

Sri M.R.Shivarudraiah vs Sri M.Somashekar on 9 July, 2015

IN THE COURT OF THE XII ADDL. CITY CIVIL AND
SESSIONS JUDGE (CCH.No.27), AT BANGALORE.

PRESENT:SRI.BHAIRAPPA SHIVALING NAIK, B.Com.,LL.B.(Spl),
XII ADDL.CITY CIVIL & SESSIONS JUDGE,
BANGALORE.

DATED: THIS THE 9TH DAY OF JULY 2015

O.S.No.4177/2009

Plaintiff:- Sri M.R.Shivarudraiah,
S/o.Sri Rudrappa,
41 years, residing
at No.198, I floor,
I stage, 6th 'A' Main road,
MIG A Sector,
Yelahanka New Town,
Bangalore -560 106.

(By Sri B.G.Ashok kumar,
Advocate)

-VS-

Defendant:- Sri M.Somashekar,
S/o.Sri Rudrappa,
54 years, residing at
No.198, Ground Floor,
I stage, 6th A Main Road,
MIG A Sector,

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O.S.No.4177/2009

Yelahanka New Town,
Bangalore 560 106.

(By GKM Associates-
Advocates)

Date of Institution of the suit	:	25/06/2009
Nature of the suit	:	Ejectment
Date of commencement of recording of the evidence	:	16/09/2010
Date on which the Judgment was		

pronounced	:	09/07/2015		
Total Duration	Years	Months	Days	
	: 06	00	14	

(BHAIRAPPA SHIVALING NAIK)
XII Addl. City Civil & Sessions Judge,
Bangalore
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O.S.No.4177/09

J U D G M E N T

This suit is filed by the plaintiff for recovery of rent, vacant possession and damages in respect of suit schedule property against the defendant.

2. The case of the plaintiff is that the plaintiff is the absolute owner in respect of the entire premises bearing No.198, 6th 'A' Main, I stage, MIG A Sector, Yelahanka New Town, Bangalore as described in the schedule annexed to the plaint. The plaintiff acquired the suit schedule property through the registered sale deed dated 3.10.2003. After acquiring the suit property has constructed a residential premises consisting of ground, 1st and 2nd floor. The basement floor is reserved for parking of the vehicles both for the tenants and the owner. The defendant being the brother of the plaintiff was approached the plaintiff to let out the suit schedule property for his residential use. The plaintiff considering the need of the defendant has agreed to let out the premises on monthly rental basis which is consisting of ground floor and half portion of the first floor comprising of one hall, four bed rooms, kitchen, bath room and toilets, as per the rental agreement dated 2.11.2004. As per the terms and conditions of the rental agreement dated 2.11.2004, the initial monthly rent was fixed at Rs.12,000/-. The duration of the rental agreement was for a period of eleven months from 1.11.2004. The defendant being a tenant was paid a sum of Rs.75,000/- as interest free refundable security deposit at the inception of the tenancy. The defendant further agreed that the rate of rent is to be increased by 10% on completion of every one year, in the event of tenancy is continued, accordingly the rate of rent per month from November 2008 is Rs.17,567/-.

3. The plaintiff has submitted that the defendant is a chronic defaulter in the matter of payment of rent is concerned. The defendant is due from November 2007 to till date in respect of the monthly rents. The premises in occupation of the defendant is required by the plaintiff to accommodate his family members. The plaintiff was demanding and requesting the defendant to quit, vacate and hand over the vacant possession of the premises to which the defendant is in occupation as a tenant. The demand and request made by the plaintiff did not yield any result, thereby the plaintiff left with no other alternative has caused legal notice by terminating the tenancy of the rental agreement dated 2.11.2004 with effect from 11.6.2009 and requested the defendant to hand over the vacant possession on 12.6.2009 as contemplated U/s.106 of Transfer of Property Act. The legal notice dated 28.5.2009 issued by the plaintiff under RPAD and under UCP was duly served on the defendant on 1.6.2009. The defendant did not choose to vacate and hand over the vacant possession of the

premises, hence, the plaintiff is constrained to file the suit for ejectment against the defendant by directing to quit, vacate and hand over the physical possession of the property under occupation by the defendant as per the rental agreement dated 2.11.2004 and also for damages from the date of suit till the actual delivery of the property under due enquiry.

4. In response to the suit summons, the defendant has appeared through his learned counsel and resisted the claim of the plaintiff by filing his written statement. Wherein the defendant has submitted that the suit is not maintainable and the same is liable to be dismissed with costs. Besides it is submitted that the plaintiff solely has not purchased the suit schedule property, the same is purchased from co-owners profits wherein the father of the plaintiff and defendant and the wife's of plaintiff and defendant have jointly entered into co-ownership business and purchasing the property bearing No.15, HIG A Sector, Yelahanka New town, Bangalore by way of absolute sale deed and put up floors of complex and let out for rent. The profit earned by co-owner business, the suit schedule property was purchased. At the time of purchase also the defendant availed loan from Vijaya Bank, Yelahanka branch and the suit schedule property was purchased. The defendant was co-obligant/co-guarantor. At no point of time defendant is a tenant under the plaintiff.

5. The defendant has admitted that he made an agreement dated 2.11.2004 and produced the same before the Vijaya Bank, Yelahanka branch to avail loan for the purpose of building the house the defendant stood as co-guarantor. The building construction was started in the year 2004 and inauguration was done in the year 2006. As stated by the plaintiff the defendant was a tenant under the plaintiff in the year 2004, how can the defendant become a tenant under the plaintiff without a house constructed in the year 2004. It establishes that the plaintiff has not come with clean hands.

6. The wife of the plaintiff has filed a suit against the wife of the defendant before the City Civil Court, which is pending. The father of the plaintiff and defendant have filed a suit for partition which is also pending for adjudication. There is a hot wind blowing among the members of the family. The main intention of the plaintiff is to torture the defendant by filing frivolous suit in order to cause mental tension to the defendant.

7. The defendant further pleaded that at no point of time he had agreed to be the tenant. The rental agreement was created with all the clauses which is required for the rental agreement purpose only for availing the loan. Originally, the suit schedule property was acquired through co-owners profits, which has been shown in the income tax. The defendant is not at all the tenant. It was only for the purpose of availing loan the rental agreement was created. Therefore, it is prayed to dismiss the suit with costs.

8. On the basis of the pleadings the following issues have been framed on 18.8.2010:-

ISSUES

- 1) Whether the plaintiff proves that the defendant is his tenant over the suit property on a monthly rent of Rs.12,000/-?

2) Whether the notice of termination is valid?

- 3) Whether the plaintiff is entitled for damages?
- 4) Whether the defendant proves that he is also the co-owner of the suit property?
- 5) What order or decree ?

9. The plaintiff in order to substantiate his claim has got examined himself as PW1 and 6 witnesses as PW.2 to P.W.7 and also adduced documentary evidence from Ex.P1 to Ex.P6.

Meanwhile, the defendant and two witnesses in support of his defence were got examined as D.W.1 to D.W.3 and got marked Ex.D1 to D128. I have heard the counsel for both the parties. Besides, both the counsel have submitted their written arguments/Notes.

10. My findings on the above said issues are as under:

Issue No.1: In the Affirmative Issue No.2: In the Affirmative Issue No.3: In the Affirmative Issue No.4: In the Negative Issue No.5; As per final order for the following:-

/REASONS/

11. Issues Nos.1 & 4 :- Since both the issues being interlinked with each other, in order to avoid repetition of discussions, are taken up together for consideration.

12. The plaintiff being the absolute owner of the suit schedule property has filed the suit for ejectment and damages against the defendant. The defendant has not only denied the exclusive ownership of the plaintiff and relationship of landlord and tenant, but also affirmed that he is also co-owner of the suit schedule property. The plaintiff is relying on oral evidence of P.W.1 to P.W.7 apart from the documentary evidence on record.

13. P.W.1 has reiterated the averments made in the plaint in the course of his examination-in-chief. It is evident from the cross-examination of P.W.1 that the defendant is the elder brother of the plaintiff. The plaintiff has given only one house on rent. Plaintiff is a businessman. The plaintiff is running xerox business and also a partner in hotel business in Sharavathi hotel. The plaintiff, defendant and their wives are the partners of the firm. The plaintiff purchased the suit property in the year 2003 out of his self earnings from his business and also availed loan from Vijaya bank, Yelahanka. Defendant is the guarantor for the said loan. The plaintiff commenced the construction of the building in the year 2003. The plaintiff had availed loan again for construction of the suit

property on 21.12.2004. At that time, the plaintiff was residing in Palace Guttahalli and the defendant was residing at Yelahanka in a rented house. The building plan was sanctioned in August 2004. There was no agreement between the plaintiff and contractor for construction of the building. The suit property consists of kitchen, living hall and three bedrooms and it is in ground floor and half portion of the first floor. The construction of the suit property was completed in 2006. The name of the plaintiff and defendant are shown to the suit property at the request of the defendant. As deposed by P.W.1 the plaintiff had started construction in the month of December 2003 before sanction of the plan. The plaintiff has purchased land with building and after demolishing the old building, new construction was made within the period of 2½ years. Earlier the plaintiff was residing in the house of the defendant at Palace Guttahalli. After the construction of the building the plaintiff shifted to the new house by vacating the earlier house and the defendant was residing in a rented house at Yelahanka. The plaintiff has occupied half of the 1st floor and the 2nd floor and the defendant has occupied ground floor and half of the 1st floor and basement is shared by them for parking cars. According to P.W.1 the plaintiff has not performed house warming ceremony. Even the plaintiff has denied the invitation card of house warming ceremony when confronted to him. Though the plaintiff has admitted the photo pertaining to his house, yet denied that the photograph pertains to house warming ceremony. The plaintiff has taken BWSSB connection in the month of December 2006 when he occupied the house. Whereas, the defendant had occupied the said portion in the month of November 2004. The plaintiff has not produced the order of assessment pertaining to the suit property. Even though P.W.1 has denied that the building has not been completed in the year 2004 and it had not been assessed to tax in the year 2004. P.W.1 has denied his signatures on the Articles of Agreement dated 09.04.2004, when confronted to him.

