IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Tmt.Dr.R.Sathya.,M.L.Ph.D
I Additional Judge
(FAC) II Additional City Civil Court, Chennai
Tuesday the 11th day of August 2026

A.S.NO. 272 of 2024
Against
O.S.No. 3978 of 2019
CNR.No.TNCH01-026161-2024

D.Hemant Kumar, S/o. D.Krishnadas, No.1-A, 1st Floor, AUM Apartments, No. 32, Kothari Road, Nungambakkam, Chennai-600 034. ..... Appellant/Plaintiff

-Vs-

1.Panna Rajda, W/o. Late Narendra Rajda

2.Kunal Rajda, S/o. Late. Narendra Rajda

3.Supriya Rajda, D/o. Kunal Rajda

No. 1 to 3 residing at No.1-A, 1st Floor, AUM Apartments, No. 32, Kothari Road, Nungambakkam, Chennai-600 034. ....Respondents/Defendants

On appeal filed against the Judgment and decree passed by the learned XI Assistant Judge, City Civil Court, Chennai in O.S.No. 3978 of 2019, dated 05.04.2024.

<u>Parties before the trial court in O.S.No. 3978 of 2019</u>

D.Hemant Kumar, S/o. D.Krishnadas, No.1-A, 1st Floor, AUM Apartments, No. 32, Kothari Road, Nungambakkam, Chennai-600 034. ..... Plaintiff

-Vs-

1.Panna Rajda, W/o. Late Narendra Rajda

2.Kunal Rajda, S/o. Late. Narendra Rajda

3.Supriya Rajda, D/o. Kunal Rajda

No. 1 to 3 residing at No.1-A, 1st Floor, AUM Apartments, No. 32, Kothari Road, Nungambakkam, Chennai-600 034. …..Defendants

This appeal suit having come up on 29.07.2026 before me in the presence of M/s.T.S.Baskaran and N.Nathami, Counsel for the Appellant and of M/s. S.Hussain Afroze, T.Magendiran, A.Abdul Subhan and Mohammed Raashidh counsels for the respondents and upon perusing the trial Court's Judgment and decree, appeal grounds, material documents and upon hearing the arguments of both sides and written arguments filed by both sides having stood over for consideration till this day, this court delivered the following:

JUDGMENT

This appeal has been filed against the Judgment and decree made in O.S.No. 3978 of 2019, dated 05.04.2024 on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. The suit is filed by the plaintiff for the relief of Mandatory Injunction directing the Defendants to quit and deliver the vacant possession of the suit property and also the consequential relief of Permanent Injunction and damages.

3. Brief averments made in the plaint in short is as follows:

3.1.The 1st and 2nd Defendants were permitted to stay in the Flat, namely No.1A, 1st Floor, AUM Apartments, No.32, Kothari Road, Nungambakkam, Chennai - 600 034 along with the Plaintiff. Due to the relationship, namely the 1st Defendant being the sister and since the 1st Defendant is a widow, the Plaintiff had permitted the 1st and 2nd Defendants to reside along with him. Though initially, the 1st and 2nd Defendants did not cause any trouble and were living peacefully along with the Plaintiff, for the past few years, the 2nd Defendant had started mis-behaving and threatening the Plaintiff. In spite of the Plaintiff's magnanimity in permitting the 1st and 2nd Defendants to stay along with him, the 2nd Defendant had mis-behaved and that the 1st Defendant is only supporting the 2nd Defendant. During the year 2015, the 2nd Defendant with the support of the 1st Defendant had started abusing the Plaintiff using foul language. The 2nd Defendant also started physically threatening the Plaintiff. Hence, Police Complaints were given on 28.08.2016 and 22.10.2016. The Plaintiff had also personally met the IG-Admin, Office of the Inspector General of Police on October 20, 2016 and had explained the situation and again sent a Complaint on 01.12.2016 to the Asst. Commissioner of Police/the Sub Inspector, Nungambakkam Police Station, Chennai. Meanwhile, the 2nd Defendant got married with the 3rd Defendant. Again during April 2017, the 2nd Defendant's behavior with the Plaintiff started worsening. He threw the books of the Plaintiff and threatening the Plaintiff to remove his articles. ii) The 2nd Defendant also did not allow the Plaintiff to move fully inside imposing various restrictions. Hence, the Plaintiff had again lodged a Complaint requesting the Police authorities to take action. One complaint was sent on 12.04.2017 and the other on 19.04.2017, wherein FIR was also registered. After all the above, the 2nd Defendant again for some time restricted his harassment. Though the harassment did not stop, the 2nd Defendant unwarranted activities were reduced a bit. While so, the 2nd Defendant had also lost his job during November 2017. Again on 21.05.2018, the 2nd Defendant started abusing the Plaintiff with foul language and when the Police Complaints were brought to his notice, he has also started making fun of the Police as well. Meanwhile, a Police Constable has come to the premises and warned the 2nd Defendant. But, still nothing improved and hence subsequently a Complaint was also registered on 26.07.2018. In spite of so many complaints to the Police, the situation has not improved. Hence, the Plaintiff has come to the conclusion that it is better to take legal recourse's to vacate the Defendants. The legal notice dated 03.03.2019 was sent to the Defendants, where briefing the misbehavior and threat of the 2nd Defendant was also mentioned. As per the notices, the Defendants were asked to vacate hand over vacant possession of the premises on or before 31.03.2019, failing which it was stated that the Plaintiff would have no other option but to demand damages from the Defendants for use and occupation at Rs.50,000/- p.m. from 01.04.2019. All the Defendants have received the notice, but they have neither chosen to reply nor have vacated the premises. But, unfortunately, the 2nd Defendant again visited the office of the Plaintiff on 24.04.2019 and in front of all the staff, the 2nd Defendant had orally abused the Plaintiff and when the Plaintiff had returned to the house on that day, he was threatened and the 2nd Defendant had tried to manhandle the Plaintiff. Hence, the Plaintiff had locked his belongings and left the articles and the Plaintiff is now forced to stay temporarily in his office. The Defendants being only permissive occupants have no right whatsoever to squat in the house of the Plaintiff. In view of all the above stated facts and circumstances, the Plaintiff having no other alternative and efficacious remedy is constrained to approach this Hon'ble Court by way of this Suit for direction, directing the Defendants to quit and deliver vacant possession of the property, described in the Schedule. Hence, this suit.

