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C.S.No.768 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12 .03.2025

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

C.S.No.768 of 2016

Mr. Abhay Kumar Singhvi

.... Plaintiff

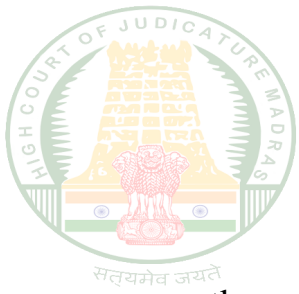
Vs

1. Mr.A.Mohammed Zackiullah
2. Mrs.Dure Naz
3. Mr.Shashi Gupta

... Respondents

Prayer: Complaint filed under Order VII, Rule 1 of CPC r/w.Order IV, Rule 1 of Original Side Rules praying for :

(a) directing the defendants 1 and 2 to perform the agreement of sale dated 02.09.2013 registered as Document No.1976/2013 and to do all such acts, deeds and things as may be necessary to convey and assure the properties more particularly set out in the schedule – C hereunder by a deed of conveyance in favour of the plaintiff by sale deeds, the cost of which shall be borne by the Plaintiff within a time fixed by this Court:



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(b) upon failure of the defendants 1 and 2 to execute the sale deed for the suit schedule-C property this Court may be pleased to execute the sale deed for the suit schedule – C property in favour of the plaintiff;

(c) declaring the Release Deed dated 07.04.2016 executed by 2nd defendant to and in favour of the 1st defendant, vide registered as document No.1218 of 2016 with S.R.O. Periamet as null and void and

(d) declaring the Mortgage Deed dated 07.04.2016 executed by the 1st defendant to and in favour of 3rd defendant, vide registered as document No.1219/2016 with S.R.O. Periamet as null and void;

(e) Permanent injunction restraining the defendants 1 to 3, their men, agents, servants or any one authorised by them from in any way dealing or encumbering or alienating or changing the nature of the suit schedule-C property;

(f) to pay the costs of the suit and (g) such further or other reliefs.

For Plaintiff : Mr.S.Ramesh Kumar

For Defendants : Mr.R.Jayaprakash for D1

D2- exparte

D3 – H. Prosper



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JUDGMENT

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The Plaintiff filed the above suit against the defendants seeking the above said reliefs.

2. The case of the plaintiff, as set out in the plaint is as follows;

(a) The defendants 1 and 2 are the owners of rear side entire first floor built up area measuring 2000 sq.ft., together with 783 sq.ft., of undivided land right and the entire second floor open terrace together with 783 sq.ft., totalling 1566 sq.ft. of undivided land in the land measuring one ground 2083 sq.ft. situate in the premises bearing Old D.No.177/1-2, Sydenhams Road, Periamet, Chennai which is mentioned as A schedule property in the suit.

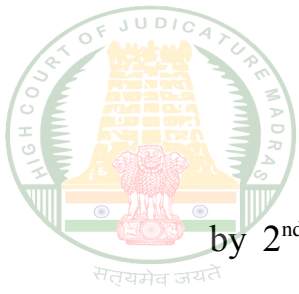
(b) The plaintiff has entered a sale agreement with the defendants 1 and 2 in respect of A schedule property for a total sale consideration of Rs.1,11,00,000/- and as an advance, the plaintiff paid Rs.20,00,000/- on 02.09.2013 to the 1st defendant. The sale agreement was registered as document No.1976 of 2013 before the Sub Registrar Office, Periamet with the 1st defendant. Since the defendants demanded higher amount, the sale deed was executed for a total sale consideration of Rs.1,68,99,000/- on 04.12.2013



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and as per the sale agreement, the defendants 1 and 2 sold the rear side entire first floor built up area measuring 1200 sq.ft. together with 783 sq.ft. of undivided land right and the entire second floor open terrace together with 783 sq.ft. totalling 1566 sq.ft. of undivided land right in the total land measuring one ground 2083 sq.ft. described as B schedule property. Though the entire sale consideration was paid for 2000 sq.ft of built up area to the defendants 1 and 2, at the time of typing of sale deed, the built up area was typed as 2000 sq.ft, but subsequently the same was altered as 1200 sq.ft. While being so, the 2nd defendant illegally released 1/6th undivided share of rear side First floor built up area measuring 800 sq.ft. together with 704.13 sq.ft. of undivided land right in the total 2083 sq.ft. mentioned as C schedule property in the suit in favour of the 1st defendant under Release Deed dated 07.04.2016 and on the same day, the 1st defendant mortgaged the said property in favour of 3rd defendant by a registered Mortgage Deed dated 07.04.2016. As per clause 4 of the sale agreement, it is agreed between the parties that the defendants shall hand over the vacant portion of the first floor rear side portion of the schedule mentioned property and after execution of registered sale agreement, the 1st and 2nd defendants handed over the entire A schedule property to the plaintiff. However, after execution of Release Deed



