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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.06.2025

PRONOUNCED ON : 10.06.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 741 of 2016

Arun Kapur

... Plaintiff

Vs.

1. Mr. Anand S.Chabria

2. Mr.Rajkumar Jhaver

...Defendants

Prayer : Civil Suit filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree by

a) directing the 1st and 2nd defendants to hand over vacant possession of the said flat '4-A' as enumerated in schedules 'A' and 'B' below to the plaintiff;; and

b) for costs of the suit.

For plaintiff : Mr. A.S.Balaji

For 1st Defendant : Mr. J.D.Srikanth Varma



For 2nd Defendant : Given up

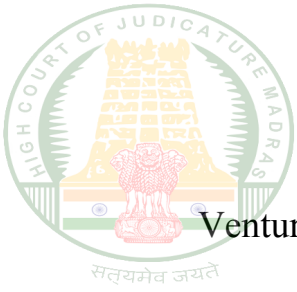
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JUDGMENT

The suit had been filed for a direction against the first and second defendants to handover vacant possession of a flat '4-A' measuring about 2000 sq.ft., of super built up area in the fourth floor of the multistored building called “Ved Nivas” at No. 52, Taylor's Road, Kilpauk, Chennai – 600 010 to the plaintiff and for the costs of the suit.

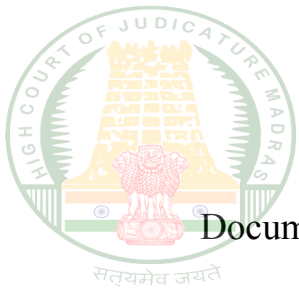
2. During the pendency of the suit, a memo had been filed by the learned counsel for the plaintiff that the relief against the second defendant is not pressed since the second defendant, who was in possession of the aforementioned flat, had vacated.

3. In the plaint, it had been stated that the plaintiff, Arun Kapur, his mother Mrs.Vinay Kumari and his brother Mr.Atul Kapur were the joint owners of the property measuring 11 grounds and 1837 sq.ft., at No. 52, Taylor's Road, Kilpauk, Chennai – 600 010. They entered into a Joint



Venture Agreement to develop the property and to construct a multistored residential complex with M/s. Sukrit Constructions, Chennai. The plaintiff further stated that he and his mother and brother had earlier availed loan from Indian Overseas Bank, Chintadripet Branch, Chennai and the said Bank had a lien over the property towards the amount due. The Bank had agreed that on repayment of the dues, they would release the lien on the undivided share of land as and when flats are sold.

4. The plaintiff further stated that on 01.04.2002 his brother Atul Kapur had executed a Release Deed releasing his undivided share over the property in favour of his mother Mrs. Vinay Kumari and the plaintiff. This Release Deed was registered as Document No. 646 of 2002 on 01.04.2002 in the Office of the Sub Registrar of Assurances, Periamet, Chennai. The plaintiff further stated that one of the flats in the second floor, flat -E was purchased by C.S.V.Raman, who had taken loan from Indian Bank, Royapettah Branch, Chennai, towards the said purchase. That Bank had paid Rs.18,00,000/- to Indian Overseas Bank and the lien was released on the undivided share of land for the flat 2E sold to C.S.V.Raman. The sale deed for the undivided share of land was executed by a Sale Deed registered as



Document No. 2149 of 2002 on 11.11.2002 in the Office of the Sub Registrar of Assurances Periamet, Chennai.

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5. The plaintiff further stated that on 28.02.2003, his mother Mrs. Vinay Kumari settled her undivided share in the said property in favour of the plaintiff by a Settlement Deed registered as Document No. 447 of 2003 on 28.02.2003 in the Office of the Sub Registrar of Assurances, Periamet, Chennai. The plaintiff thus claimed that he had become the absolute owner of the entire property.

6. Subsequently, his brother Atul Kapur filed C.S.No. 985 of 2004 on the Original Side of this Court to declare the Release Deed executed by him registered as Document No. 646 of 2002 on 01.04.2002 as null and void. The suit was dismissed by Judgment dated 04.03.2016.