4. <u>Brief averments made in the written statement filed by the defendant in short is as follows:</u>

The Plaintiff is the younger brother of the 1st Defendant and the 2nd Defendant is the son of the 1st Defendant and the 3rd Defendant is the wife of the 2nd Defendant. The suit schedule mentioned property was purchased by her father, (Late)

Mr.Krishnadas Dutia, from and out of his own funds. However, the property was purchased in the name of the Plaintiff and the Plaintiff had no independent source of income at that point in time. The (Late) Mr.Krishnadas Dutia, from his own funds, also purchased other properties in his name or in the names of the family members. The 1st Defendant was married to Mr.Narendra Rajda in the year 1973. Within 8 years of her marriage, when the 1st Defendant was about 33 years old, her husband passed away on 24.05.1981 after suffering a massive cardiac arrest. The 2nd Defendant, Mr.Kunal Rajda, was aged about 1 year at the time of demise of his father. Since the demise of Mr.Narendra Rajda , the 1st Defendant and her minor son are living with her parents. The family moved into the suit schedule property in the year 1982. Although the property stood in the name of the Plaintiff, it was always the understanding between the family members that the suit schedule property would belong to the Plaintiff and the 1st Defendant and that they would both be equally entitled to the said property since the 1st Defendant was a widow and the Plaintiff was and remains unmarried till date. It is pertinent to state that the Plaintiff, 1st Defendant, their parents and the 2nd Defendant, all resided together in the Schedule mentioned property. Mr. Krishnadas Dutia and Mrs.Tara Devi passed away in the year 2002 and 2013 respectively. Thereafter, the Plaintiff and Defendants continue to reside in the suit schedule mentioned property. During the lifetime of the 1st Defendant's parents, they provided her with monies to take care of her day to day expenses and towards the educational and other requirements of the 2nd Defendant. However, after the passing away of their parents, the Plaintiff refused to provide regular financial support and with each passing day thereafter, things got intolerable for the 1st and 2nd Defendants. He even instructed the Plaintiff to take the 2nd Defendant in the family business. However, the Plaintiff refused to do so after the demise of Mr.Dutia and the 2^{nd} Defendant was forced to search for a job despite the existence of a flourishing family business. Taking advantage of the pitiable condition of the 1^{st} and 2^{nd} Defendants, the Plaintiff started hurling verbal abuse on them with the intention of chasing them out. After the death of Mrs.Tara Devi in 2013, the Plaintiff's behavior changed from bad to worse. However, after their death, the Plaintiff's behavior and attitude kept getting worse with each passing day. The 1^{st} Defendant got married on 25.11.2016 and has been residing in the suit schedule property ever since then and considered it her matrimonial home. Further, the 3^{rd} Defendant has not in any manner disrespected the Plaintiff . It was (Late) Mr.Krishnadas Dutia whose monies went into purchase of the suit schedule property who allowed the 1^{st} and 2^{nd} Defendants to live there and he, in no uncertain terms declared that the Plaintiff and the 1^{st} Defendant would both be entitled to the property equally. The Plaintiff filed false complaints against them and all such complaints were rightly closed by the police authorities after due inquiry. In fact, the police even admonished the Plaintiff that he cannot use the police and the legal system to settle any personal scores with his family members which is when he stopped lodging false complaints against the 1st and 2nd Defendants. It is in fact the Plaintiff who has been torturing and harassing the 1st and 2nd Defendant. The 2nd Defendant denied the allegation that he abused the Plaintiff and/or threw books and/or threatened the Plaintiff or that he imposed restrictions on the Plaintiff's movement or that he visited the office of the Plaintiff on 24.04.19 or on any other day and abused him. It is further denied that the Plaintiff was threatened and/or manhandled by any of the Defendants. The entire averments/allegations contained in the plaint appear to have been concocted for the purpose of filing and maintaining the instant suit. While still residing in the same house, the Plaintiff issued a legal notice dated 03.03.2019 to the Defendants asking them to vacate the property. The Defendants actions of the Plaintiff clearly show the intention and ulterior motive of the Plaintiff to dispossess the Defendants from the suit schedule property. The 1 st Defendant filed a suit before the Hon'ble Madras High Court being C.S.No.653 of 2019, for declaration, partition and rendition of accounts in respect of several properties left behind by the parents of the Plaintiff and 1st Defendant, including the instant suit schedule property. The Defendants crave leave of this Hon'ble Court to place reliance on the plaint and the documents filed by the 1st Defendant in C.S. No.653 of 2019 before the Madras High Court. The suit is an abuse of process of law and that the Plaintiff is not entitled to any misplaced sympathy or relief from this Hon'ble Court. Hence, the suit is liable to be dismissed with exemplary costs.

5. On the above pleadings the following issues were framed for trial :-

1. Whether the Plaintiff is entitled for mandatory injunction directing the Defendants to quit and deliver vacant possession of the property, described in the schedule hereunder to the Plaintiff?

2. Whether the Plaintiff is entitled for directing the Defendant to pay Rs.50,000/- (Rupees Fifty Thousand only) per month as future damages or any other amount that may be determined by the Hon'ble Court from the date of plaint till the date of handing over vacant possession of the schedule property to the Plaintiffs?

3. Whether the Plaintiff is entitled for permanent injunction and for costs as prayed for?

4. To what other reliefs the Plaintiff are entitled to?

6.The Plaintiff Hemant Kumar examined himself as PW1 and Ex.A1 to Ex.A23 were marked through him. On behalf of the Defendants, the 1st Defendant Panna Raja was examined as DW1 and Ex.B1 to Ex.B3 were marked.

7. After detailed trial the lower court partly decreed the suit**.** Aggrieved by the judgment and decree of the trial court, the unsuccessful plaintiff has preferred this appeal questioning the correctness of the judgment and decree of the trial court on various grounds. The following grounds are worth for consideration:

- The Judgment and Decree of the Learned Judge is contrary to law and weight of evidence.

- The Learned Judge ought to have decreed the suit for the relief of eviction, delivery of vacant possession of the suit properties and damages.
- The Learned Judge failed to consider that the suit property was purchased by the Appellant/Plaintiff from and out of his funds.
- The Learned Judge failed to appreciate Ex.A2 to Ex.A23, which proves that the Appellant/Plaintiff had his own income, from which the suit house was purchased.
- The Learned Judge failed to consider that during the cross examination of Appellant/Plaintiff (PW1), it was not disputed that the Appellant had his own income and that the suit property was purchased from it. On this sole ground, the suit is liable to be decreed in entirety.
- The Learned Judge ought to have held that the Respondents failed to prove their alleged claim that the suit property was purchased from and out of the funds of the father Krishnadas Dutia.
- The Learned Judge ought to have held that the Respondents/Defendants failed to prove that their alleged claims are bonafide. No prima facie evidence was let in to prove their alleged claims.
- The Learned Judge ought to have held that the Respondents/Defendants failed to prove that the father Krishnadas Dutia had any source of income.

