to the deceased plaintiff.

24. Learned Senior Counsel would also invite my attention to Section 269-SS of the provisions of Income Tax Act, 1961 to fortify his arguments that there is a cap of any transaction exceeding Rs.20,000/- and it shall be by way of instrument viz., Account Payee cheque or Bank Draft. He would also refer to Section 6 of Foreign Exchange



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Management Act (FEMA), 1999, where repatriation of foreign fund is not permitted unless it is through Reserve Bank of India or the Bank specified by the Central Government. Therefore, the learned Senior Counsel would submit that the first defendant failed even to establish the claims made in his own written statement. He would also refer to the statement of bank accounts, exhibited by the first defendant and pointing out the various exhibits viz., D.37, D.11, D.29, D.36 and D.37, learned Senior Counsel would focus on the minimum balance maintained by the first defendant and there being no possibility of the first defendant possessing anywhere near sufficient funds to meet the whopping sale consideration of Rs.1,21,51,000.

25. Learned Senior Counsel would place reliance on the defendants exhibits D.31, D.67, D.77 and D.78 which are income tax returns and acknowledgements filed by the defendants and Exs.D.68 and D.79 which also do not reflect the payments alleged to have been made/received by the first defendant.

26. With regard to Section 54 of Transfer of Property Act,



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learned Senior Counsel would state that two of the fundamental ingredients to be fulfilled in order to effect a valid sale are (i) payment of sale consideration and (ii) possession being transferred from seller to buyer. Though the registration of the sale deed is one of the necessary ingredients, he would submit that mere registration alone would not transfer title to the first defendant and it is “not be all and end all” to convey the title. He would further submit that the plaintiffs have clearly established non-payment of sale consideration and the first defendant being put in possession in pursuance of the alleged Ex.P.10 sale deed. The defendants have failed to establish that there has been a valid sale and on the contrary, the plaintiffs have established that the sale deed Ex.P.10 is nothing but a sham and nominal document.

27. Sofar as the relief of damages, leaned Senior Counsel submits that the defendants 1 and 2 have forcibly occupied the suit property on 30.04.2010 on the strength of the order passed by this Court in Crl.O.P.No.9394 of 2010 in Ex.D.53 and their occupation is not lawful and they are entitled to pay damages to the plaintiffs. In this regard, learned Senior Counsel would place reliance on the decision of this Court in the case of *K.Pandurangan vs Parimala and Others* reported in



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2022 (1) MWN (Civil) 767 and state that the wrong committed by the defendants 1 and 2 is not a mere civil wrong and that they are liable to pay damages .

28. Learned Senior Counsel would further place reliance on the evidence of D.W.3 with regard to the nature of the suit property and also the income that would accrue from the suit property. According to the learned Senior Counsel, the first defendant has admitted that the property would fetch Rs.60,000/- by way of rental income and considering the fact that there is a dubbing theatre at the ground floor and the first floor is used as an Office of the Staff of the Theatre, he would submit that the plaintiffs are entitled to pay damages of Rs.75,000/- per month. Learned counsel would place reliance on the decision of the Hon'ble Supreme Court in the case of *Dalip Singh vs State of Uttar Pradesh and Others* reported in 2010(2) SCC 114, where the Hon'ble Supreme Court regretted the trend of people having no respect for law, morality and conscience. Learned Senior Counsel would also rely on the following decisions for the following prepositions:-

1. NO CONSIDERATION



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S.No.	<i>CITATION</i>
1.	AIR 1978 PATNA 97 (Baldeo Singh and Others vs Dwarika Singh and Others)
2.	2012 (1) CTC 53 (Lakshmi and 2 others vs Muthusamy) SA No.1541/1998 & CMP No.13533/2004
3.	2017 (6) SCALE 551 (Champa Devi vs Sudama Dubey (Dead) & Others) CA No.8153 of 2017 SLP (C)No.33280 of 2012
4.	2021 (3) MWN (CIVIL) 825 (Kewal Krishan vs Rajesh Kumar & Others etc) CA Nos.6989-6992/2021 & SCL (C)Nos.2033-2036/2016 dated 22.11.2021
5.	2024(1) MWN (CIVIL) 746 (Anthonisamy vs 1.Christo Raj 2. Leela Mary) S.A.No.446 of 2017

II. FIDUCIARY RELATIONSHIP BETWEEN ADVOCATE AND CLIENT

<i>S.No</i>	<i>CITATION</i>
6.	ILR 1962 P & H (Col.XV-(2)201 (Amrit Lal C.Shaw vs Ram Kumar, Advocate) Civil Miscellaneous No.1066 of 1960 dt.07.03.1962
7.	(1998) 9 SCC 169 (Rajendra Nath Bhargava (Dead) by Lrs vs



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S.No	CITATION
	Ramachandra kasliwal & Another) C.A.Nos.2601 of 1987 dt.20.03.1997
8.	AIR 1937 Calcutta 492 (Abdur Rauff vs Mt.Aymona Bili) Appeal No.242 of 1934 dt.20.03.1937
9.	AIR 1938 Bombay 304 (Shivgangawa Madiwalappa Vulavi vs Basangouda Govindgouda Patil) C.S.No.403 of 1930 dt.13.08.1937.
10.	AIR 1966 A.P.104 (Bandarapalli Mastanamma Being minor rep by the next friend and mother of Bandarupalli Nagaratnamma and Others vs Ganguri Adinarayana and Others) Appeal No.216 of 1960
11.	AIR 1973 ORISSA 18 (Bancha Bhol and Others vs Sana Bewa and Others) S.A.No.21 of 1970
12.	AIR 1973 M.P.252 (Smt.Koze and another vs Makhan Singh) S.A.No.310 of 1967 dated 21.04.1972
13.	AIR 1984 H.P.11 (Smt.Takri Devi vs Smt.Rama Dogra and Others) C.S.No.24 of 1984 dated 06.06.1983
14.	2008(2) CTC 433 (Suguna and another vs Vinod G.Nehemiah and Others) O.S.A.No.330 and 331 of 2007 dtd.26.02.2008

III. FRAUD

Sl.No.	CITATION
15.	AIR 1947 OUDH 89 (Ram Kalap Pande vs Bansidhar and another) Second Appeal No.79 of 1941 dtd.31.07.1946
16.	AIR 1975 GAUHATI 30 (Guljan Bibi vs Nazir-uddin Mia)



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<i>Sl.No.</i>	<i>CITATION</i>
	Second Appeal No.16 of 1972 dtd.21.06.1974
17.	AIR 1996 SC 2754 (Smt.Bhatori vs Smt.Ram Pirari) C.S.No.676 of 1996 dt.30.07.1996
18.	2020(1) CTC 616 (Sivakumar and another vs Arasu Rathinam and 4 others) S.A.No.1499 of 2002 Dtd.16.12.2019

IV. BANKER'S EVIDENCE ACT

<i>Sl.No.</i>	<i>CITATION</i>
19	2018(6) CTC 465 (Royal Bank of Scotland NV vs Dr.T.D.Naidu) OSA No.58 of 2015 & MP No.1 of 2025 & CMP No. 12554 of 2017
20	AIR 2017 SC 3433 (Champa Devi vs Sudama Dubey (Dead) & Ors) C.A.No.8153 of 2017 dtd.27.03.2017

V. DAMAGES

<i>Sl.No.</i>	<i>CITATION</i>
21.	2022(1) MWN(Civil) 767 (K.Pandurangan vs Parimala & Others)
22.	2020(6) CTC 697 N.Ramayee vs Sub Registrar, Salem District & another) W.P.No.674 of 2020
23.	2023(2) CTC 289 (Federal Bank Ltd vs Sub Registrar, Coimabtores) W.P.No.2758 of 2023



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VI. ABUSE OF PROCESS OF LAW

Sl.No	<i>CITATION</i>
24	(2010) 2 SCC 114 (Dalip Singh vs State of Uttar Pradesh and Others) C.A.No.5239 of 2002

29. Per contra, learned counsel for the defendants 1 and 2 Mr.Sadasharam would submit that the plaintiffs are not entitled to any of the reliefs, especially in view of the fact that plaintiffs 2 to 7 have got the plaint amended and added averments and allegations and sought for various reliefs which the original plaint did not indicate or seek. Insofar as the sale consideration, the learned counsel would submit that the plaintiffs having come on record as legal representatives of the deceased plaintiff, they cannot take out a stand other than the stand taken by the deceased plaintiff in the plaint and the sale consideration being mutually agreed between the deceased plaintiff and the defendants 1 and 2, the plaintiffs 2 to 7 cannot travel beyond what the deceased plaintiff had committed or agreed upon. Learned counsel would state that as the defendants 1 and 2 were in search of residential house in Chennai, they offered to purchase the property from the deceased plaintiff which would



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also incidentally help the deceased plaintiff to discharge all his liabilities and meet his medical expenses. Therefore, Ex.P.10 document cannot be styled as a sham and nominal document.

30. Learned counsel would also submit that at the instigation of the third defendant in order to usurp the suit property and only with such motive, he obtained a Will dated 24.12.2009. Learned counsel would submit that the present counsel on record for the third defendant was the counsel for late Krishna Rao when the plaint was prepared and the suit was filed. All these clearly would show that the suit itself was master minded only by the third defendant and not by M.V.Krishna Rao. Learned counsel would submit that the property having been sold to the first defendant under Ex.P.10 sale deed dated 19.03.2010, the Will dated 24.12.2009 stands cancelled automatically and therefore, the third defendant had no axe to grind in the matter. He would also raise serious doubts with regard to the alleged Will since the Will did not see the light of the day until Krishna Rao died on 21.12.2010.

