

# K.Muthusamy vs M/S. Aruna Theatre & Enterprises Pvt. ... on 1 September, 2003

Tr.C.S.No.355 of 2014, C.S.No.570 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on  
14~09~2020

Delivered on  
14~10~2020

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and  
C.S.No.721 of 2010

C.S.No.756 of 2004 renumbered as  
Tr.C.S.355 of 2014

1. K.Muthusamy  
S/o Late S. Kalyanasundaram Pillai
2. Mrs. M. Kanthimathi  
W/o K.Muthusamy

Both are residing at:  
No.7, Lakshmanan Street,  
T. Nagar, Chennai 600017.

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Vs.

1. M/s. Aruna Theatre & Enterprises Pvt. Ltd.,  
represented by its Director  
S. Venkatachalam  
No.3, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083.

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Tr.C.S.No.355 of 2014, C.S.No.570 of

2. S. Venkatachalam  
S/o Late Subramania Pillai,  
No.3, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083

3. K. Vadivel Murugan  
S/o Late S. Karuppasamy Pillai  
No.3, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083
4. S. Balasubramaniam  
S/o Late S. Sundaram Pillai  
No.3, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083
5. K. Murugan  
S/o Late S. Kalyanasundaram Pillai  
No.7, Lakshmanan Street  
T. Nagar, Chennai 600017
6. N. Sankara Narayanan  
S/o Late S.Narayana Pillai,  
Proprietor, Aruna Agencies,  
No.2, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083.
7. Indian Oil Corporation Limited  
No.500, Mount Road, Teynampet,  
Chennai 600018.

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Prayer :       Plaint filed under Order VII Rule 1 CPC r/w Order IV R  
of the Original Side Rules to pass a judgment and decree against th  
defendants :

a. directing the 6th and 7th defendants to make payment o  
sum of Rs.22,99,680/- being rents payable from 01.09.2003  
till date of this suit ;

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Tr.C.S.No.355 of 2014, C.S.No.57

b. for a permanent injunction restraining the defendants  
their men, agents, servants, employees person or persons  
acting tio or under them or for and on their behalf from  
any manner whatsoever putting up construction or making  
any structural alteration of any nature or othersie deali  
with, parting with possession of the plaint schedule  
mentioned property;

c. for costs of the suit; and

d. pass such further or other orders as this Court may de  
fit and proper in the circumstances of the case and thus  
render justice.

For Plaintiffs : Mr. M.S. Krishnan  
Senior Counsel for  
M/s.Sarvabhauman Associates

For Defendants : Mr.C. Umashankar [for D1]

No appearance [for D2, D3 & D5]

Set Ex-parte [D5]

Mr. Viswanatha Rao  
Senior Counsel for  
Mr.A.K. Raghavalu [for D6]

Mr. Abdul Hameed for  
M/s. AAV Partners [for D7]

C.S.No.570 of 2006

N. Sankara Narayanan  
S/o Late S.Narayana Pillai,

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Tr.C.S.No.355 of 2014, C.S.No.570 of 2006

Proprietor, Aruna Agency,  
No.22, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083

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Vs.

1. M/s. Aruna Theatres & Enterprises Pvt. Ltd.,  
Represented by its Director  
Mr.S. Venkatachalam  
No.3. Ashok Pillar Road,  
Ashok Nagar, Chennai 600083.

2.K.Muthuswamy  
S/o Late S. Kalyanasundaram Pillai  
No.7, Lakshmanan Street,  
T. Nagar, Chennai 600017.

3. Mrs. M. Kanthimathi  
W/o K.Muthuswamy

... D

Prayer : Complaint filed under Order VII Rule 1 CPC r/w Order IV Rule 13 of the Original Side Rules to pass a judgment and decree to :

a. Declaring that the sale deed bearing dated 1.9.2003  
Document No.2062 of 2003 S.R.O.Ashok Nagar, in respect

of the plaint schedule property executed by the 1st Defendant company in favour of the 2nd and 3rd defendants is sham, void, illegal, invalid and inoperative consequent

b. Restraining the Defendants by perpetual injunction from in any manner interfering with the peaceful possession and enjoyment of the plaint schedule property by the Plaintiff

c. Directing the defendants to pay the costs of this suit

d. Granting such further or other reliefs as this court may

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Tr.C.S.No.355 of 2014, C.S.No.570

deem fit in the circumstance of the case.

For Plaintiff : Mr. Viswanatha Rao  
Senior Counsel for  
Mr.A.K. Raghavalu

For Defendants : Mr. C. Umashankar [for D1]  
  
Mr. M.S. Krishnan  
Senior Counsel for  
M/s.Sarvabhauman Associates [for

C.S.No.721 of 2010

1. K.Muthusamy  
S/o Late S. Kalyanasundaram Pillai

2. Mrs. M. Kanthimathi  
W/o K.Muthusamy

Both are residing at:  
No.7, Lakshmanan Street,  
T. Nagar, Chennai 600017.

...

Vs.

1. N. Sankara Narayanan  
S/o Late S.Narayana Pillai,  
Proprietor, Aruna Agency,  
No.22, Ashok Pillar Road,  
Ashok Nagar, Chennai 600083.

2. Indian Oil Corporation Limited  
No.500, Mount Road, Teynampet,  
Chennai 600018.

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Prayer :     Plaint filed under Order VII Rule 1 CPC r/w Order IV Rule 2 of the Original Side Rules to pass a judgment and decree against the defendants directing the defendants :

- i. to deliver the vacant possession of the suit property which is more fully described in the schedule to these plaintiffs
- ii. to pay a sum of Rs.91,98,720/- being the damages for sue and occupation of the suit schedule property from 19.007.2007 to 19.07.2010 for the three years preceding the suit to these plaintiffs
- iii. to pay future damages for use and occupation of the suit schedule property at the rate of Rs.2,55,520/- per month such other rate fixed by this Court from the date of suit delivery of the suit property
- iv. to pay costs of this suit; and
- v. to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs         :     Mr. M.S. Krishnan  
Senior Counsel for  
M/s.Sarvabhauman Associates

For Defendants       :     Mr. Viswanatha Rao  
Senior Counsel for  
Mr.A.K. Raghavalu [for D1]  
  
Mr. Abdul Hameed for  
M/s. AAV Partners [for D2]

Three suits have been filed for the following reliefs:

1(a) C.S.No.756 of 2004 renumbered as Tr.C.S.355 of 2014 filed for seeking direction to direct the 6th and 7th defendants to make payment of a sum of Rs.22,99,680/- being rents payable from 01.09.2003 till date of the suit and for a permanent injunction restraining the defendants their men, agents, servants, employees person or persons acting to or under them or for and on their behalf from in any manner whatsoever putting up construction or making any structural alteration of any nature or otherwise dealing with, parting with possession of the plaint schedule mentioned property with costs.

1.(b) C.S.570 of 2006, seeking a declaration that the sale deed bearing dated 1.9.2003 Document No.2062 of 2003 S.R.O. Ashok Nagar, in respect of the plaint schedule property executed by the 1st Defendant company in favour of the 2nd and 3rd defendants is sham, void, illegal, invalid and inoperative consequently; Restraining the Defendants by perfectual injunction from in any manner interfering with the peaceful <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 possession and enjoyment of the plaint schedule property by the Plaintiffs and to pay the costs.

1.(c) C.S.No.721 of 2010 filed to deliver the vacant possession of the suit property which is more fully described in the schedule to these plaintiffs; to pay a sum of Rs.91,98,720/- being the damages for sue and occupation of the suit schedule property from 19.07.2007 to 19.07.2010 for the three years preceding the suit to these plaintiffs; to pay future damages for use and occupation of the suit schedule property at the rate of Rs.2,55,520/- per month or such other rate fixed by this Court from the date of suit till delivery of the suit property with costs.

2. Since the parties are same and nature of the issues raised in all three suits are almost identical, a joint trial was ordered in this matter and common evidence was recorded for all the suits. In view of the same this court is inclined the deliver this common judgement.

2.The brief facts leading to file these suits are as under :

2.(a) The Plaintiffs in Tr.C.S.No.355 of 2014 and C.S.No.721 of <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 2010 are husband and wife. They are the shareholders of the first defendant. The first defendant was in some financial difficulty and required money for discharging its liability with the bank. The Plaintiff come forward to purchase the suit property for a sum of Rs.60 lakhs. Agreement of sale was also entered on 30.07.2003. The plaintiff paid the consideration under two cheques bearing Nos.5414754 dated 03.07.2003 for Rs.10 lakhs and cheque No.270088 dated 01.09.2003 for Rs.50 lakhs. First defendant represented by the defendants 2 to 5 have executed sale deed

dated 01.09.2003 in favour of the Plaintiffs. After the purchase of the property the plaintiffs called upon the 6th and 7th defendants who are occupying the property as tenants to pay the monthly rents of Rs.1,91,640/- and attorn the tenancy. Besides the plaintiffs also sent a letter to the 6th defendant to vacate the premises. The alleged Memorandum of Understanding referred by the 6th defendant has not come into force and is not a valid or legal document. Many family members have not come forward to sign the memorandum of understanding as they were not agreeable for such an understanding. Despite several reminders the rents have not been paid.

Hence, suit filed for recovery of rent.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

2.(b) It is the further contention of the plaintiffs that Defendants 1 to 5 have colluded with Defendants 6 and 7 to defeat the rights of the plaintiff. Hence, suit for recovery of rent and consequential injunction.

3.(a) 1st Defendant submitted that there was no agreement of sale between the defendants and plaintiffs. In the year 1998 the other family company by name M/s.Annai Mookambigai Floor and Rolling Mills Ltd., borrowed a sum of Rs.759.68 lakhs from Karur Vysya Bank, Chennai 26. For the said loan amount 1st defendant stood as a corporate guarantor. Several dispute arose between the family members who are the shareholders of the 1st Defendant company. Due to the internal disputes and inefficient management by the erstwhile board of directors, the loan amount of the said bank could not be repaid within the stipulated time. Because of such internal disputes inside the company the said bank was not in a position to recover its dues and the bank pressurising the first defendant company to pay some amount in order to get rid of legal action. The then Board of Directors of the 1st Defendant company viz., i) Mr.K.Muthusamy

ii) Mr.Venkatachalam iii) Mr.Vadivel Murugan iv) Mr.S. Balasubramanian

v) Mr.K. Murugan who could not act to tackle the entire situation and the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 1st defendant was put to awkward position by the bank.