- The Learned Judge failed to consider that the Respondents/Defendants are fraudulently claiming right in the suit house only to delay the rightful claims of the Appellant and to prevent the Appellant from residing in the soit house during his lifetime.
- The Learned Judge failed to consider that pendency of the OP for probate Respondent of the fathers Will filed by the Appellant and the suit filed by the respondent for partition are immaterial for determining the rights of the parties in the present lis.
- The Learned Judge failed to consider that there is no necessity to plead regarding filing of OP and partition suit, in the present case.
- The finding of the Learned Judge that the rights of the parties cannot be decided in the present suit, in view of the pendency of the OP for probate of the fathers Will and the suit for partition, is contrary to law.
- The Learned Judge miserably erred in holding that the Appellant/Plaintiff took a contradictory stand in the probate OP that the 1st Respondent/1st Defendant shall be entitled to the suit property, if not for the Will of the father. The suit flat is not the subject matter of OP.
- The finding of the Learned Judge that since the 1st Respondent/1st Defendant has been residing in the suit property for more than 25 years and also claiming

right as legal heir of father Krishnadas Dutia, the prayer for evicting the Defendants cannot be granted is unsustainable in law.

- The finding of the Learned Judge that the rights of the parties in the suit property can be known only after the result of the OP and partition suit and that the Appellant/Plaintiff cannot seek for eviction at this juncture is contrary to settled principles of law.
- The finding of the Learned Judge that the Appellant/Plaintiff ought to have sought for the relief of declaration is unsustainable in law as there is no cloud in title.
- The Learned Judge erred in heavily relying up Ex.Al to hold that the Appellant failed to prove title as Ex.Al pertains to vacant land and watchman quarters.
- The Learned Judge erred in holding that the Appellant/Plaintiff failed to state as to in which schedule in Ex.Al, the suit flat is situated.
- The finding of the Learned Judge that the Appellant/Plaintiff failed to file any Joint Development Agreement or gave details about the suit flat to know the rights of the parties is unsustainable. The 1st Respondent's alleged claim is not based on any Deed, but is as a legal heir of Late. Krishnadas Dutia.
- The Learned Judge erred in holding that the Appellant/Plaintiff failed to state as to how he obtained title to the suit property.

- The Learned Judge erred in holding that the Appellant/Plaintiff failed to prove through documentary evidence that the suit property was purchased from and out of his income.
- The Learned Judge erred in brushing aside the tax receipts on the ground that PWI admitted that the 1st Respondent/1st Defendant is residing with him from the year 1983 and that no evidence is produced to prove that it was a permissive possession.
- The Learned Judge erred in holding that the year when the Defendants were permitted to reside in the suit property is not averred. It is an admitted fact that the 1st Respondent has been residing in the suit property since its purchase. Moreover the year is immaterial to the facts of this case.
- The Learned Judge failed to consider that during the cross examination of PWI, the damages at Rs.50,000/- per month was not disputed. On this sole ground the relief for damages is liable to be decreed.
- The Learned Judge failed to consider that the Respondents were residing in the suit flat even after the legal notice for eviction, which compelled the Appellant to file the suit for eviction. Therefore the Respondents possession since then have been illegal and unlawful.
- The Learned Judge erred in holding the Appellant/Plaintiff failed to aver the basis upon which the damages was calculated at Rs.50,000/- per month.

- The Learned Judge erred in holding that the no future damages can be claimed as the Appellant/Plaintiff failed to prove the Respondents/Defendants were in unlawful possession and enjoyment of the suit property.
- The other reasons assigned by the Learned Judge in dismissing the relief for eviction and damages is contrary to law and unsustainable.

Therefore, the appellant prayed to allow the appeal and to partly set aside the decree and Judgment of the Trial Court.

7. **Point for consideration in the appeal:-**

(1) Whether the trial court had ignored the relevant admissions obtained during cross-examination and had incorrectly applied the decision in Anathula Sudhakar Vs.P.Buchi Reddy (2008) 4 SCC 594?

(2) Whether the trial court is justified in coming to the conclusion that the appellant/plaintiff is not entitled to the relief of mandatory injunction and claim for damages ?

(3) Whether the judgment and decree dated 05.04.2024 passed by the learned XI Assistant Judge, City Civil Court, Chennai, in O.S.No.3978 of 2019, are liable to be modified or set aside to the extent challenged in the present appeal?

(4) Whether the decree and Judgment of the Trial Court is in accordance with law or is liable to be set aside?

The parties are referred by their litigative status before the Trial Court.

9. **Point No 1 to 4:**

The counsel for the appellant filed his written arguments and contended that the impugned Judgment is liable to be set aside as the learned Trial Judge failed to appreciate the oral and documentary evidence in its proper perspective and has dismissed the principal relief of recovery of possession on wholly untenable factual and legal grounds.The Trial Court has, on the one hand, accepted that the Defendants cannot alienate or encumber the suit property till the rights are decided in the proceedings pending before the Hon'ble High Court and accordingly granted permanent injunction in favour of the Plaintiff. Having recognised the Plaintiff's prima facie right to protect the property, the Trial Court committed a serious error in refusing the consequential relief of recovery of possession solely on the ground that C.S.No.653 of 2019 is pending before the Hon'ble High Court. This reasoning is self-contradictory and legally unsustainable. The entire approach of the Trial Court proceeds on the erroneous assumption that mere filing of a partition suit by the first Defendant creates a legal embargo against adjudicating the Plaintiff's existing civil rights. Such an approach is contrary to the settled principles governing civil adjudication.

10.The counsel for the appellant further contended that the Appellant is the younger brother of the first Respondent. The second Respondent is the son of the first Respondent and the third Respondent is the wife of the second Respondent. The suit property absolutely belongs to the Appellant under a registered Sale Deed dated 21.03.1994 (Ex.A1). The first Respondent being the widowed sister of the Appellant was permitted to reside in the suit property purely on account of love and affection.