7. The plaintiff further stated that C.S.V. Raman, who had purchased the flat No.E in the second floor had however sold the flat No.A on the fourth floor to the first defendant Anand Chabbria by sale deed dated 15.12.2004 registered as Document No. 2899 in the office of the Sub Registrar of



Assurances, Periamet, Chennai. It had been contended that the defendants were able to get physical possession of the flats owing to fraudulent act of Mrs. Sujatha Hariharan, one of the partners of M/s. Sukrit Constructions and also the sister-in-law of C.S.V.Raman. This sale deed was executed by C.S.Hariharan, the husband of Mrs.Sujatha Hariharan, the Power of Attorney Agent of C.S.V. Raman.

8. The plaintiff further claimed that this Sale Deed was declared as null and void by a Judgment of the III Assistant City Civil Court dated 11.04.2011 in O.S.No.4411 of 2005. The decree was also registered as Document No. 60 of 2012 on 12.01.2012 in the Office of the Sub Registrar of Assurances, Periamet.

9. The plaintiff further stated that out of the total area of 28,237 sq.ft., the vendors, namely the plaintiff, his mother and brother had sold 26,217 sq.ft., as undivided share of land to various purchasers of flats. The plaintiff however claimed that he was still the vendor and owner of the balance unsold area measuring 2,020 sq.ft., of undivided share of land. He also stated that he was the owner of the unsold flats in the complex.



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10. The plaintiff further stated that flat No.4-A was, at the time of institution of the suit in the possession of the second defendant as a tenant of the first defendant. Notice had been exchanged between the plaintiff and the defendants prior to the institution of the suit. It is under these circumstances that the suit had been filed seeking recovery of possession of the said flat and for costs of the suit.

11. In the written statement filed by the first respondent, it had been contended that the suit is not maintainable since a relief had not been sought for declaration of title. It had also been pointed out that the plaintiff had also joined in the execution of the sale deed dated 11.11.2002 registered as Document No. 2149 of 2002 whereby undivided share of land had been sold to C.S.V.Raman. It had been contended that the first defendant purchased the undivided share of land from C.S.V. Raman by sale deed dated 15.12.2004 registered as Document No. 2899 of 2004. It had been therefore contended that the suit filed in the year 2016 is hopelessly barred by limitation.



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12. In the written statement, reference was also made to the written statement filed in O.S.No. 4411 of 2005 wherein it had been stated that the plaintiff, his mother and brother had mortgaged the entire property with Indian Overseas Bank and the debt had accrued to about Rs.2.50 crores. It was further stated that the family had approached C.H. Subramaniam for help and it was decided to develop the property and put up an apartment complex to discharge the debt.

13. A partnership firm was therefore formed. The three partners were the plaintiff, his son Rishi Kapur and Mrs. Sujatha Hariharan. A joint development agreement was entered on 22.04.1999 with M/s. Sukrith Constructions. Thereafter, a Memorandum of Undertaking was also signed on 14.12.2001 authorising the builder to collect the amounts due on sale of the flats and to resolve all disputes.

14. It had been specifically stated in the written statement that all these facts had not been disclosed in the plaint. It had been very specifically further stated that the plaintiff had lost his right and title in the property. The first defendant claimed that he was the absolute owner of the suit property. It



had therefore been contended that the plaintiff cannot seek possession without seeking the relief of declaration of title.

15. It had been further stated that the plaintiff had not chosen to challenge the allotment in favour of C.S.V.Raman or the sale deed in favour of the first defendant and had also not chosen to declare his title of the suit property but had instituted the suit seeking merely possession. It had been stated that when there is a cloud is raised on the title, the relief of declaration of title should be sought from the Court.

16. It had been further stated that the suit in O.S.No. 4411 of 2005 was still pending at the time of the filing of the written statement. It had been further stated that the son of the plaintiff had executed a sale deed in favour of C.S.V. Raman conveying 745 sq.ft., of undivided land in the property and that M/s. Sukrit Constructions were entitled to sell Flat No.A in the fourth floor with built up area of 2000 sq.ft. The undivided share of land was then conveyed by C.S.V.Raman to the first respondent by a registered sale deed dated 15.12.2004. A separate Construction Agreement was entered into with M/s. Sukhrit Construction. The first defendant took possession of the flat



and is in enjoyment of the same. It had been stated that without title, the plaintiff had sought the relief of possession and that therefore, the suit is not maintainable. It was thus contended that the suit should be dismissed.

17. The learned counsel for the plaintiff had filed a memo giving up the relief sought against the second defendant.

18. On the basis of the above pleadings, the following issues were framed for trial:-

“1. Whether the plaintiff is entitled for the relief of recovery of possession without seeking relief of declaration of title to the suit property?