3.(b) It is the further contention that the 1st Plaintiff being politically and monetarily influenced person in among all the family members, in order to save the assets of the first defendant company, there was a resolution passed to sell away the property in question to avoid any legal action from the bank against all the properties. At that time first Plaintiff forced all other directors of the 1st defendant company to make a conditional sale to him and the 2nd Defendant to save the company. Arrangement was struck between the directors of the company that there will be a sale of the suit scheduled property for a sale price of Rs.1 Crore, out of which Rs.60 lakhs will be paid by the 1st Plaintiff to the Bank and remaining amount of Rs.40 lakhs will be paid at later point of time i.e., after due discussion between the family members who are the shareholders of the 1st defendant company. Further the amount of Rs.60 lakhs which was paid by the 1st plaintiff shall be repaid to

him if the Petrol Bunk license could not be transferred on his name within a period of 24 months i.e., from 27.08.2003. further in this arrangement dated 27.08.2003 it was agreed that the 1st defendant company has to pay interest every month to the 1st plaintiff from the date of <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 execution of the sale deed till the date of transfer of license of the petrol bunk. The rate of interest agreed was 22% p.a. on Rs.60 lakhs. This arrangement was also reduced into writing by the parties i.e., the directors of the 1st defendant and the 1st plaintiff. Only on the above arrangements property was sold in a nominal manner by a registered sale deed dated 01.09.2003. In fact all the Directors have not agreed for execution of the sale deed, they have forced to sign on bank's pressure for legal action on one side and coercion on the other side from 1st Plaintiff. Hence, it is the contention that the sale deed is sham and nominal. Same was done only to rescue the 1st Defendant company from the legal action by the bank. The agreed interest also paid by the 1st Defendant to the Plaintiff and Defendant No.2 and 3 were acting upon the said arrangements.

3.(c) It is the further contention of the 1st Defendant that in a proceeding before the DRT, receiver was appointed in respect of the 1st Defendant company. In the meanwhile some of the shareholders of the 1st Defendant company filed an application under section 397, 398 of Companies Act, 1956 in Company Law Board in C.P.No.64 of 2006. On 5.1.2007 there was an extra General Meeting and in the meeting various <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 resolution were passed including the removal of the erring erstwhile Directors. The Company Law Board by its order dated 09.08.2007 confirmed the resolution passed by the shareholders on 05.01.2007. Hence it is the contention of the 1st Defendant that 1st Plaintiff was in full control over the affairs of the 1st Defendant company. The other Board of Directors at that time were helpless and they were literally threatened by the 1st Plaintiff. It is the further contention that there was a family arrangement entered between the six branches of the family and the 6th Defendant is in exclusive possession and enjoyment of the properties allotted to his branch along with his family members. Besides the 6th Defendant is also running petrol bunk in the properties allotted to him. Hence the 6th Defendant alone is entitled for the suit properties.

4. The 3rd Defendant also filed a statement to the effect that only 6th Defendant is in possession of the suit property in his own right from 24.9.1998, when an MOU was executed by him and all other shareholders of the company. Ever since the execution of the MOU, 6th Defendant alone has been in possession and enjoyment of the plaint schedule property carrying on petrol bunk business as a dealer under the 7th Defendant. The <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 suit has not filed with true facts. The agreement of sale dated 27.8.2003 and subsequent sale dated 1.9.2003 are not legally valid as the property was never owned by 1st Defendant company at the time of agreement of sale and sale deed. The property was already given over to the 6th Defendant even earlier on 24.9.98. Hence the sale deed dated 1.9.2003 under which the plaintiff are claiming rights against the 6th defendant is sham and nominal. 6th Defendant was never a tenant of the plaint schedule property. This defendant was compelled to sign the sale deed dated 1.9.2003 on false promise by the 1st plaintiff that he was only taking the sale deed as a security for the monies lend by him to the company.

5. The 5th Defendant also took a similar defence as that of the 4th defendant.



6. The 6th Defendant in his statement denied the entire allegations and submitted that he was not aware of the entire any sale agreement dated 30.07.2003. Ever there is any such agreement the same is not legally valid. He also disputed the alleged payment of two cheques to the bank. It is his contention that the Petrol Bunk in the suit property belongs to him <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 absolutely and he is carrying on his own business under the name and style of Aruna Agency. The alleged land claimed by the Plaintiffs is not correct. 1st Plaintiff is admittedly the Director of the Company is in fiduciary position and in the position of trust and confidence and is not entitled to purchase the property from the company by his name or in the name of his wife. The property purchased by the Plaintiffs for a very low price of Rs.60 lakhs, while the value of the property according to the registration department is Rs.92,15,280/-. The sale in favour of the Plaintiffs is not valid in law.

7. The 7th Defendant denying the allegations contained in the plaint and submitted that they are not a tenant under the Plaintiffs. 6th Defendant has been operating the Retail Outlet in the schedule property. 7th Defendant has invested huge amounts in providing various infrastructural facilities and continues until today in investing monies towards modernizing the retail outlet for the benefit of the general motoring public. 7th Defendant at no point of time had paid any rents either to the 6th Defendant or to the 1st Defendant. Hence submitted that the suit as against the 7th Defendant is not maintainable.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

8. C.S.No.570 of 2006 filed by the 6th Defendant in Tr.C.S.No.355 of 2014. In the plaint it is his contention that vacant land of an extent of 2 ground and 1588 sq.ft. Or thereabouts morefully set out in the schedule, originally belonged to the 1st Defendant Private Limited Company. All Directors and Shareholders of the said company are members of a single family, headed by the late Sankaranarayana Pillai. He is a member of the family of the said original ancestor and a shareholder of the company. Subsequently after passage of time disputes and dissensions arose between the different members of the family and a Memorandum of Understanding came to be executed by all the Directors and shareholders of the company on 24.09.1998. The memorandum of Understanding was executed by the members of the families of S.Paramasivam Pillai, S. Sundaram Pillai, S.Narayan Pillai, S. Karuppaswamy Pillai and S. Kalyana Sundaram Pillai. All sons of late Sankaranarayana Pillai by way of family arrangement under the said Memorandum of understanding came to be allotted different item of the properties to the company and the family of Sankara Narayana Pillai. The 6th Defendant/Plaintiff herein who hails from the branch of S.Narayana Pillai was allotted the suit property and house has been in exclusive <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 possession and enjoyment of the properties. Even before the execution of the M.O.U.suit property was in possession and enjoyment of the 6th Defendant/Plaintiff herein from 1982 allotted by the Tamil Nadu Housing Board. The 6th Defendant/Plaintiff herein also running a petrol bunk and office room in the properties. The M.O.U. dated 24.9.1998 was acted upon and different members who are allotted different properties have been dealing with the properties so allotted to them in their own right, independently without reference to the 1st Defendant company or its directors or Shareholdes and other family members.

9. The 2nd defendant who is one of the Directors of the 1st Defendant company entertained the evil idea of taking away the Plaintiff's scheduled property, acted in collusion and conspiracy with the other Directors purported to purchase the property from the 1st Defendant company on 1.9.2003 for a sale consideration of Rs.60 lacs. The alleged sale is invalid and does not in any manner affect the absolute right of the plaintiff. The Defendants are in a position of trust, confidence and in fiduciary relationship and they cannot commit breach of trust. The alleged sale deed is void. The 2nd Defendant is not only filed a suit for recovery of arrears of <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 rent but also filed RCOP No.2202 of 2004 for eviction of the plaintiff on the ground of wilful default and wilful denial of title. The said RCOP was dismissed after full trial on the ground that there is no relationship of landlord and tenant between the 2nd and 3rd Defendants. As there was complete mismanagement of the affairs of the company and the directors are guilty of misappropriation of monies belonging to the company, the Plaintiff had taken proceedings under the Companies Act against the Directors of the company including K.Muthusamy, the 2nd Defendant. All the shareholders of the company are parties in the proceedings. The sale in favour of Defendants 2 and 3 is not real but is only a sort of an escrow transaction of an alleged borrowing by the company from one of its directors. The company is only loan transaction company and paying interest to the 2nd Defendant every month. The above circumstances clearly show that the purported sale in favour of the 2nd and 3rd Defendants is sham and nominal. The Plaintiff is not a party to the impugned sale deed executed by the 1st Defendant in favour of the 2nd and 3rd Defendants. Therefore, he is entitled to ignore the same and he is not bound in law to seek the relief of setting aside the sale deed. Hence the suit. <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

10. The 1st Defendant company filed written statement denying the allegations and pleaded that due to the loan availed by the Company the bank pressurising the 1st defendant company to pay some amount in order to get rid of legal action. The then Board of Directors of the 1st Defendant company passed resolution to sell away the property to avoid any legal action from the bank against all the property. At that point of time 1st Plaintiff forced all other directors of the 1st Defendant company to make a conditional sale to him. He has taken a similar defence as taken in Tr.C.S.No.355 of 2014. Therefore the same has not repeated again.

11. Defendants 2 and 3 who are Plaintiffs in Tr.C.S.No.355 of 2014 stated that the suit is grossly undervalued and the plaintiff being a shareholder of the 1st Defendant company he is bound by the resolutions passed by the Board of Directors. The sale deed in favour of the Defendants 2 and 3 had been validly and legally executed as per the resolution of the Board dated 30.06.2003 for valuable consideration of Rs.60 lakhs. Hence the 1st Defendant is not entitled to question the sale deed executed in favour of the Defendants 2 and 3. In view of the current change in management of the 1st Defendant company due to certain orders passed by Company Law <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Board, the new management has colluded with the plaintiff to file this frivolous and vexatious suit. The 1st Defendant and the present management are aware that the sale in favour of the Defendants 2 and 3 cannot be questioned. The plaintiff is only a shareholder of the 1st Defendant company has no independent right to maintain this suit. Further the suit has to be valued as per Section 40 of the Tamilnadu Court Fees and Suit Valuation Act.