14. It is elicited from the mouth of P.W.1 during the course of his further cross-examination that admittedly his father Rudrappa filed O.S No.1209/2009 for partition and separate possession in respect of suit property and another property that is Rudreshwara Chambers. It is also admitted that the wife of the plaintiff Rathnamma filed separate suit in O.S No.3773/2009 for partition in respect of Rudreshwara Chambers, but P.W.1 does not remember whether the present suit is filed subsequent to filing of the said suits. P.W.1 has further admitted that his father has asserted in his plaint in O.S No.1209/2009 that he himself, plaintiff, his wife, defendant and his wife are co-owners of Rudreshwara Enterprises. The land of Rudreshwara Chambers bearing Site No.15 was purchased jointly in the name of his wife and wife of defendant and subsequently the building was constructed thereon. P.W.1 does not know that Rudreshwara Enterprises was assessed as co- owners by the income tax authority, but he is an individual assessee.

15. Nothing has been elicited from the cross-

examination of P.W.1 so far Income Tax Returns for the assessment year 1999-2000. The main source of income for Rudreshwara Chambers is rental. The plaintiff has not involved in a purchase of land and construction of Rudreshwara Chambers as his wife and wife of defendant were looking after the same along with defendant. Admittedly P.W.1 was running Xerox center in rented premises at Cunningham Road in a portion of 10X10 ft. since 1989 when the plaintiff was aged 21 years. The plaintiff, his brother and his other family members were cordial with each other till the litigation. The plaintiff was having income from Xerox center about 1.5 lakhs during the year 1989, which was

only the source of income during the period from 1989 to 1999 and thereafter the plaintiff became partner of the Sharavathi Hotel as shown in his income tax returns. P.W.1 cannot say whether the Account Extract issued by the Vijaya Bank, Yelahanka branch is pertaining to A/C No.146 of Rudreshwara Chambers. P.W.1 has admitted Income Tax assessment for the year 2007-2008 pertaining to Hotel Sharavathi when confronted to him and got it marked as Ex.D2. It is also admitted that a sum of Rs.7, 62,000/- was availed from the bank and this defendant stood as a guarantor for the said loan and was arranged for the said loan. The defendant stood as guarantor for further loan of Rs.23, 00,000/- as admitted by P.W.1. The brother of the plaintiff was also supervising the building construction work. The plaintiff has no accounts pertaining to building construction. Admittedly the EMIs of loan towards the land and construction was Rs.16,320/- and Rs.22,000/- respectively. The payment towards the EMIs was made through plaintiff's SB account but not from the account of Rudreshwara Chambers to his account and then to the Bank. The plaintiff could not say whether the Sharavathi Hotel has paid amounts towards purchase of building materials without verifying the accounts. P.W.1 does not remember whether he has shown the rental proceeds in his income returns. P.W.1 has not gone through the order passed by the Chief Commissioner of Income Tax dated.24.02.2005.

16. It is further revealed from the mouth of P.W.1 that earlier the defendant and his wife were working in Ashoka Hotel and he was staying in the house of defendant as tenant on monthly rent of Rs.4,000/- and subsequently he was paying rent of Rs.6,000/-, but he has no documentary evidence to show the payment of rent. As deposed by P.W.1 his wife was running STD Booth and she is an income tax assessee. P.W.1 has totally denied that the defendant was given amount of Rs.1,90,500/- to him and the plaintiff has got credited that amount in his bank account and issued cheque for the said amount to the vendor of the land. It is also denied that every day Sharavathi hotel used to make payment directly to the bank towards the loan account and he has not produced the SB account extract as the entries made therein go against him and the income of plaintiff, defendant and joint firm were utilized for purchase of land and construction of the building over it. It is also denied that the defendant is never tenant under the plaintiff and the defendant has not paid either rent or advance to the plaintiff. The defendant and his wife were staying in a rented house at Yelahanka to look after Sharavathi Hotel and he was staying in the defendant's house at Guttahalli It is also denied that neither his wife nor his son had capacity to purchase Rudreshwara Chambers and the schedule property but to evict the defendant from the premises a false suit is filed.

17. P.W.2 M.R.Rajashekar is none other than the brother of the plaintiff and defendant who has supported the case of the plaintiff as against the defendant. According to P.W.2, there was partition among the members of the joint family and their joint family properties were divided among them through Panchayat parikattu dated.2.8.1995. Accordingly 'C' schedule property measuring 1 Acre out of 6 Acres in land Sy.No.29 of Bisavanahalli village was allotted to him. The said panchayath parikattu is executed among four brothers and their father. The suit schedule property is self acquired property of plaintiff. The plaintiff purchased the suit schedule property in the year 2003. The plaintiff commenced the construction of the house in the year 2003 and he was personally supervising the construction work till the completion of the building. The construction was completed in the month of October 2004. The defendant is in occupation of the portion of building as per Rent Agreement from November 2004. The construction of the entire building was completed

in the month of October/November 2006. Thereafter the plaintiff being the owner was started to reside in the half portion of 1st floor and 2nd floor. The defendant occupied the ground floor and portion of 1st floor immediately after its construction in the month of November 2004. At that time, the further construction of the 2nd floor was still in progress.

18. P.W.2 has produced panchayath parikattu from his custody and same is got marked as Ex.P6. It is evident from the cross-examination of P.W.2 that he is resident of Marasandra Village. The partition took place about 18 to 20 years back in respect of the properties shown in schedule of Ex.P6. All the ancestral properties of their family are included in Ex.P.6- Panchayath Parikattu. P.W. 2 has admitted on confrontation of Agreement of sale in respect of 5 Acres of land and it is got marked as Ex.D3. The said Agreement dated.18.2.1995 bears the signatures of P.W.2 marked as Ex.D3(a) but P.W. 2 has shown his ignorance about the GPA executed in favour of Mahadeva Gowda. P.W.2 has sold 2 acres of land in favour of Chabria resident of Marasandra village but he does not know that on 06.12.1995 One acre 17 guntas of land was sold to one Manjula. As deposed by P.W. 2, he was still minor as on 06.12.1995. P.W.2 had worked in Sharavathi Hotel, but he does not remember the exact period. There is no document to that effect. The house warming ceremony was not performed, but pooja was performed in the year 2006. The mother of P.W. 2 died in the rented house occupied by the defendant. But it is denied that the partition as per Ex.P.6 is only binding only on P.W.2 to the extent of one acre.

19. P.W.3 B.L.Mahesh and P.W.4 B.L.Mylaraswamy are brother-in-laws of plaintiff. Both the witnesses have deposed that the plaintiff is the absolute owner of the suit schedule property having acquired the same under the Sale Deed from one V.P.Sridhara Murthy under the Sale Deed dated.310.2003. The ground floor and half of the 1st floor was rented out to the defendant under Rental Agreement dated.2.11.2004. P.Ws.3 and 4 are the witnesses to the said Agreement marked as Ex.P2. The defendant was earlier residing in a rented house in Yelahanka new Town. Immediately after the Agreement, he occupied the schedule premises as a tenant. The entire construction activities were completed during the October/November 2006. Thereafter the half of the 1st floor and 2nd floor was occupied by the plaintiff. It is an admitted fact that P.W.3 also is brother-in-law of plaintiff. He has no documents to show that he had worked in Sharavathi Hotel as a relative. But nothing worth has been elicited so for the defence of the defendant is concerned in the course of cross- examination of either P.W.2 or P.W.4. P.W. 4 has identified the signature of both the plaintiff and defendant as well as witnesses marked as Ex.P2(a) to Ex.P2(c). P.Ws.3 and 4 have no idea about the ancestral property of plaintiff and defendants and the funds accumulated by the plaintiff for the construction of the house in dispute. P.W.4 signed on rental Agreement as a witness after signing other witnesses. Moreover, the defendant has not disputed the execution of Rent Agreement at Ex.P2.

20. P.W.5- K.S.Jayashankar Kumar Sharma was said to have been running business in the name and style of M/s. Computer Needs in the same premises where the plaintiff is running his Xerox center at No.31, Ranka Chambers, Cunningham Road, Bengaluru.

21. P.W.6 Lakshman.K. is also neighbour to the Xerox center of the plaintiff. Both the witnesses have deposed that the defendant was also working as Office Asst. with Zenith Computer Ltd., No.30,

Leemans Complex, Cunningham Road, Bengaluru. Prior to it, the defendant was working at Hotel Ashoka, Kumara Krupa Road, Bengaluru. The plaintiff started his business with the financial assistance from bank to purchase the Xerox machine. The plaintiff and defendants started their hotel at No.15, HIG 'A' sector, Yelahanka New Town, Bengaluru in the name and style of Hotel Sharavathi on the Partnership basis in the year 1997. The plaintiff has constructed the suit building and let out ground floor and half of the 1st floor premises on a rental basis to the defendant in the year 2004 and remaining half portion of 1st floor and entire 2nd floor was retained by the plaintiff for his own occupation. There are differences arose between the plaintiff and defendants and they closed the Partnership business during November 2007 and it was given to some other person on rental basis. The defendant is in occupation of the schedule premises as a tenant and not as an owner. It is elicited from the cross-examination of P.W.6 that he has established Graphic International Business in the year 1989. He knows the defendant since 1992. The Sharavathi Hotel was started in the year 1997. There were four partners namely, Mr. & Mrs. Shiva Rurdaiah i.e., plaintiff and his wife, defendant and his wife. Sharavathi hotel business came to an end in the year 2007. Admittedly, P.W.6 has no personal knowledge regarding loan availed by the plaintiff for running the Xerox business and purchase of land for Sharavathi Hotel as well as regarding ancestral property of plaintiff and the defendant. According to P.W.6, the suit property consists of basement, ground, 1st and 2nd floors. The basic difference between the plaintiff and the defendant is non-payment of rent. P.W.6 personally knows that the defendant is tenant under the plaintiff in respect of the suit property as claimed in this suit.