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by 2nd defendant in favour of 1st defendant, the 1st defendant became the owner of 800 sq.ft. (C schedule property). As per the sale agreement, the 1st defendant has to transfer the said 800 sq.ft. of superstructure in favour of the plaintiff herein. Therefore, the plaintiff issued legal notice on 29.06.2016, but the same was returned 'unclaimed'.

(c) When the plaintiff had paid the entire sale consideration for the A schedule property and there is no due of amount towards A schedule property, the defendants 1 and 2 only have committed breach of contract by releasing the C schedule property in favour of 2nd defendant and mortgaging the same in favour of 3rd defendant. Thus, according to plaintiff, the acts of the defendants 1 and 2 are highly illegal. Hence the plaintiff filed the present suit for specific performance praying to direct the defendants 1 and 2 to perform the agreement of sale dated 02.09.2013 by conveying the C schedule property measuring 800 sq.ft. in favour of plaintiff by a Deed of Conveyance and for such other reliefs as stated above.

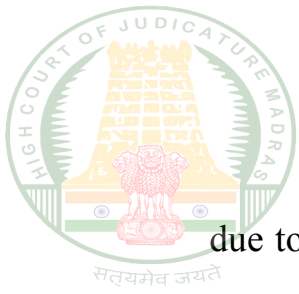
3. The case of the 1st Defendant, as set out, in the Written Statement, is as follows:-



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(i) The defendants 1 and 2 who are the absolute joint owners of the A schedule property, offered the same for a sale consideration of Rs.1,11,00,000/-, but during the relevant point of time, the 2nd defendant who was residing abroad, did not consent for the sale of her share in the A schedule property, since the sale consideration fixed is much lesser than the actual market price, therefore, the deal was re-negotiated and after the arrival of 2nd defendant, the sale consideration was revised and fixed at Rs.1,68,00,000/-. But as the plaintiff had paid only Rs.1,11,00,000/- and failed to pay the remaining sum of Rs.57,00,000/-, the sale deed was executed only in respect of 1200 sq.ft. of built up area in the 1st floor area and not for the entire first floor built up area of 2000 sq.ft. On the date of registration of sale deed, on negotiation, the plaintiff agreed to pay the balance sale consideration of Rs.57,00,000/- within short period of time and got the sale deed corrected through a deed of Rectification, for which the defendants have also agreed and signed. Thus, after mutual negotiations and on his own accord, the plaintiff has mentioned the extent as '1200 sq.ft. of built up area' in the sale deed and agreed to get the deed of rectification on payment of the balance sale consideration of Rs.57,00,000/-. Whereas the entire sale consideration of Rs.1,68,00,000/- was not paid and the balance sum of Rs.57,00,000/- is still



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due towards part of the sale consideration, the possession in respect of 1200 sq.ft. only was handed over to the plaintiff and the remaining 800 sq.ft. built up portion of the first floor was kept under the custody of the 1st defendant. The very fact that the plaintiff had only paid Rs.1,11,00,000/- towards part payment of the entire sale consideration of Rs.1,68,00,000/- and still he has to pay Rs.57,00,000/- towards balance sale consideration is also recorded in writing during the mediation held before this court and the same was also signed by the plaintiff and his counsel. As the plaintiff has purchased only 1200 sq.ft. of first floor, he has no right or authority to question the execution of the Release Deed and the mortgage transaction in respect of the property owned by 1st and 2nd defendants. Though the plaintiff orally agreed to make arrangements for payment of balance sale consideration, registration of rectification deed and to withdraw the legal notice, without doing so, he clandestinely filed the present suit with false and baseless allegations, therefore, the defendants should be compensated for the inordinate delay of more than 11 years in payment of balance sale consideration of Rs.57,00,000/- from the date of registration of sale deed till the date of realisation. The suit agreement was dated 02.09.2013 and the legal notice was issued on 29.06.2016, this alone shows the flaws and falsehood in the case of



the plaintiff. The plaintiff is not ready and willing to perform his part of the agreement to purchase the remaining portion, hence, he is not entitled for the discretionary relief of performance, hence the suit is liable to be dismissed with exemplary costs.