12. The Plaintiff earlier filed a company petition in C.P.NO.19 of 2004 under Section 397 and 398 of the Companies Act, 1956, which was withdrawn with liberty to file a fresh petition. Later he had filed another company petition in C.P.No.45 of 2005, which is still pending. Therefore, the Plaintiff is not entitled to pursuing the suit after having elected to pursue another remedy before another forum. The 1st Plaintiff had been in enjoyment of the suit property only as a lessee. The lease period has also expired long back. The 1st Defendant company was in need of funds to discharge its liabilities to the Bank and they offered the suit property for sale to the Plaintiff and the Indian Oil Corporation as a first offer vide their letters dated 10.2.2003 and 19.2.2003 to the plaintiff and by letter dated <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 18.2.2003 and 28.2.2003 to Indian Oil Corporation respectively. He has purchased the property as per the Memorandum of Understanding entered among the family members. But many of them failed to agree and sign it. It has not been acted upon by all the parties. First Defendant company has separate entity and it was not a party to the Memorandum of Understanding and hence is not bound by its terms. Hence, prayed for dismissal of the suit.

13. C.S.No.721 of 2010 filed for directing the defendants to deliver vacant possession of the suit property and to pay a sum of Rs.91,98,720/- being the damages for use and occupation of the suit property and future damages at the rate of Rs.2,55,520/- per month. The allegations raised in this suit are similar in the plaint filed in Tr.C.S.No.355 of 2014, which is filed for rent and permanent injunction. The allegations are denied by the 1st Defendant.

14. It is the contention of the 1st Defendant in C.S.No.721 of 2010 that he is the owner by virtue of family arrangement and he is also running a petrol bunk in the suit property in the inception. The sale deed never acted <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 upon. It is only sham and nominal. The Memorandum of Understanding dated 24.09.1998 gives absolute right to the defendant. He never lessee under plaintiff. The Plaintiff having failed to initiate certain rent control proceedings filed the present suit. In the company petition the plaintiff has also admitted the same. The plaintiff has decided to cancel the sale deed on condition that the company should return the sale consideration. Hence his contention is that the sale deed is never acted upon.

15. Based on the above pleadings, the following issues were framed in all three suits respectively:

15.(a) Issues framed in Tr. C.S.No.355 of 2014 (C.S.No.756 of 2004):

1. Whether the 6th Defendant was tenant under the Plaintiff?
2. Whether the suit claim towards areas of rent is maintainable
3. Whether the Plaintiffs are the owners of the suit property?
4. To what relief the parties are entitled to?

15.(b) Issues framed in C.S.No.570 of 2006:

1. Whether the suit framed as such is tenable?
2. Whether the suit property was originally allotted in favour <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 of the plaintiff in a family arrangement by way of Memorandum of Understanding? And if so, whether the sale deed dated 1.9.2003 executed by D2, representing D1, in favour of D3 is void ab initio?
3. Whether the sale deed dated 1.9.2003 is sham and nominal?
4. Whether the plaintiff is entitled to obtain the order of injunction as against the defendants, so as to restrain them from interfering with his peaceful possession and enjoyment of the suit property?
5. To what relief is the plaintiff entitled?

15.(c) Issues framed in C.S.No.721 of 2010:

1. Whether the 1st defendant is entitled to challenge the sale deed dated 01.09.2003 executed in favour of the Plaintiffs?
2. Whether the suit as framed is maintainable without the prayer for declaration?
3. Whether the suit is valued property?

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

4. Whether the MOU dated 24.09.1998 relied on by the 1st Defendant is valid and binding on the Plaintiffs?
5. Whether the Plaintiffs are entitled for the relief of recovery of possession of the suit property from the defendants?
6. Whether the Plaintiffs are entitled for a sum of Rs.91,98,720/- being the damages for use and occupation of the suit schedule property from 19.07.2007 to 19.07.2010 for the years preceding the suits from the defendants
7. Whether the Plaintiff are entitled for future damages for use and occupation of the suit schedule property at the rate of Rs.2,55,520/- per month from the date of suit till the date of delivery of the property from the defendants?
8. Whether the present suit is barred by the principles of res-

judicata as the similar proceedings in R.C.O.P.No.2204 of 2004 and R.C.A.No.597 of 2006 filed by the Plaintiffs herein, stands dismissed on the failure to prove landlord- tenant relationship with the 1st Defendant herein?

9. Whether the suit is barred by non-joinder of parties in <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 view of M/s.Aruna Theatres and Enterprises Pvt Ltd not arrayed as a party defendant in the present suit?

10. To what other reliefs?

16. Joint trial was conducted in all the matters. The 1st Plaintiff in Tr.C.S.No.355 of 2014 and in C.S.No.721 of 2010 was examined as P.W.1 and Ex.P.1 and Ex.P.12 were marked on the side of the Plaintiff. Plaintiff in C.S.No.570 of 2006 was examined as D.W.1 and on his side Exs.D1 to D17 were marked.

17. Learned Senior Counsel Mr. Viswanatha Rao appearing for the Plaintiff in C.S.No.570 of 2006, 6th Defendant in Tr.C.S.No.355 of 2014 and 1st Defendant in C.S.721 of 2010 submitted that one Sankara Narayana Pillai was ancestor to the parties herein. The parties to the suits are members of the joint Hindu family which is not in dispute. The said Sankara Narayana Pillai had six sons. Plaintiff in O.S.No.570 of 2006 are from the branch of the first son of Sankara Narayana Pillai. The Plaintiffs in the other suits are from the branches of the sixth son of Sankara Narayana Pillai. The joint family of all branches developed business which <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 is also not in dispute. The suit property among various other properties originally belonged to the first defendant company, in which all the children from common ancestor and their children were shareholders. The suit property was allotted to the 1st Defendant under the City Improvement Scheme which is also not in dispute. In the suit property this plaintiff (in C.S.No.570 of 2006) developed a petrol bunk and obtained licence from the 7th Defendant to run the petrol bunk. It is his contention that as the dispute arose between the parties, Memorandum of Understanding reached between the parties signed by all the members of the families and also the Directors and shareholders of the 1st Defendant company and the suit property was specifically allotted to the plaintiff in C.S.No.570 of 2006.

18. It is the further contention of the learned senior counsel for the plaintiff in C.S.No.570 of 2006 that the plaintiff in other suits claiming the ownership on the basis of the sale deed executed by the first defendant. Above said sale is the result of coercion and undue influence and the sale deed is the result of loan transaction. When the 1st defendant become debtor, in order to pay the loan of the bank and when the bank taken the legal action to bring the properties for sale, in order to safe guard the assets <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 of the company, 1st Defendant has passed a resolution to sell the property for more than Rs.3 Crores. Whereas the sale has been registered in favour of the Plaintiff in C.S.No.721 of 2010 for a paltry sum of Rs.60 lakhs. Such sale is sham and nominal, which was executed on the condition that 1st Defendant company would pay the interest for the above amount and the sale shall be cancelled on payment of money. The sale deed was never acted upon. Hence his contention that no board resolution to sell the property to Mr.Muthusamy. Other directors stand clearly indicate that the sale

is the result of coercion and undue influence and the company was paying interest to the tune of Rs.30 lakhs to the plaintiff, which is also admitted by the plaintiff before the company law board.

19. In Ex.D.7 the Plaintiff had admitted the loan transaction and his own brother is also in his pleadings admitted that the sale is not acted upon. Merely because the sale deed is registered in favour of the plaintiff, the same has not acted upon which was never intended to convey the property. Based on such sale deed one cannot establish the title. It is his further contention that the true intention has to be gathered from various circumstances available in this case. The Directors should not enter <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 profitable business with the company under Section 297 of the companies Act. Articles of Association also prohibits such purchase by the Directors. Hence his contention that the entire property is the joint family property. The Memorandum of Understanding entered among the family members clearly indicates that the suit property was allotted to the Plaintiff in C.S.No.570 of 2006. Hence his submission though the memorandum is not a registered one, the conduct of the parties signing the memorandum and their admission operate as estoppel. Hence his submission that the suit filed for recovery or possession is not maintainable without prayer for declaration. Besides, the suit is also hit by Order 2 Rule 2(3) of C.P.C. Hence his submission that the suit to declare the sale deed as null and void has to be allowed and other suits have to be dismissed. In support of his contentions he relied upon the following judgements:

1. Gangabai vs. Chhabubai [AIR 1982 SC 20]
2. Syed Rasool and Others vs. Mohammad Moulana [AIR 1997 Kar 173]
3. Thulasidhara and Others vs. Narayanappa and Ors. [2019 (6) SCC 409]  
<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010
4. Kaliaperumal vs. Rajagopal [AIR 2009 SC 2122]
5. Roshan Singh and Others vs. Tile Singh and Others [2018 (14) SCC 814 ]
6. Subbaroya M.N. vs. Vittala M.N. [AIR 2016 SC 3236 ]
7. K. Tiruapathi Mudali vs. T.Lakshmana Mudali & Ors. [AIR 195 Mad 545]
8. Habeeb Khan and Others vs. Valasula Devi and others [AIR 1997 AP 53]
9. Ram Parshotam Mittal and Others vs. Hotel Queen Road (P) Ltd., [2019 (5) CTC 803]

20. Mr.M.S. Krishnan, learned Senior Counsel appearing for the Plaintiffs in Tr.C.S.355 of 2014 and C.S.No.721 of 2010 submitted that the plaintiff has purchased the property after the Board Resolution passed by the company under Ex.D.1. Since the 6th Defendant in Tr.C.S.No.355 of 2014

was in possession of the property running a petrol bunk, priority was <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 given to him under Ex.P.2, Ex.P.3 and Ex.P.4 and despite such priority he has not chosen to purchase the property. Therefore, the company in order to clear the debts had sold the property. It is his contention that the resolution is not passed for the sale of the property for Rs.3 Crores. Resolution is passed only to clear the debt of Rs.3 Crores by selling the subject matter of the property and the sale deed is properly supported by consideration, the execution and consideration has not disputed. Merely because the property was purchased for market value which is lesser than the guideline value it cannot be said that the title did not pass. The properties, admittedly were in possession of the person who is already hostile towards others rights. Therefore, naturally the value of the property would be diminished. Hence, it is his contention that when the sale consideration is not disputed, the 6th Defendant has no right to question the sale deed. He has no locus standi to challenge the sale deed, the company and other directors have not challenged the sale deed. Whereas the 6th Defendant has set up a title merely on the basis of the Memorandum which has not been acted upon, which is not admissible in evidence.