2. Whether the vacant possession of the suit schedule property was handed over to the first defendant's Vendor Mr.C.S.V.Raman on the 1st December 2003 by M/s. Sukrit constructions in view of the construction agreement dated 11.11.2002?

3. To what other reliefs the parties are entitled to?”



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19. During trial, the plaintiff Arun Kapur examined himself as PW-1 and marked Exs. P-1 to P-17. The father of the first defendant Suresh Kumar Chabria was examined as DW-1 and he marked Exs. D-1 to D-3.

20. Heard arguments advanced by Mr.A.S.Balaji, learned counsel for the plaintiff and Mr.J.D.Srikanth Varma, learned counsel for the first defendant.

21. Mr.A.S.Balaji, learned counsel for the plaintiff took the Court through the pleadings and the evidence adduced by the parties. He pointed out that the plaintiff, his mother and brother were the absolute owners of land measuring 11 grounds and 1837 sq.ft., at No. 52, Taylor's Road, Chennai. They had obtained loan from Indian Overseas Bank, Chintadripet Branch. In order to settle the dues they had taken a decision to develop the property. The learned counsel pointed out that a Joint Venture Agreement was entered into with M/s. Sukrit Cosntruction. Thereafter, on the development of the flats, the flat No.E in the second floor had been sold to C.S.V.Raman, who is actually the brother-in-law of one of the partners of M/s. Sukrit



Constructions, Mrs. Sujatha Hariharan. The learned counsel pointed out that while purchasing the flat, Mr. C.S.V.Raman had sought loan from Indian Bank and specifically pointed out the correspondences between Indian Bank and Indian Overseas Bank relating to release of lien and the amount that should be paid to Indian Overseas Bank and stated that for all practical purposes, Mr.C.S.V.Raman had purchased only Flat No.2E in the second floor of the complex. A sale Deed was also executed in his favour for undivided share of land of 745 sq.ft. The learned counsel pointed out that the total plinth area of the flat No.2-E was 2840 sq.f.t, and the porportionate undivided share of land was 745 sq.ft.

22. The learned counsel further pointed out that however C.S.V.Raman had sold a flat in the fourth floor namely 4-A to the first defendant. It was contended that he has no such right to convey the said flat.

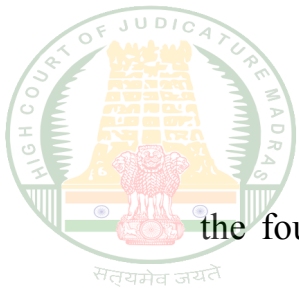
23. The learned counsel further pointed out that the brother of the plaintiff had executed a Release Deed releasing his one third undivided share in the property but later filed a suit seeking to set aside the said Release Deed as null and void. A Judgment was delivered in the year 2016 and this was



affirmed. The mother of the plaintiff had also released her undivided one third share to the plaintiff. The learned counsel therefore pointed out that the plaintiff had become the owner of the total area of land.

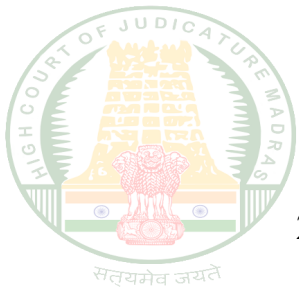
24. The learned counsel stated that the first defendant had unlawfully obtained Flat No.4-A without any title and without any right and it was under those circumstances since the title of the plaintiff had been affirmed in the year 2016, the suit had been filed seeking recovery of possession of the said flat. The learned counsel further pointed out that the Flat No.4-A measured only 2000 sq.ft., and therefore contended that C.S.V. Raman could not have conveyed 745 sq.ft., of land and should have conveyed only a lesser area. The learned counsel therefore stated that the suit should be decreed as prayed for and recovery of possession must be granted.

25. Mr.J.D.Srikanth Varma, learned counsel for the first defendant however contested every point raised on behalf of the plaintiff. According to him after the execution of the Joint Venture Agreement, the builder had taken control of the entire property. The plaintiff can claim right and title only to the unsold portions of the property. He contended that the builder transferred



the fourth floor flat to Mr.C.S.V.Raman, quite apart from executing a sale deed for the undivided share of land of 745 sq.ft. The learned counsel stated that this flat in the fourth floor was later conveyed by C.S.V.Raman to the first defendant. The learned counsel specifically questioned the right title of the plaintiff to claim ownership of the property. He therefore stated that without seeking the relief of declaration of title, the plaintiff cannot seek recovery of possession.