The second Respondent was also residing along with his mother. The permission granted was only a permissive occupation and never conferred any legal right upon the Respondents. Owing to continuous acts of intimidation, abuse, interference and threats committed particularly by the second Respondent, the Appellant was constrained notice dated 03.03.2019 was issued terminating the permissive occupation and to lodge several police complaints from the year 2016 onwards. Ultimately, legal calling upon the Respondents to vacate the premises. Despite receipt of notice, they neither replied nor vacated, thereby necessitating the filing of the suit. The defence is that though the Sale Deed stands in the Plaintiff's name, the consideration allegedly came from the father and therefore the first Defendant has equal rights in the property. Except making such a bald plea, no documentary evidence whatsoever has been produced by the Defendants to substantiate the said contention.

11.The counsel for the appellant further contended that the learned Trial Judge failed to appreciate that the Plaintiff discharged the burden cast upon him by producing unimpeachable documentary evidence. The Plaintiff produced Registered Sale Deed dated 21.03.1994 – Ex.Al., Wealth Tax Order – Ex.A14., Chartered Accountant's Certificate - Ex. A19., Property Tax Receipts,Water Tax Receipts, Electricity Records, Maintenance Receipts, Other municipal and statutory records standing exclusively in his name. The above documents consistently establish that ever since the purchase, the Plaintiff alone has been recognised by every statutory authority as the owner of the suit property. The Trial Court noticed the existence of these documents but failed to assign them their proper evidentiary value. Instead, the Court proceeded as though the Plaintiff had not produced any evidence regarding his independent source of income. Such finding is contrary to the record, particularly, Ex.A14 (Wealth Tax Order) and Ex.A 19 (Auditor's Certificate) were produced specifically to establish that the Plaintiff possessed independent financial resources sufficient to acquire the property. The Trial Court has neither analysed these exhibits nor recorded any valid reason for discarding them. The finding that the Plaintiff failed to establish his independent source of funds is therefore perverse, being contrary to the documentary evidence available on record.

12.The counsel for the appellant further contended that the entire defence proceeds on the allegation that late Krishnadas Dutia purchased the property in the Plaintiff's name. This is a positive plea specifically pleaded by the Defendants. Therefore, the burden squarely rested upon the Defendants to establish(i) that the father paid the entire sale consideration, (ii) that the Plaintiff was only a name lender and (iii) that the beneficial ownership vested with the father. No bank account, No account books, No income records, No Wealth Tax records of the father, No Income Tax records, No document showing payment of consideration, No evidence from the vendor, No documentary evidence whatsoever. In spite of the complete absence of evidence on the Defendants' side, the learned Trial Judge shifted the burden upon the Plaintiff to disprove the Defendants' allegation. Such reversal of burden is contrary to the Indian Evidence Act. Further, despite pleading that the Plaintiff had no independent income, no meaningful suggestion was put during the cross-examination of PW1 disputing the Plaintiff's financial capacity. This aspect had already been highlighted before the Trial Court in the written arguments and remains unanswered by the defence.

13.The counsel for the appellant further contended that similarly, during the cross-examination of DW1, the following admission was elicited:

> எனது சகோதரர் வருமான வரி செலுத்துபவர் என்பதால் எனது சகோதரர் எனது தகப்பனார் உடன் சேர்ந்து தொழில் செய்து வருவதால் வருமான வரி அவரும் தாக்கல் செய்திருக்க வேண்டும்.

This admission, coupled with the admitted filing of Income Tax returns by the Plaintiff, probabilises the Plaintiff's independent source of income. The Trial Court has completely omitted to consider this material admission and the principal reason assigned by the learned Trial Judge for declining the relief of recovery of possession is that the first Defendant bas instituted C.S.No.653 of 2019 before the Hon'ble High Court, claiming that the suit property forms part of the family properties and that the said proceedings are pending and the said reasoning is legally unsustainable. The mere institution of a civil suit neither extinguishes nor suspends the legal rights of the opposite party. Unless and until the competent Court passes a decree declaring that the Plaintiff has no exclusive title over the suit property, the Plaintiff continues to be the absolute owner under the registered Sale Deed marked as Ex.Al. The Trial Court virtually refused to exercise the jurisdiction vested in it by postponing adjudication of the Plaintiffs civil rights on account of the pendency of another proceeding. Such an approach is contrary to the settled principles governing civil trials. Every civil suit has to be decided on the pleadings, evidence and issues arising therein. The pendency of another suit cannot become a substitute for the appreciation of evidence recorded in the present suit. Significantly, the Defendants never obtained any interim order from the Hon'ble High Court restraining the Plaintiff from asserting his rights over the suit property. Equally, there is no order declaring that the Plaintiff's title under Ex.Al stands suspended or eclipsed. Therefore, the learned Trial Judge could not have denied the relief of recovery merely because C.S.No.653 of 2019 is pending. The learned Trial Judge overlooked that the burden in the present suit was to determine whether the Plaintiff had established a better title than the Defendants and whether the Defendants had any legal right to continue in possession after termination of their permissive occupation. Those issues ought to have been independently decided on the evidence available in this suit.

14.The counsel for the appellant further contended that the Defendants attempted to create an impression that because late Krishnadas Dutia was the father of the Plaintiff and the first Defendant, every property standing in the Plaintiff's name should automatically be treated as family property. Such a proposition is unknown to law. Under the settled principles governing ownership of immovable property, a registered conveyance vests title in the purchaser named therein unless the contrary is established by cogent and convincing evidence. In the present case, Ex. Al unequivocally conveys the suit property in favour of the Plaintiff alone. The Defendants admittedly are not parties to the sale transaction. There is absolutely no recital in Ex.Al indicating that the Plaintiff was merely a benamidar or trustee for the benefit of the father or the family. The Defendants have not produced any contemporaneous document showing that late Krishnadas Dutia objected to the Plaintiff treating the property as his own during his lifetime. On the contrary, all municipal, revenue and statutory records continued in the Plaintiff's name for several years. Taxes were paid in his name. Electricity and other civic records also stand in his name. These contemporaneous documents strongly corroborate the Plaintiff's exclusive ownership. The learned Trial Judge failed to attach due weight to these undisputed documents.

15.The counsel for the appellant further contended that the pleadings of the Plaintiff consistently disclose that the first Defendant, being his widowed sister, was permitted to occupy the premises out of sympathy and affection. Such occupation was never adverse and itIt was never under any claim of ownership and it was never pursuant to any transfer of interest and the permission was purely personal and revocable. Once the Plaintiff terminated the permission by issuing legal notice calling upon the Defendants to vacate, their possession immediately became unauthorized and thereafter, the Defendants had no independent legal right to continue in occupation and the Trial Court has not recorded any finding that the Defendants acquired title by adverse possession, prescription or any independent legal source. Once permissive possession stands terminated, the owner becomes entitled to recover possession. The learned Trial Judge therefore committed a serious error in refusing the consequential relief despite holding that the Plaintiff's claim deserved protection to the extent of restraining alienation.