31. Learned counsel would also refer to the evidence of D.W.1



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(D.3) in this regard and he would point out to the inconsistencies in the evidence of D.W.1. Learned counsel would also attack the written statement filed by the third defendant where a prayer is made to decree the suit in favour of the third defendant provisionally subject to production of Will dated 24.12.2009. Learned counsel would state that such a plea in written statement is unheard and calls for no consideration.

32. Learned counsel would further submit that no oral evidence can be brought on record as against the admission of the deceased plaintiff M.V.Krishna Rao himself. He points out various documents where the deceased plaintiff M.V.Krishna Rao has admitted having received the entire sale consideration and also conveying the property in favour of the first and second defendants. In this regard, learned counsel would draw my attention to Exs.P.12 and P.16, which, according to the learned counsel for the defendants 1 and 2, clinchingly reiterated and confirmed that the deceased plaintiff had in fact sold the suit property to the defendants 1 & 2 for valid sale consideration. Similarly, Ex.D.55 has also been referred to by the learned counsel for the defendants 1 and 2. Relying on this document, learned counsel would submit that the legal



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representatives of the deceased M.V.Krishna Rao are therefore estopped from taking a different stand and plead that no consideration has passed under Ex.P.10 sale deed.

33. In this regard, learned counsel would place reliance on Sections 91, 92 and 115 of the Indian Evidence Act, 1872 and Section 17 of the Registration Act. Learned counsel would submit that pursuant to Ex.P.10 Sale Deed, the defendants also acted upon such sale deed and obtained patta in their name in Ex.D.5 and they have also mutated the revenue records and are paying all taxes in their names. Learned counsel would refer to Exs.D.76 dated 28.11.2011 and the rental agreement Ex.D.85 fortifying his contention that the sale deed was acted upon by the defendants 1 and 2. He also questioned the propriety of both P.W. 1 and D.W.1 (D3) to even depose since they have no personal knowledge about the sale consideration and in the light of the evidence produced by the defendants 1 and 2 to show that the sale consideration was passed on to the deceased plaintiff, the sale deed has to be held valid and complied with Section 54 of Transfer of Property Act.

34. The learned counsel for Defendants 1 & 2 would submit



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that the plaintiffs have no documentary evidence in the nature of any memorandum of understanding between the deceased plaintiff and the defendants 1 and 2 to establish the plea that the first defendant agreed to transfer the sale consideration back to the first plaintiff after sale of the property by defendants 1 & 2. As regards the evidence of P.W.1/2nd plaintiff, the learned counsel for the defendants 1 and 2 submits that evidence is only hearsay and not trust worthy. Therefore, the evidence of P.W.1 has to be discarded in toto. He would draw my attention to the pleadings of M.V.Krishna Rao that the second plaintiff has been threatening him and also took about 400 sovereigns of gold and a sum of Rs.60,00,000/- from him. Learned counsel for the defendants 1 and 2 submits that even in the plaint, the deceased plaintiff was making scathing allegations against his wife/2nd plaintiff and now after his death the second plaintiff and her children are seeking to claim his property.

35. As regards the third defendant, learned counsel for the defendants 1 and 2 would state that the third defendant has not stated anything about the consideration in his written statement nor he has taken a stand that the sale deed is sham and nominal. Further the third



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defendant has also admitted that he has not rebutted the claim of the 1st defendant in his written statement and thus makes it clear that the 1st defendant has neglected to pay any amount to the 3rd defendant when the 3rd defendant demanded Rs.65,00,000/- and therefore, the 3rd defendant has chosen to act against the interest of the defendants 1 and 2.

36. With regard to recording of conversation, learned counsel for the defendants 1 and 2 submitted that the 3rd defendant has fraudulently created the electronic recording and electronic recording cannot be admitted in evidence in the absence of any certificate as contemplated under Section 65-B of Indian Evidence Act.

37. Learned counsel for the defendants 1 and 2 further submits that the deceased Krishna Rao is not an illiterate person but a Post Graduate and a well experienced man, who cannot be expected to execute a sham and nominal sale deed with regard to the suit property. He would submit that if really the document is sham and nominal, the original document of title would not have been handed over to the first defendant and the deceased plaintiff would have retained it. Therefore,



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learned counsel submits that defendants 1 and 2 are the absolute owners of the property and they are entitled to a decree in Tr.C.S.No.768 of 2013 and since the defendants 1 and 2 are the absolute owners, the defendant in Tr.C.S.No.768 of 2013 is to quit and deliver vacant possession of the portions under her occupation in the 2nd floor of the suit property.

Learned counsel relied on the following decisions:-

- i) AIR 1947 Madras 165 (Elaya Pillai vs Ramasamy Jadaya Goundan)*
- ii) 1999 (3) SCC 109 (Gajraj vs Sudha and Others)*
- iii) AIR 1961 SC 1747 (Ram Saran Lall and Ors vs Mst.Domini Kuer and Ors)*
- iv) AIR 1999 SC 1441 (Vidhyadhar vs Mankikrao)*
- v) 2006(5) SCC 353 (Prem Singh and Others vs Birbal and Others)*
- vi) 2009 (4) SCC 193 (Kaliaperumal vs Rajagopal and another)*
- vii) 2009 (5) SCC 713 (Vimal Chand Ghevarchand Jain and Others vs Ramakant Eknath Jadoo)*
- viii) 2013 (6) CTC 809 (N.A.Chinnasamy and another vs S. Vellingirinathan)*
- ix) 2014 (10) SCC 473 (Anvar P.V vs P.K.Basheer and Others)*



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x) *AIR 2018 Mad 151 (K.V.Rathnam vs P.B.Prince Andrew and another)*

xi) *AIR 2019 SC 72 (Jamila Begum (D) through legal heirs vs Shami Mohd (D) through legal heirs and another*

xii) *2023 (4) CTC 670 (Damodhar Naryan Sawale (D) through LRs vs Shri Tejr Rao Bajirao Mhaske and others)*

38. Learned counsel for the third defendant Mr.R.Ravi would submit that the third defendant was aware of the genesis of the deceased plaintiff's association with the first defendant, a lawyer by profession, and as to how the first defendant misused his acquaintance and induced the sole plaintiff to execute a sham and nominal sale deed in favour of the defendants 1 and 2. Learned counsel for the third defendant submits that the third defendant has been dealing with the first defendant from day one. He also places reliance on the tape recorded conversation between the defendants 1 and 3 on two occasions.

39. According to the learned counsel for the third defendant, the first defendant has admitted as many as in 10 places that he never paid any money for sale consideration and that he entered into possession forcibly. Learned counsel for the third defendant has given a tabular



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column setting out various statements/admissions made by the first defendant with specific time also. He would further submit that the tape recorded version is sufficient to throw out the case of the defendants 1 and 2 that the entire consideration was duly passed on to the deceased plaintiff. Learned counsel would further submit that when the tape recorder itself is exhibited before this Court, there is no necessity for filing of 65-B Certificate and he would contend that there is no merit in the argument put forth by the learned counsel for the defendants 1 and 2. Learned counsel for the third defendant would place reliance on Section 111 of the Indian Evidence Act, 1872 and also the judgment of the Hon'ble Supreme Court in the case of *2009 (4) SCC 193 (Kaliaperumal vs Rajagopal and another)* and *2009 (5) SCC 713 (Vimal Chand Ghevarchand Jain and Others vs Ramakant Eknath Jadoo)*. Learned counsel submits that when the document itself has been impeached, Sections 91 and 92 of the Indian Evidence Act cannot be put against the plaintiffs with regard to passing of title under sale deed. Learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of *Roop Kumar vs Mohan Thedani (2003) 6 SCC 595* where it is held that the issue of title has not passed on the execution of the sale deed can be



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raised to rebut the contents of the document and intention of the parties behind executing the document can be gathered from the recitals of the document or by other attending circumstances.

40. Learned counsel further submits that in the light of Section 111 of Indian Evidence Act, burden is cast only on the first defendant to establish good faith in the transaction that he contracted with his client. Learned counsel would submit that the third defendant has personally met the son of Krishna Rao and impressed the necessity of legal heirs being impleaded in the suit and he would also state that as a counsel for the deceased counsel, notice was issued to all the legal heirs of late Krishna Rao and on the instructions of the third defendant to get themselves impleaded in the suit in C.S.No.925 of 2010., as the statutory date for abatement was closing, the third defendant took initiative to implead himself in the capacity as legal representative under registered Will dated 24.09.2009. The third defendant filed application as third party to implead himself as plaintiff in the pending suit. This application No.2171/2011 was hotly contested by defendants 1 and 2 but was ultimately allowed on 19.10.2011. The 1st defendant, aggrieved by the same, filed O.S.A No.73



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of 2011 and finally A.No.2171 of 2011 was remanded back to the learned single Judge for fresh consideration, after setting aside the impleadment of the third defendant. After remand, Application No.2171 of 2011 was partly allowed transposing Murugesan as third defendant on 05.12.2014. The 3rd defendant's appeal against the order dated 05.12.2014 in OSA No.174 of 2015 was dismissed by the Hon'ble First Bench and further appeal to Apex Court was also dismissed. Thus, Murugesan, the legal representative of the deceased plaintiff through Will dated 24.09.2009 who became plaintiff initially was later transposed as 3rd defendant by order dated 05.12.2014.

41. Learned counsel would also point out that according to the defendants 1 and 2, simple mortgage created by Krishna Rao on the suit property in favour of Mr.Atchudalingam for Rs.15,00,000/- was discharged by them by paying cash on 15.03.2010 under registered cancellation deed. Further, the said amount of Rs.15,00,000/- was not shown as a part of sale consideration in the sale deed dated 19.03.2010. He took me through the evidence in this regard and contended that the explanation offered by the first defendant that the Sub Registrar did not



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agree was totally unsustainable.

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42. As regards the various documents relied on by the learned counsel for the defendants 1 and 2, learned counsel for the third defendant would submit that these documents are all suspicious in nature and from the reading of the documents, it is clear that the first defendant obtained such documents to support their case that the sale consideration has been paid in full.