22. On the other hand, P.W.7 K.Balaji has also supported the version of P.W.6 in the course of his examination-in-chief. Besides, it is deposed that the plaintiff and defendant started their business at No.15, HIG 'A' Sector, Yelahanaka New Town, Bengaluru under the name and style 'Hotel Sharavathi' on Partnership basis in the year 1997. The plaintiff has constructed the residential house No.198, 'Rajathadri' MIG, 'A' sector, 6th Main Road, Yelahanka New Ton, Bengaluru in which ground floor and half of the 1st floor premises was let out on a rental basis to the defendant in the year 2004 and rest of half portion of 1st floor and entire 2nd floor was retained by the plaintiff for his own occupation. Nothing worth has been elicited from the cross-examination of P.W.6 so as to discard his examination-in-chief. Infact, the defendant has not at all transversed the material facts touching the real dispute in controversy between the parties so as to falsify the oral evidence of P.W.7.

23. On the other hand, D.W.1 has reproduced the contents of written statement of the defendant in the course of his examination-in-chief by way of an affidavit. It is evident form the cross-examination of D.W.1 that, plaintiff and defendant are originally residents of Marasandra village of Doddaballapura Taluk. The father of the parties by name Rudrappa is still alive. D.W.1 has admitted his signature on the Rent Agreement at Ex.P2 got marked as Ex.P2(a). Though D.W.1 has denied his father is living with him, yet voluntarily stated that they are living in the same house. It is also admitted that both sons of defendant are residing in the ground floor and 1st floor of the suit property as claimed by the plaintiff in the suit. The defendant and his wife worked together in Hotel Ashoka, ITDC Group from 1976 to 1988. Defendant and his wife discontinued their work in the said hotel for the reasons best known to them. The defendant served in Zenith Computers Private Limited as Attender till 1995. Neither the defendant nor his wife is an income tax assessee. The wife

of the defendant also gave resignation in the year 1996. The father of the defendant is having four sons and two daughters namely T.Rudrappa- defendant, M.R.Chandrashekar, M.R.Shivarudraiah, Chennarudramma and Rajeshwari, all are married. D.W.1 has admitted attestation of Panchayath parikath at Ex.P.6 and his signature is marked as Ex.P.6(c) and the signature of his elder brother T.Rudrappa is marked as Ex.P.6(d). There is a thumb impression of his father on Ex.P.6. It is also admitted that now said T.Rudrappa, Chandrashekar and their sisters are not in joint family. Now the plaintiff is also not in joint family. Immediately after coming over to Bangalore, the defendant was residing in a rented house at Palace Guttahalli area in house No.256 during the period from 1981 to 1992 on monthly rent of Rs.130/- initially and it was enhanced to Rs.180/- by the time of vacating the house. It is also admitted that D.W.1 has purchased corner site in the name of his wife and wife of the plaintiff at HIG Sector, Yelahanka New Town, and Bangalore. The offices of Tahashildar, Bangalore North Taluk and Office of Sub-registrar of Yelahanka are located in that building on rent till today and wife of plaintiff and his wife jointly executed Rental agreement in favour of the Government. It is admitted that both the Government offices have been paying the rent separately to them equally through cheques from 2007 onwards. Further the space of terrace was let on rent for erection of Telecom Tower to Spice Tele communication. It is also clarified from the mouth of D.W.1 that his father sold last property in the month of December 1995 and thereafter no ancestral property was left.

24. It is evident from further cross-examination of D.W.1 that, the said Rudreshwara Enterprises is not registered with the concerned authorities of Firms Registration. As replied by D.W.1 to a specific question, Rudreshwara Enterprises is Co- owners' Samsthe but not a Partnership Firm. Initially No.15, HIG 'A' Sector, Yelahanka Upnagar consisting of 5 floors M.S. Building was under the said enterprises but no document is produced to that effect. It is also admitted that the Sale deed is executed in respect of the said property in the name of B.L.Rathnamma and Geetha Somashekar and their names are still appearing in the BBMP khatha records. The tenants of the shopping complexes in that building got entered into rent agreement with the said two persons. The Sub-registrar office never drawn cheque in favour of Rudreshwara Enterprises towards payment of rent. There is no record to show that the defendant, his father, his wife, plaintiff and his wife together authorized wives of plaintiff and defendant to open the bank account in the name of Rudreshwara Enterprises. The account of Rudreshwara Enterprises is in Vijaya Bank, Yelahanka Upnagar Branch bearing No.CA146 is in the name of said Geetha Somashekhar and B.L.Rathnamma . Since December 2007 the said Current account was in-operative account. The plaintiff, defendant and their wives are running Partnership business under the name and style 'Sharavathi hotel' in the basement of multistoreyed building and the said Sharavathi hotel came to be closed in the month of November 2007. The said Geetha Somashekar and B.L.Rathnamma had only executed Rent Agreement in favour of one Annappa for running the hotel in the basement and that tenant is paying rent equally to them through cheque. Besides, the said Geetha Somashekar and B.L.Rathnamma executed Rent Agreement in respect of the said Hotel premises to one Radhakrishna Adiga who is paying the rent to them through cheque.

25. The plaintiff and defendant were cordial till November 2007. According to D.W.1, there is an agreement dated 15.05.1996 to show that there was Co- ownership deed. There was no obstacle to purchase suit site No.198 jointly, but it was purchased exclusively in the name of plaintiff.

Admittedly, the plaintiff borrowed loan from Vijaya Bank, Yelahanka Branch and it was cleared in the year 2007. Further, the plaintiff borrowed loan for construction of building on the suit site, but the defendant does not know whether the said loan account is closed or not and that loan amount has been paid by plaintiff and still balance remains. There is no record in writing to show that the plaintiff demanded money either from Sharavathi hotel or from Rudreshwara Enterprises for the purpose of construction of the building on the site. As deposed by D.W.1, they have not got registered Declaration among five members declaring that the suit property is belonging to Co-owners.

26. D.W.1 has further admitted that there is no reference of house No.198 in notice at Ex.D.2 issued by Income tax Department. Ex.D.3 Agreement of Sale is also not pertaining to house No.198. Ex.P.6 and Ex.P.7 are in the name of plaintiff and in respect of the suit property. The current A/c. No.146 is in the name of Rudreshwara Enterprises. The defendant was not operating current account No.146. The plaintiff was also one of the partners of Hotel Sharavathi. It is established from the reply of D.W.1 to a specific question that Ex.D.11 to Ex.D.14 bills are issued in the name of Hotel Sharavathi. But according to D.W.1, those materials were used for house No.198. The materials mentioned in Ex.D.23, 25, 28 and 30 are purchased in the name of plaintiff for house No.198. Ex.D.45 the balance sheet does not disclose house number 198 as that house was not completed by that time. As deposed by D.W.1, there is record to show that the property No.15 is joint family property and belonging to Co-owners, but no documentary evidence is placed on record to that effect. It is further admitted that Ex.D.48 is pertaining to current account No.250007 of Sharavathi hotel. The defendant and plaintiff were jointly operating that current account. The plaintiff is also having equal right to withdraw amount from that current account, but with consent and whatever amount paid through the account of Sharavathi Hotel was used for house No.198, but with consent. Infact, D.W.1 does not know whether the amount was debited to the profit and loss account of Sharavathi hotel. It is also admitted that some amount of installment of loan pertaining to house No.198 were transferred from CA No.449 to SB Account of plaintiff. The bank was collecting the installment amount from S/B account of the plaintiff and crediting to the loan account. As per Ex.D.51 and Ex.D.52, the loan account and S/B. account is standing in the names of plaintiff and his wife jointly. The loan Application Form at Ex.D.53 and Ex.D.55 are standing in the names of plaintiff and his wife only and the defendant has executed Letter of Guarantee as per Ex.D.54 and Ex.D.56 as Guarantor only. D.W.1 is said to have written the letter to Vijaya bank informing that he is also Co-owner of the schedule property but no document in that regard is produced. D.W.1 is said to have come to know about the original Deed of Co-ownership business during the raid by Income tax authorities in the year 1997 but he did not issue notice to the plaintiff to produce the said original deed even after receipt of notice of termination of tenancy. They have not recited about contribution of sale consideration by five persons in the Sale deed executed between B.L.Rathnamma and Geetha Somashekar. D.W.1 had not issued legal notice calling upon the plaintiff to return the rental agreement as it was executed nominally as alleged by him. They have not availed loan for M/s. Rudreshwara Enterprises from the bank but M/s. Rudreshwara Enterprises has stood as Guarantor for the loan availed by Hotel Sharavathi in Vijaya bank A/c. No.CA177, CA449 and CCM250007. They entered into registered Agreement with Spice Telecom for installing Mobile Tower over Terrace of No.15, HIG 'A' Sector, Yelahanka New Town, Bengaluru. There is no impediment to produce that document. Even then, no such documentary evidence is placed on record by the

defendant.