16.The counsel for the appellant further contended that the defence throughout the trial rested upon an allegation that the Plaintiff was financially incapable of purchasing the property. However, the Defendants deliberately withheld the best evidence available with them. If really late Krishnadas Dutia had paid the consideration, his Income Tax records could have been produced and his Wealth Tax returns could have been produced, his account books could have been produced,

bank statements could have been produced, documents evidencing withdrawal of funds could have been produced, any correspondence relating to purchase could have been produced, None of these documents have been filed. The failure to produce the best available evidence warrants drawing an adverse inference against the Defendants under Section 114 of the Indian Evidence Act. Instead of drawing such adverse inference, the learned Trial Judge shifted the burden upon the Plaintiff. Such an approach is directly opposed to the settled principles of evidence.

17.The counsel for the appellant further contended that the impugned judgment contains mutually inconsistent findings. On one hand, the Trial Court granted permanent iniunction restraining alienation or encumbrance by the Defendants and it refused recovery of possession on the ground that title is disputed and if the Plaintiff had absolutely no enforceable right, there was no justification for granting any injunction in his favour. Conversely, once the Court found that the Plaintiff's interest required judicial protection, there was no legal basis for refusing recovery merely because another suit is pending. These inconsistent findings demonstrate that the Trial Court misdirected itself in appreciating the legal consequences flowing from the evidence on record. One of the principal reasons assigned by the learned Trial Judge for dismissing the suit is that since the Defendants disputed the Plaintiffs title and C.S.No.653 of 2019 is pending before the Hon'ble High Court, the Plaintiff ought to have sought a declaration of title instead of maintaining a suit for mandatory injunction and recovery of possession. The said finding is contrary to the settled principles of law. A mere denial of title in the written statement does not compel the Plaintiff to institute a suit for declaration. Unless the Defendants raise a genuine, substantial and bona fide cloud over the Plaintiff's title by producing acceptable evidence, the Plaintiff is entitled to maintain a suit based upon his existing title. In the present case, the Plaintiff has produced the registered Sale Deed (Ex.A1) together with continuous documentary evidence recognising his ownership. On the contrary, the Defendants have not produced a single title document in their favour. Therefore, no genuine cloud over title existed warranting a suit for declaration. The Trial Court unfortunately treated the mere filing of a partition suit by the first Defendant as sufficient to create a cloud over title. Such an approach is legally erroneous. If mere institution of a suit is treated as creating a cloud over title. every registered owner can be deprived of his remedies merely by filing speculative litigation. The law does not contemplate such a consequence. Therefore, the reliance placed upon the decision in *Anathula Sudhakar v. P. Buchi Reddy* is wholly misplaced and distinguishable on facts.

18.The counsel for the appellant further contended that the learned Trial Judge relied upon the judgment of the Hon'ble Supreme Court in Anathula Sudhakar v. P. Buchi Reddy to hold that the Plaintiff ought to have sought declaration of title. With utmost respect, the facts of the present case stand on an entirely different footing. The Hon'ble Supreme Court itself has held that where the Plaintiff is able to establish his title and the Defendant merely raises a frivolous or unsupported dispute, a declaration is not mandatory. In the present case the Plaintiff has produced the registered conveyance and statutory records stand in his name, municipal records stand in his name, tax receipts stand in his name, wealth tax records support his financial status, Chartered Accountant's Certificate supports his source of funds, whereas the Defendants have produced no document whatsoever establishing title. Therefore, the present case does not fall within the category of cases where a serious cloud over title exists. Rather, it falls within the category where the Defendant merely disputes title without any supporting evidence. Hence the Trial Court completely misunderstood the ratio laid down in Anathula Sudhakar. Instead of applying the ratio, the Trial Court has expanded it beyond its intended scope.

19.The counsel for the appellant further contended that the learned Trial Judge has selectively extracted portions of the oral evidence while completely overlooking material admissions elicited during cross-examination. The Plaintiff had specifically relied on the admissions made by DW1 in the that the father alone possessed financial capacity. Likewise, the admissions extracted from the cross-examination regarding the Plaintiff's independent business activities and income have not been discussed at all. The Trial Court has referred only to isolated answers convenient to the defence while ignoring the evidence favourable to the Plaintiff and such selective appreciation of evidence renders the findings perverse. The appellate Court, being the final Court on facts, is duty-bound to reappreciate the entire oral evidence independently instead of merely affirming the conclusions recorded by the Trial Court.

20.The counsel for the appellant further contended that throughout the proceedings, the Defendants repeatedly asserted that late Krishnadas Dutia purchased the property in the Plaintiff's name. However, it is a settled principle that pleadings are not proof and every material plea requires independent evidence except oral assertions, absolutely no documentary evidence has been produced. The Trial Court unfortunately treated those assertions as though they stood proved. Such an approach is directly contrary to the Indian Evidence Act and the Plaintiff cannot be non-suited merely because the Defendants made allegations unsupported by evidence.

21.The counsel for the appellant further contended that the impugned judgment deserves interference for the following independent reasons that (a) Material documentary evidence such as Ex.A14 and Ex.A19 has not been properly analysed, (b) The burden of proof has been wrongly shifted from the Defendants to the Plaintiff, (c) Relevant admissions obtained during cross-examination have been ignored, (d) No adverse inference has been drawn against the Defendants for withholding the best evidence, (e) The pending partition suit has been treated as if it automatically eclipses the Plaintiff's title, (f) The decision in Anathula Sudhakar has been incorrectly applied, (g) The findings granting permanent injunction and refusing recovery of possession are mutually inconsistent, (h) The Trial Court has virtually declined to adjudicate the issues arising in the suit on the assumption that another

Court will decide them in future. Each of the above errors independently warrants interference by this Hon'ble Appellate Court.

22.The counsel for the appellant further contended that being a first appeal under Section 96 CPC, this Hon'ble Court is the final Court on facts as well as law and the entire oral and documentary evidence is open to reappreciation.Where the Trial Court has ignored material evidence, drawn conclusions unsupported by the record, or misapplied settled legal principles, this Hon'ble Court is fully empowered to reassess the evidence and arrive at its own independent conclusions. In the present case, the findings recorded by the Trial Court are neither supported by the evidence on record nor by the settled principles governing title, burden of proof and permissive possession. Therefore, this is a fit case warranting complete reappreciation of the evidence and reversal of the judgment insofar as it dismisses the relief of recovery of possession.