4. The case of the 3rd Defendant, as set out, in the Written Statement, is as follows:-

i).The 3rd defendant has filed the written statement stating that the 1st defendant represented himself as absolute owner of C schedule property, by acquiring the same by Release Deed dated 07.04.2016 and believing the words of the 1st defendant, he lent a huge amount as loan to him on executing a mortgage deed in respect of C schedule property and with other property. The burden of proof lies on the plaintiff to show that the agreement of sale was executed in respect of 2000 sq.ft. including C schedule property. The mortgage in respect of C schedule property for valuable consideration is legally enforceable and bonafide. The plaintiff, with ulterior motive to usurp the entire property has stated that he has paid the entire sale consideration for this 800 sq.ft. Therefore, the simple mortgage created by the 1st defendant in favour of the 3rd defendant is valid and binding upon the defendants and the



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plaintiff. The plaintiff has come with soil hands and has obtained an exparte order of injunction by fraudulent representation, hence he is not entitled to enjoy the benefit of injunction. There is no *prima facie* case in favour of plaintiff and the balance of convenience lies only in favour of the defendant.

5. Heard both sides and perused the materials available on record. Though service is complete on 2nd defendant, he has not appeared either in person or through counsel, hence, he was set exparte on 25.11.2024.

6. Upon hearing and perusing the pleadings, this Court on 06.10.2020 has framed the following issues for trial.

1. *Whether the plaintiff is entitled to seek a relief for specific performance as enumerated in the Sale Agreement dated 02.09.2013?*
2. *Whether the plaintiff is always ready and willing to perform his part of the contract?*
3. *Whether the plaintiff is entitled for declaration declaring that the Mortgage Deed dated 07.04.2016 as null and void?*
4. *To what other relief the plaintiff is entitled?.*



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7. On 06.04.2022, this Court has framed the following additional issue for consideration:

“Whether the plaintiff is entitled for declaring that the Release Deed dated 07.04.2006 as null and void?”

8. On the side of the Plaintiff, PW1 was examined and exhibits Ex.P.1 to Ex.P.24 were marked and on the side of the defendants, DW1 was examined and no exhibits were marked.

Issue Nos. 1,2 and 4:

9.The learned counsel for the plaintiff has submitted that the plaintiff and the 1st defendant entered into sale agreement vide Ex.P16, for 1566 sq.ft undivided share of land together with entire 1st floor built up area measuring about 2000 sq.ft and the entire 2nd floor open terrace, for total sale consideration of Rs.1,11,00,000/-. In the meanwhile, the sale consideration was sought for Rs.1,68,00,000/- for the said suit property due to demand of extra amount of Rs.58,00,000/- from the 2nd defendant herein. Accepting the same, the plaintiff had paid total sale consideration of Rs.1,68,00,000/-. Thereafter, the defendants 1 and 2 have jointly sold the said suit property, but



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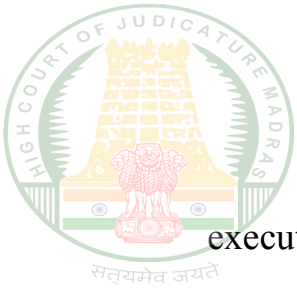
at the time of registering the sale deed, the 1st defendant had made correction

the sq.ft in the sale deed as 1200 sq.ft, leaving the remaining area 800 sq.ft.

Vide Ex.P17.

10. It has been further submitted that after selling the said suit property along with the share of the 2nd defendant, the 2nd defendant fraudulently without any right, illegally, executed Release Deed dated 07.04.2016 vide Ex.P18 in favour of her brother ie. 1st defendant herein. Subsequently, the 1st defendant had mortgaged the same to the tune of Rs.30 Lakh vide Ex.P19, without showing any details of payment for the purpose of the case. After the 2nd defendant executed the Ex.P17 selling her share, along with her brother, the 2nd defendant has no right to release her share in favour of the 1st defendant and the same has been mortgaged with the 3rd defendant for Rs.30 Laks while the plaintiff is the original owner to that share. Hence, the Ex.P18 and Ex.P19 are invalid documents to be treated as a null and void. Hence, he prays the releif as sought in the suit.