27. D.W.2 Smt. B.C.Jyohti is said to be an Accountant by profession who has deposed that she was working as Accountant in Hotel Sharavathi during the period from 03.07.1997 to 21.11.2007 and looking after the personal accounts of co-ownership firm namely, M/s. Rudreshwara Enterprises. Besides, she was also looking after the personal accounts of all the co-owners of M/s. Rudreshwara Enterprises. Hotel Sharavathi was a Partnership firm. The plaintiff, defendant and their wives were the partners of the said Hotel apart from the father of Mr.Somashekhar and Mr.Shivaruddraiah, their father

- Rudrappa were the co-owners. She was working as Accountant of Hotel Sharavathi. D.W.2 is got examined by defendant to prove Ex.D6 to Ex.D41 and Ex.D122 i.e., the receipts, vouchers and invoices pertaining to M/s.Hotel Sharavathi and M/s. Rudreshwara Enterprises and payments made to plaintiff from out of the account of M/s. Rudreshwara Enterprises towards the purchase of site and construction, loan taken by the plaintiff. Though the money is transferred to the S.B Account of the plaintiff every month, the plaintiff used to remind her that sufficient fund should be kept available to be transferred to his S/B Account so that he can meet with the instalment payments due to Vijaya Bank towards purchase of site and loan created for construction in the suit schedule property. D.W.2 was said to have participated in the Gruhapravesham performed in the suit schedule property in the month of November 2006 along with her family. According to D.W.2, Ex.D6 to Ex.D41 and Ex.D122 are in her handwriting. Whereas it is elicited from the cross-examination of D.W.2 that she has not produced document to show that she was working as Accountant of Hotel Sharavathi during the period from 3.7.1997 to 21.11.2007 and drawing salary. D.W.2 came to know about the partners of M/s. Rudreshwara Enterprises only through audit. Admittedly, D.W.2 was not preparing the balance sheet of M/s. Rudreshwara Enterprises and Hotel Sharavathi. One Y.A.Amarnath Reddy was Auditor of M/s. Rudreshwara Enterprises and Hotel Sharavathi but she was maintaining attendance register, cash vouchers, depositing cash in banks and maintaining details of payments made through cheque. But she had not been maintaining cash book, day book, personal ledgers, sundry creditors and sundry debtors in both the firms. The said Y.A.Amarnath Reddy was maintaining those accounts but that witness is not got examined. D.W.2 does not know whether the Partnership Deeds and other Deeds were with the said Auditor. However it is admitted that they were only Co-owners i.e., plaintiff, defendant and wives of plaintiff and defendant and except these Co- partners, nobody is having responsibility of Hotel Sharavathi. The plaintiff and defendant were only operating bank account of Hotel Sharavathi which was holding current account and OD account. D.W.2 further admitted that the defendant was only looking after the administration of Hotel Sharavathi throughout the day. D.W. 2 has shown her ignorance about the plaintiff having a separate business and activities and running Rudreshwara Xerox Center in Cunningham Road. M/s. Rudreshwara Enterprises was collecting rents of commercial building i.e., No.15, HIG 'A' Sector, Yelahanka New Town. M/s. Rudreshwara Enterprises is having one bank account in Vijaya Bank, Yelahanka Branch in the joint name of B.L.Rathnamma and Geetha Somashekar. According to D.W.2, the said B.L.Rathnamma and Geetha Somashekar were not receiving rents from Hotel Sharavathi but other tenants in that building were paying rent to them. The cheques issued towards payment of rents were encashed to the account of B.L.Rathnamma and Geetha Somashekar and all the transactions were at their instances. D.W.2 has not seen any

documents to show that they were Co-owners. Infact, D.W.2 has no knowledge about the personal transactions of plaintiff and defendant. It is also admitted that Ex.D.6 to Ex.D.41 and Ex.D.122 do not bear the signature of plaintiff for having approved such payments but those payments are approved by only defendant.

28. D.W.3 - T.K.Shivaprakash is said to be a Civil Engineer and Contractor by profession who has deposed that he knew about the civil contract construction work. According to D.W.3, plaintiff and defendant were giving him instructions with regard to construction and they were making payment to him through cash and cheque. The payments were coming from plaintiff and defendant in the office situated at Sharavathi hotel owned by them in the form of cash, self cheques, account payee cheques and also personal cheques in his name. D.W.3 was said to have entered into Articles of Agreement with the plaintiff on 9.4.2004 signed by both plaintiff and defendant as owners and witness respectively. D.W.3 issued bills for the contract work executed by him in his firm's letter-head and also issued payment receipts to plaintiff in his firm's receipt book. The main structure for the building was completed during December 2005. D.W.3 has identified his signature on Ex.D4 marked as Ex.D4(a) and also identified the signatures of plaintiff and defendant marked as Ex.D4(b & c). It is revealed from the cross-examination of D.W.3 that he has not got registered Shivaprakash and Co., with any authority. He used to confirm Ownership of land/site before starting construction work. He had confirmed that the plaintiff is the owner of suit schedule property. The suit building is consisting of basement, ground, first and second floor and there are five slabs. Ex.D.4 is printed format maintained by him. They have not made any endorsement on Ex.D.4 for having written by hand. Ex.D.4 does not disclose the name of defendant as owner. But, at the time of execution Ex.D.4 defendant and his friend were also present. D.W.3 has denied that, the construction work was started much prior to execution Ex.D.4. One Nandish Malika was Architect for the suit building who had handed over all the structural works and structural preparation works in the month of October 2003. Infact, D.W.3 is uncertain about this fact. A civil contractor need not issue completion certificate. As such, he has not issued any such certificate. D.W.3 has not produced accounts or vouchers for having received payment from both plaintiff and defendant as deposed by him. However D.W.3 has denied that he had not undertaken to complete construction work and the plaintiff has alone completed the construction of the building with labourers.

29. The plaintiff has exhibited certified copy of the Deed of Absolute Sale dated.03.10.2003 at Ex.P1. Accordingly, the plaintiff has purchased the site bearing No.198, khatha No.1098/198 issued by the Yelahanka City Municipal Council, Bengaluru-64 of 1st stage/phase, Yelahanka New Town, Bengaluru measuring East to West:70 ft. and North to South: 45 ft. along with two square RCC roofed house building thereon of Red-Oxide flooring, doors and windows of jungle wood with all civic amenities and bounded by: East Road, West by Site No.171, North by Site No.199 and South by site No.197 for consideration of Rs.9,52,500/- from one V.P.Sridhara Murthy. The execution of the said Sale Deed in respect of site is not in dispute.

30. Ex.P2 is unregistered Rental Agreement dated.2.11.2004 executed between the plaintiff and defendant as landlord and tenant in respect of schedule property i.e., piece and parcel of independent residential house bearing No.198, in ground floor, situated at 6th 'A' Main, 1st stage, MIG., 'A' Sector, Yelahanka New Town, Bengaluru -560064 comprising of one hall, four bedrooms,

one kitchen, four bathrooms and two toilets with sump and over-head tank in the schedule premises. There is no reference of half portion of 1st floor in the schedule of the Rental Agreement. As per the recitals in the Rental Agreement, the plaintiff is the sole and absolute owner of the schedule property. The plaintiff for want of liquid funds has decided to let out the schedule premises to the tenant i.e., his elder brother on monthly rental of Rs.12,000/-. Further the defendant has paid a sum of Rs.75,000/- by way of cash as security deposit/advances. The due execution and attestation of Ex.P2 has been proved not only through P.Ws.2 and 3 the attesting witnesses, but also in view of admission of defendant. There is no recitals in the Rental Agreement to the effect that the said Rental Agreement is a formal Agreement executed for the purpose of availing loan from the bank as pleaded by the defendant.

31. The plaintiff got issued legal notice dated.28.05.2009 as per Ex.P3 to the defendant under Certificate of Posting as well as RPAD and that notice was duly served upon the defendant as it is evident from Ex.P4 and Ex.P5. The plaintiff through the said legal notice has not only brought to the notice of the defendant that the plaintiff is the absolute owner in respect of the entire premises bearing No.198, 6th 'A' Main, 1st stage, MIG 'A' Sector, Yelahanka New Town, Bengaluru, but also terminated the tenancy of the defendant in respect of the residential house in the ground floor of the premises bearing No.198, 6th 'A' Main, 1st stage, MIG 'A' Sector, Yelahanka New Town, Bengaluru, consisting of one hall, bedrooms, toilets and kitchen with all required fitting and fixtures and entire building within the boundaries as described in the schedule to the notice. Due to default on the part of the defendant in the matter of payment of monthly rents since November 2007 and also demanded arrears of rent as per the terms of Rental Agreement dated.2.11.2004 and also demanded the damages at the rate of Rs.3000/- per day after the date of expiry of date of termination of tenancy till the handing over of vacant possession of the schedule premises to the plaintiff.

32. Ex.P6 - Panchayat Parikath/Partition Deed dated.02.08.1995 as exhibited by P.W.2 discloses that, there was partition taken place in respect of land Sy.No.29 measuring 6 Acres situated at Bisuvanahalli, Doddaballapura Taluk, among the sons of Rudrappa i.e., T.Rudrappa, defendant, P.W.2 and the plaintiff earlier. Except P.W.2 other brothers were taken their share in the schedule property described as schedule 'A', 'B' and 'D' earlier and through Ex.P6 schedule 'C' property to the extent of 1 Acre out of 6 Acres in Sy.No.39 was allotted to the share of P.W.2. Ex.P6 has been signed by not only the said four brothers, but also their father put his thump impression in the presence of witnesses as reflected at the foot of the panchayath partikath. The defendant is not disputing the execution and attestation of Ex.P6 but the defendant is asserting that the said document was executed only in respect of the property allotted to the share of P.W.2.