23.The counsel for the appellant further contended that the civil cases are decided on the touchstone of preponderance of probabilities. The Plaintiff is not required to prove his case beyond reasonable doubt. The question is whether the evidence adduced by the Plaintiff is more probable and convincing than that of the Defendants. In the present case, the Plaintiff has established a consistent chain of documentary evidence commencing from the registered Sale Deed (Ex.A1) and continuing through municipal records, tax receipts, statutory records, Wealth Tax proceedings and the Chartered Accountant's Certificate. These documents span several years and are wholly consistent with the Plaintiff's claim of exclusive ownership. On the contrary, the Defendants have not produced even a single contemporaneous document to probabilise their plea that the suit property was purchased by late Krishnadas Dutia in the Plaintiff's name. Their entire defence is founded only upon oral assertions unsupported by any documentary evidence. Such a defence cannot displace the evidentiary value attached to a registered conveyance. The learned Trial Judge, instead of testing the rival cases on the basis of probabilities arising from the evidence, proceeded on conjectures and assumed that because the father was financially well placed, he must have purchased the property. Such inference is not founded upon any legal evidence and is therefore liable to be rejected.

24.The counsel for the appellant further contended that it is an admitted fact that Ex.Al is a registered Sale Deed executed in favour of the Plaintiff. The Defendants have neither sought cancellation of Ex.Al nor questioned its execution or genuineness. They have also not pleaded fraud, impersonation, coercion or misrepresentation in relation to the execution of Ex.A1. Once the execution and registration of Ex.Al are admitted, the title conveyed thereunder continues to operate until it is avoided in accordance with law. The Trial Court could not have virtually rendered Ex. Al ineffective merely on the basis of an unsubstantiated plea that the father allegedly supplied the sale consideration. Even assuming, without admitting, that the father contributed financially, that circumstance by itself would not divest the Plaintiff of the legal title conveyed under a registered instrument unless the Defendants establish the legal consequences flowing therefrom by admissible evidence. No such evidence has been produced.

25.The counsel for the appellant further contended that the conduct of the parties is a relevant circumstance while appreciating evidence. If the Defendants genuinely believed that the property belonged to the family, they would have asserted such a claim immediately after the purchase in 1994. They would have sought mutation of records and they would have objected to the Plaintiff paying taxes in his own nameand have challenged the Plaintiff's exclusive enjoyment and have initiated appropriate legal proceedings much earlier. Instead, the Defendants continued to occupy the premises only because the Plaintiff, out of affection towards his widowed sister, permitted them to reside therein. Only after disputes arose between the parties did the Defendants, for the first time, set up the plea that the property belongs to the family. Such conduct itself probabilises the Plaintiff's case that the occupation was only permissive. The consequence of the impugned Judgment is that a person holding a registered Sale Deed and supported by statutory records has been denied recovery of his own property solely because another party has instituted a partition suit making a contrary allegation. If such reasoning is accepted, every registered owner can be deprived of possession merely by filing a partition suit or any other declaratory proceeding, without producing any evidence in support thereof. Such a proposition strikes at the very sanctity of registered conveyances and is contrary to the settled principles governing property law and the learned Trial Judge has therefore committed an error affecting the very root of the decision, warranting interference by this Hon'ble Appellate Court.

26.The counsel for the appellant further contended that the Plaintiff has established his title under Ex.Al and continuous recognition of such title by statutory authorities and his financial capacity through documentary evidence, Ex-A14&19, permissive occupation of the Defendants, valid termination of such permission, continued unauthorised occupation by the Defendants. The Defendants, on the other hand, have failed to establish any independent title, payment of sale consideration, any legal right to remain in possession, any documentary evidence supporting their defence. The Trial Court has ignored material evidence, misdirected itself on the burden of proof, misapplied the decision in Anathula Sudhakar, and refused to exercise jurisdiction on an erroneous assumption that the Plaintiff should await the result of another proceeding. The findings recorded by the learned Trial Judge are therefore unsustainable both on the facts and in law and prayed that the appeal may be allowed.

27.The counsel for the respondent filed his written arguments and contended that the present First Appeal has been preferred by the Appellant/Plaintiff challenging the Judgment and Decree dated 05.04.2024 passed in O.S. No. 3978 of 2019 by the XI Assistant City Civil Court, Chennai, to the extent that it dismissed the Appellant's prayers for mandatory injunction (eviction/delivery of vacant possession) and monthly damages of Rs. 50,000/-. The suit flat, situated at No. 1-A, 1st Floor, AUM Apartments, Kothari Road, Nungambakkam, Chennai, is the shared family home where Respondent No. 1 (the widowed sister of the Appellant) and Respondent No. 2 (her son) are residing and the Learned Trial Judge rightly appreciated the oral and documentary evidence, recognized the complex intra-family claims pending before the Hon'ble High Court of Madras, and correctly held that the Appellant is not entitled to evict the Respondents under the guise of a summary/permissive occupancy suit.

28.The counsel for the respondent further contended that the Appellant's Claim is that the Appellant purchased the suit property out of his own independent income and marked tax receipts (Ex.A2 to Ex.A4, Ex.A14 to Ex.A22),. The Learned Trial Judge correctly held that the Appellant failed to adduce any documentary evidence proving his independent source of income or that funds for the purchase flowed exclusively from his personal account at the time of purchase. Merely producing post-purchase property tax receipts or utility bills (Ex.A2-Ex.A4, Ex.A14-Ex.A22) in one's name does not establish absolute ownership. Rather the suit property has been purchased from Joint Family Funds. It is established through cross-examination that both the Appellant and his father were actively running businesses. The Respondent No. 1 has consistently asserted that the suit flat was purchased by her father from joint family business funds.

29.The counsel for the respondent further contended that the Appellant claims that the Trial Court erred in holding that he failed to prove how he obtained title to the suit flat. As rightly noted by the Trial Court. Ex.A1 (Sale Deed dated 21.03.1994) pertains only to vacant land and a watchman's quarters, The Appellant failed to produce any Joint Development Agreement (JDA), builder's agreement, or construction allotment deed to link Ex.Al to the specific 3,000 sq. ft. flat (No. 1-A). The Appellant failed to establish as he is the owner of the flat. There is a direct cloud on the Appellant's title. As settled by the Hon'ble Supreme Court in ***Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594*** where a cloud is raised over the plaintiff's title and the plaintiff is not in exclusive possession, a mere suit for injunction/eviction without seeking a relief of Declaration of Title is not maintainable in law.