26. It was also contended that the sale deeds were of the years 2003 and 2004 and the suit instituted in the year 2016 and was therefore hopelessly barred by the law of limitation. The learned counsel further argued that the suit in the City Civil Court instituted by the son of the plaintiff had been dismissed for default and that therefore, the plaintiff was a third party to the documents executed by M/s. Sukrit Constructions cannot claim the right to seek possession of the flat which had been lawfully purchased by the first defendant. The learned counsel therefore asserted that the suit should be dismissed.



27. I have carefully considered the arguments advanced and perused the records.

Issue No:1

28. The suit had been filed seeking a direction against the first and second defendants to handover vacant possession of Flat No.4-A measuring about 2000 sq.ft., built up area in the 4th floor of the multistoried building called “Ved Nivas” at No. 52, Taylor's Road, Kilpauk, Chennai – 600 010.

29. It is the case of the plaintiff that he, his brother Atul Kapur and mother Mrs. Vinay Kumari, were the joint owners of the property at No.52, Taylor's Road, Kilpauk, Chennai – 600 010, totally measuring 11 grounds and 1837 sq.ft. They had obtained loan from Indian Overseas Bank, Chintadripet Branch, Chennai. To settle the outstanding, they had taken a decision to promote the property by constructing residential apartments.

30. They entered into a Joint Venture Agreement on 22.04.1999 with M/s. Sukrit Constructions in which the son of the plaintiff was one of the



partners. Pursuant to the Joint Venture Agreement, construction was put up.

One of the flats in the second floor Flat No.2-E measuring 2840 sq.ft., was sought to be purchased by C.S.V.Raman, who incidently is the brother-in-law of an other partner of M/s. Sukrit Constructions, Mrs. Sujatha Hariharan. In this connection, he applied for loan from Indian Bank, Royapettah Branch. The correspondences in that regard between Indian Bank, Royapettah Branch and Indian Overseas Bank, Chintadripet Branch, Chennai, were marked as Exs.P-2, P-3, P-4 and P-5.

31. The learned counsel for the plaintiff placed much reliance on these documents to show that the correspondences related to the Flat in the second floor/2-E. Indian Bank, Royapettah Branch had sought clarification about release of lien held by Indian Overseas Bank over the land. All these correspondences were only with respect to Flat No.2-E. The learned counsel for the plaintiff insisted that C.S.V.Raman had intention to purchase the flat in the second floor / 2-E. Thereafter, consequent to such decision, a sale deed of undivided share of land of 745 sq.ft., was also executed on 11.11.2002 under Ex.P-6 by Document No.2149 of 2002 registered in the Sub Registrar of Assurances, Periamet. The learned counsel for the plaintiff



argued that this undivided share of land of 745 sq.ft., was related to the total area of the flat, namely, 2840 sq.ft. This sale deed had been executed by the plaintiff, his mother and his brother. It is however contended that the brother was joined as an executant only as a confirming party since he had earlier executed a Release Deed on 01.04.2002, marked as Ex.P-1 by which he had released his undivided share in the total property in favour of the plaintiff.

32. The main argument advanced by the plaintiff is that the plaintiff is the owner of the entire land except the land which had been sold to the purchasers of the various flats as undivided shares relatable to the area of the flats and also of the unsold flats. The learned counsel pointed out that C.S.V.Raman, who had obtained loan from Indian Bank, Royapettah Branch, with intention to purchase the 2-E flat, then sold the flat in the 4th floor / 4-A flat to the first defendant by a sale deed dated 15.12.2004 under Ex.P-8 which was registered as Document No. 2899 of 2004 in the Office of the Sub Registrar of Assurances, Periamet. This particular document was sought to be set aside and declared as null and void in a suit filed by the son of the plaintiff, Rishi Kapur, in O.S.No.4411/2005 filed before III Assistant City Civil Court, Chennai. An exparte decree was passed on 11.04.2011 under Ex.P-9.