33. On the other hand, the defendant has been relying on sale Agreement dated.18.2.1995 at Ex.D3 executed by the parents and brothers including the plaintiff and defendant herein in favour of Krishnamurthy and R.Mahadeva Gowda sons of R.Ramachanadrappa, thereby agreed to sell the land bearing Sy.No.29 to an extent of 6 Acres situated at Bisuvanahalli village as described in the schedule of that Agreement about 5½ months prior to execution of palupattu at Ex.P6. Except the palupatti and Agreement of sale, nothing is placed on record to show that the said land bearing Sy.No.29 is still available for partition among the members of Hindu Joint Family of Rudrappa s/o. Chikka Rudrappa so as to take into consideration.

34. Ex.D4 Articles of Agreement dated. 9.4.2004 was executed between the plaintiff and M/s. Shivaprakash and Co., i.e., D.W.3 herein. Accordingly the plaintiff being the owner was entered into Agreement with the said contract for construction of his residential building i.e., the suit property subject to terms and conditions as recited therein. As per general conditions, the contractor agreed to complete his part of the works in all respect within 30 months from the date of commencement of work i.e., within 10.10.2006. The said Articles of Agreement is signed by not only the plaintiff and the said contractor i.e., D.W.3 as parties to the Agreement, but also attested by the defendant and another as witnesses. The plaintiff has denied not only the execution of Articles of Agreement as per Ex.D4, but also contended that he never entered into contract with D.W.3 for construction of suit building. As deposed by P.W. 1, he personally constructed the entire building through the labourers.

35. The certified copy of plaint, written statement of the 1st defendant and defendants 2 and 4 in O.S.No.1209/2008 at Ex.D5 go to show that father of the plaintiff and defendant filed a suit in O.S.No.1209/2008 against the plaintiff, defendant and their wives as a member of Hindu Undivided Family for partition and separate possession as the plaintiff and defendants are co-owners of the suit schedule 'A' & 'B' properties. The suit schedule properties were purchased by the plaintiffs and defendants from out of the source of the Hindu Undivided Family funds. Though the Sale Deed got registered in the name of 1st defendant in respect of the suit schedule 'B' property, yet the 1st defendant has no individual right to create any encumbrances without the knowledge and consent of the plaintiff and other co-owners. The plaintiff has prayed to effect partition of the schedule properties by metes and bound and put the plaintiff of his 1/5th share in the schedule properties. The suit schedule 'B' property in that suit is the subject matter of the instant suit. The 1st defendant has made it clear in his written statement that the suit schedule 'A' property was jointly purchased and owned by 3rd and 4th defendant under valid registered Sale Deed and the schedule 'B' property is exclusive property of the 1st defendant having purchased out of his own money under a valid registered Sale Deed on 03.10.2003 and constructed a residential house and in which one portion is rented it out to 2nd defendant under Rental Agreement. In order to knock off the property, the 2nd defendant in collusion with the 4th defendant has set up the plaintiff to claim the partition right on the alleged strength of co-ownership which is not permissible under law.

36. Whereas the defendants 2 and 4 have filed separate written statement in that suit and unequivocally admitted the claim of the plaintiff in respect of both the schedule properties as against the defendants. Besides, the defendants 2 and 4 have admitted that the plaintiff is one of the co-owners of M/s.Rudrashwara Chambers, situated at No.15, HIG 'A' Sector, Yelahanka New Town, Bangalore. The suit schedule 'A' property consists of multistoried building and the plaintiff and defendants are all co-owners of the said property. The suit schedule 'B' property is purchased by Hindu Undivided Family funds. Hence the plaintiff and defendants are equally entitled for suit schedule 'A' & 'B' properties. Further the plaintiff has also invested huge sum and money along with defendants and put up construction on suit schedule 'A' & 'B' properties. However the defendants 2 and 4 have prayed to dismiss the suit of the plaintiff as not maintainable with exemplary costs.

37. Ex.D6 and Ex.D7 are tax invoices dated.05.01.2006 issued in the name of plaintiff at the address of the suit schedule property for having purchased wood. The cheque numbers are written subsequently. Ex.D8 to Ex.D42 are the bank vouchers and cash bills under the letter head of Hotel

Sharavathi and in the name of plaintiff during the year 2005-06 for having paid the amount towards purchase of the building materials from different shops. As admitted by D.W.2, the possibility of defendant preparing these bank vouchers and cash bill and invoice just to suit their purpose after thought cannot be ruled out. Ex.D43- Tax invoices are addressed to the plaintiff and these tax invoices are nothing to do with the defence of the defendant. Ex.D44- Indemnity Bond was said to have been executed by the plaintiff, defendant and their wives in favour of Vijaya Bank, Yelhanaka branch as Partners of Hotel Sharavathi. The particulars of the sanction letter are kept blank in that bond. As such, the indemnity bond is irrelevant to the subject-matter of the instant suit. Ex.D46 is the Xerox copy of incomplete order passed by Chief Commissioner of Income Tax, Bengaluru wherein the plaintiff, defendant, their wives and their father Rudrappa are shown as co-owners. Ex.D46 is plain incomplete copy and it is neither certified nor attested by the competent authority so as to form piece of evidence in this case. Ex.D47 is ledger extract of Current Account No.C/A.146 of Rudrashwara Enterprises. Accordingly during the period from 14.8.2004 to 26.4.2007 a sum of Rs.16,320/-, Rs.32,640/- and 17000/- on various dates were transferred to the account of Shivarudariah i.e., the plaintiff herein.

38. Ex.D48 the Statement of Account of A/c. No.CCm 250007 of Hotel Sharavathi is in the name of plaintiff, defendant and their wives and that account was to be operated by defendant and plaintiff jointly during the period from 1.10.2002 to 14.9.2007. Ex.D49 is the account No.CA 449 of M/s. Hotel Sharavathi. According to defendant, in the month of June 2004 a sum of Rs.1,91,000/- paid through cheque to the plaintiff towards sale consideration of purchasing the site but there is no reference of either account number or name of the plaintiff in that relevant entry. The defendant is also pleading that the various payments were made for the purchase of the building materials etc., through the said account of M/s. Hotel Sharavathi but there is no reference of plaintiff. Both the loan accounts jointly in the name of plaintiff and his wife disclose that the loan amount was repaid in instalments directly from their S.B. Account and also by hard cash as it is evident from Ex.D50 and Ex.D51.

39. It is an admitted fact that the plaintiff and his wife are having joint S/B.Account No.8514 in Vijaya Bank even prior to purchase of site and construction of building. Further the plaintiff and his wife jointly submitted application for sanction of loan for purchasing the site as per Ex.P52 and the defendant signed the Letter of guarantee as per Ex.D54. It is the plaintiff and his wife jointly submitted the application for loan for construction of building before Vijaya Bank as per Ex.D55 and the defendant has stood as a guarantor for the said loan also as per Ex.D56- Letter of Guarantee. The said S/B. Account No.8514 discloses each and every entry of transfer of the amount of Rs.16,320/- every month from Current Account No.146 of Rudreswara Enterprises and the said amount transferred from Rudreswara Enterprises was credited to the S/B. Account of the plaintiff and his wife as it is evident from the Statement of Accounts at Ex.D52. On the other hand, the loan account No.230029 standing in the name of plaintiff and his wife at Ex.D50 discloses that a sum of Rs.16,320/- has been transferred and deposited directly from their S.B. Account.

40. The defendant in order to show that he was residing in a rented house of one Suresh S.L. during the period from April 2002 to April 2007 has exhibited rent receipts and advance rent receipt at Ex.D57 to Ex.D116 and Ex.D117 respectively. Though those rent receipts are for the period of about

five years, yet each of the receipt has been in the handwriting of one and the same person by a single pen. Except the self serving receipts, nothing is placed on record to prove that the defendant was in a rented house belonging to the said owner. It is a fit case to draw an adverse inference against the defendant for having not got examined the said owner by name Suresh.S.L. Moreover, this fact is without any pleadings. As such, the possibility of defendant preparing these receipts conveniently just to suit his purpose cannot be ruled out. The certificate issued by the private Doctor as per Ex.D118 discloses that the mother of the plaintiff and defendant died on 27.5.2006 when he was residing in property No.2043, HIG, 1st 'B' main, 4th 'B' cross, 1st floor, New Town, Yelahanka. This is also a self serving document. Ex.D119 and Ex.D120 go to show that the telephone number in the name of wife of plaintiff was transferred from the house No.243 Upstairs to the suit schedule building in the month of January 2007. It can be inferred from these documents that the telephone was shifted to the suit schedule property in the month of January 2007, but nothing more than that. The plaintiff obtained electricity connection in the month of April 2007 as per Ex.D121. Ex.D122 receipt issued by Borewell digging contractors dated.26.4.2004 is in respect of Hotel Sharavathi and it is signed by the defendant and at the foot of the receipt, it is mentioned in the same ink 'on account of 198 site'. In view of admission of D.W.2 in the course of her cross-examination, not only Ex.D6 to Ex.D41, but also Ex.D122 are in the handwriting of D.W.2. When these documents are said to be issued by some 3rd parties, yet each of these documents is in the hand writing of the person working under the defendant. As such, I do not find any truth or trustworthiness so far these irrelevant documents produced by the defendant are concerned.