30.The counsel for the respondent further contended that the Appellant in his cross examination dated 14.12.2022 has admitted that he is not in possession of the suit property and In the case of ***Sanjay Paliwal and Ors. Vs. Bharat Heavy Electricals Ltd in (2026INSC61)*** The Hon'ble Supreme Court in paragraph 20 to 22 had held that *"Where the Plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the Defendant asserts title thereto and there is also a threat of dispossession from Defendant, the Plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of Plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the Plaintiff will have to file a suit for declaration, possession and injunction".*

31.The counsel for the respondent further contended that the respondent/defendant had disputed the exclusive ownership of the Appellant and to assert her right as the Joint owner of the suit property had filed C.S No.653/2019 before the Hon'ble High Court Madras seeking for a relief of partition and it is pending adjudication. It is pertinent to state that Ex.B3 (Plaint filed in C.S No.653/2019) is dated 02.10.2019 and the O.S No.3978 of 2019 is dated 20.11.2019, the Appellant being aware of the suit filed for partition had deliberately filed the subsequent suit O.S No.3978 of 2019 for bare injunction and for damages which is not maintainable. The present Appeal is also hit under Section 41(h) of Specific Relief Act, 1963.

32.The counsel for the respondent further contended that the Appellant had stated that the pending Partition Suit (C.S. No. 653/2019) and Probate Petition (O.P. No. 611/2020) before the Hon'ble High Court are immaterial to this suit but in Ex.B1 (Probate Petition filed by the Appellant in O.P. No 611/2020), the Appellant himself made an unequivocal admission at Paragraph 13 that, but for the alleged Will of the father, Respondent No. 1 would be entitled to a share in the family properties. The Appellant under fabricated Will is trying to usurp all the properties including the suit property so as to deprive the widow to lurch without any other property from the estate of her father. Furthermore, C.S. No. 653/2019 filed by Respondent No. 1 for partition includes the suit flat. The Appellant took contradictory positions between his Probate pleadings and the present plaint. The Trial Court rightly held that the true legal rights and ownership of the parties across all joint properties are sub-judice before the Hon'ble High Court and cannot be pre-empted by evicting the widow sister at this juncture.

33.The counsel for the respondent further contended that the appellant claimed that the Respondents are merely permissive license-holders whom he permitted to stay out of goodwill, but in the cross-examination, PW1 (Appellant) admitted that

Respondent No. 1 has been residing along with his parents since 1982 or 1983-long before the execution of the sale deed Ex Al in 1994.

34.The counsel for the respondent further contended that the appellant’s claims mesne profits/damages of Rs. 50,000/- per month but to claim damages for use and occupation, the Appellant must first establish that the Respondents' possession is unlawful/unauthorized. Since the Respondents are residing under a bona fide claim of legal right as legal heirs pending partition, their possession is legal. There cannot be an injunction against a co-owner. The Appellant further had adduced zero documentary evidence to substantiate how the arbitrary figure of Rs. 50,000/- per month was calculated.

35.The Counsel for the respondent relied on the judgment in (i) MANU/SC/0062/2026 between Sanjay Paliwal and Ors Vs. Bharat Heavy Electricals Ltd., (ii) MANU/SC/7376/2008 between Anathula Sudhakar Vs. Buchi Reddy (Dead) by Lrs and Ors and (iii)MANU/TN/3080/2025 between Chandrika Vs. Paulmarisan and prayed that the appeal may be dismissed.

36.The appellant is the plaintiff in the suit and had filed the suit in O.S.No. 3978/2019 for a relief of mandatory injunction directing the defendants to quit and deliver vacant possession of the property, described in the suit schedult to the plaintiff and also directing the defendant to pay Rs.50,000/- per month as future damages or any other amount that may be determined by the Hon’ble Court from the date of plaint till the date of handing over vacant possession of the schedule property to the plaintiffs and also for permanent injunction restraining the defendant or her men from in any way altering, alienating, encumbering or dealing with the schedule property and the present appeal has been filed as against the Judgment and decree made in O.S.No. 3978 of 2019, dated 05.04.2024 passed by the XI Assistant Judge, City Civil Court, Chennai.

37.It is the case of the appellant/plaintiff that he is the absolute owner of the suit property and the 1st defendant is the sister and is a widow and the 2nd defendant is her son and the 3rd defendant is the wife of the 2nd defendant and due to the relationship he had allowed the 1st and 2nd defendant to stay in the suit property. But after few years the 1st and 2nd defendant started mibehaving with the appellant/plaintiff and started abusing the plaintiff and physically threatening the plaintiff and a complaint was given before IG-Admin, Office of the Inspector General of Police on 20.10.2016 and since even after the complaint their behaviour started worsening with no other option a legal notie was issued to the defendant to vacate and hand over vacant possession and the suit was subsequently filed.

38.It is the case of the respondents/defendants is that the suit property absolutely belonged to their late father Mr.Krishnadas Dutia who had purchased the property in the name of plaintiff being his son and the plaintiff had no separte income to purchase the property and during the life time of their father they had all lived in the suit property as joint family and their father had died in 2002 and their mother had also died in 2013 and the plaintiff and 1st defendant continued to live in the suit property and in fact the plaintiff had been lodging false complaints and hence a suit C.S.No. 653/2019 had been filed by the respondent/defendant before the Hon'ble Madras High court seeking the relief of declaration, partition and rendition of accounts in respect of several properties including the suit property and the same is pending.

39.The present appeal has been filed by the plaintiff on the ground that the trial court failed to appreciate Ex.A2 to Ex.A23 marked by the plaintiff and failed to appreciate that the respondents/defendants had not proved that their late father Krishnadoss Dutia had purchased the suit property and had also failed to appreciate that an OP for probate of the Will of their father was filed by appellant and pending and the partition suit filed by the 1st defendant is immaterial for determining the rights of the parties in the present suit and the trial court had wrongly placed reliance on the judgment passed in Anathula Sudhakar Vs.P.Buchi Reddy (2008) 4 SCC 594.