11.The learned counsel for the 1st defendant submitted that as the plaintiff had paid only Rs.1,11,00,000/- out of 1,68,00,000/-, the sale deed was



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executed only in respect of 1200 sq.ft. of built up area in the 1st floor area and not for the entire first floor built up area of 2000 sq.ft. On the date of registration of sale deed, on negotiation, the plaintiff agreed to pay the balance sale consideration of Rs.57,00,000/- within short period of time and however, failed to pay the remaining amount.

12. It has been further submitted that the balance sale consideration of Rs.57,00,000/- is also recorded in writing during the mediation held before this court and the same was also signed by the plaintiff and his counsel. As the plaintiff has purchased only 1200 sq.ft. of first floor, he has no right or authority to question the execution of the Release Deed and the mortgage transaction in respect of the property owned by 1st and 2nd defendants. While considering the suit agreement was dated 02.09.2013, the plaintiff has issued the legal notice on 29.06.2016. This alone shows the flaws and falsehood in the case of the plaintiff. The plaintiff is not ready and willing to perform his part of the agreement to purchase the remaining portion, hence, he is not entitled for the discretionary relief of performance, hence the suit is liable to be dismissed with exemplary costs.

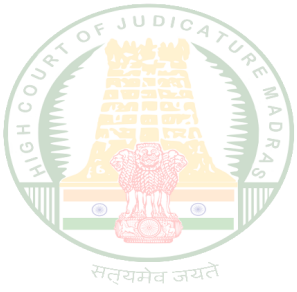


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13. The learned counsel for the 3rd defendant submitted that the 1st

defendant represented himself as absolute owner of C schedule property, by acquiring the same by Release Deed dated 07.04.2016 and believing the words of the 1st defendant, he lent a huge amount as loan to him on executing a mortgage deed in respect of C schedule property and with other property. Therefore, the simple mortgage created by the 1st defendant in favour of the 3rd defendant is valid and binding upon the defendants and the plaintiff. There is no *prima facie* case in favour of plaintiff and the balance of convenience lies only in favour of the defendants. Hence, the suit is liable to be dismissed.

14. On a perusal of the records, it is admitted fact that a sum of Rs.1,68,00,000/- has been finalized as the sale consideration for the suit schedule property to the extent of 2000 Sq.ft on the first floor together with 783 sq.ft of undivided land right and the entire 2nd floor open terrace together with 783 Sq.ft totally 1566 Sq.ft of undivided land right in the total land measuring about 1 ground 2083 Sq.ft despite the Sale Agreement Ex. P16 executed for a sale consideration of Rs.1,11,00,000/-. However, even though the amount of Rs.1,68,00,000/- has been effected in the Sale Deed-Ex.P17, it has been (corrected) mentioned only as 1200 Sq.ft. instead of 2000 Sq.ft. in the extent of the suit schedule property.



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15. Under such circumstances, the plaintiff contends that even though the plaintiff has paid the entire sale consideration of Rs.1,68,00,000/- as negotiated with the defendants 1 and 2 to the extent of 2000 Sq.ft on the 1st floor, the Ex.P17-Sale Deed, was not effected to the extent of 2000 Sq.ft and the same was executed only to the extent of 1200 Sq.ft on the 1st floor, leaving the extent of 800 Sq.ft. Per contra, 1st defendant contends that the plaintiff failed to pay the balance sale consideration of Rs.57,00,000/- as agreed by him, hence, the Ex.P17 was executed only to the extent of 1200 Sq.ft. retaining the right over 800 Sq.ft on the 1st floor. Hence, the plaintiff has no right to question the execution of Release Deed-Ex.P18 and Mortgage Deed-Ex.P19.

16. The only dispute in this case whether the defendants 1 and 2 have received the entire sale consideration of Rs.1,68,00,000/- or not as agreed with the plaintiff. Despite it is denied for having received the amount of balance sale consideration of Rs.57 Lakh on the side of the defendants, it is clandestinely mentioned the factual facts of the case in Ex.P17-Sale Deed itself in Para Nos.9 to 12 as follows:



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“WHEREAS the VENDORS decided to sell the schedule mentioned property to the purchaser for a total sale consideration of Rs.1,11,00,000/- and entered into the registered sale agreement, subsequently, the Vendor has demanded the higher amount and after negotiation, the Vendor agree to sell the schedule mentioned property for a total sale consideration of Rs.1,68,00,000/- (Rupees One crore Sixty eight lakhs only) free from all encumbrances and the PURCHASER agreed to purchase the same for a total sale consideration of Rs.1,68,00,000/- (Rupees One crore Sixty eight lakhs only).