43. He would also contend that there is no necessity for filing an affidavit under Section 482 of Criminal Procedure Code. He would further submits that the documents Exs.D.55, 64 and 65 are all the documents close on the heels of the sale deed, when the plaintiff was still under the grip of the first defendant and therefore, these documents cannot be taken into consideration to establish the truth of the sale deed and passing of sale consideration.

44. Pointing out the abnormalities in Ex.P.10 sale deed, the



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learned counsel would submit that the sale deed does not mention handing over of the title document or receipt of any advance or discharge of simple mortgage and the same being set off against sale consideration. Learned counsel would further submit that the counsel who is said to have drafted the sale deed has not signed the sale deed and there is no mention in the deed as to why the first defendant was forced to pay the entire consideration in cash.

45. Finally, learned counsel for the third defendant would submit that the third defendant has not given up his claim under the Will and even in Application No.5709 of 2011 dated 19.07.2013, this Court had reserved the right of the third defendant and leaving it open for the parties to fight out their disputes during trial. He would therefore pray that the interest of the third defendant be protected and suitable orders be passed in the suit.

46. I have considered the submissions advanced by the learned counsel for the plaintiffs and the defendants.



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47. The deceased plaintiff M.V.Krishna Rao, initially filed a suit as sole plaintiff on 08.11.2010. However, in less than a month , he died. Thereafter, as discussed above, originally, the third defendant got himself impleaded as second plaintiff under the strength of an alleged Will, executed by Krishna Rao himself in favour of the third defendant. However, subsequently, the matter was taken up on appeal in O.S.A proceedings and the wife and children of the sole plaintiff Krishna Rao were brought on record as plaintiffs 2 to 7 in the capacity of legal heirs of the deceased Krishna Rao by order dated 19.07.2013 in Application No.5709 of 2011. Thereafter, in Application No.2171 of 2011 dated 05.12.2014, the second plaintiff was transposed as third defendant. The suit reliefs are as follows:-

- “a) Declaring the registered sale deed document bearing No.976 of 2010 on the file of the Sub-Registrar Office, Kodambakkam, executed by plaintiff in favour of the 1st and 2nd defendants as null and void and not binding on the plaintiff or any person claiming through him and cancel the same;*
- b) Granting permanent injunction restraining the defendants from alienating or in any manner encumbering the plaint schedule property;*



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c) Mandatory injunction directing the defendants 1 and 2 to deliver vacant possession of their portion of occupation of the suit schedule of property morefully described in the suit as schedule B property;

and

d) directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 to till handing over the Schedule -B Property being the damages for their use and occupation of the Schedule-B of the Plaint and to pay the cost.

48. The sum and substance of the allegations made by the Krishna Rao as plaintiff is that he was suffering from various physical ailments and not in cordial terms with his wife and children and taking advantage of his helpless situation, the first defendant, his advocate, under the guise of advising him and rendering professional service, knocked of the suit property by inducing him to execute a sale deed in his favour. Therefore, the plaintiff readily agreed for the execution of the sale deed believing the words of the first defendant since he had obtained the suit property by means of court decree that too, on the plea of adverse possession and therefore, he had no valid title over the suit property and it



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would be difficult for him to sell the property. Therefore, according to the plaintiff, the first defendant suggested the plaintiff to execute the sale deed in favour of the defendants 1 and 2 and once the said document is registered, it would find place in the Encumbrance Certificate and thereafter, it would be easier to dispose of the suit property.

49. Believing the words of the first defendant that the plaintiff would get the entire sale consideration paid to him, he proceeded to execute the sale deed in favour of the defendants 1 and 2. According to the plaintiff, not even a single rupee was paid towards sale consideration under Ex.P.10 and the document itself was sham and nominal. The entire exercise is master minded by the first defendant. The plaintiff has also stated that the first defendant promised on his wife and children and said that he would not go back on his words and only under such circumstances, the plaintiff agreed for execution of the sale deed, as suggested by the first defendant. In short the plaintiff has alleged that there has been a total breach of trust and fraud played by the first defendant.



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50. It is seen that even before Ex.P.10 Sale deed, the wife of Krishna Rao, who was subsequently impleaded as second plaintiff has filed a suit in O.S.No.44 of 2010 on the file of II Additional Family Court, where she sought for injunction against the deceased plaintiff from alienating the suit property. A warning Notice Board was also put up in the suit property about the pendency of the suit in O.S.No.44 of 2010. In fact, the first defendant has admitted in evidence that such a Board was indeed put up by the second plaintiff. Further, the first defendant has stated that on the date of execution of Ex.P.10, there was no litigation between Krishna Rao and his wife with regard to the suit property and there was no legal impediment for the defendants 1 and 2 to purchase the suit property.

51. Strangely, the first defendant, who has acted as Lawyer for the deceased Krishna Rao, has apparently fought shy to admit his role as an advocate. In the plaint, there are clear averments and allegations to the fact that the plaintiff has sought for professional assistance from the first defendant and as to how the first defendant came to be introduced to the plaintiff through common friend by name Ramki @ Ramakrishnan.



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However, the first defendant, during the course of trial, has gone to the extent of denying that he knew the said Ramki @ Ramakrishnan and also that he acted as an advocate for the deceased plaintiff.

52. In the written statement of the first defendant, the first defendant has admitted that he is practising advocate and the plaintiff had approached him for assistance and the first defendant gave him proper advise and also helped the plaintiff financially since his own family members were inimical to the plaintiff. In fact, Ex.P.3 assumes significance in this regard. Ex.P.3 is weekly magazine Kumutham dated 25.03.2009. In the said magazine, there is an article carrying the complaint lodged by the plaintiff. Even according to the first defendant, before publishing such complaint, a Reporter by name Pushkin Rajkumar interviewed the first defendant and the first defendant gave an interview certifying the clear title of the plaintiff and also stated that the plaintiff had every right over the property. During cross examination, the plaintiff admitted to the said article in the weekly magazine and he also admitted that his photograph has been published along with the said article. Though he feigns ignorance as to the interview given by Krishna Rao, he



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admitted to the fact that the first defendant did mention to the Reporter that Krishna Rao is the owner of the property and he did state that he was certain about the title of the plaintiff. However, back tracking from the said admission, the first defendant has further stated that at no point of time, he was the counsel of Krishna Rao and that he did not give legal advice to him except for advising the husband and wife not to fight. As regards financial help, he has stated that whenever Krishna Rao wanted financial help, he would lend and collect it back. Strangely, during cross examination, the first defendant claims that he never knew about the interview in Ex.P.3 Kumutham publication until receipt of the summons from the Court.

53. In Ex.P.2, complaint dated 18.03.2009 to the Commissioner of Police, the name and mobile number of the first defendant has been mentioned and the first defendant's name has been mentioned as “sender”. D.W.1 admits his Cell number is “9444344496” and it is the very same number which has been mentioned in Ex.P.2 complaint. He also attempted to disown the reference to him by stating that his name is “Shiva Kumar” not “Shiva” alone which alone is mentioned in Ex.P.2



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Complaint. However, in Ex.D.15 Invitation pertaining to opening of an advocate Office in January 2003, the first defendant himself has printed his name only “Shiva” (Vakil Shiva). Therefore, the statement of the first defendant does not appear to be believable or trust worthy. It is clearly an after thought to disown the advocate-client relationship to get away from the doubt that may be created over the purchase made by the first defendant and his wife from a client, that too a property in respect of which, advice is sought for by the deceased plaintiff. The fact that the first defendant admits that he knew about the interview that was published in Kumutham in Ex.P.3 and he did mention certifying the title of the deceased plaintiff to be good and marketable would all clearly go to show that it was indeed the first defendant who was the brain behind the said interview and also Ex.P.2 complaint to the Commissioner of Police drafted on behalf of the deceased plaintiff Krishna Rao.

54. As regards, Ex.D.25 the alleged rental agreement dated 02.04.2009, it is signed by Ramki @ Ramakrishnan and the third defendant and it is drafted by the first defendant himself. Though the first defendant claims to have come into possession in pursuance of the rental agreement Ex.D.25, there is not a shred of evidence advanced on the side



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of the defendants 1 and 2 that they were indeed put in possession of any portion of the suit property in pursuance of the rented agreement in EX.D.25.

55. There is not even a single rental receipt that has been filed for payment of rent under the alleged rental agreement and therefore, as rightly pointed out by the learned Senior Counsel for the plaintiffs, the said rental agreement was also never intended to be acted upon, but only a part of the larger game plan and mischief played by the first defendant to knock off the suit property from the deceased plaintiff. More so, as rightly contended by the learned Senior Counsel, even in Ex.P.10 sale deed, the address of the defendants 1 and 2 is mentioned as No.164, 2nd floor, Kakkan Colony, Nungambakkam, Chennai-600 034, shows that the defendants 1 and 2 were never in possession of any portion of the suit property in pursuance of the rental agreement in Ex.D.25.

56. With regard to the major issue of payment of sale consideration and the validity of sale deed under Ex.P.10, admittedly, the sale consideration mentioned in Ex.P.10 is Rs.1,21,51,000/- In paragraph



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No.6 of the written statement of the defendants 1 and 2, they have attempted to explain the payment of sale consideration. However, totally, all claims stated therein works out to Rs.80,00,000/- with a clear short fall of Rs.51,00,000/-. Even with regard to the payments mentioned in the written statement, totalling Rs.80,00,000/-, though there is a claim of loan and gift from brother-in-law, younger brother and sale of 70 sovereigns of gold jewels in Ex.D.35, from the evidence, it is seen that the first defendant has not been able to substantiate any of these payments. Insofar as the payment from Singapore to the tune of Rs.15,00,000/- is concerned, as rightly pointed out by the learned Senior Counsel for the plaintiff, without the consent of Reserve Bank of India, such transfer cannot be made internationally and in any event, if there had been such a gift or loan from the brother-in-law, there would be record by way of bank transaction to evidence such payment. However, no document has been filed in this regard.