21. In fact, 6th Defendant in his one of the reply notices taken a stand <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 that the company itself did not have right to the property, since the property was allotted to him under memorandum. In the memorandum, the company was not a party. The company being the distinct legal entity has not been made as a party. Therefore, any memorandum allotting the property cannot be looked into. Ex.D-17 also make it clear that memorandum not been acted upon. Ex.D.16 also shows that Memorandum has not been acted upon. Hence his submission that the Plaintiff being the title holder, 6th Defendant has no right to challenge his title. The contention of the 6th Defendant that the suit is barred under Order 2 Rule 2 of the CPC is also without any basis and such plea was never raised in the pleadings. Hence, submitted that the suit for recovery of possession, recovery of arrears of rent has to be decreed and suit filed by the 6th defendant for setting aside the sale deed has to be dismissed. In support of his contention he relied upon the following judgements:

1. Dalip Singh vs. Mehar Singh Rathee and others [(2004) 7 SCC 650]
2. Alka Gupta vs. Narender Kumar Gupta [(2010) 10 SCC 141]  
<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010
3. Coffee Board vs. Ramesh Exports Private Limited [(2014) 6 SCC 424]
4. Narayana Naicker v. Kannusamy Naicker [ 2019 SCC Online Mad 21145]
5. Yellapu Uma Maheswari and Another vs. Buddha Jagadheeswararao and others [(2015) 16 SCC 787]
6. Sita Ram Bhama vs. Ramvatar Bhama [(2018) 15 SCC 130]

7. Vishwanath Bapurao Sabale vs. Shalinibai Nagappa Sabale and Others [(2009) 12 SCC 101]

8. SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited [(2011) 14 SCC 66]

9. Kaliaperumal vs. Rajagopal [AIR 2009 SC 2122]

22. Mr. Uma Shankar appearing for 1st Defendant in Tr.C.S.No.355 <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 of 2014 and 570 of 2016 submitted that sale is sham and nominal and only conditional sale. Interest also paid periodically to Plaintiff. Therefore sale deed did not convey title. Further his contention that Memorandum of family arrangement is not admissible hence his contention that entire property belong to 1st Respondent company and prayed for dismissal of all the suits.

23. Mr. Abdul Hameed learned counsel appearing for the Indian Oil Corporation in Tr.C.S.No.355 of 2014 and C.S.No.721 of 2010 submitted that in the event this court passing a decree for eviction they may require six months time to vacate the premises since they put up some developed infrastructure in the property.

24. The rank of the parties is referred as per their rank in Tr.C.S.No.355 of 2014 (C.S.No.756 of 2004) for convenient sake since the pleadings of the parties with regard to the sale deed and family arrangements are identical in all suits. Though 3 suits have filed for different reliefs, the main issue revolving around in all three suits is whether sale deed dated 1.9.2003 executed by the company viz., Aruna <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Enterprises Pvt. Ltd., is binding on the company and others. Therefore, the issues No.2 and 3 in C.S.No.570 of 2006 and issue No.1, 4 and 5 in C.S.721 of 2010 have to be dealt first to address the contentious issue herein.

I. Issues Nos.2 and 3 in C.S.No.570 of 2006 and Issues No.1, 4 and 5 in C.S.721 of 2010

25. The facts can be culled out from the pleadings of the concerned parties with regard to the sale and family arrangement etc., The Plaintiff in Tr.C.S.No.355 of 2014 (C.S.No.756 of 2004) and 6th Defendant in the above suit are the main contesting parties. Though the 1st Defendant company have filed a written statement, not produced oral or documentary evidence on their side. The 1st Plaintiff was examined as P.W.1 and the 6th Defendant was examined as D.W.1. In the above back ground, this Court has to analyse the entire facts portrayed by the parties before the Court.

26. It is not disputed by both sides that the suit property and other property larger extent was originally allotted to the company by registered deed on 15.12.1974 on lease cum sale basis for the purpose of running a petrol bunk. Ex.D.2 filed in this regard and the property was sold on the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 condition that the petrol bunk to be constructed thereon and shall not be put any use except for petrol bunk unless the consent by written the Vendor has to be obtained from the purchaser. The



subject property is the portion of the property in which petrol bunk has also admittedly set up. It is the contention of the Plaintiff that as the company approached to get a license for running a petrol bunk as none of the directors of the company was qualified to bid for the petrol bunk dealership. The 6th Defendant in C.S.No.570 of 2006 is one of the sons of the company directors viz., S. Narayana Pillai being the only graduate of the family, license was obtained in his name and the company gave a letter of consent to take dealership in his name to run petrol bunk. In a nutshell it is the contention of the plaintiff that the petrol bunk license was obtained since the sixth defendant was only granduate in the family among the shareholders. After such license, he became the lessee of the company. Though denying a long lease, it is the contention that the company has given consent to obtain licence on their name. In this regard it is relevant to refer the evidence of the D.W.1, wherein he admitted that the property was originally allotted to the company on lease cum sale basis for running a petrol bunk and the document was registered in the year 1980. He has also admitted that as the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 other directors are not educated, he being B.E. Mechanical, he was permitted to take dealership in his name to run the petrol bunk by the consent of all the directors. From the admission of D.W.1, it can be seen that the dealership was obtained in his name, since other directors are not graduates and the dealership was obtained by the consent of the other shareholders in the name of the 6th Defendant and he has also admitted in his evidence as he was the only educated person, he was permitted to run the petrol bunk. He was running the petrol bunk as requested jointly by all the family members. Such permission was orally and not in writing.

27. It is to be noted that Ex.D.14 filed by the Defendant himself clearly shows that 6th Defendant was inducted as the lessee of the plot. From his admission and the above documents make it clear that license was given in his name as the lessee of the suit property. Therefore, now it cannot be contended by the 6th Defendant that his dealership was obtained in his own name and he is running the same in his individual capacity.

28. Be that as it may. It the case of the Plaintiff that the suit property was sold by the company in their favour for a valuable consideration of <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Rs.60 lakhs on 01.09.2003. It is specifically pleaded in the plaint that the company faced some financial crisis taking several efforts to come out such crisis in order to save the SARFAESI Proceedings. Resolution was passed by the company to sell the property on 3.12.2003. As the other directors and shareholders not preferred to purchase the property, the Plaintiffs have purchased the property. It is specifically averred in the plaint, despite the preference given to the 6th defendant, since he is running a petrol bunk in the suit property, to purchase the property he never come forward. It is specifically stated that by letter dated 10.02.2013 and reminder dated 19.02.2013, preference was given to the 6th Defendant. However, he has not purchased. Therefore, the plaintiff has purchased the property under Ex.P.5. Ex.P.1 Board resolution dated 3.2.2003 was also filed. On a perusal of the same makes it clear that the Board of Directors have passed resolution to dispose of the property in order to settle a sum of Rs.3 Crores towards 6.9 crores due by sister concern of the company in Karur Vysya Bank. Thereby they decided to dispose of the property. Accordingly, resolution was passed and Exs.P.2 and P.3 letter dated 10.2.2003 and 19.2.2003 giving preference to the 6th Defendant to purchase the property were also filed. These specific allegation of the plaintiff as to the resolution <http://www.judis.nic.in>

Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 passed by the company and preference given to the 6th defendant to purchase the property is not even denied in the written statement.

29. Be that as it may. In the written statement filed by the 1st Defendant company in para 5 they admitted that the company had in bad shape and in order to save the assets of the 1st Defendant company, the Board of Directors passed a resolution to sell away the property in question to avoid any legal action from the bank against all properties. In para 5 they have admitted that there was a resolution passed by the company for selling the property. That apart it is the specific contention of the 1st defendant that the 1st plaintiff viz., Mr.K. Muthusamy being the influential person politically and monetarily forced all other directors to make a conditional sale to him and the 2nd plaintiff to save the company. However, the allegation of alleged force or coercion has not been substantiated by any evidence by examining any of the directors in this regard. In para 6 of the written statement it is categorically admitted that the company has agreed to sell the property for a sale price of Rs.1 Crore, out of which Rs.60 lakhs will be paid by the 1st Plaintiff to the bank and remaining amount of Rs.40 lakhs will be paid at a later point of time and it <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 is also admitted that Rs.60 lakhs which was paid by the 1st plaintiff shall be returned to him with interest if the license of the petrol bunk could not be transferred on his name within a period of 2 years from the date of that arrangement i.e., from 27.08.2003, the amount shall be returned with interest @ 22 % per annum. From the above admission, in the pleadings, it is easily seen that the execution of the sale deed in favour of the plaintiff was not disputed by the company. Therefore the date sale and the receipt of consideration of Rs.60 lakhs has not disputed by 1st Defendant company. What was stated is as the license could not be transferred to the 1st plaintiff's name, the 6th defendant agreed to pay the interest for the above amount and paid a sum of Rs.31,68,000/- . In this regard Ex.P.8 the Minutes of the meeting of the Board of Directors makes it very clear that as the vacant possession could not be handed over to the plaintiff, they in fact requested to return the sale amount or pay compensation. However, the company has agreed to pay compensation at the rate of 22% on the sale consideration of Rs.60 lakhs. The above document makes it clear that as long as the vacant possession has not been handed over, in fact the company has decided to pay the compensation at the rate of 22% on the sale consideration. The written statement and pleadings and evidence <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 makes it clear that in fact the company had transferred the property for a sale consideration of Rs.60 lakhs. They have also agreed to transfer the petrol bunk license in favour of the 1st plaintiff.