41. The certified copy of Sale Deed and Encumbrance Certificate at Ex.D123 and Ex.D124 disclose that admittedly the father of the defendant and plaintiff by name Rudrappa sold his ancestral land measuring 1 Acre 10 Guntas of Sy.No.47/1A through registered Sale Deed dated.6.5.1995 in favour of H.R.Manjula and as deposed by D.W.1, the said piece of land belonging to the family of plaintiff and defendant was lastly sold by the father of the defendant and thereafter, no ancestral property or joint family property remained for the alleged co- owners as contended by the defendant herein. The contents of invitation card at Ex.D125 discloses that the parents of the plaintiff and defendant jointly invited for house warming ceremony of their sons i.e., the defendant and plaintiff for their newly constructed house "Rajathadri" on 03.11.2006 on the suit schedule property. It also bears the names of Rudrappa, Smt.Geetha Somashekar, Smt.Rathnamma and Shivarudraiah and also further they have got printed with best compliments from Rudreswara Enterprises, Rudreswara Xerox Center, Hotel Sharavathi and Sharavathi Cool Joint on the back of that invitation card. The plaintiff has not only denied the invitation card, but also stated that he had not at all performed house warming ceremony and he performed pooja of the house immediately after completion of ground floor. The defendant has also produced photo album at Ex.D1. In some of the photographs, the building in dispute is seen and the plaintiff and his wife are performing some pooja and homa inside the house. The defendant and his wife are also participated in the pooja function. The photographs themselves are not evidence to prove either ownership or possession of either of the parties over the suit schedule property. The plaintiff and defendant along with their parents were happy till November 2007. The wives of plaintiff and defendant are jointly running hotel business and also collecting rent from the tenants. The plaintiff and defendant being brothers, might have performed any of the functions as reflecting in the various photographs, but it can be said that the house warming ceremony might have performed in the 1st week of November 2006.

42. The defendant has also produced the S.B. Account of Hotel Sharavathi bearing No.8090 for the period from 18.2.2003 to 8.2.2009. Accordingly on 7.10.2004, a sum of Rs.1,00,000/- was transferred to plaintiff through cheque No.112872 during the initial period of construction of building. Ex.D127 is S/B. Account No.14281 of wife of defendant wherein the residence of wife of defendant is shown at 15, HIG, Yelahanka New Town and a sum of Rs.1,00,000/- was transferred to plaintiff through cheque No.131603 on 11.9.2004 from the said S/B. Account. Ex.D128 the joint S/B. Account No.8487 is in the name of defendant and his wife. They have shown their address at Hotel Sharavathi, Rudreswara Enterprises. Accordingly a sum of Rs.75, 000/- and Rs.50,000/- transferred to plaintiff on 10.8.2004 and 11.8.2004 and also transferred Rs.25,000/- through different cheques on 12.8.2004 and 14.8.2004 to the S/B. Account of plaintiff and his wife. As on 3.5.2005, the balance account in their joint amount was only Rs.2418/-.

43. On scrutinizing the evidence on record, it is proved before the court that the plaintiff is the younger brother of the defendant and their father Rudrappa is still alive. The Hindu Undivided Family of Rudrappa consists of four sons namely, T.Rudrappa, defendant, P.W.2 and the plaintiff as well as two daughters namely, Chennarudramma and Rajeshwari. The land survey No.29 measuring 6 Acres was only the ancestral Hindu Undivided Family property of Rudrappa. As per sale Agreement dated.18.2.1995 at Ex.D3,. the plaintiff, defendant and their brothers agreed to sell 6 Acre of land in Sy.No.29 in favour of Krishnamurthy and R.Mahadeva Gowda and Ex.D3 is not only signed by the plaintiff, defendant and their brothers, but also their father Rudrappa. Nothing is placed on record to show that what happened to that sale Agreement till today. Even then, the panchayath parikath at Ex.P6 dated.2.8.1985 exhibited by P.W.2 shows, the brothers of P.W.2 took their share described as schedule A,B and D earlier to 2.8.1985 and through that panchayth parikath, schedule 'C' property to the extent of 1 Acre out of 6 Acres in Sy.No.29 was allotted to the share of P.W.2 only. Apart from sale Agreement and panchath parikath in respect of land Sy.No.29, the father of the plaintiff and defendant sold his entire ancestral land Sy.No.47/1A measuring 1 Acre 10 Guntas to the said H.R.Manjula through registered Sale Deed dated.6.12.1995. Neither the plaintiff nor the defendant has produced any other documentary evidence to show that the said ancestral lands and other properties of the Hindu Undivided Family are still available for partition so as take into consideration that Hindu Undivided Family of plaintiff and defendant is still a joint family. This is one aspect of the matter.

44. On the other hand, the plaintiff, defendant and their wives only formed M/s. Rudreswara Enterprises unregistered Partnership. Admittedly the property bearing No.15, HIG, Yelahanka New Town was purchased jointly in the name of respective wives of plaintiff and defendant and constructed multistoried building and let out the separate portions of that building to the Govt. offices on monthly rent. It is the respective wives of the plaintiff and defendant who are collecting the rents form the tenants. Besides, the plaintiff and defendant were running M/s. Hotel Sharavathi under the supervision of their wives. The plaintiff and his wife were having 50% right in the profits form M/s. Hotel Sharavathi and the tenements at the time of purchasing the suit schedule land. The plaintiff is also running Xerox center. The plaintiff has purchased the suit property from his own earnings and by availing the loan from Vijaya Bank under registered Sale Deed. There is no evidence to show that plaintiff, defendant and their wives and father were co-owners as contended by the defendant. If they could have been in Hindu Undivided Family and then not only the property

No.15, but also suit schedule property No.198 would have been purchased either in the name of their father or the defendant being the elder member of the family. Further if really the suit property was purchased by the plaintiff and defendant as co-owners and then, the Sale Deed would have been executed jointly in favour of plaintiff and defendant. Even the plaintiff has constructed the suit building consisting of basement, ground, first and second floor by availing loan from Vijaya Bank. As per the loan application and loan accounts, it is the plaintiff and his wife who are the co-obligants. The defendant is admittedly stood as a guarantor. All these facts themselves go to show that the suit schedule property is self acquired property of plaintiff. The collective bill, invoices, credit notes at Ex.D6 to Ex.D43 and Ex.D122 being unauthenticated, no evidentiary value is attached to those documents. Moreover, it is evident from the documentary evidence adduced by the defendant itself that the plaintiff is the owner of schedule property. In the absence of relevant evidence to show either existence of joint family or contribution made by defendant and alleged co-owners, it cannot be inferred that the defendant being co-owner is also having right over the suit schedule property. It is relevant to note here that when there was no partition taken place in respect of the joint family properties and then, the father of the plaintiff and defendant could have filed suit against not only the plaintiff, defendant and their respective wives, but also his other two sons and daughters. There is no role of other brothers and sisters in the alleged co-owner's properties as alleged by the defendant. Under these facts and circumstances without much discussion, I hold that there was severance of status of Hindu Undivided Family of plaintiff and defendant in the year 1995 itself. Plaintiff and defendant were living separately in rented houses prior to purchase of the suit property. Hence without much discussion, I hold that plaintiff is the absolute owner of the suit property and defendant is stranger to the suit schedule property. As such, question of co-ownership of defendant in respect of suit property does not arise at all.

45. The plaintiff has been mainly relying on Ex.P2- Rent Agreement to prove that the defendant is his tenant over the suit property on a monthly rental of Rs.12, 000/-. Though the defendant has admitted his signature and also execution of Rent Agreement at Ex.P2, yet he is contending that the Rental Agreement was executed only for the purpose of availing loan from the bank without any basis. Besides, the plaintiff is able to prove the due execution as well as contents of Rental Agreement through competent witnesses. As per the recitals in the Rent Agreement, the plaintiff agreed to let out ground floor comprising of one hall, four bedrooms, one kitchen, four bathrooms and two toilets with sump and over-head tank in the schedule premises. Further the defendant has agreed to increase the monthly rent by 10% after completion of every one year of tenancy and the tenancy of the schedule premises was for a period of 11 months from 1.11.2004. There is no recital to show that the tenancy was for a period beyond one year so as to take into consideration.

46. Though the defendant has not objected for exhibiting the Rental Agreement when it was tendered in the examination-in-chief of P.W.1, yet the counsel for the defendant has very much argued that the duration specified by the controversial document at Ex.P2 is for 11 months. According to Ex.P2, the defendant has been a tenant under plaintiff for more than a period of one year. Such documents are compulsorily registerable U/s.17 (1)(d) of the Indian Registration Act. The non-registration of such document is fatal and does not affect the immovable property in any manner as per the provisions of Sec.49 of Indian Registration Act. As such, a scenario the plaintiff claiming he to be the landlord and proceeding against defendant as his tenant is totally

unsustainable. The Rental Agreement cannot be relied even for collateral purpose.

47. The counsel for the defendant is placing his reliance on various decisions in support of his arguments. In 1981 MHJ/847 (S.K.Jameel Ahmad s/o. SK.Farid Vs. Naeem Gulab SK. (Smt.) w/o. Sayed Samshur Rahman Kadari) wherein it is held that:

"The only other possible interpretation can be that though the Agreement provide that the tenant will vacate at the expiry of period 11 months being the agreed Lease period, in fact he was entitled to continue in occupation as a tenant indefinitely and that accordingly at the end of every three years he was not pay the rent enhanced by 20%. This in my view as the only possible other construction. In that case it would be a ease for more than one year and it is required to be in writing and registered as per Sec.107 of the Transfer of Property Act. In the absence of registered document, the Lease will be invalid and the tenant will continue only as a monthly tenant on the rent originally filed. The Agreement of enhanced rent being based on the term of the Lease period being more than one year will not be admissible in evidence as being part of the terms of the alleged Lease. The terms which forms part of the Lease which has to be in writing registered, cannot be made valid and applicable by circumventing the provisions of Transfer of Property Act and the Registration act by incorporating them in a separate Agreement."