57. Similarly, a sum of Rs.30,00,000/- is said to have been borrowed from one A.T.Thisaiswaran. In fact, the alleged mortgagor who gave the loan of Rs.30,00,000/- has been examined as D.W.5 and he admitted that he had no proof that he had paid a sum of Rs.30,00,000/- to



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the first defendant. Though he claims that it was by mortgage on deposit of title deeds, no document to support such mortgage has been filed on the side of the defendants.

58. With regard to sale of gold jewels, Ex.D.35 is only an estimate of the gold jewellery and it would not amount to sale of jewels, resulting in consideration accruing to the defendants 1 and 2. Therefore, the entire sale consideration of Rs.1,21,51,000/- remains unsubstantiated. The Court also cannot loose sight of the fact that any payment exceeding Rs.20,000/- cannot be made by way of cash. However, strangely, the sale consideration to the huge tune of Rs.1,21,51,000/- is claimed to have been made in cash, which is against the Law.

59. The income tax returns filed by the defendants 1 and 2 do not support the claim made in paragraph No.6 of the written statement. Similarly, the bank account statement in Exs.D.11, 29, 36, 37, 38, 39, 40 and 56 also do not support the claim of the defendants 1 and 2 that they were in possession of sufficient funds to meet the sale consideration and the balance in all these accounts were having minimum of few thousands and ten thousands. Even the income tax returns of the defendants 1 and 2



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reflects the gross income of Rs.1,81,400/- for the financial year 01.04.2009-31.03.2010 (Ex.B.31) which is the relevant year concerning Ex.P.10 Sale deed.

60. Thus, it is clear that the defendants 1 and 2 miserably failed to establish that they have paid sale consideration to the plaintiff Krishna Rao. No doubt, reliance has been placed on the documents executed by Krishna Rao himself by way of affidavits before this Court and complaints to the police. However, as rightly pointed out by the learned counsel for the third defendant, all these documents are within a short span of time. It is not the case of the plaintiff that immediately upon execution of the sale deed in favour of the defendants 1 and 2, he lost trust in the first defendant. Therefore, at all points of time, when the complaints were lodged and affidavits were filed before this Court, the trust placed by the deceased Krishna Rao continued to hold sway at that length of time and only much later, the plaintiff realised he was cheated and he was constrained to file the above suit and until such time, he was totally believing the first defendant.

61. The plaint allegations clearly spells out such blind faith and



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trust by the deceased plaintiff, on the first defendant. Unfortunately, within a month after filing the suit, the plaintiff, Krishna Rao died and therefore, the Court has not had the benefit of evidence from Krishna Rao being recorded at trial. The plaint allegations, however, in this regard and the evidence of D.W.1/third defendant assumes great significance. The third defendant has been with the deceased plaintiff through out and he is personally acquainted with what all transpired between the plaintiff and the first defendant. The third defendant has exhibited the tape recorded conversations between himself and the first defendant. The original tape recorder has been exhibited before this Court in Ex.D.6. Therefore, the contention of the learned counsel for the defendants 1 and 2 that without 65-B certificate the said transcription cannot be taken as valid evidence, cannot be countenanced. When primary evidence itself is marked as an exhibit before this Court, there is no requirement of any certificate under Section 65-B, as contended by the learned counsel for the defendants 1 and 2. The first defendant also nowhere disputes or controverts the conversation he had with the third defendant.

62. I have gone through the transcript between the defendants 1



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and 3 and at more than half a dozen places, the first defendant admits that he never paid any money to the plaintiff by way of sale consideration under Ex.P.10. He also talks about his devious plans to forcibly occupy the ground and first floor of the suit property. He in fact also advises third defendant to project a stand that the entire consideration was paid to the plaintiff and it was passed on to Krishna Rao's concubine and that he should not divulge the truth of non payment to anybody. He has also stated that if Krishna Rao died, the defendants 1 and 3 would have to wash off their sins by forming a Trust and helping needy people. D.W.1 also states that stamp and registration charges would be borne out only by him. The first defendant also finds fault with the third defendant for informing Ramki @ Ramakrishnan about the plan hatched by the first defendant. He also suggested actions as to how to corner Ramki @ Ramakrishnan and silence him. He also discussed the thoughts about the second plaintiff meeting her husband Krishna Rao and Krishna Rao informing her about the sale deed having been executed without receiving any sale consideration. The first defendant has also spoken about his plans to get into physical possession of the ground floor portion of the suit property with the help of police and also states that except



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Murugesan, the third defendant, no one knows the truth that the first defendant never paid any sale consideration in acquiring the property from the deceased plaintiff Krishna Rao. There is even a discussion about the third defendant joining execution of the sale deed since he is the beneficiary of the Will executed by Krishna Rao.

63. Thus, it is clear that the first defendant, under the guise of acting as an advocate for the plaintiff has chosen to betray him to the fullest extent including snatching away his property without payment of single rupee, besides, the first defendant has also used the sole plaintiff to file an affidavit reiterating the factum of sale deed executed and payment having been received by him in order to create evidence to valid the sale deed Ex.P.10.

64. The argument of the learned counsel for the third defendant that there was absolutely no necessity for an affidavit to be filed in CrI.O.P cannot be slightly brushed aside also. There was no necessity for M.V.Krishna Rao to come on record by way of an affidavit in CrI.O.P, filed under Section 482 of Criminal Procedure Code and state



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about the sale deed being true and that he had received about the sale consideration from the first defendant. This appears to be part of the plan devised by the first defendant to strengthen the sale deed in his favour and use these as evidence at a later point of time, to defend the sale deed in his favour.

65.I have already dealt in detail with regard to Ex.P3 and it is clear that the 1st defendant has acted as the lawyer for the plaintiff and only on second thoughts in order to defend the suit and try to save the property, the 1st defendant has taken a diametrically opposite stand as if he never acted as a lawyer for M.V.Krishna Rao. His theory of entering into a lease agreement with M.V.Krishna Rao and entering the property as a tenant is also falsified from the evidence that he never took physical possession of any portion of the suit property, until he chose to enter the property forcibly after obtaining an order through M.V.Krishna Rao himself in the criminal Court. Therefore, the case projected by the 1st defendant that he is a bonafide purchaser for value and that the Sale Deed is not a sham and nominal document can never be countenanced.



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66.The relationship between the lawyer and a client is sacred and professional. Unfortunately the 1st defendant has grossly abused his position as a lawyer and schemingly chalked out a plan to knock off the suit property without paying a single rupee. In fact, it has come out in evidence that even the stamp duty and registration charges were borne only by the 3rd defendant and not by the defendants 1 and 2. It is really unfortunate that the 1st defendant has made unlawful enrichment at the expense of his client, late M.V.Krishna Rao throwing all professional rules of conduct to the winds.

67.I have also discussed in great detail the failure of the defendants 1 and 2 to establish payment of sale consideration. None of the exhibits marked on the defendants prove that the sale consideration was in fact paid to the plaintiff or that the defendants had sufficient money at that disposal at relevant point of time to meet the sale consideration. Therefore, the question that remains to be answered is as to whether in the teeth of the registered Sale Deed which talks about payment of sale consideration and transfer of title, whether the same can be subsequently impeached on the ground of failure of consideration or



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fraud and deceit the law on this aspect is to be considered.

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68.In *Champa Devi Vs. Sudama Dubey (Dead) & Others* reported in 2017 6 SCALE 551, where the Hon'ble Supreme Court held that onus to prove and establish that sale consideration had been duly paid to the vendors, would rest squarely on the defendant. In *Kewal Krishan Vs. Rajesh Kumar & Others etc.*, reported in 2021 (3) MWN (Civil) 825, where the Hon'ble Supreme Court discussing Section 54 of the Transfer of Property Act, held that price that is sale consideration was an essential part of sale of any immovable property and that sale of property without any consideration was void. I had an occasion to deal with a case where it was alleged that the sale transaction was sham and nominal and not supported by consideration, in *Anthonisamy Vs. Christo Raj and Others* reported in 2024 1 MWN (Civil) 746, where I held that when there is no evidence on record to prove source to pay the sale consideration, the transaction was sham and nominal, not being supported by consideration. The ratio laid down in the above cases would be squarely applicable to the facts of the present case. The Sale Deed



claims that the entire sale consideration has been paid by cash and when there is an embargo under the Income Tax Act for payment of any money exceeding Rs.20,000/- by way of cash. However, in the present case a huge sum of Rs.1 crore is alleged to have been paid by cash. The explanation sought to be given by the defendants 1 and 2 in the written statement and evidence does not in any manner support actual payment of sale consideration to the plaintiff, M.V.Krishna Rao. In fact, I have already discussed these aspects in great detail in earlier paragraphs of this judgment. Therefore, there is no difficulty in holding that the defendants 1 and 2 on whom burden of proof lay, failed miserably to establish the payment of sale consideration and consequently, the sale was not completed as contemplated under Section 54 of the Transfer of Property Act. The Sale Deed is clearly sham and nominal document.

69. At this juncture, the argument of the learned counsel for the defendants 1 and 2, Mr. Sadasharam relying on Sections 91 and 92 of the Indian Evidence Act and the various admissions of M.V.Krishna Rao himself in Court proceedings, admitting the sale of property to the defendant 1 and 2 and also receipt of sale consideration need to be



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considered.