30. Above pleadings makes it clear that the intention of the parties only to transfer the property for consideration. Therefore it cannot be said that the sale deed is nominal one. Subsequent to the contract as agreeing to pay interest as compensation also makes it clear that the company is intended to pay such interest as the vacant possession was not handed over. It is relevant to note that having pleaded that the sale is only a nominal and the interest is agreed to be paid the company has not even taken any steps to annul the sale at any point of time. It is the contention of the learned counsel that the Memorandum and Article of Association prohibits sale or purchase by the directors.

31. Ex.D.4 Memorandum and Articles of Association of the 1st Defendant company when seen clause 27 of the Memorandum and Articles of Association makes it clear that the company can sell, lease, mortgage, transfer, exchange, surrender or otherwise dispose of the property any part <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 of the business movable or immovable property assets or understanding of the company or any rights and effects for the time being of the company for such consideration in such a manner on such terms for such purposes as the company may think fit and as to any sale of real property either in consideration of a gross sum or of rent charge or partly in one way and partly another and in particular for shares, stock debentures or other securities of any other company whether or not having objects altogether or in part similar to those of the company.

32. Clause 40 of the Articles of Association reads as follows:

“40. Subject to compliance of Section 297 of the Act a Director or his relative, a partner, any other partner in such a firm or a private company or which the Director is a member or director, shall not be capable of entering into any contract with the company for sale, purchase or supply of any goods, materials or services.”

33. Section 297 (1) of the Companies Act 1956 makes it clear that except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company -

(a) for the sale, purchase or supply of any goods, materials or services;

The above section makes it clear that any sale, purchase or supply of any material or services cannot be done without the consent of the Board of Directors. The same will not restrict the power of the company to sell the immovable property to any of the director. Admittedly in this case Ex.D.1 resolution has been passed by the company which is also admitted by the company for sale of the property. Further it is to be noted that any contract entered by any director without consent of Board, such contract will only be voidable at the option of the Board as per sub-clause 5 of the Section 297 of the Companies Act 1956. Admittedly, the company so far has not exercised their right of option to avoid the sale. It is relevant to note that they never challenged the sale in any of the proceedings. In fact some of the directors who were parties to the resolution have filed a company petition for oppression and mismanagement before the Company Law Board vide, Ex.D6. As against the order of the Company Law Board <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 appeal also filed before this Court. On perusal of the Ex.D.5 order passed by this Court in a company appeal makes it clear that (i) The acts of oppression and mismanagement complained of by the respondents 1 to 5 herein in their petition C.P.No.64 of 2006 were (1) the leasing out of the Kalyana Mandapam to the son of the first appellant herein on 28.6.2002 for a rent far below the market value (2) the sale of the Petrol Bunk in favour of the first appellant and his wife for a consideration of Rs.60 lakhs (3) the receipt of Rs.99,000/- per month by the first appellant, as interest on the sale consideration fixed for the Petrol Bunk, on the ground that

the possession of the property could not be taken (4) the appropriation of the rent (license fee) paid by RPG Cellular Company, for the tower installed in the terrace of the Kalyana Mandapam building, by the son of the first appellant (5) the salary drawn unauthorisedly by the first appellant, claiming to be the Managing Director and (6) the failure to conduct Annual General Meetings from the year 2001 and the failure to file annual returns. It is to be pointed out that after the appointment of the Receiver by the Debts Recovery Tribunal, the payment of Rs.99,000/-, allegedly paid towards interest, to the first appellant and his wife, was stopped since 1.6.2006. Similarly, the receipt of the rent/license fee by the son of the first <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 appellant from RPG Cellular Company has also been stopped.

34. They never sought to annul the transaction at any point of time. The Company Law Board passed an order that the present Board of Directors of the company will continue to carry on the management of the affairs of the company, in strict compliance with the articles of Association and appointed one Chartered Accountant, authorised to carry out an investigative audit of the account of the company for the period from 1.4.2000 to 31.3.2005. Challenging the same the appeal was filed and this Court also dismissed the Appeal. Para 63 of the order passed by this Court makes it clear that the company did not seek to set aside the sale deed in terms of Section 402(e). It is also recorded that the respondents were parties to the resolutions, were also signatories to the sale deed. This Court has recorded that probably as such act can be put against them they avoided seeking to set aside the sale deed. The main contention of the mismanagement that despite the sale the compensation at the rate of 22% p.a. was paid is also one of the mismanagement. This Court ultimately dismissed the company law Broad appeal.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

35. The above judgement makes it clear that neither the company nor any of the directors sought to annul the sale deed though they filed an application for oppression and mismanagement at the relevant point of time. It is also relevant to note that though the company or director have power to seek annulment of sale deed they ought to have filed application 397 and 398 r/w Section 402(e) or (f) before the Company Law Board, which has not been done in this case. But only the oppression and mismanagement alone complained before the Company Law Board. Therefore, without challenging the sale deed admittedly executed by the company, after passing of the resolution, now the company cannot contend that the sale deed is only sham and nominal one. The very pleadings of the 1st Defendant in the written statement in para 6 indicate that they have intended to transfer the petrol bunk incense in favour of the plaintiff after the transfer of the property in their name. The same clearly indicate that in fact, their real intention was to transfer the property for valuable consideration. Therefore, merely because a sale deed was registered for a consideration of Rs.60 lakhs, as against the guideline value i.e., Rs.97 lakhs as mentioned in the sale deed, the same cannot be put against the plaintiff to contend that the sale deed is not valid.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

36. Therefore, mere inadequacy of the sale consideration is not a ground to hold that transfer did not take place. When the company has sold the property by proper resolution and received a

consideration of Rs.60 lakhs, merely consideration less than a guideline value, that cannot be a ground to non-suit the sale deed. It is also relevant to note that admittedly the 6th Defendant is in possession of the property and running a petrol bunk. Even after the transfer of the property the vacant possession could not be secured by the company and particularly 6th defendant setting up an individual title over the property on the basis of the alleged family arrangement. Such a situation, the market value normally would be less than the guideline value, since the person already having hostile attitude squatting on the property, the value of the property would certainly slash below the guideline value. In such a view of the matter, mere inadequacy of the sale consideration alone will not be a ground to set aside the sale deed.

37. It is also well settled that even for passing of title entire price is not a condition precedent for completion of the sale. Section 54 of the Transfer of Property Act defined the "Sale" is a transfer of ownership in <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 exchange for a price paid or promised or "part-paid" and "part-promised." If the intention of the parties were that the title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. The above section makes it very clear even in the event of non payment of sale consideration, the remedy of the vendor is only to sue for the balance price. Similarly vendor also have a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Therefore, it cannot be said that mere inadequacy of the sale consideration, the sale did not even to take place there was no intention to transfer the property in this case. In fact the company has agreed to the transfer the license of the Petrol Bunk in favour of the 1st Plaintiff within 24 months and also agreed to pay the interest. The resolution particularly Ex.P.8 which is also not disputed indicate that the 1st Respondent company agreed to pay compensation till the vacant site is handed over. These documents proved that in fact the intention of parties was to convey the property in true sense. Now, the company having failed to challenge the sale deed and not taken any steps to annul the sale deed either under Section 402 of the Companies Act 1956, merely filed an <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 application under the Companies Act 1956 for alleging certain oppression and mismanagement of the company. As indicated above, para 63 in Ex.D.5 this Court has clearly noted that since the resolution and the sale deed signatures would be put against the directors, they have not challenged the same. Now the contention of the 1st defendant that such a resolution and sale deed is a result of force and coercion has not substantiated in any manner. To prove alleged force and threat necessary particulars as to the nature of the force or coercion etc., must have been made in the pleadings. But the pleadings are totally silent about these aspects. Now the 1st Defendant appears to grab opportunity in a actual dispute between 6st Defendant and Plaintiffs with regard to the suit properties. Company has pleaded in para 17 of the written statement that the suit property fell into the share of the one of the branches of 6 brothers in respect of which memorandum of understanding was also executed on 24.9.1998 and the same was acted upon by other branches of the family members and the 6th defendant is in exclusive possession and enjoyment of the properties allotted by branch along with other family members. Therefore, it is the contention of the 1st Defendant that since the property has already allotted to the 6th defendant, the plaintiff not entitled to claim the same. Having <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 taken such a stand in the pleadings during the submissions the

company took a stand that the subject matter of the property neither go to the Plaintiff nor to the 6th Defendant and only revert back to the company. Such stand cannot be appreciated by this Court. Having taken the stand that the property was allotted to the 6th Defendant the Company has to either stand or fall on their own legs. It cannot take a stand contrary to their pleadings.

38. Be that as it may. The 6th Defendant took a stand that the property was exclusively allotted to him by family arrangement, which was entered on 24.9.98 and it is his further contention in the pleading that C.P.No.64 of 2005 he has also filed an Application C.A.No.1 of 2013 wherein the applicant also submitted that he is ready to take back his money. Therefore, the sum and substance of the main defence is that he is absolute owner of the suit property in pursuant to the family arrangement dated 24.09.1998, the sale is not binding and sham and nominal.

39. As far as the application by him before the Company Law Board is concerned, same is marked as Ex.D.6. In the original C.P. filed by the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Directors, he has filed the application seeking relief to execute the order of this court passed in Company Appeal No.6 of 2009 on 21.02.2011 and initiate surcharge proceedings against the respondents 2 to 4. In the above application counter Ex.D.7 also filed by the plaintiff herein. In para 12 plaintiff has pleaded that the company has agreed for interest on the sale consideration. As such it is his contention that sale is not valid. On a perusal of the above two documents this Court is of the view that the 1st Defendant having set up independent title to the property based on the Memorandum of Understanding marked as Ex.D.1 prove his case by establishing the same however, not chosen to file any application to annul the transfer at the relevant point of time. Whereas he has filed a suit now for declaration to declare the sale deed null and void on the ground that he is the owner of the property.