48. Whereas in the instant case, the Rental Agreement was for a period of 11 months. As per Clause-10, it is agreed between the parties that after the expiry of tenancy period, tenancy can be extended on mutual consent and tenant has to increase the monthly rent by 10% after completion of every one year of tenancy. Infact, interpretation of the Agreement as referred in the aforesaid decision and in the instant case are different. 46. The instant Agreement is regarding increase in the monthly rent with mutual consent that too after completion of one year of tenancy. As such, the monthly tenancy between the parties to the suit for initial period of 11 months has been mutually extended.

49. On the other hand, the registration of Lease Deed for a period exceeding one year is mandatory U/s.17 of Registration Act. Infact, the Rental Agreement at Ex.P2 being for a period of 11 months is not required to be registered. However the requisite stamp duty must be paid. Infact, the Rental Agreement between the parties is on insufficiently stamped papers. As such, as per order dated.7.7.2015, the plaintiff has paid the deficit stamp duty with penalty of Rs.491/- under Article.30 (1)(a) (i) r/w. Article. No.12. As such, there is no bar to admit the Rental Agreement at Ex.P2 in evidence.

50. In ILR 2013 (1) Kerala 17 in Aniyam Vs. Raveendran the Hon'ble Kerala High Court has held that:

"Though S.49 of the Registration Act bars reception of an unregistered document in evidence, which is required to be registered u/s.17 of the Registration Act, the Apex Court in Champalal V. Samrath Bai (MANU/SC/0302/1960: AIR 1970 SC 629) of the

view that prohibition u/s.49 is not against the filing of the document and what is prohibited is the admissibility of the same in evidence so as to affect immovable property falling u/s.17. Further it was observed that such a document will not avail to create, declare assign, limit or extinguish any right, title or interest in or to the immovable property made mention of in the document. In other words, an unregistered document cannot be used for the purpose of establishing that the document created or declared or assigned or limited or extinguished a right to immovable property."

51. In (1977) DLT 22 in P.N.Karkhanis Vs. P.N.Chopra, the Hon'ble Delhi High Court has that in the said case Agreement dated.29.5.1962 was wholly inadmissible in evidence as it purports to be a Lease for one year. It is not a registered document. The document of Lease relied upon is thus wholly inadmissible in evidence and there can be no two opinions about it. The document was compulsorily registerable under the provisions of Sec.17 of the Registration Act and its admissibility is completely barred u/s.49 of that Act. This document cannot be looked into for purposes of creation of a Lease or any interest in the property. It can only be looked into for a collateral purpose of finding out the nature of possession of the petitioner.

52. In 200(5) APLJ64 in Relangi Nageswara Rao and another VS. Tatha Chiranjeeva Rao (died) by LRs. It is held that:

"The ground on which the eviction was sought, were that the tenant denied the title of the landlord, which was not bonafide that the tenant committed default in payment of rent that the tenant sublet the premises. If the relationship is established, nothing survives in the petition and the same has to be allowed. The case of the petitioner would stand or fall on establishing the relationship and that issue cannot be decided in the guise of collateral transaction. Whether there is a tenancy or whether the respondent was tenant cannot be traced as a collateral issue in the instant case. What cannot be achieved by the petitioner directly cannot be allowed to be achieved indirectly."

53. It is also held in a case reported in (2005)9 SCC 375 in Crystal Developers Vs. Smt.Asha Lata Ghosh (Dead) through L.Rs and ors. by the Hon'ble Supreme Court of India that:

"It is our incumbent duty to review such inferential process. In such cases, the right of this Court to review such inferential process cannot be denied. It is well settled that inference have to be drawn from a given set of facts and circumstances with realistic diversity and not with dead uniformity. We have, therefore,, interfered with the concurrent findings recorded by the Courts below as we find that in the present case, findings have been recorded on fraud and collusion in favour of the plaintiffs, who have not alleged fraud or collusion supported by the particulars."

54. In LIC of India & Anr. Vs. Ram Pal Singh Bisen reported in MANU/SC/0170/2010 it is held that:

"Mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent."

55. As noted supra, in the instant case, the plaintiff has not produced documentary evidence to show the collection of rent or extension of tenancy of the defendant beyond one year. However it is proved from the unchallenged oral evidence of P.W.2 to P.W.4 that the plaintiff is the owner and the defendant is tenant under the plaintiff in respect of suit schedule property on monthly rent of Rs.12,000/- and due to default on the part of the defendant in paying the rents, the plaintiff has terminated the tenancy and filed the instant suit for ejectment. It is also admitted by D.W.1 in the course of his cross-examination that his both sons are in occupation of suit schedule property as claimed by the plaintiff in the plaint. This fact itself goes to show that the tenancy between the plaintiff and defendant has been extended mutually. The principles laid down in the aforesaid decisions are not aptly applicable to the facts of the case on hand so as to discard the Rental Agreement at Ex.P2. Hence I hold that the defendant is tenant under the plaintiff on monthly rent in respect of the property as described in the schedule annexed to the rent Agreement at Ex.P2 and notice of termination of tenancy at Ex.P3 and I answer Issue No.1 in the Affirmative and Issue No.4 in the Negative.

56. Issue No.2:- The plaintiff got issued notice of termination of tenancy as per Ex.P3 dated.28.5.2009 through RPAD and also Under Certificate of Posting. That notice was duly served upon the defendant at the said schedule premises as it is evident from Ex.P4 and Ex.P5 the postal acknowledgments. The plaintiff has terminated the tenancy of the defendant as the defendant had become chronic defaulter in the matter of payment of rents enhanced to Rs.15970/- from November 2007 to October 2008 and also demand arrears of rent at enhanced rate and vacant possession of the premises as described in the schedule annexed to the Rental Agreement at Ex.P2. Besides, the plaintiff has claimed damages at the rate of Rs.3000/- per day from 11.6.2009 till handing over vacant possession of the schedule property. The defendant is not disputing the service of that notice. The plaintiff has given clear 15 days time for vacating the schedule premises through that notice. As per the Rental Agreement at Ex.P2, plaintiff has let out ground floor only as described therein and also terminated the tenancy by issuing notice in respect of the said ground floor. Whereas the plaintiff filed the suit for ejectment against the defendant in respect of property as described in the schedule annexed to the plaint. Accordingly the plaintiff is claiming that the defendant is in occupation of not only ground floor, but also portion of 1st floor in the premises bearing No.198 with boundaries as mentioned therein. There is no reference of portion of 1st floor in the Rental Agreement. There is no pleading to show how the defendant has been permitted to occupy the portion of first floor. The claim of plaintiff in that regard is base less. As such, the plaintiff cannot claim the entire suit schedule property, except the property as described in the schedule to the Rental Agreement.

57. The defendant is not seriously disputing the termination of tenancy only on the ground that the defendant is co-owner and there is no relationship of landlord and tenant between them. In view of findings on Issue Nos.1 and 2, the plaintiff is able to prove the important aspect of relationship of landlord and tenant between the plaintiff and defendant.

58. The counsel for the plaintiff has also referred various decisions in support of his arguments.

59. In ILR 2007 Karnataka 3892 in P.Honnamma Vs. B.Jannath and Anr. It is held that:

"A plain reading of the quit notice will establish that the requirement of 15 days notice as contemplated u/s.106 of Transfer of Property Act, 1882 has been satisfied."

60. In ILR 1990 KAR 2639 in Govindamma Vs. Murugesh Mudaliar, our Hon'ble High Court has held that:

"By reason of denial of title in himself by the tenant, there is no automatic forfeiture of the tenancy right and that such conduct on the part of the tenant gives a right to the lessor to elect to determine the Lease by issuing a notice in writing as required u/s.111(g) of the Transfer of Property Act. This proposition is in conformity with the provisions contained in Sec.111(g) of the Transfer of Property Act and therefore, it applies to a case where tenancy is purely governed by the provisions of the Transfer of Property Act and not by the provisions of the Rent Act."

61. In ILR 2006 KAR 4584 in M.C.Mohammed Vs.Gowramma and others, it is held that:

"Tenant continuing as a Statutory Tenant after the expiry of the contractual period, does not require another notice of termination of his tenancy- further held, on the expiry of the Lease period by efflux of time, no further termination of the tenancy arises as no subsisting contract remains after the Lease period is over."

62. In ILR 2011 KAR 739 (Mr.Haneef Sait Vs. Mr.Syed Asif) it is laid down that:

"U/s.107 of the Act, a Lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument. Any Lease of this kind would be void unless it is crated by a registered instrument. Indisputedly, the Lease of the suit property by the plaintiff in favour of the defendant was for 11 months. No doubt, the Lease Agreement between the parties, has not been produced. However, there is no dispute that, the Lease was on month to month basis and for a term not exceeding one year. The factum of Lease from month to month and the initially agreed period being not for a term exceeding one year, is not in dispute. Hence the deeming provisions of the first part of Section 106 of the Act, cannot be attracted in the present case. Further held, Sec.106 provides, inter alia, that in the absence of a contract between the parties, a Lease of immovable property for manufacturing purpose shall be deemed to be a Lease from year to year terminable

by six months' notice. In the present case, there is clear admission that, the Lease in question was not from year to year or for a period exceeding one year.

The Lease in question will fall in the second half of Sec.106 requiring 15 day's notice of termination. A Lease from month to month or a Lease other than a Lease from year to year is terminable by 15 days' notice.)

63. In ILR 2005 KAR 4115 in M/s.Amar Transport Company Vs. Smt.Muthu Ganapathy, it is held that:

"The tenant who continues in possession after determination of the Lease without the assent of the landlord is a tenant by sufferance which is nothing but a tenancy at will by the assent of the landlord. But the relationship of landlord and tenant is not established until the rent was paid and accepted. The lessee holding over with the consent of a lessor is in a better position than a mere tenant at will."