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70.Law is well settled that though no evidence can be adduced contrary to a written instrument, especially the document like a registered Sale Deed. However, there is an exemption to the normal rule. When the document itself is claimed as being fraudulent and motivated and the document itself is challenged or attacked on such grounds, it would be open to a person challenging the document to lead evidence to establish the plea of fraud or other vitiating factors. Therefore, the argument put forth by the learned counsel for the defendants 1 and 2 and the case law relied upon by him cannot be made applicable to the facts of the present case where the 1st plaintiff has clearly laid a challenge to the registered Sale Deed alleging that the 1st defendant who was his lawyer, breached the trust placed by Krishna Rao in him and fraudulently brought about the Sale Deed, knocking off the suit property from the plaintiff.

71.With regard to Section 111 of the Indian Evidence Act and fiduciary capacity, the learned Senior Counsel for the plaintiffs would



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place reliance on the decision of the Hon'ble Supreme Court in *Brajendra Nath Bhargava (Dead) by LR's Vs. Ramachandra Kasliwal and Another* reported in 1998 9 SCC 169, where the Hon'ble Supreme Court held that when the conduct of the respondents was not unblemished and they had played a part in securing the property in the name of Benamidars while they were representing one of the parties to the suit, the respondents were guilty of misconduct. The facts of the case on hand is in fact worse. The 1st defendant, while acting as the lawyer for the deceased plaintiff, M.V.Krishna Rao has himself chosen to purchase the property of the plaintiff and has not been able to establish that the transaction was either a fair or a bonafide one.

72.In *Abdur Rauff Vs. Aymona Bibi* reported in AIR 1937 CAL 492, the Hon'ble Division of Calcutta High Court held that when a person was in a position to dominate the Will of another and brought about a transaction and the transaction prima facie appearing to be unconscionable, then the burden of proof would lie on the person in a position to dominate the Will of the other. Here, the 1st defendant has clearly taken advantage of the hapless situation of the deceased plaintiff,



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M.V.Krishna Rao who was literally sinking from various major health issues, coupled with the fact that he had marital discord problems with his wife and also other issues with his family and taking undue advantage of all these, the 1st defendant has clearly exercised his domination on the feeble mind of M.V.Krishna Rao and brought about the Sale Deed.

73.In *Shivgangawa Madiwalappa Vulavi Vs. Basangouda Govindgouda Patil* reported in *AIR 1938 BOM 304*, where the Hon'ble Division of Bench of Bombay High Court held relying on Section 16(3) of the Indian Contract Act that when one person is under the control and influence of another person and the other unduly or unfairly exercises his influence and control for his own advantage of benefit, then the burden of proof would be on the person receiving the benefit to give clear and cogent proof that the transaction complained off was lawful and was one that law would support and recognize.

74.The Hon'ble Division Bench of this Court in *Suguna and Another Vs. Vinod G.Nehemiah and Others* Reported in *2008 2 CTC 433*, where this Court held that even when there was no specific issue raise on



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the question of undue influence, when the plaintiff had prayed for a declaration that the Settlement Deed was illegal, invalid, sham and nominal, the Division Bench of this Court held that it was wide enough to include the plea of undue influence. The Division Bench of this Court also, referring Sections 16(2)(a) and 16(3) of the Indian Contract Act, held that in order to establish existence of a fiduciary relationship, it would be necessary to show that one party relies on the other, such an extent that there is complete trust and confidence placed on the other, thus facilitating him to influence the family. Applying the ratio laid down by the Hon'ble Division to the facts of the present case, the plaintiffs have clearly made out a strong prima facie case regarding the great amount of trust placed by M.V.Krishna Rao in the 1st defendant on the fond hope that he was actually professionally assisting him to dispose of the property so that the sale proceeds could be applied to settle the loans and also take care of the growing medical and personal needs of M.V.Krishna Rao.

75.Though the learned counsel for the defendants 1 and 2 has placed reliance on the decision of the Hon'ble Supreme Court in *Prem*



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Singh and Others Vs. Birbal and Others reported in 2006 5 SCC 353,

and in Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath

Jadoo reported in 2009 5 SCC 713 and in *N.A.Chinnasamy and Another*

Vs. S.Vellingirinathan reported in 2013 6 CTC 809, regarding onus being

on the plaintiff, the fact of these cases were entirely on different

circumstances wherein, the Hon'ble Supreme Court has held that the onus

would be on the person alleging the Sale Deed to be sham and nominal.

However, I have already found that in the present case, the 1st defendant

had taken undue advantage of his relationship of being a lawyer to the

deceased plaintiff, Krishna Rao and therefore, the burden would only be

on the 1st defendant and not on the plaintiff. Reliance is placed on the

decision of the Hon'ble Supreme Court in *N.A.Chinnasamy's case*

(*referred herein supra*) regarding applicability of Sections 91 and 92 of

the Indian Evidence Act. Though law is well settled that no oral

admissions would be permissible to impeach documentary evidence,

there are legal exceptions which I have already discussed earlier.

Therefore, the said decision would also not apply to the facts of the

present case.



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76. With regard to sale being complete on registration, reliance has been placed on *AIR 1961 SC 1747 (Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others)* and *AIR 1999 SC 1441 (Vidhyadhar Vs. Mankikrao)*. In the first case, the issue was whether at which point of time, the registration of a Sale Deed under the Registration Act would become complete and therefore, dealing with those facts, the Hon'ble Supreme Court held that sale would stand completed when document to be registered is copied out in records of the Registration Office as required under Section 61 of the Registration Act. In the second case, the Hon'ble Supreme Court, referring Section 54(2) of Tamil Nadu Transfer of Property Act, held that when the Sale Deed was executed and presented for registration and before the Sub Registrar, remaining sale consideration was also paid and thereafter documents were registered and there was also evidence adduced at trial that the entire sale consideration had been paid and in such circumstances, the Hon'ble Supreme Court held that the Sale Deed was valid. The facts of the present case, however, are entirely different.

77. It is the specific case where the plaintiff has alleged that no



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payment has been made towards sale consideration and the document itself is sham and nominal document. In fact, even in the decision relied on by the learned counsel for the defendants 1 and 2 in *Vidhyadhar's* case, the Hon'ble Supreme Court recognized the right to raise a legitimate plea that the Sale Deed, by which title to the property, was intended to be conveyed was void or fictitious and not intended to be acted upon and that the question would depend upon the pleadings of the parties, nature of the suit, nature of the deed, evidence let in by the parties in the suit and other attending circumstances. Therefore, this ratio laid down by the Hon'ble Supreme Court would equally govern the facts of the present case. For the various discussions herein above, it has been established that the Sale Deed in Ex.P10 = Ex.D44 was never intended to be acted upon.

78.Much has been argued by the learned counsel for the defendants 1 and 2 regarding the statements and affidavits made by M.V.Krishna Rao himself before this Court in various proceedings, where he has admitted to have received the sale consideration and also that the sale was effected voluntarily by him in favour of the defendants



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1 and 2. From the evidence on record and the pleadings, it is crystal clear at all those relevant points of time when M.V.Krishna Rao chose to file such affidavits, he was being guided, rather actually being misguided by the 1st defendant, who was his lawyer and acting as per his instructions and only on the fond hope that he would get relief, M.V.Krishna Rao has signed such affidavits and he has made such statement before this Court. Therefore, even these documents on which heavy reliance is placed by the learned counsel for the defendants 1 and 2 would also be hit by documents brought about taking advantage of the fiduciary capacity between the deceased plaintiff, M.V.Krishna Rao and the 1st defendant. Therefore, the arguments advanced by the learned counsel for the defendants 1 and 2 cannot be countenanced.

79.Coming to the objection regarding non-production of Section 65-B Certificate under the Indian Evidence Act regarding the tape recorded evidence and cross cut filed by D.W.1, the 3rd defendant, I have already discussed that the requirement of Sections 65-B of the Indian Evidence Act cannot be put against the audio tape version, namely conversion between the defendants 1 and 3 since the original tape



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recorder itself has been exhibited before this Court. In fact, when the tape recorder along with the transcript was sought to be produced by D.W.1, the application was opposed, however this Court allowed the application and permitted the said documents to be marked. The defendants 1 and 2 did not challenge the said order before the Appellate Court and allowed it to become final.

80.However, it is unfortunate that the original tape recorder, for sheer lack of proper keep and maintenance, after being marked during trial, has been rendered to a non-working condition because of leakage of batteries and despite my best efforts to retrieve the audio content, I have not been successful. However, the Compact Disc that has been marked is available to corroborate the transcript filed by the learned counsel for the third defendant. It is however a wake up call for the Courts to take immediate steps to ensure that whenever such electronic media, especially audio/video, are filed or exhibited before the Court, the Court shall ensure that the Registry takes immediate control over the said exhibits and ensures that the same is preserved for the Courts to examine the same at the later stage of the suit, especially during the stage of



arguments or at the time of pronouncement of judgment.

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81. Though the original tape recorder is not in working condition, the Compact Disc is available. There is also a Pen Drive which has been attached to these documents. However there is absolutely no reference to the Pen Drive being marked. Though the learned counsel for the 3rd defendant submitted that the said Pen Drive was also given along with the Compact Disc and verbatim copies of the Pen Drive were also given to the learned counsel for the plaintiff and the defendants 1 and 2, since there is no record of the same, I am unable to accept the argument of the learned counsel for the 3rd defendant. At the same time, as the Compact Disc is available, I have heard the audio files recorded. They match with the transcript which has been marked before this Court in Ex.D7. Of course, the transcript does not contain the entire conversation recorded between the 1st and 3rd defendant and only the material portions more relevant and crucial to the present case are found in the transcription. However, I do not find anything amiss in the transcript that is to say that what has not been spoken being recorded in the transcription. Whatever is found in the transcript and as spelt out from the original audio tape conversion (as heard from the Compact Disc) is



only the actual conversation that has taken place between the defendants

1 and 3.