“NOW THIS DEED OF SALE WITNESSTH that in pursuance of the aforesaid agreement and in consideration of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakhs only) paid by the PURCHASER to the VENDOR in the following manner:

1. A sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) by RTGS dated dated 02.09.2013, drawn on Union Bank of India, A.N. Street Branch to Kotak Mahndra Bank, Nungambakkam Branch, Chennai.



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2. A sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) by RTGS dated dated 10.10.2013, drawn on Union Bank of India, A.N. Street Branch to Kotak Mahndra Bank, Nungambakkam Branch, Chennai

3. A sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) by Demand Draft bearing No.691421, dated 03.12.2013, drawn on Union Bank of India, A.N. Street Branch to Kotak Mahndra Bank, Nungambakkam Branch, Chennai.

4. *A sum of Rs.1,68,000/- towards TDS vide Challan Sr. No.00749 dated 03.12.2013, at Central Bank of India, 0293-VIKBOM VIKHROLI Branch, Chennai.*

5. *A sum of Rs.96,32,000/- by cash totalling a sum of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakhs only).*

The VENDORS do hereby admit, acknowledge the receipt of the entire sale consideration of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakhs only) and release the PURCHASER from further payment, the VENDORS do hereby sell, grant, convey and assign



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WEB COPY 17. In view of the above, it is crystal clear that the Ex.P17-Sale Deed was executed after receiving the entire sale consideration of Rs.1,68,00,000/- . If there is any discrepancy in the sale consideration, the defendants ought to have denied to sign in the Sale Deed and corrected the discrepancy amount in the Sale deed. But, the defendants have signed the Sale Deed acknowledging the aforesaid amount as per terms mentioned therein. While being so, there is no question of non payment of Rs.57,00,000/- out of Rs.1,68,00,000/-. Hence, only the extent of the suit property has been corrected as 1200 Sq.ft instead of 2000 Sq.ft, it cannot be construed that the plaintiff failed to pay the balance sale consideration of Rs.57,00,000/-. This is out of Sale agreement entered between the plaintiff and the defendants mentioning the extent as 1200 Sq.ft instead of 2000 Sq.ft on the first floor while there is no dispute on the finalization of sale consideration for Rs.1,68,00,000/-. Further, the Defendants 1 and 2 have bounden duty to perform the contract of Sale Agreement as per the terms and conditions therein. Despite the defendant contends that the issue raised by the defendants have been admitted by the plaintiff in the Mediation centre. However, it cannot be taken into consideration. Further, the 2nd defendant has not entered appearance and failed to put forth her defence.



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WEB.COM This creates suspicious circumstances. Hence, the plaintiff is entitled to seek a relief for specific performance as enumerated in the Sale Agreement dated 02.09.2013. Accordingly Issue Nos.1 and 4 are answered.

18. On perusal of the deposition of D.W1, it is seen that in the event of failure on the side of the plaintiff for non-payment of balance sale consideration, in terms of the agreement, the defendants 1 and 2 ought to have sent notice seeking the balance sale consideration. However, the defendants 1 and 2 have not sent any notice in this regard to the plaintiff. Whereas, the plaintiff has issued notice Ex.P20 and no reply on the side of the defendants while the 3rd defendant has received the same and it has been unclaimed on other defendants. Further, since the plaintiff has proved that he has paid the entire amount of Rs.1,68,00,000/-, the question of ready and willingness of the plaintiff cannot be raised and the defendants have bounden duty to perform their part of contract. Accordingly, issue No.2 is answered.

Issue No. 3 and Additional Issue No.1

19. Since the Issue No.1 and 2 are answered in favour of the plaintiff, the Release Deed dated 07.04.2006 and Mortgage Deed dated 07.04.2006 shall stand become as null and void. Accordingly, Issue No.3 and additional



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issue No.1 are answered.

WEB COPY 20. In the result, the suit is decreed as prayed for with cost.