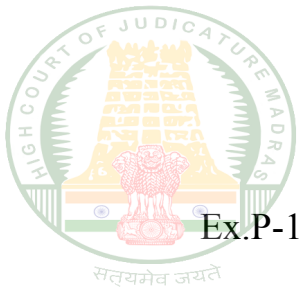


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33. It is the case of the plaintiff that on 28.02.2003 by Ex.P-7 the mother of the plaintiff had also settled in favour of the plaintiff of her undivided 1/3rd share in the land by Document No.447 of 2003 registered again in the Sub Registrar of Assurances, Periamet. The plaintiff therefore claims that by way of the release deed and settlement deed executed by his brother and mother, he had become the absolute owner of the land except the portions which had been sold to the purchasers of the flats. The plaintiff claims that C.S.V.Raman had no right to convey the flat 4-A in the 4th floor.

34. In Ex.P-8 sale deed executed by C.S.V.Raman in favour of the first defendant dated 15.12.2004 and registered as Document No.2899 of 2004 in the office of the Sub Registrar of Assurances, Periamet, the vendor C.S.V.Raman had covenanted that he was the absolute owner of the property of the flat measuring 2000 sq.ft., of type A in the 4th floor of the premises. This is a categorical statement made by the vendor in the year 2004.

35. It had been pointed out by the learned counsel for the plaintiff that his brother, who had executed a Release Deed on 01.04.2002 marked as



Ex.P-1 releasing his 1/3rd undivided share in the land in favour of the plaintiff had then filed C.S.No. 985 of 2004 seeking a declaration that the said Release Deed was brought about by fraud and undue influence and was illegal and inoperative and unenforceable. The suit was dismissed by Judgment dated 04.03.2016 which was marked as Ex.P-14.

36. It is the claim of the plaintiff that on and from that date, his title had been affirmed. But however, this suit had been filed seeking recovery of possession of Flat 4-A which had already been sold by C.S.V.Raman on 15.12.2004 to the first defendant. The first defendant had filed Ex.D-2 which is a document evidencing delivery of vacant possession of Flat No.4-A to C.S.V.Raman by M/s. Sukrit Constructions. This is dated 01.12.2023. It is thus seen that in so far as Flat-4A is concerned, M/s. Sukrit Constructions had handed over vacant possession of the Flat to C.S.V.Raman and the plaintiff and his mother along with his brother had also executed a sale deed for an undivided share of 745 sq.ft., of land to C.S.V.Raman. In that particular document, Ex.P-6, it had been conveniented that the said sale was consequent to a Joint Venture Agreement entered by the Vendors with M/s. Sukrit Constructions for construction of flats and that M/s. Sukrit



Constructions had taken possession of the property and are proceeding with construction of flats. It had been contended that this sale of undivided share of land of 745 sq.ft., is towards purchase of a flat by C.S.V.Raman.

37. The contention of the plaintiff is that C.S.V.Raman had taken loan from Indian Bank, Royapettah Branch for purchase of a flat in the 2nd floor but had sold a flat in the 4th floor to the first defedant. If that be so, then that particular sale deed should have been challenged and a declaration should have been sought that the sale deed is null and void and had been executed with fradulent intention. But however, the plaintiff had not sought such declaration. If he is to claim that he need not seek such declaration, then he has to concede the title of C.S.V.Raman to convey the said flat.

38. In the plaint, however, it had been asserted by the plaintiff that he is the owner of flat 4-A which according to him is an unsold flat, which statement is obvisouly not correct in view of the sale deed executed by C.S.V.Raman in favour of the first defendant. This sale deed was in the year 2004. The first defendant has been in possession from the year 2004. It is contended that the plaintiff had become the absolute owner of the unsold land



pursuant to the decree in C.S.No. 985 of 2004 dated 04.03.2016 marked as

Ex.P-14. But the issue in this case is not with respect to the land but with specific reference to flat No.4-A for which possession is sought. When that particular flat had been sold by a registered document, such document stares in the face of the plaintiff and unless such document is set aside, the plaintiff can never seek possession of the said flat.

39. If the plaintiff was to seek such a declaration, then the plaintiff would also run the risk of answering a charge of the relief being barred by limitation.

40. The possession of the first defendant had been in open hostility to the claim of the plaintiff on and from 15.12.2004. The reliance of the plaintiff on the decree in C.S.No. 985 of 2004 under Ex.P-14 could be limited only to the negation of the claim of his brother Atul Kapur regarding the Release Deed executed by him which he alleged was executed under coercion and undue influence. It could never stretch to a declaration that the plaintiff is the owner of the Flat 4-A. Therefore without seeking such declaration, the plaintiff can never seek possession of Flat 4-A. The suit in C.S.No. 985 of



2004 was limited to the land in Door No. 52, Taylor's Road, Chennai. The present suit is with specific reference to Flat No.4-A for which the plaintiff will necessarily have to seek a declaration that he is the owner.