82. At this juncture, the evidence of D.W.1 and D.W.3, namely the 3rd defendant and the 1st defendant also needs to be scrutinized. D.W.1 has clearly spoken about the recording of the conversation on two occasions with the 3rd defendant and he has vouched for the truth and veracity of the said conversation with the 3rd defendant. Though D.W.1 has been elaborately cross-examined by the learned counsel for the defendants 1 and 2, I do not find even a single suggestion alleging that the voice found in the audio tape recordings are not that of the 1st defendant or that of the 3rd defendant. I find only general suggestions that it is possible to do voice over and manipulate recordings etc. Unfortunately, vital suggestions denying the genuineness of the audio recordings in question have not even been put to D.W.1 despite lengthy cross-examination across several hearings. Further, even during chief examination of the 1st defendant as D.W.3 also, he does not deny the fact that he spoke to the 3rd defendant or that the tape recordings are not true in as much as that the voice found therein was not his voice. For all the



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above reasons, I am inclined to hold that the 3rd defendant has sufficiently proved the truth and genuineness of the conversations that he had with the 1st defendant. On scrutiny of the transcript, it is clear that the 1st defendant admits on multiple times that he has not paid sale consideration under Ex.P10 and that it was clearly a master plan hatched to knock off the suit property.

83.Issue No.6:-

With regard to claim for damages, the plaintiffs have sought for damages for the wrongful occupation of the suit property at the hands of the defendants 1 and 2. The plaintiffs have claimed Rs.75,000/- per month from April 2010 onwards.

84.Though the deceased plaintiff, M.V.Krishna Rao did not originally choose to seek the relief of damages when he first instituted the suit as a sole plaintiff by way claiming the relief of declaration that the Sale Deed in Ex.P10 was null and void and not binding on the plaintiff or any person claiming through him and for a permanent injunction to restrain the defendants for alienating or encumbering the



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suit property in any manner, subsequently, after the plaintiffs 2 to 7 impleaded themselves, they have included the relief of damages for use and occupation. It is the contention of the defendant 1 and 2 that the legal heirs could not amend the plaint and seek the reliefs which are not originally sought for by the plaintiff himself.

85.In this regard, the learned counsel for the defendants 1 and 2 placed reliance on the decision of this Court in *Elaya Pillai Vs. Ramasamy Jadayya Goundan* reported in *AIR 1947 Madras 165* and in *Gajraj Vs. Sudha and Others* reported in *1999 (3) SCC 109*, where the Courts have held that the legal heirs only take the place of the predecessor and they cannot give a go by to the pleadings of their predecessor and they cannot pursue their own individual interest and rights, especially when they failed to establish themselves as having any other status in relation to the case. There is no quarrel with regard to the said settled principle of permissibility of the legal heirs to be bound by the pleadings of their predecessor. However, in the present case, there is no dispute that the plaintiffs, by their own pleadings have made out a case of trespass and unlawful occupation of portion of the suit property



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by the defendants 1 and 2 and the erstwhile plaintiff, M.V.Krishna Rao himself had right to amend the plaint and seek the relief of possession and damages for use and occupation consequent to his demise, that too, the early stages of the litigation soon after the filing of the plaint when his wife and children were impleaded and they have thought it fit to amend the plaint and seeks the reliefs of recovery of possession and damages for use and occupation.

86.Thus, in the circumstances of the case, it cannot be said that the legal heirs being bound by the pleadings of M.V.Krishna Rao are not even entitled to seek the relief of recovery of possession and damages for use and occupation. The bar is only for the legal representatives from taking any contradictory stand that the predecessor had taken in the pleadings. Therefore, I do not find any legal embargo for the legal representatives who have sought amendment of the plaint to include the reliefs of recovery of claiming possession and damages for use and occupation. It is totally another thing that the amendments were ordered by this Court and the defendants 1 and 2 did not even challenge the same.

87.In fact, though the amended paragraphs as introduced by the legal representatives suggested that the 2nd plaintiff also contributed for



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the development of the suit property, she was not entitled to set up such a case which would run counter to the original pleadings of Krishna Rao himself. Even if these pleadings are discounted and ignored, as legal representatives, namely the plaintiffs 2 to 7 stepped into the shoes of M.V.Krishna Rao and therefore they become entitled to the suit property as his legal representatives and when they have been impleaded, in pursuance of the order dated 19.07.2013 in A.No.5709 of 2011, they are certainly well within the rights to seek for recovery of possession and damages for use and occupation. Therefore, the arguments to the contra put forth by the learned counsel for the defendants 1 and 2 is devoid of merits and deserves no consideration.

88. With regard to quantum of damages, the 1st defendant, during cross-examination, has admitted that the suit property was fetched not less than Rs.60,000/- per month by way of rental income. It is also admitted that the dubbing theatre in the ground floor and therefore, in the light of the evidence adduced by D.W.3 himself there is no difficulty in holding that the plaintiffs are certainly entitled to damages for use and occupation at the rate of Rs.75,000/- per month.



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89. This leaves us with the relief, rather stand taken by the 3rd defendant. Strangely, the 3rd defendant has filed a written statement throughout supporting the version of the deceased plaintiff, M.V.Krishna Rao. However, in the said written statement, he has also claimed independent right under the alleged Will said to have been executed by M.V.Krishna Rao in his favour bequeathing the suit property to him.

90. Admittedly, the 3rd defendant has not taken out any application for grant of probate/letters of administration in respect of the said Will in his favour. Despite pendency of the suit and death of M.V.Krishna Rao way back in the year 2010, for all these years, the 3rd defendant has not initiated any proceedings to adjudicate the Will and establish the truth and genuineness of the same. Therefore, the prayer in the written statement, that too, without payment of any Court fee, deserves no consideration in the eye of law and no right whatsoever can be preserved in favour of the 3rd defendant.

91. **Tr.C.S.No.768 of 2013:**



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In view of the discussions and findings rendered above in C.S.No.925 of 2010, the plaintiffs in Tr.C.S.No.768 of 2013, namely defendants 1 and 2 in C.S.No.925 of 2010 are not entitled to any relief and the issues framed in Tr.C.S.No.768 of 2013 are accordingly answered against the plaintiffs therein.

92.Before parting with the case, I would like to remind that advocates are to assist the Courts and they are engaged in a noble profession and they have a sacrosanct duty not only to the Courts but also to their clients. If such a profession is abused by advocates, who choose to stab their own clients behind their backs and knock off their valuable properties, it would unfortunately only lead to a lawless situation where aggrieved persons will have to fend for themselves and they would think twice before engaging the services of a lawyer, under fear or apprehension that their interest would not be genuinely protected by a person who is supposed to do. This is a classic case of what a lawyer should not do and because of lawyers like this, the faith and trust in the judicial system itself gets eroded.



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93.In fine, Tr.C.S.No.768 of 2013 is dismissed and the suit in

C.S.No.925 of 2010 is decreed as follows:

(i) The Sale Deed bearing Doc.No.976 of 2010 on the file of the Sub Registrar Office, Kodambakkam, executed by the deceased plaintiff, M.V.Krishna Rao in favour of the defendants 1 and 2 is declared as null and void and not binding on the plaintiffs.

(ii) Permanent injunction is granted restraining the defendants from alienating or encumbering the suit property.

(iii) Mandatory injunction is granted directing the defendants 1 and 2 to deliver the vacant possession of the portion under their occupation, namely Schedule B of the suit property.

(iv) The defendants 1 and 2 are directed to pay damages for use and occupation at the rate of Rs.75,000/- per month from April 2010 onwards and shall continue to pay the same till the date of decree i.e today and at the same rate till date of handing over of the vacant possession of the Schedule B of the suit portion to the plaintiffs.

(v) The defendants 1 and 2 shall pay the costs of the suit to the plaintiffs.



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30.10.2024

ata/sr
Index : Yes / No
Speaking/Non-speaking
Neutral Citation : Yes / No

List of Witness on the side of the plaintiffs:

P.W.1 – Mrs.Seetha Rajakumari

List of Exhibits on the side of the plaintiffs:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	Divorce Petition on the ground of cruelty filed by M.V.Krishna Rao against the 2 nd plaintiff Mrs.Seetha Rajakumar in O.P.No.942 of 2006. (Nil.04.2009)
2.	Ex.P2	Complaint given by M.V.Krishna Rao the original plaintiff to the Commissioner of Police dated 18.03.2009.
3.	Ex.P3	Interview jointly given by Krishna Rao (1 st plaintiff) and the 1 st defendant (Advocate Shivakumar) to Kumudham Weekly Magazine) dated 25.03.2009.
4.	Ex.P4	Lease Deed between the 1 st plaintiff (M.V.Krishna Rao) and the 1 st defendant, K.Shivakumar dated 02.04.2009.
5.	Ex.P5	Medical Report issued by Dr.Mehtha Nursing Home to the 1 st plaintiff (M.V.Krishna Rao) dated 18.07.2009.
6.	Ex.P6	Suit in O.A.No.44 of 2010 filed by Seetha Rajakumari (the 2 nd plaintiff) against her husband M.V.Krishna Rao, (1 st plaintiff) with prayers not to alienate the property covered in this suit dated 18.02.2010.