12.03.2025

Index:Yes/No

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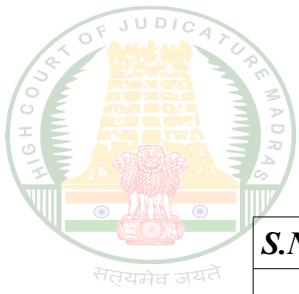
Witnesses examined on the side of the plaintiffs and defendants:-

P.W.1. - Mr. Mahendar Kumar

D.W.1: Mr.A. Mohammed Zackiullah

List of exhibits on the side of the plaintiff:

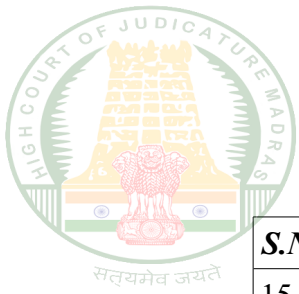
<i>S.No.</i>	<i>Date</i>	<i>Descriptions of Documents</i>	<i>Exhibits</i>
1.	05.07.2022	Authorisation letter	Ex.P.1
2	11.09.1995	Certified copy of the sale deed Doc. No. 188/1996 executed by A.Mohammed Niyamathulla to Esmail Pillai Salim.	Ex.P2
3.	11.09.1995	Certified copy of sale deed under Doc. No. 189 /	Ex.P.3



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S.No.	Date	Descriptions of Documents	Exhibits
		1996 executed by A.Mohammed Niyamathulla to Sheeja Salim	
4	10.08.2009	Certified copy of sale deed under Doc. No. 1394/ 2009 by Esmail Pillai Salim and Sheeja Salim to Anil Kumar, dated 10.08.2009.	Ex.P.4.
5	15.10.2012	Certified copy of Sale Deed under Doc. No. 1986/ 2012 by Anil Kumar to Abhay Kumar Singhvi, dated 15.10.2012.	Ex.P.5
6	09.11.1995	Certified copy of settlement deed in Doc. No. 2121/1995 executed by A. Mohammed Niyamathulla to Mohammed Zackiulla	Ex.P.6
7	21.02.2011	Certified copy of Sale Deed under Doc.No.362/2011 executed by Mohammed Zaciullah to K.Anil Kumar	Ex.P.7
8	15.10.2012	Certified copy of the sale deed under Doc.No.1987/2012 executed by Anil Kumar to Abhay Kumar Singhvi	Ex.P.8
9	27.08.1996	Certified copy of sale deed under in Doc.No.2080 of 1996 executed by A.Mohammed Niyamathulla to Tara Devi,	Ex.P.9
10	27.08.1996	Certified copy of sale deed in Doc.No.2081/1996 executed by A.Mohammed Niyamathulla to Tara Devi	Ex.P.10
11	16.04.1998	Certified copy of sale deed under Doc. No. 1064/1998 executed by A. Mohammed Niyamathulla to B.A.K.Syed Durabuthin and another	Ex.P.11
12	22.04.2013	Certified copy of sale deed under Doc.No.909/2013 executed by B.A.K.Syed Durabuthin and another to Abhay Kumar Singhvi,	Ex.P.12
13	16.04.1998	Certified copy of sale deed in Doc.No.1065 of 1998 executed by A.mohammed Niyamathulla to Muhammed Abdul Malick,	Ex.P.13
14	18.10.2013	Certified copy of sale deed under Doc.No.2333/2013 executed by Muhammed Abdul Malick to Abhay Kumar Singhvi	Ex.P.14



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S.No.	Date	Descriptions of Documents	Exhibits
15	09.08.2010	Certified copy of Release Deed under Doc.No.1620/2010 executed by Mallika Begum and others to Mohammed Zackiullah	Ex.P.15
16	02.09.2013	The Photocopy of sale agreement in Doc.No.1976/2013 executed between plaintiff and defendant 1 and 2 dated 02.09.2013 (compared with original)	Ex.P.16
17	04.12.2013	Certified copy of sale deed document No.2688/2013 executed by defendants 1 and 2 in favour of the plaintiff	Ex.P.17
18	07.04.2016	The certified copy of the Release Deed DocNo.1218/2016 executed by 2 nd defendant in favour of 1 st defendant	Ex.P.18
19	07.04.2016	The certified copy of the Mortgage Deed Doc.No.1219/2016 executed by 1 st defendant in favour of 3 rd defendant	Ex.P.19
20	29.06.2016	The office copy of the Legal Notice issued to the defendants with postal receipts	Ex.P.-20
21	02.07.2016	The original postal acknowledgment card for receipt of legal notice by the 3 rd defendant	Ex.P.-21
22	13.07.2016	The Original unclaimed return cover by the 1 st defendant	Ex.P.-22
23	14.07.2016	The original unclaimed return cover by the 2 nd defendant	Ex.P-23
24		Encumbrance Certificate	Ex.P.24

There is no exhibits marked on the side of the defendants.

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