64. In the instant case as noted supra, though the defendant was duly served with the quit notice, yet did not take care to reply to that notice within reasonable time setting up his specific plea/defence so as to take into consideration. Infact, the defendant has taken up inconsistent plea that he is the co- owner, but not tenant under the plaintiff without any basis only after thought just to overcome the tenancy.

65. In 2003 SC 3995 in Parwati Bai Vs. Radhika the Hon'ble Supreme Court of India has held that:

"The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of S.106 of Transfer of Property Act.

The receipt of notice by the defendant is admitted in the written statement. The defendant has not raised any specific objection as to the validity of the notice. An objection as to invalidity or infirmity of notice u/s.106 of T.P.Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one. It cannot, therefore,, be said that the notice in the present case suffered from any infirmity. A copy of notice was exhibited and proved by the plaintiff as Exh.P4."

66. Under these circumstances, it is a fit case to draw an adverse inference against the defendant for having not raised specific objections at the earliest point of time and failed to adduce rebuttal evidence so as to disbelieve claim of the plaintiff in this suit. As such, the termination of tenancy of the defendant by the plaintiff being valid is binding on the defendant. Hence, I answer Issue No.2 in the Affirmative.

67. Issue No.3:- The plaintiff has claimed damages at the rate of Rs.3000/- per day from the date of termination of tenancy through quit notice. The plaintiff has not claimed arrears of rent or damages till the date of filing the suit. However, the plaintiff has sought for damages from the date of suit to the date of actual delivery of possession from the defendant to the plaintiff under due enquiry. In the

Rental Agreement agreed rate of rent was Rs.12000/- initially and it was enhanced to Rs.17,567/- as on the date of filing of suit. The plaintiff has valued the suit based on that rental value and paid the requisite Court Fee. Looking to the attitude of both the parties towards the subject-matter of the suit, the defendant is liable to pay damages. The plaintiff has not adduced any evidence so as to take into consideration and award just and reasonable damages from the defendant on account of unauthorised occupation of the defendant in respect of Leased out premises. Hence the plaintiff is entitled to claim mesne profits/damages and the same shall be determined by a separate enquiry under Or.XX, Rule 12 of CPC. Accordingly I answer Issue No.3 in the Affirmative.

68. Issue No.5:- In view of my findings on the issues No.1 to 4 and the reasons stated therein, In the result, I proceed to pass the following:-

ORDER The suit of the plaintiff is partly decreed with costs as under:-

The defendant is directed to quit, vacate and handover vacant possession of residential house bearing No.198 in ground floor situated at 6th 'A' main, 1st stage, MIG 'A' Sector, Yelahanka New Town, Bengaluru -560064 comprising of one hall, four bed rooms, one kitchen, four bathrooms and two toilets with sump and over-head tank as described in the schedule of Rental Agreement at Ex.P2 within three months from the date of this order (09.07.2015).

The plaintiff is entitled to claim mesne profits from the date of suit, to the date of delivery of vacant possession of the said schedule premises from the defendant.

There shall be a separate enquiry under Or.XX, Rule 12 of CPC for determining the mesne profits.

The suit of the plaintiff in respect of portion of first floor as described in the schedule annexed to the plaint is dismissed. However, the plaintiff may be at liberty to claim the same in accordance with law.

Draw up a decree accordingly.

(Dictated to the Judgment Writer, transcript thereof corrected, signed and then pronounced by me, in open Court, on this the 9th day of July 2015.) (BHAIRAPPA SHIVALING NAIK) XII Addl. City Civil & Sessions Judge, Bangalore A N N E X U R E I. List of witnesses examined on behalf of:

(a) Plaintiff side :

P.W.1:	Sri M.R.Shivarudraiah
P.W.2:	Sri M R Chandrashekar
P.W.3:	Sri B.L.Mahesh
P.W.4:	Sri B.L.Mylaraswamy
P.W.5:	Sri K S Jayashankar Kumar Sharma

P.W.6: Sri Lakshman K
P.W.7: Sri M.R.Shivarudraiah

(b) Defendant's side :

D.W.1: Sri M Somashekar
D.W.2 Smt.B.C.Jyothi
D.W.3: Sri T.K.Shivaprakash

II. List of documents exhibited on behalf of :

(a) Plaintiff side :

Ex.P1: Certified copy of Sale Deed
Ex.P2: Rental agreement
(a) to (c) Signatures
Ex.p3: Office copy of legal notice
Ex.P4: UCP
Ex.P5: Postal acknowledgment
Ex.P6: Panchayath Parikath

(b) Defendant's side :

Ex.D1: Photo Album (P.W.1)
Ex.D1(a) Wrapper
Ex.D1(b)(c) 2 photos
Ex.D2: Income tax assessment of Hotel
Sharavathi for the year 2007-08
Ex.D3: Agreement (P.W.2)
Ex.D3(a): Signature
Ex.D4: Articles of agreement
dt.09.04.2004
Ex.D5: Certified copy of plaint in
O.S.No.1209/2008
Ex.D6,7: Two tax invoices
Ex.P8-10 Bank vouchers (3 in numbers)
Ex.D11,12 Two bill invoices
Ex.D13,14 Two receipts issued by Praveena
Plywoods
Ex.D15-19 Five bank vouchers
Ex.D20 Cash bill issued by IHB Enterprises
Ex.D21,22 Two bank vouchers
Ex.D23 Receipt issued by Reliance marble
and granite
Ex.D24 Bank voucher
Ex.D25 Tax invoice dt.08.07.2006
Ex.D26,27 Two bank vouchers

Ex.D28 Tax invoice cum delivery challan
dt.14.10.2006

Ex.D29	Bank voucher	
Ex.D30	Gas bill dt.05.12.2006	
Ex.D31	Receipt voucher	
Ex.D32,33	Two bank vouchers	
Ex.D34,35	Two bank vouchers	
Ex.D36	Receipt dt.17.01.2007	
Ex.D37	Bank voucher dt.24.01.2007	
Ex.D38	Receipt voucher dt.18.01.2007	
Ex.D39	Bank voucher dt.17.02.2007	
Ex.D40	Receipt voucher dt.14.02.2007	
Ex.D41	Bank voucher dt.28.02.2007	
Ex.D42	Receipt voucher dt.17.03.2007	
Ex.D43	Tax invoice - Chabria Ceramics dt.11.02.2006	
Ex.D44	Indemnity bond	
Ex.D45	Extract of the balance sheet for the year 31.03.2005 and 31.03.2006	
Ex.D46	Order of Chief Commissioner of Income tax dt.24.02.2005	
Ex.D47	Extract of A/c. No.CA146 of Vijaya bank.	
Ex.D48	Extract of OD A/c. CCM250007 of Vijaya Bank	
Ex.D49	Extract of A/c. No.CA449 of Vijaya bank pertaining to M/s. Hotel Sharavathi	
Ex.D50	Extract of A/c. No.ML230029 of Vijaya bank pertaining to	
Ex.D51	Shivarudraiah and Rathnamma Extract of A/c. No.ML240037 of Vijaya bank pertaining to Shivarudraiah and Rathnamma for the period from 01.01.2003 to 25.06.2008	
Ex.D52	Extract of SB A/c. No.8514 of Vijaya bank	
Ex.D53	Attested copy of loan application	
Ex.D54	Letter of guarantee for Rs.8,00,000/-	
Ex.D55	House construction loan application	
Ex.D56	Letter of guarantee	

Ex.D57-D116	60 rent receipts from 05.05.2002 to 05.04.2007
Ex.D117	Rent advance receipt
Ex.D118	Certificate dt.27.05.2006 issued by Dr.K.S.Mohan Rao
Ex.D119, 120	Two letters issued by BSNL
Ex.D121	Service certificate issued by BESCOM
Ex.D122	Bills, Proforma invoices, credit notes, delivery notes, receipts and payment vouchers
Ex.D123	Certified copy of Sale deed dt.12.12.1995
Ex.D124	Encumbrance certificate dt.28.03.2013

Ex.D125 House warming ceremony invitation Ex.D126 Passbook of SB A/c No.8090 of Vijaya Bank pertaining to Rudrappa Ex.D127 Passbook issued by Canara bank pertaining to SB A/c No.14281 of Geetha Someshekar Ex.D128 Passbook of SB A/c No.8487 of Vijaya Bank pertaining to Someshekar and Geetha (BHAIRAPPA SHIVALING NAIK) XII Addl. City Civil & Sessions Judge, Bangalore (Judgment pronounced in open court) The suit of the plaintiff is partly decreed with costs as under:-

The defendant is directed to quit, vacate and handover vacant possession of residential house bearing No.198 in ground floor situated at 6th 'A' main, 1st stage, MIG 'A' Sector, Yelahanka New Town, Bengaluru -560064 comprising of one hall, four bed rooms, one kitchen, four bathrooms and two toilets with sump and over-head tank as described in the schedule of Rental Agreement at Ex.P2 within three months from the date of this order (09.07.2015).

The plaintiff is entitled to claim mesne profits from the date of suit, to the date of delivery of vacant possession of the said schedule premises from the defendant.

There shall be a separate enquiry under Or.XX, Rule 12 of CPC for determining the mesne profits.

The suit of the plaintiff in respect of portion of first floor as described in the schedule annexed to the plaint is dismissed. However, the

plaintiff may be at liberty to claim the same in accordance with law.

Draw up a decree accordingly.
(vide Judgment passed.)

XII ACCJ;Bangalore