40. It is the main contention in his suit which was filed for declaration that the sale is not real one and it is only nominal transaction, the suit property was already allotted to him on 24.9.1998. Memorandum was also acted upon and he has become absolute owner of the property. It is the specific stand of the 1st Defendant in his plaint that he become the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 absolute owner of the property by virtue of the allotment made in family arrangement and Memorandum of understanding dated 24.09.1998. There was no pleadings in the plaint as to the oral partition. Whereas in the chief examination in the first time he pleaded the oral partition much prior to the Memorandum of Understanding dated 24.9.1998. It is well settled that if the party relies upon oral partition, such oral partition not only pleaded but also established before the court of law. The entire burden lies on the parties to set up plea of oral partition. The entire pleadings in C.S.No.570 of 2006 filed for seeking to set aside the document there is no whisper as to the date of oral partition. What was pleaded is only Memorandum of understanding reached between the directors and shareholders of the company on 24.9.1998. In the Memorandum the suit property was allotted to him. Ex.D.1 Memorandum of Understanding said to be reached between all the shareholders and directors of the company filed. It is not disputed by the parties that the various companies and firms originally developed by 6 brothers viz., S.Paramasivam Pillai, S. Sundaram Pillai, S.Narayana Pillai, S. Subramania Pillai, S. Karuppaswamy Pillai and S. Kalyana Sundaram Pillai. Contesting parties herein the 1st Plaintiff filed the suit for recovery of possession is the son of Mr.S. Kalyana Sundaram

Pillai. 6th Defendant in <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 the suit is the son of Mr.S. Narayana Pillai. This fact is not in dispute. After the death of some of the brothers all the family members and directors have entered into memorandum wherein the 6th Defendant the branch of S. Narayana Pillai and others agreed to retire from the firms. In view of their retirement the suit properties and other properties were allotted to them. The memorandum of understanding Ex.D.1 relied upon by the 6th Defendant is reads as follows:

"And Whereas the family of Sri.S. Narayana Pillai agreed to retire from the firm aforesaid and by way of their retirement benefits they are allotted property situated at No.42, Anandavelu Mudali Street, Prambur, Chennai - 11 belonging to the firm M/s.Asoka Traders more particularly described in the schedule "A" hereto as also 2 grounds and 1547 sq.ft. at Ashok Nagar more particularly described in the schedule "B" hereto belonging to M/s. Aruna Theatre and Enterprises Pvt. Ltd., wherein all the family members are share holders and in which land Sri.N. Sankaranarayanan, Son of Late Sri.S.Narayana Pillai is running a petrol bunk in his individual capacity, in full and final settlement of the claim of later Sri.S. Narayana Pillai family in the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 properties and assets of the firms M/s Ashok Traders M/s. Aravind Industries and M/s. Ananda Industries.

And whereas accordingly the family of Sri.S.Narayana Pillai has also agreed to retire from the above said firms releasing and relinquishing all their rights, title and interest in the firm which also owns immovable properties more particularly described in the scheduled "C" hereto.

Now this memorandum of understanding witnesseth and it is hereby agreed by and between the parties as follows:-

1. The family of Late Sri.S.Narayana Pillai shall retire from the following firms as from this day A. Ashoka Traders B. M/s. Aravind Industries C. M/s. Ananda Industries"

41. The first part of the Memorandum indicate that as if the suit property was allotted in present. The second part of the Memorandum indicate as if in view of such allotment they shall retire from three firms. As a consideration of such retirement, the properties including suit <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 properties shall be allotted to them. The first part of the Memorandum clearly indicate as if the property was allotted to the persons and subsequent clauses indicate as a consideration for such a retirement in the three of the firms they shall be allotted the property. It indicate that only on retiring from the firms property will be allotted in future. If the 1 st Clause as indicated in the Memorandum construed as an allotment in a family arrangement this Court is of the view that such document cannot be given any importance in the eye of law. If any non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees

and upwards, to or in immovable property; such document would require compulsory registration under Section 17 of the Registration Act. Therefore, even the first clause construed as allotment of the present, the document is hit by Section 17 of the Registration Act. Similarly, even if any property will be allotted in future which purports to operate to create any right in immovable property the documents also required registration and it also hit by Section 17 of the Registration Act.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

42. A careful reading of the entire clauses in the Memorandum makes it clear that at the most such document is capable of enforcement if other conditions satisfied after retirement from other firms. But that has not been done. Whereas right has been claimed on the basis of the unregistered document which is certainly inadmissible and cannot be looked into in the eye of law.

43. Much emphasis was made by the learned Senior Counsel Mr. Viswanatha Rao that since the family arrangement was entered by most of the family members and shareholders and the Memorandum also was not disputed though it is required registration, such memorandum operates as estoppel against the parties. 1st Plaintiff also signed in the Memorandum. Therefore, the Memorandum could be received in evidence as a corroborative evidence under Section 49 of the Registration Act. It is to be noted that Section 49 deals with unregistered document. The proviso to Section 49 of the Registration Act deals with effect of non-registration of documents required to be registered. The proviso to Section 49 makes it very clear that unregistered document required to be registered may be received as evidence of a contract in a suit for specific performance or as <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 evidence of any collateral transaction not required to be effected by registered instrument.

44. It is well settled that the collateral transaction meant under Section 49 of the Registration Act is not related to the main transaction. But the transaction which is incidental to connect with that transaction. When the document itself affects the very immovable property and based on such document right has been claimed, as long as documents remain unregistered as against Section 17 of the Act, such document cannot be received in evidence. Such document can be received and relied upon in respect of the collateral transaction which is not a main transaction of the contract. But it is only incidentally connected with the transaction, which has been held by the Apex Court in *SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited* [(2011) 14 SCC 66]

45. In *Yellapu Uma Maheswari and Another vs. Buddha Jagadheeswararao and others* [(2015) 16 SCC 787] the Honorable Apex court has held that unregistered and unstamped partition deed not admissible in evidence for primary purpose of division of joint properties <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 by metes and bounds. The entire pleadings of the 6th Defendant makes it clear that as if the suit property was allotted pursuant to the Memorandum entered on 24.09.1998. Such view of the fact the document which is not registered cannot be given much importance.

46. In *Narayana Naicker v. Kannusamy Naicker* [2019 SCC Online Mad 21145], I had an occasion to deal with this issue and held that unregistered document in respect of immovable property cannot



be looked into.

47. Learned Senior Counsel for the Plaintiff placed much reliance on the judgment of Honourable Supreme Court in *Thulasidhara and Others vs. Narayanappa and Ors.* [2019 (6) SCC 409] and submitted that unregistered document would operate as estoppel. The Apex Court in the above case held that the partition deed said to be a only a list of properties partitioned and does not create or extinguish any right in the immovable property and therefore not a compulsorily registrable. Such view was arrived after considering the facts and having regard to the family arrangements in the case. In the above case oral partition took place in the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 year 1991. In such a situation, the Apex Court held that as the oral partition is proved through document reduced into writing required registration, not registered the same operate as estoppel. But in this case the very right itself claimed on the basis of the Memorandum which is unregistered. No oral partition has pleaded in the plaint. Therefore, above judgment cannot be applied to the facts of the present case.

48. In *Subbaroya M.N. vs. Vittala M.N.* [AIR 2016 SC 3236 ] relied by the learned Senior Counsel and contend that the Apex Court has held that family arrangement can be used as a corroborative piece of evidence for showing or explaining the conduct of the parties. In the above case after taking note of the Panchayat which was reduced into writing the Apex Court relied the document for corroborative evidence alongwith other evidence. The facts of the above case is not applicable to the present case.

49. In *Roshan Singh and Others vs. Tile Singh and Others* [2018 (14) SCC 814 ] the Honourable Apex Court has held as follows:

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 "11. Even otherwise, the document Exh. P-12 can be looked into under the proviso to s. 49 which allows documents which would otherwise be excluded, to be used as evidence of 'any collateral transaction not required to be effected by a registered instrument'. In *Varada Pillai v. Jeevarathnammal*, LR (1919) 46 IA 285 the Judicial Committee of the Privy Council allowed an unregistered deed of gift which required registration, to be used not to prove a gift 'because no legal title passed' but to prove that the donee thereafter held in her own right. We find no reason why the same rule should not be made applicable to a case like the present."

50. In the above case also it is held that family arrangement could be received as corroborative evidence. In the above case also taking note of the partitions already completed in the year 1955 and subsequent agreement only with regard to the mode of nature of arrangement with regard to the division of remaining property mere agreement does not require registration. So the above judgment is not applicable to the facts of the present case.

51. In *Kaliaperumal vs. Rajagopal* [AIR 2009 SC 2122] the Honourable Supreme Court held that title to property will not go to <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 purchaser immediately on execution and registration but parties may intend

otherwise. In the above case in fact the parties intended that title of the ownership of the properties would be passed to the purchaser only after the payment of full consideration. That is not the case here in fact parties agreed for particular consideration which has been fully paid. Subsequently taken different stand therefore the above judgement also not applicable to the facts of the present case.

52. In K. Tiruapathi Mudali vs. T.Lakshmana Mudali & Ors. [AIR 195 Mad 545] the Honourable Apex Court has held that whether a sale deed was a sham and simulated one not intended to convey any title or whether it was real one intended to pass title to the transferee thereunder depends upon the 'animus transferendi' at the time when the parties entered into the transaction and each has to be decided with reference to the documents and the surrounding circumstances. But in the case on hand, as already stated the very statement of the company itself clearly indicated that they intended to transfer the property.

53. In Habeeb Khan and Others vs. Valasula Devi and others [AIR <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 1997 AP 53] the Honourable Apex Court has held that overall evidence can be taken into consideration to find out the real nature of the transaction and S.92 of the Evidence Act is not a bar to the admission of oral evidence to prove that the transaction was intended to be something other than what it purports to be.