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7.	Ex.P7	Affidavit and Petition in I.A.No.461 of 2010 in O.S.No.44 of 2010 filed by Seetha Rajakumari (2 nd plaintiff) against her husband M.V.Krishna Rao (1 st plaintiff) dated 24.02.2010.
8.	Ex.P8	Deed of cancellation of simple mortgage by Achuthalingam (Creditor) in favour of M.V.Krishna Rao (1 st plaintiff)
9.	Ex.P9	Cancellation of Lease Deed dated 15.03.2010 by M.V.Krishna Rao made in favour of 1 st defendant dated 15.03.2010.
10.	Ex.P10	Deed of Sale executed by M.V.Krishna Rao in favour of the defendants 1 and 2 dated 19.03.2010.
11.	Ex.P11	Medical Certificate of M.V.Krishna Rao issued by Dr.Metha Hospital with respect to dialysis dated 11.11.2010.
12.	Ex.P12	Affidavit filed by M.V.Krishna Rao in Crl.O.P.No.8915 of 2010 dated Nil.04.2010.
13.	Ex.P13	Order made by this Court in Crl.O.P.No.8915 of 2010 dated 20.04.2010.
14.	Ex.P14	Hand Written Letter dated 05.10.2010 of M.V.Krishna Rao explaining the circumstances under which Ex.P10 the sham and nominal Deed of Sale was made without receiving single paisa from the defendants 1 and 2.
15.	Ex.P15	Encumbrance Certificate dated 11.10.2010 for the period from 01.01.1987 to 10.10.2010 issued by the Sub-Registrar Office, Kodambakkam.
16.	Ex.P16	Notarized Sworn affidavit of the plaintiff authenticated by the Notary at Metha Hospital dated 12.10.2010.
17.	Ex.P17	Legal Notice dated 15.10.2010 issued by M.V.Krishna Rao through his advocate explaining the circumstances wherein the sham and nominal Deed of Sale was procured by the



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		defendants 1 and 2.
18.	Ex.P18	Letter of the counsel for M.V.Krishna Rao stating about the complaint given by his client to various authorities dated 01.11.2010.
19.	Ex.P19	Receipt issued by the Metha Nursing Home to M.V.Krishna Rao for having received payment for his treatment dated 01.11.2010.

List of Witness on the side of the Defendants:

D.W.1 – Mr.Murugesan

D.W.2 – Mr.V.Achuthalingam

D.W.3 – Mr.K.Shivakumar

D.W.4 – Mr.S.Udaiyappan

D.W.5 – Mr.A.Thisai Eswaran

List of exhibits marked on the side of the Defendants:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.D1	Petition (with clean copy) and order in M.P.Nos.530 and 531 of 2010 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai.
2.	Ex.D2	Judgment made in O.S.A.No.174 of 2015 by the Hon'ble First Bench of this Court.
3.	Ex.D3	Affidavit and Judges summons and order passed in A.No.2171 of 2011 in C.S.No.925 of 2010.
4.	Ex.D4	Will of late M.V.Krishna Rao dated 24.09.2009.
5.	Ex.D5	Patta issued in the name of late M.V.Krishna Rao in 2009.



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6.	Ex.D6	Sony IC Recorder and Compact Disc (Available on Court record)
7.	Ex.D7	Transcript of Taped Conversation between Murugesan (D-3) K.Shivakumar (D-1). (Ex.D-7). (as in Ex.D-3) Both are the same.
8.	Ex.D8	Deed of Simple Mortgage executed by Late M.V.Krishna Rao in favour of DW-2 Achuthalingam dated 28.11.2011.
9.	Ex.D9	Receipt of Discharge of Mortgage executed by DW-2 Achuthalingam in favour of Late M.V.Krishna Rao dated 15.03.2010.
10.	Ex.D10	Xerox Copy of Membership Card issued by Nadigar Sangam to the 1st Defendant. (K.Shivakumar) (Original Compared) dated 28.11.1994.
11.	Ex.D11	Daily collection card issued by REPCO Bank in the name of the 1st Defendant. (K.Shivakumar) dated Feb 1997 to June 1999.
12.	Ex.D12	Online copy of the suit property Tax Payment in the name of the Defendants 1 and 2 during 1998- 1999 to 2012-2013.
13.	Ex.D13	Certified copy of the Judgement and Decree passed in O.S.No.2707 of 1998 on the file of the VI Addl. Judge, City Civil Court, Chennai. Submitted (Original marked in O.S.No.3932 of 2010 as Ex.A1 filed by K.Shivakumar) dated 25.09.2001.
14.	Ex.D14	Self attested copy of the College Transfer Certificate of the 1st Defendant issued by Dr.Ambedkar Govt. Law College,Chennai dated 12.07.2000.
15.	Ex.D15	Invitation with cover for inauguration of Advocate Office by the 1st Defendant. (Original). dated 26.01.2003 .
16.	Ex.D16	Receipt issued by Madurai High Court Bar Association in the name of the 1st Defendant dated 12.03.2004 for Membership subscription. (Original). Dated 12.03.2004.
17.	Ex.D17	Property Tax Demand Card for the period from



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		31.03.2006 to March 2012 issued by Corporation of Chennai. (Original). Dated 31.03.2006.
18.	Ex.D18	Property Tax Demand Card for the period from 01.04.2012 to 31.03.2018 issued by Corporation of Chennai. (Original).
19.	Ex.D19	Certified copy of the Petition in ??No.942 of 2006 between the deceased 1 st Plaintiff and the 2nd Plaintiff. (Original Document filed in O.P.No.942 of 2006).
20.	Ex.D20	Self Attested copy of the order issued by the Hon'ble Chief Justice of High Court of Judicature at Madras appointing the 1st Defendant as a Special Committee Member. 07.12.2006.
21.	Ex.D21	Certified copy of the Counter filed by the 2nd Plaintiff in O.P.No.942 of 2006. (Original Document filed in O.P.No.942 of 2006). Dated 20.02.2007.
22.	Ex.D22	Receipts issued by Madras High Court Advocates' Association to the 1 st Defendant for Membership Subscription. (Original 15 Nos.) dated 21.11.2001 To 10.03.2019.
23.	Ex.D23	Receipts issued by Women Lawyer's Association, Chennai (K.Parasaran Creche) in the name of the 1st Defendant. (Original 15 Nos.) dated 06.08.2007 To 08.08.2008.
24.	Ex.D24	Certified copy of Proprietorship concern of Muthu Muruga Enterprises (Travel Bus Ticket Booking) in the name of the 2nd Defendant. Dated 06.12.2007.
25.	Ex.D25	Certified copy of Rental Agreement between the deceased M.V. Krishna Rao and the 1st Defendant. Dated 02.04.2009.
26.	Ex.D26	Rental Agreement Registration Receipt between the deceased 1st Plaintiff (M.V. Krishna Rao) and the 1st Defendant. (Original 2 Nos.) dated 02.04.2009.
27.	Ex.D27	Self Attested copy of the 1st Defendant's M.H.A.A. I.D. Card mentioning the suit property address. Dated 29.06.2009.



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28.	Ex.D28	Copy of the Ration Card in the name of the 1 st Defendant with the change of address of suit property with Smart Card. (Original may be compared).dated 27.06.2009.
29.	Ex.D29	UCO Bank Pass Book for the Joint Account of the Defendants 1 and 2 mentioning the suit property address. Dated 29.09.2009.
30.	Ex.D30	Electricity Consumption Card for the suit property. (Original). Dated 2009 To 2011.
31.	Ex.D31	Acknowledgement for having filed Return to the Income Tax Department for the assessment year in the name of 2nd Defendant Mrs.Meena Shivakumar for the Financial Year 2009-2010 (Original) dated 2009-2010.
32.	Ex.D32	Proprietorship concern of Muthu Muruga Enterprises with Rs.1,000/- as Capital in the name of the 2nd Defendant. (Original). Dated 21.01.2010.
33.	Ex.D33	Profession Tax Payment of Rs.1,665/- Receipt issued to Muthu Muruga Enterprises by the Corporation of Chennai. (Original). Dated 28.01.2010.
34.	Ex.D34	Profession Tax Pass Book issued by Corporation of Chennai in the name of Muthu Muruga Enterprises.(Self Attested Copy). Dated 09.02.2010.
35.	Ex.D35	Xerox Copy of the Receipt issued by Mr.Rajkumar for sale of 432 Grams of Gold Jewels worth Rs.8,00,000/- Dated 18.03.2010.
36.	Ex.D36	ICICI Bank Current Account Statement of the 2nd Defendant (Original). Submitted Not as per Bankers' Book Evidence Act. Dated 28.02.2010.
37.	Ex.D37	ICICI Bank Current Statement of the 2nd Defendant (Original). Dated 31.03.2010.
38.	Ex.D38	ICICI Bank Current Statement of the 2nd Defendant (Original). Dated 30.04.2010.
39.	Ex.D39	ICICI Bank Current Statement of the 2nd Defendant (Original). Dated 31.05.2010.



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40.	Ex.D40	ICICI Bank Current Statement of the 2nd Defendant (Original). Dated 31.07.2010.
41.	Ex.D41	Lease Cancellation Deed executed by the Deceased 1st Plaintiff M.V.Krishna Rao. Dated 15.03.2010.
42.	Ex.D42	L.I.C. Policy Certificate in the name of the 2nd Defendant bearing Policy No.705027760 issued to the address of the suit property. (Original) dated 18.03.2010.
43.	Ex.D43	L.I.C. Policy Certificate in the name of the 1st Defendant bearing Policy No.705027765 issued to the address of the suit property. (Self Attested Copy) dated 18.03.2010.
44.	Ex.D44	Certified Copy of the Sale Deed executed by the Deceased Plaintiff in favour of the 1st and 2nd Defendants. Dated 19.03.2010.
45.	Ex.D45	Sale Deed Registration Fee Receipt for the Sale Deed executed by Deceased Plaintiff in favour of the 1st and 2nd Defendants. (Original 4 Nos.) dated 19.03.2010.
46.	Ex.D46	Certified Copy of the information furnished by the Deputy Commissioner of Police / Public Information Officer with copy of Complaint dated 24.03.2010 given by the deceased Plaintiff to the Commissioner of Police, Chennai obtained under RTI Act along with translated copy. (Original document marked in Tr.C.S.No.768 of 2013, O.S.No.3848 of 2011 for R-4).
47.	Ex.D47	Water and Sewerage Tax Demand Card issued by Chennai Metropolitan Water Supply and Sewerage Board for the suit property. (Original 5 Nos.). Dated 01.04.2010 To 31.03.2015.
48.	Ex.D48	Water and Sewerage Tax Demand Card issued by Chennai Metropolitan Water Supply and Sewerage Board for the suit property. (Original 5 Nos.). Dated 25.10.2016 To 31.03.2019.
49.	Ex.D49	Water and Sewerage Tax Demand Card issued by