40.The relationship between the parties are admitted. It is the contention of the appellant/plaintiff that the respondent/defendant had not proved that the property was purchased by their late father Krishnadas Dutia in the name of the plaintiff and that the plaintiff is only a name lender and the beneficial ownership vested with the father but on the other hand he had produced Ex.A1 the sale deed dated 21.03.94 executed in his favour and also the wealth tax order Ex.A14 Chartered Accountant's Certificate-Ex.A19, Property Tax Receipts. Water Tax Receipts Electricity Records, Maintenance Receipts, Other Municipal and statutory records standing exclusively in his name. In this context on persual of Ex.B1 it is the petition filed under section 222 and 276 of the Indian Succession Act 1925 for probate the Will of Krishnadas Dutia, which has been marked during the cross examination of the plaintiff and Ex. B3 is the plaint filed in C.S.No.653/2019 by the 1st defendant as against the plaintiff seeking a relief of declaring the 1st defendant herein as the owner of 1/2 share in schedule-J mentioned property and pass a preliminary decree for partition of properties specified in the suit schedule by metes and bounds and to allot 1/4 share in the Schedule-A, B, C and F mentioned properties to the 1st defendant herein and for separate possession of the same and to allot 1/3 share in the schedule-D and E mentioned properties to the 1st defendant herein and for separate possession of the same and to allot 1/2 share in the schedule- G, H, I and J mentioned properties to the 1st defendant herein and for separate possession of the same and pass a judgment and decree, directing the defendant to render accounts in respect of the monies/rents received from the Schedule-F mentioned property from November 2016 onwards and consequently for payment of the amount so determined and for cost of the suit. Further, on perusal of Ex.A1 the sale Deed dated 23.01.1994 in favour of the appellant/plaintiff it reveals that only a vacant land with a watchman quarters has been purchased in the name of the appellant/plaintiff. It is the admitted case of the appellant/plaintiff and the respondent/defendant that there is a flat in the suit property viz., Flat No. 1A to an extent of 3000 sq.ft but the appellant had not filed any document to show that the building had been constructed by him in the suit property and that Flat No. 1A particularly belongs to him. In this regard the respondent counsel relied on the citation in the case of *Sanjay Paliwal and Ors Vs.Bharat Heavy Electricals Ltd.,* wherein it has been held by the Hon'ble Apex Court that

> *"Where the Plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the Defendant asserts title thereto and there is also a threat of dispossession from Defendant, the Plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of Plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the Plaintiff will have to file a suit for declaration, possession and injunction."*

Further it has been held in the said case that

> *"The principles enunciated in Anathula Sudhakar govern cases where there exists a dispute as to title and rival claims of possession, whereas the decisions in Sant Lal Jain and Joseph Severance apply to situations where the Defendant is a terminated licensee or permissive occupant, having no independent or competing right in the property."*

41.In the light of the above judgment the respondent/defendants having claimed that the suit property had been purchased from joint family funds and the appellant/plaintiff is only a name lender and there being a cloud over the title of the suit property the suit ought to have been filed for a relief of declaration of title also. When the respondent/defendant had asserted her right as a joint owner of the suit property in the suit filed by her in C.S.No. 653/2019 seeking for a relief of partition and the same pending adjudication and Ex.B3 revealing that the suit C.S.No. 653/2019 had been filed on 02.10.19 earlier to the present suit O.S.3978/2019 which had been filed subsequently on 20.11.19 for bare injunction and damages. This court is of the considered view that the appellant/plaintiff ought to have proved that he had purchased the suit property all by himself but it is the admission of the plaintiff that his father started the business of Cotton and yarn and the business in dyes and chemical was started by him.

42.On perusal of the cross examination of PW1 he had categorically admitted that the 1st defendant lived along with his parent's in1982 or 1983 long before the execution of Ex.A1 sale deed in 1994 and the evidence is as follows:-

> *"My sister in the year 1982 or 1983 came and lived along with my parents and with me. Till now she is living together with me. In the year 2002 November, my father passed away. My mother passed away in the year 2013 July."*

43.Further the 1st defendant as DW1 had been cross examined and it is her evidence as follows:-

> *"எனது தகப்பனார் வருமான வரி செலுத்துபவரா என்றால் ஆமாம். இது சம்பந்தமான ஆவணங்கள் ஏதும் உள்ளதா என்றால் இருக்கலாம். ஆனால் எனக்கு தெரியாது. எனது சகோதரர் வருமான வரி செலுத்தி வரும் நபரா என்றால் எனது சகோதரர் எனது தகப்பனாருடன் சேர்ந்து தொழில் செய்து வருவதால் வருமானவரி அவரும் தாக்கல் செய்திருக்க வேண்டும். எனது தகப்பனாரும் எனது சகோதரரும் வெவ்வேறு தொழில் செய்து வந்தார்களா என்றால் இல்லை. எனது தகப்பனாரும் எனது சகோதரரும் என்ன தொழிலை சேர்ந்து செய்தார்கள் என்றால் Dyes and Chemicals தொழில் செய்து வந்தார்கள். எனது தகப்பனாரும் எனது சகோதரரும் சேர்ந்து தொழில் செய்ததற்கான ஆவணங்கள் ஏதும் தாக்கல் செய்துள்ளேனா என்றால் செய்திருக்கலாம் எனக்கு சரியாக தெரியவில்லை"*

44.Hence in view of the evidence of the appellant and the 1st defendant this court is of the considered view that the trial court had rightly held that the suit property is the subject matter of the Will in O.P.No.611/2020 as well as the partition suit filed in C.S. No. 653/2019 and the right of the plaintiff and 1st defendant would be known only after the outcome of the suit filed by the 1st defendant and the trial court had rightly held that the plaintiff had failed to prove that the defendants are in unlawful possesion of the suit flat and had dismissed the claim of damages and the relief of recovery of possession . This court hence concludes that the suit for bare injunction is not maintainable when the defendant raises a genunine dispute regarding title, creating a cloud over the plaintiffs title not just a mere denial and there is no illegality or infirmity to interefere with the trial court judgment and hence the appeal is dismissed and the Point No.1 to 4 is answered accordingly in favour of the respondents.

In the result, the appeal is dismissed and the Judgment and Decree passed by the Learned XI Assistant Judge, City Civil Court, Chennai in O.S.No.3978/2019, dated 05.04.2024 is hereby confirmed. No costs.

Dictated to the steno-typist directly computerised by her corrected and pronounced by me in the open Court, this the 11th day of August 2026.

R SATHYA Digitally signed by R SATHYA

I Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

<u>Both side witnesses and documents</u>: Nil

R SATHYA Digitally signed by R SATHYA

I Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Copy to:-

The XI Assistant Court,
City Civil Court, Chennai
(with trial court records)

Draft/Fair/copy of
Judgment
in
A.S.NO. 272 of 2024
Against
O.S.No. 3978 of 2019
Date 11.08.2026.
II Addl.Court, Chennai.