54. In Syed Rasool and Others vs. Mohammad Moulana [AIR 1997 Kar 173] it is held that when a party pleads that there was no contract at all or that an instrument which had been bought into existence earlier was only a sham one not intended to be acted upon, it would be open to him to establish by oral evidence that there was no intention on the part of the parties to bring into existence a contract or an effective document.

55. Gangabai vs. Chhabubai [AIR 1982 SC 20] the Honourable Apex Court has held that oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether not recorded in the document, was entered into between the parties.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Absolutely there is no dispute with regard to the above cases. But they are not applicable to the facts of the present case on hand.

56. In Ram Parshotam Mittal and Others vs. Hotel Queen Road (P) Ltd., [2019 (5) CTC 803] it is held as follows:

"80. ... ..

... If, therefore, a director who could sway the decision of the Board, one way or the other is a person interested in the subject matter of the deliberations and nevertheless participates in the meeting, and the interests of the director are not identical with those of the company, the ultimate damage to the company and the

shareholders could well be imagined. This principle that where a director has a personal interest, he ought not to participate in the Board's deliberation is so sacred that no further inquiry is necessary to set at naught decisions brought about in violation of the principles. No harm might result to the company by allowing participation of an interested director, and yet the participation, per se, is vicious."

57. Admittedly in this case even the company has not sought to annul the sale in fact resolution passed by them. What was complained by them was oppression and mismanagement for paying the compensation <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 after sale of the property which has been clearly dealt with by this Court in Ex.D.5.

58. As the company has not challenged and the directors entered such contract, though such transaction is voidable as indicated in Section

397. In such view of the matter as long as the sale has not challenged, the defendant cannot now contend that the sale is not valid.

59. In the light of the above submission now it has to be seen whether family arrangement came into force and acted upon between the parties. Evidence of the parties clearly indicate that some of the branch is also not been signed. Some of the branches also fully signed. It is also to be noted that what was intended under Ex.D.1 allotment to the particular branch i.e., branch of Narayana Pillai legal heirs and not to the 1st defendant alone provided they retire from other three firms.

60. Further, Ex.D.1, on the basis of which the rights in respect of the immovable property was claimed by the defendants, the Company being the separate legal entity was not made as a party in the above agreement. In <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 the subsequent partition deed, shareholders also does not whisper anything about the family arrangements. This fact clearly indicate that Ex.D.1 has not acted upon clearly. Therefore, any such arrangements without the Company being a signatory in such document will not bind the Company also. But whereas the first defendant itself has admitted the sale of the property.

61. Ex.D.16 makes it very clear that the legal heirs of the Narayana Pillai branch have in fact claimed dividend from the firm from which they agreed to retire in Ex.D.1. Ex.D.16 series also shows that wife of the Narayana Pillai and the mother of the 6th Defendant also addressed a letter indicating that they have been continuously received the income and rent from the firm and requested that the same to be paid in individual name of the legal heirs. The above fact clearly indicate that Ex.D.1 so called family arrangement was not acted upon. Therefore , it cannot be said that pursuant to the same the property was allotted either in present or future. At the most Ex.D.1 could be considered only an agreement for allotment. Further other legal heirs have not been relinquished their rights in other firms. But Ex.D.16 makes it very clear that other legal heirs of Narayanan Pillai are <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 continue to receive the income from the firm, from which they agreed to retire under Ex.D.1. Same makes it very clear that Ex.D.1.has not acted upon as contended by the 6th Defendant. It is also to be

noted that what was intended under Ex.D.1 is to allot the share provided one branch of family retire from other three firms. Ex.D.16 proves that they have not retired from the firms. In such a view of the matter the person permitted to run the Petrol Bunk in his name and licence was obtained in his name as he admitted in his evidence i.e., he is only educated person in the family, he cannot claim the ownership of the entire property based on Ex.D.1 which is not only an inadmissible document but also not been acted upon. Therefore, Ex.D.1 did not give any right to the Plaintiff to establish the title over the property. Merely because the property tax have been paid under Ex.D.9 series, where the Petrol Bunk run by the plaintiff, they cannot establish ownership on the basis of the property tax. His own evidence clearly indicate that he came into possession with the permission of company to run the petrol bunk in his name, license was obtained in his name as he is only graduate among the shareholders. In such a view of the matter, he cannot claim any right over the property and the property has already transferred merely because some of the interest also paid on the sale <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 consideration and compensation as vacant possession was not handed over by the company, it cannot be held that title did not pass to the purchaser. Accordingly, these issues are answered in favour of the Plaintiff C.S.No.721 of 2010 and Defendant in C.S.No.570 of 2006. Issue Nos.1 to 4 in Tr.C.S.No.355 of 2014 (C.S.No.756 of 2004), Issue Nos.4 and 5 in C.S.No.570 of 2006 and Issue Nos.2, 3, 6 to 10 in C.S.No.721 of 2010

62. The case of the learned counsel for the defendant is that the suit is barred by Order 2 Rule 2 of CPC. When such contention has analysed, earlier, the plaintiffs had filed a suit for recovery of arrears of rent in Tr.C.S.No.355 of 2014. It has to be noted that earlier, based on the sale in favour of the plaintiff Muthusamy and his wife Kanthimathi, , rent has been claimed. Attornment notice has also been issued under Exs.P.2 and P.3. The above notices are not denied. However, when the application filed for eviction as the defendant raised the issue denying the relationship of landlord and tenant, the Rent Controller passed orders in favour of the defendant.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

63. As the Rent Controller dismissed the petition, in the meanwhile, the recovery of rent was claimed based on notice, which has not been replied by the defendants, mere become suit for recovery was not filed at earlier stage. It cannot be concluded that the suit is hit by Order 2 Rule 2 of CPC. The suit for recovery of possession was filed based on the title. In fact, the sale and passing of title has not even disputed by the first defendant Company. What was sought to be canvassed in this proceeding is that since the plaintiff in C.S.No.570 of 2006 himself has agreed to take back the sale consideration, the sale has not been acted upon. Therefore, suit filed for recovery of possession, based on a separate cause of action, it cannot be said that the suit is barred under Order 2 Rule 2 of CPC. Such contention cannot be countenanced for the simple reason that cause of action for recovery of rent arose mainly on the ground all notice issued by the plaintiff. Probably such recovery of arrears has claimed mainly on the basis that the plaintiff himself as in Ex.D.14 has admitted that he is the lessee of the plot. In such a view of the fact that the contention that the suit is hit by Order 2 Rule 2, cannot be countenanced.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

64. It is also relevant to note that there is no whisper whatsoever made in the pleading with regard to Order 2 Rule 2 of CPC. Only for the first time during argument of such plea has been raised, which cannot be countenanced. Without any plea being made, and no issues framed in that aspect, oral submission alone is not sufficient to hold that suit is hit by Order 2 Rule 2 of CPC.

65. In DALIP SINGH Vs. MEHAR SINGH RATHEE AND OTHERS {(2004) 7 SC – 650, wherein the Hon'ble Apex Court has held that in the absence of pleadings and proof of identity of cause of action, appellant could not be permitted to raise the plea of bar of Order 2 Rule 2 of CPC.

66. In ALKA GUPTA Vs. NARENDER KUMAR GUPTA {(2010) 10 SCC 141, the Hon'ble Apex Court has held that while considering whether a second suit by a party is barred by Order 2 Rule 2 of CPC, all that is required to be seen is whether the reliefs claimed in both suits arose from the same cause of action. The Court is not expected to go into the merits of the claim and decide the validity of the second claim. The <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 strength of the second case and the conduct of the plaintiff are not relevant for deciding whether the second suit is barred by Order 2 Rule 2 of CPC.

67. In COFFEE BOARD Vs. RAMESH EXPORTS PRIVATE LIMITED {(2014) 6 SCC – 424}, the Hon'ble Apex Court held that bar under Order 2 Rule 2 CPC must be specifically pleaded by the defendant in the suit and the trial Court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different.

68. Admittedly, in this case, no such plea has been raised. Be that as it may. The very sale of the property in favour of the plaintiff is not disputed by the Company. Even though the Company has filed an application before the Company Law Board, for oppression and mismanagement, they have not even sought to annul the sale. As rightly indicated, sale was never sought to be annulled by the Company and Ex.D.14 makes it clear that the first defendant in O.S.No.721 is claimed to be the lessee of the suit property and Rent Control proceedings also filed. <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Therefore, mere claiming the rents, it cannot be said that cause of action arose at the same time for recovery of possession. It is for the plaintiff to choose either to proceed for recovery of property or to collect mere rent. Therefore, merely because he has not filed the suit for recovery of possession, at an earliest point of time, cannot be said that the suit filed for recovery of possession, at a later point of time, is barred by Order 2 Rule 2 of CPC.

69. It is his further contention that the suit is not maintainable. It is to be noted that the Company, first defendant in C.S.No.750 of 2006 and the first defendant in Tr.C.S.No.355 of 2014 has not disputed the selling of the property for a consideration of Rs.60 lakhs. The only contention is that there was some arrangement after sale of the property as the license of the petrol bunk could not be transferred to the purchaser. They agreed to pay the interest on sale consideration. Resolution passed by the Company also indicate that they agreed to pay compensation at the rate of 22% on the sale consideration till the vacant possession is handed over by the plaintiff in C.S.No.570 of 06. Therefore, when the sale of the property is not disputed and the title already passed in favour of the

predecessors merely because <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 now the different stand has been taken by the vendor and also the person who is in possession of the property it cannot be said that the suit for recovery of possession is not maintainable without seeking a declaration of title.