41. The claim of the plaintiff that the sale of undivided share of land of 745 sq.ft., to C.S.V.Raman was relatable to that 2-E which measured 2840 sq.ft., and not to that 4-A which measured 2000 sq.ft., would not advance the case of the plaintiff since the sale deed in Ex.P-6 is with specific reference to that 4-A and that sale deed has created a cloud over the claim of title by the plaintiff.

42. In the written statement, the first defendant had very categorically questioned the right, title and interest of the plaintiff over Flat No.4-A. When a cloud is raised over the title of the plaintiff, then necessarily the plaint should have been amended to include the relief of declaration of title. Having failed to do so, the plaintiff can never seek possession without seeking such declaration.



43. In *2008 4 SCC 594 [Anathula Sudhakar Vs. P.Buchi Reddy*

(dead) by Lrs., and others] the Hon'ble Supreme Court had very categorically stated that when a cloud is raised over the plaintiff's title and he is not in possession, then a suit must be laid for declaration and possession, with or without consequential injunction. It had been further clarified that a cloud is said to be raised when prima facie the right of a third party is made over the property.

44. In the instant case, Ex.P-6 is the sale deed executed C.S.V.Raman in favour of the first defendant. It raises a prima facie presumption that specifically with respect to Flat No.4-A the title had flowed to the first defendant by way of a registered document. The plaintiff had not sought a declaration that he is the title holder of that particular flat. It is not sufficient to hold that he is the owner of the land which is not sold. Additionally, the Joint Venture Agreement had not been produced as a document. That document would reveal the right which had accrued to the promoter of the flats, M/s. Sukrit Constructions and the manner in which they could hand over vacant possession of the flats to the proposed purchasers.



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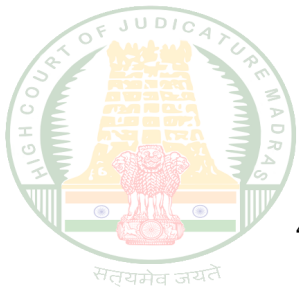
45. In this connection, a reference could be made to paragraph Nos.

13.3 & 14 in **Anathulla Sudhakar**, referred supra, which are as follows:-

“13.3.Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.”

46. In the instant case Ex.P-6 raises a cloud over the claim of the plaintiff to title over that 4-A.



47. I hold that the relief claimed by the plaintiff seeking possession will have to fail since he had not sought the relief of declaration of title particularly when a cloud over his title had been raised not only by the first defendant but also by Ex.P-6 sale deed dated 15.12.2004 / Document No.2899 of 2004 registered in the Office of the Sub Registrar of Assurances, Periamet with specific reference to flat No. 4-A. This issue is therefore answered against the plaintiff.

Issue No.2:

48. This issue is whether vacant possession of flat 4-A had been handed over to C.S.V. Raman by M/s. Sukrit Constructions on 01.12.2003 in view of the Construction Agreement dated 11.11.2002.

49. It is pertinent to point out that neither C.S.V.Raman nor M/s. Sukrit Constructions are parties to the suit. The Joint Venture Agreement dated 11.11.2002 had not been produced as a document before the Court. The plaintiff had also not taken summons to examine any partner of M/s. Sukrit Constructions or C.S.V.Raman as witnesses during the course of trial.



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50. The first defendant had however produced Ex.D-2 during the course of trial. The said document very clearly shows that vacant possession of Flat 4A in the fourth floor had been delivered to C.S.V.Raman by M/s. Sukrit Constructions. It must also be pointed out that the son of the plaintiff is one of the partners of M/s. Sukrit Constructions. The plaintiff had not taken steps to atleast examine his son as a witness to depose about the veracity about this document.

51. The document had been admitted as evidence and no contra evidence had been produced to disprove the said document. The witness had also withstood cross examination on the said document. To a specific question, DW-1 stated that one of the partners of M/s. Sukrit Constructions handed over the flat 4-A to C.S.V.Raman. The said question and answer is as follows:-

“Q22: Who allotted Flat 4A to C.S.V.Raman?”

A: One of the partners of Ms.Sukrith Constructions handed over the flat 4A to C.S.V.Raman.”