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		Chennai Metropolitan Water Supply and Sewerage Board for the suit property. (Original 14 Nos.). Dated 11.02.2017 To 08.03.2018.
50.	Ex.D50	Petition with Docket Order in I.A. No.7870 of 2010 in O.S.No.3932 of 2010 on the file of the VI Asst. Judge, City Civil Court, Chennai between the Defendants 1 and 2 and the 2nd Plaintiff. Dated 19.04.2010.
51.	Ex.D51	Certified Copy of the Order and Decretal Order passed in I.A. No.7870 of 2010 in O.S.No.3932 of 2010 on the file of the VI Asst. Judge, City Civil Court, Chennai granted Interim Injunction made absolute. Dated 27.10.2010.
52.	Ex.D52	Amended Plaint in O.S.No.3932 of 2010 between the Defendants 1 and 2 and the 2nd Plaintiff. (Self Attested Copy). Dated 19.04.2010.
53.	Ex.D53	Certified Copy of the Order made in CrI.O.P.No.9394 of 2010. Dated 23.04.2010.
54.	Ex.D54	Notice issued by the 1st and 2nd Defendant's counsel to the 2nd Plaintiff with acknowledgement (Original Document marked in Tr.C.S.No.768 of 2013, (O.S.No. 3848 of 2011). Dated 10.06.2010.
55.	Ex.D55	Certified copy of the Counter made in M.P.No.530 and 531 of 2010 filed by the Deceased 1 st Plaintiff under the Domestic Violence Act on the file of the XVII M.M. at Saidapet. Dated 06.08.2010.
56.	Ex.D56	Original Copy of the Letter issued by ICICI Bank, Chennai to the 2nd Defendant. Dated 21.08.2010.
57.	Ex.D57	Certified Copy of the Petition in R.C.O.P.No.1457 of 2010 on the file of the XIII Court of Small Causes Court. Dated 24.08.2010.
58.	Ex.D58	Certified copy of Counter filed in R.C.O.P.No. 1457 of 2010 on the file of the XIII Small Causes Court, Madras by the Respondent Sulaiman Bahrudeen. Dated 15.11.2010.
59.	Ex.D59	Plaint in Ejectment Suit No.11 of 2010 between the



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		Defendants 1 and 2 and the 2nd Plaintiff (Self Attested Copy) dated 30.08.2010.
60.	Ex.D60	Certified Copy of the Plaint in Ejectment Suit No.12 of 2010 between the Defendants 1 and 2 and the deceased 1 st Plaintiff (Original document marked in Tr.C.S.No.768 of 2013; O.S.No.3848 of 2011 for R3). Dated 30.08.2010.
61.	Ex.D61	True copy of the Affidavit and set-aside Petition in Ejectment Suit No.11 of 2010 filed by the 2nd Plaintiff. Dated 21.12.2010.
62.	Ex.D62	Rental Agreement between the Defendants 1 and 2 with M/s. Chennai Used Cars. (Original). Dated 05.10.2010.
63.	Ex.D63	Electricity Payment Receipts. (Original) dated 2010 To Jan 2019.
64.	Ex.D64	Certified Copy of the Affidavit and Petition in Cri.O.P.No.8915 of 2010. Dated 15.04.2010.
65.	Ex.D65	Certified Copy of the order passed Crl.O.P.No.8915 of 2010. Dated 24.04.2010.
66.	Ex.D66	Certified Copy of the Affidavit and Petition in Crl.O.P.No.9078 of 2010.dated 15.04.2010.
67.	Ex.D67	Certified Copy of the Acknowledgement for the Income Tax Returns in the name of the 1st Defendant. (Original Document Marked in O.S.No.6883 of 2015 as Ex.A-25. Dated 2010 To 2011.
68.	Ex.D68	Certified Copy of the Acknowledgement for the Income Tax Returns in the name of the 2nd Defendant. Dated 2010 To 2011.
69.	Ex.D69	Certified copy of the Petition RCOP.No.222 of 2011 filed by the 2nd and 1st Defendant. Dated 25.01.2011.
70.	Ex.D70	Certified Copy of the Written Statement filed by the 2nd Plaintiff in O.S. No.3932 of 2010 dated 23.02.2011.
71.	Ex.D71	Certified Copy of the Order in Ejectment Suit No.11 of 2010 in the Court of III Small Causes Court. Dated



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		04.03.2011.
72.	Ex.D72	Certified Copy of the Impleading Petition with Affidavit in M.P.No.336 of 2011 in R.C.O.P.No.222 of 2011 filed by the 2nd Plaintiff. Dated 04.08.2011.
73.	Ex.D73	Certified Copy of the Counter Affidavit filed by the 1st and 2nd Defendants in M.P.No.336 of 2011 in R.C.O.P.No.222 of 2011. Dated 22.08.2011.
74.	Ex.D74	Certified Copy of the Counter Affidavit filed by Sulaiman Bahrudeen R.C.O.P.No.222 of 2011. Dated 05.09.2011.
75.	Ex.D75	Certified Copy of the Patta issued by the Tahsildar, Egmore - Nungambakkam Taluk to the Defendants 1 and 2. (Original Document marked in Tr.C.S.No.768 of 2013 in O.S.No.3848 of 2011 for R-6). Dated 06.11.2011.
76.	Ex.D76	Certified Copy of the Simply Mortgage Deed in favour of Suresh Kumar Gupta. Dated 28.11.2011; 2011-12; 2012-13 2014-15, 2015-16; 2016-17; 2017-18; 2018-19.
77.	Ex.D77	Certified Copy of the Acknowledgement for Income Tax Returns in the name of K.Shivakumar (1st Defendant) for the Assessment Years. (7 Nos.)
78.	Ex.D78	Online Copy of the Advance Income Tax paid Receipts in the name of the Defendants 1 and 2 for the Assessment year 2019-2020. Dated 15.10.2018 and 12.03.2019; 2011-12; 2012-13; 2014-15; 2015-16; 2016-17; 2017-18.
79.	Ex.D79	Certified and Original copy of the Acknowledgement for Income Tax Returns in the name of Meena Shivakumar (2nd Defendant) for the Assessment Years. (6 Nos.)
80.	Ex.D80	Xerox Copy of License issued to Muthu Muruga Dairy Farms by the Executive Officer, Sholavandan Panchayat at Madurai District. Dated 21.02.2012.
81.	Ex.D81	Xerox Copy of Profession Tax Receipt issued by Sholavandan Panchayat at Madurai District to Muthu



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		Muruga Dairy and Poultry Farm (4 Nos.) dated 02.02.2012 To 21.04.2017.
82.	Ex.D82	Copy of Profession Tax Receipt issued by Sholavandan Panchayat at Madurai District to Hotel Muthu Muruga (2 Nos.). Dated 20.05.2016 To 21.04.2017.
83.	Ex.D83	Original Copy of the Profession Tax Receipt issued by Sholavandan Panchayat at Madurai District to Shiva and Kani Law Associates LLP. Dated 20.05.2016 To 21.04.2017.
84.	Ex.D84	Certified Copy of the order passed in C.R.P.(PD) Nos.5023 and 5024 of 2011. Dated 12.09.2012.
85.	Ex.D85	Original copy of the Rental Agreement. between the Defendants 1 and 2 with Sulaiman Bahrudeen. Dated 01.02.2013.
86.	Ex.D86	Certified Copy of the order passed in CrI.O.P.No.9078 of 2010. Dated 23.04.2013.
87.	Ex.D87	Original Copy of the Telegram Notice issued by the counsel for 1 Defendant to the 2nd Plaintiff. Dated 05.06.2013.
88.	Ex.D88	Original Copy of the Rental Receipt issued by the Sholavandan Panchayat at Madurai District to the 1st Defendant in respect of Shop No.3 and 9. Dated 25.02.2015 And 27.07.2018 .
89.	Ex.D89	Original Copy of the Food License of Hotel Muthu Muruga issued by Tamil Nadu Food Safety Drug Administration Department. Dated 07.08.2015.
90.	Ex.D90	Original copy of the License issued by Joint Director of Industries and Commerce, Government of Tamil Nadu to Muthu Muruga Enterprises. Dated 25.01.2012
91.	Ex.D91	No Objection letter issued by UCO Bank, Main Branch, Chennai 600 001 to the 2nd Defendant for clearing the car loan. (Xerox Self Attested).
92.	Ex.D92	Original Copy of the Information furnished by Public Information Officer / Regional Transport Office,



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		Ayanavaram for the Application under RTI Act dated 21.08.2017 by the 1 Defendant. Dated 19.09.2017.
93.	Ex.D93	Original Copy of the Information furnished by Public Information Officer/ Registrar (Administration) for Application under RTI Act dated 02.01.2018 by the 1st Defendant to the Registrar, High Court, Madras. Dated 28.02.2018.
94.	Ex.D94	Original Copy of the Experience Conduct Certificate issued by M.H.A.A. to the 1st Defendant. Dated 27.04.2018.
95.	Ex.D95	PAN Card in the name of the 1st Defendant obtained from the Income Tax Department the year 1996 (Self Attested) dated 1996.
96.	Ex.D96	Original Copy of the Bar Council Certificate issued by the Bar Council of Tamil Nadu and Puducherry. Dated 28.02.2019.
97.	Ex.D97	Online Copy of the Property Tax Receipt. (4 Nos.) dated 10.03.2019.

30.10.2024



WEB COPY



C.S.No.925 of 2010
& Tr.C.S.No.768 of 2013

P.B.BALAJI.J.

ata/sr

C.S.No.925 of 2010
& Tr.C.S.No.768 of 2013