70. It is the contention of the plaintiff in C.S.570 of 2006 that he became the owner of the property by virtue of allotment under Ex.D.1. In fact, when he makes a positive assertion over the title of the property, he has to seek for a declaration rather whereas he has sought only declaration to annul the sale deed which was validly executed by the Company. The Company has never raised any issue with the sale deed, except complaining of mismanagement in the company petition. As already indicated that even there is any violation of Section 297 of the Companies Act and Articles of Association such sale or transfer is only voidable and not void ab initio. Such a view of the fact as long as the vendor viz., the Company has not chosen to cancel such sale, the person who is in possession of the property, lessee of the Company, under Ex.D.14, now cannot seek to set aside the sale deed. In such a view of the fact, this Court is of the view that the suit filed for recovery of possession is maintainable. <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

71. As long as the sale is not challenged by the Company, the person who is in possession as a lessee and squatting in the property and claiming the independent right on the basis of the inadmissible document cannot contend that the person who got better title to the property has to seek for declaration and for recovery of possession.

72. The suit has been valued under Section 43 of the Tamil Nadu Court Fees and Suit Valuation Act. It is relevant to note that the sale has already been clearly established by the plaintiff. The issuance of notice has also not denied. No reply was issued to notice of attornment. Ex.D.10 reply sent by the defendants also shows that he is also aware of transfer. The fact remains that Ex.D.14 deed executed by defendant in C.S.No.721 of 2010 to the Indian Oil Corporation Limited, makes it very clear that he himself stated that he was a lessee in the plot. It is not disputed that the subject matter of property originally purchased by the Company and when he has admitted that he is a tenant under the Company. Therefore, mere setting up some independent title at later point of time sets up independent title, it cannot be said that his position as a tenant has converted into real <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 owner. His evidence also clearly indicate that he was permitted to run a petrol bunk since he was only permitted to get license in his name as he was the only graduate among the shareholder. Therefore, when the agency was a lessee and the license was obtained merely in his name, it cannot be contended that his position is not that of a lessee. Admittedly, Ex.D.14 clearly makes it clear that Aruna Theatre & Enterprises Pvt Ltd., in whose favour dealership agreement was executed by the Indian Oil Corporation Limited was a lessee of the suit property. Rent Control Petition was filed by the plaintiff originally dismissed on the ground that as there is no separate agreement between the parties. Since the defendant set up the title and the title deeds is a question and the application is dismissed, there was no discussion with regard to the title and notices, etc.

73. Be that as it may. As he was already a lessee in the Company, the Company has sold the property and proper notice also issued which is also not replied. This Court is of the view that the Court fee paid cannot be faulted under Section 43 of the Act.

74. As far as issue No.8 in C.S.No.721 of 2010 is concerned, this <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Court is of the view that to apply the principles of res judicata, there must be an issue which was directly and substituting issue between the parties or their representatives in formally decided suit. Rent Control proceedings being summary in nature. There were no issue decided as to the title of property. Therefore, Rent Control Proceedings cannot operate as res judicata.

75. To apply the principles, the finding as to the title of the immovable property should have been rendered in the former suit in the Court of competent jurisdiction. Therefore, any observation in rent control proceedings cannot operate as a res judicata in a subsequent suit wherein the question of title is directly and substituting issue between the parties. In rent control proceedings, application filed for eviction was dismissed by the Rent Controller and the same was marked as Ex.D.3. The question of title was not decided by the Rent Controller. In such a view of the matter, since the eviction petition was dismissed on different grounds, the same cannot operate as res judicata in the present suit where the main issues relate to the title of the property.

<http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010

76. Similarly, as far as the issue of non joinder of the Company in the suit for recovery of possession filed by the plaintiff, this Court is of the view that the Company has not challenged the sale at any point of time. The plaintiff has traces the title on the basis of the sale executed by the Company whereas the defendant sets up independent title on the basis of Ex.D.1 family arrangement. Therefore, mere Company cannot made as a defendant in the above suit will not have any effect in deciding the title of the property on the basis of the pleadings and evidence of the parties.

77. It is also relevant to note that in other two suits, the Company is very much a party and common evidence was recorded in all the three suits and the evidence is also adduced in common for all three suits. Though different suits have filed at different stages, issue culled out from all the three suits primarily was with regard to title to the property. In the written statement Company does not dispute transfer of property. Whereas they have taken a stand as if it is only a conditional sale. The Company has not even examined anybody to countenance the contention nor challenged such sale though it is voidable under Section 297 of the Act. Having filed a petition for mismanagement and oppression, they have not chosen to avoid <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 the sale deed under Section 402 of the Companies Act. Reasons for not avoiding the said sale is also clearly recorded by this Court in the Company appeal, as already discussed in the earlier part of this judgment. In such a view of the fact, mere the Company is not made as a party in suit, the suit cannot be held to be bad for non joinder of the Company. Accordingly, these issues are answered against the defendants.

78. As already discussed in previous issues, original defendant in C.S.No.721 of 2010 was inducted into the suit property as a lessee of the Company and license was obtained in his individual name. The manner in which Company passed Resolution even to pay the compensation, indicate that vacant possession was not handed over by the defendants. The intention of the Company was to give effect to the sale deed. The title in favour of the plaintiffs have been clearly established, the defendants stand of independent title holder has not been established. In such a view of the fact, this Court is of the view that recovery of amount claimed as arrears of rent in Tr.C.S.No.355 of 2014 cannot be ordered in favour of the purchaser for the simple reason that the purchaser were paid a sum of Rs.31 lakhs as compensation, for not handing over the vacant possession of the property. <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Factum of this payment has been proved and established and recorded in Ex.D.5. Sum of Rs.35.2 lakhs towards compensation on the sale consideration as the vacant possession has not been handed over has been recorded in paragraph 12. In such a view of the matter, even assuming that defendant is liable to pay the rent, the same has been already compensated and paid by the Company. Therefore, this Court is of the view that having received that amount, the plaintiffs in C.S.No.355 of 2014 cannot once again seek for recovery of money to the tune of Rs.22 lakhs as arrears of rent. If such amount is ordered to be paid will amount to unjust enrichment on the part of the plaintiffs. Therefore, this Court holds that recovery of amount sought by the plaintiff in Tr.C.S.No.355 of 2014 cannot be ordered in their favour since they have already compensated by the Company itself. The above amount has been paid for three years i.e., from 2003 – 2006. Such a view of the fact that the recovery of rent claimed by the plaintiff is negated. However, having regard to the fact that the title has been established and the first defendant is squatting on the property, this Court is of the view that defendant is liable to pay damages at the rate of Rs.2,55,520/- per month for use and occupation of the property from the date of suit. This Court restrict the damages alone to be paid by the <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 defendants in favour of the plaintiff from the date of suit till the date of delivery of the property. Accordingly, damages at the rate of RS.2,55,520/- p.m., is ordered from the date of suit till the date of delivery of the property. Accordingly, these issues are answered.

79. In the result,

(i) the suit in C.S.No.721 of 2010 is decreed with costs for recovery of possession in favour of the plaintiff and the plaintiff is also entitled to damages at the rate of Rs.2,55,520/- per month from 19/7/2007 till the date of delivery of possession.

(ii) the suit in Tr.C.S.No.355 of 2014 and C.S.No.570 of 2006 are dismissed and parties to bear their respective costs.

(iii) Taking note of the submission of Indian Oil Corporation Limited, six months time is granted to remove all their infrastructure.

14.10.2020 <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Index : Yes/No Internet : Yes/No ggs/mvs Witnesses: P.W.1 Mr.K. Muthusamy D.W.1 Mr. N. Sankaranarayanan Plaintiff's side Exhibits:



Ex.P1 : Copy of the resolution dated 03.02.2003 Ex.P.2 : Letter issued by the 1st Defendant Company (Tr.C.S.No.355 of 2014) to the 6th Defendant Ex.P.3 : Copy of the reminder letter dated 19.02.2003 Ex.P.4 : Office letter to 7th Defendant dated 28.02.2003 Ex.P.5 : Original Sale Deed Ex.P.6 : Copy of the Notice dt.8.10.2003 along with Ack.Card Ex.P.7 : Copy of the Notice dt.30.10.2003 along with Ack.Card Ex.P.8 : Copy of Minutes of the Board Meeting dt.14.10.2003 Ex.P.9 : Letter dt.3.11.2003 Sent by P.W.1 to D.W.1 Ex.P.10 : Reply notice by D.W.1 dt.10.11.2003 Ex.P.11 : Rejoinder by P.W.1 to D.W.1 dt.15.11.2003 Ex.P.12 : Series of Communications by P.W.1 along with Ack. Card Defendant's Side Exhibits:

Ex.D.1 : Memorandum of understanding dt. 24.9.1998 Ex.D.2 : Copy of Document No.1572 of 1980 Ex.D.3 : Copy of order in R.C.O.P.No.2202 of 2004 dt.23.3.2006 <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 Ex.D.4 : Memorandum and Articles of Association of 1st Defendant Company Ex.D.5 : Order in C.A.No.6 of 2009 dated 21.02.2011 Ex.D.6 : Copy of C.A.No.1 of 2013 in C.P.No.64 of 2006 Ex.D.7 : Copy of the counter statement by 2nd Respondent in C.A.No.1 of 2013 in C.P.No.64 of 2006 Ex.D.8 : Deed of family arrangement dated 23.11.1998 Ex.D.9 series : Xerox copies of Corporation Tax collection receipts Ex.D.10 series: Xerox copies of Property Tax payment Receipts. Ex.D.11series: Sewerage Tax payment Receipts Ex.D.12 series: Property tax collection receipts of 1st Defendant company for the period from 2006 to 2017 Ex.P.13 : Order of Company Appeal (AT) No.340 of 2017 dt.23.01.2018 Ex.P.14 : Copy of Petrol Pump Dealer Agreement Ex.D.15: Copy of MOU dated 24.9.1998 Ex.D.16:

Ex.D.17: Certified copy of Deed of partition and family arrangement dt: 27.01.2000 <http://www.judis.nic.in> Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010 N. SATHISH KUMAR, J.

ggs Common Judgment in:

Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and 14.10.2020 <http://www.judis.nic.in>  
Tr.C.S.No.355 of 2014, C.S.No.570 of 2006 and C.S.No.721 of 2010  
<http://www.judis.nic.in>