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52. It is thus evident that C.S.V.Raman had been handed over possession of Flat 4-A in his capacity as owner. He had subsequently conveyed the same to the first defendant under Ex.P-6. The plaintiff had also not sought any relief to declare that Ex.P-6 is null and void and not binding on him.

53. A cumulative appreciation of the above facts would show that M/s. Sukrit Constructions had infact handed over vacant possession of flat 4-A to C.S.V.Raman and at that particular point of time, the plaintiff had not raised any objection. He had not raised any objection when the flat was conveyed to the first defendant. He had not raised any objection on and from the date when the first defendant came to be in possession.

54. In view of the fact that the Joint Venture Agreement need not be produced by the plaintiff and the plaintiff had also not taken any steps to issue summons to any of the partners of M/s. Sukrit Constructions and had also not taken any steps to issue summons to C.S.V. Raman to confront them with the veracity of Ex.D-2, I hold that vacant possession of Flat 4-A had



been handed over to C.S.V.Raman by M/s. Sukrit Constructions under

Ex.D2.

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55. This issue is answered against the plaintiff.

Issue No.3:

56. In view of the categorical findings returned with respect to Issue Nos. 1 and 2, I hold that the suit has to fail and is accordingly dismissed.

57. In the result,

(i) The suit is dismissed with costs against the first defendant and without costs against the second defendant.

Vsg

10.06.2025

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking Order



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List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – Mr. Arun Kapur

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is certified copy of release deed dated 01.04.2002;
2. Ex.P2 is the copy of the letter dated 05.11.2002;
3. Ex.P3 is the copy of the letter dated 05.11.2002;
4. Ex.P4 is the copy of the letter dated 11.11.2002;
5. Ex.P5 is the copy of letter dated 11.11.2002;
6. Ex.P6 is the certified copy of the sale deed dated 11.11.2002;
7. Ex.P7 is certified copy of the Settlement Deed dated 28.02.2003;
8. Ex.P8 is the certified copy of the sale deed dated 15.12.2004;
9. Ex.P9 is the certified copy of teh decree in O.S.No. 4411 of 2005 dated 11.04.2011;
10. Ex.P10 is the certified copy of Encumbrance Certificate for the period 01.01.2001 to 31.07.2009 (under Section 65B certificate is filed);
11. Ex.P11 is the office copy of the legal notice dated 28.01.2016 issued by the plaintiff counsel;



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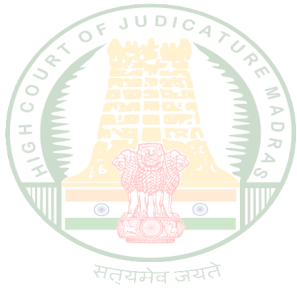
12. Ex.P12 is the served copy of the reply notice dated 08.02.2016;
13. Ex.P13 is the served copy of the reply notice dated 18.02.2016 issued by the second defendant;
14. Ex.P14 is the certified copy of judgment in C.S.No. 985 of 2004 dated 04.03.2016 on the file of Hon'ble High Court, Chennai.;
15. Ex.P15 is the certified copy of the Judgment in O.S.No. 4411 of 2005 dated 11.04.2011 on the file of III Assistant Judge, CCC;
16. Ex.P16 is the certified copy of the sale agreement dated 21.10.2002. (The learned counsel for the defendant objected to mark the document on the ground that the document is unregistered and not a original and signatory to the Sale Agreement is not party to the suit; and
17. Ex.P17 is the grounds of revision.

2. List of Witnesses Examined on the side of the Defendants:-

1. P.W.1 – Mr. Arun Kapur

3. List of Exhibits Marked on the side of the Defendants:-

1. Ex.D1 is the original sale deed dated 11.11.2002 executed by Mrs. Vinay Kumari, Mr.Arun Kapur, Mr.Atul Kapur to CSV Raman registered as Document No.2149 of 2002 on the file of Sub-Registrar Office, Periamet;



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2. Ex.D2 is the original letter dated 01.12.2003 of delivery of possession of flat issued by M/s. Sukrit Constructions in favour of CSV Raman; and
3. Ex.D3 is the original Sale Deed dated 15.12.2004 executed by Mr. CSV Raman to and in favour of Mr.Anand S Chabria registered as document No. 2899 of 2004.

10.06.2025

vsg



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C.V.KARTHIKEYAN, J.

Vsg

Pre-Delivery Judgment made in

C.S.No. 741 of 2016

10.06.2025