

**(2000) 11 MAD CK 0063**  
**In the Madras High Court**  
**Case No : S.A. No. 184 of 1989**

Govindappa Naidu

APPELLANT

Vs

Srinivasalu Naidu and six others

RESPONDENT

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**Date of Decision :** 23-11-2000

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Provincial Insolvency Act, 1920 — Section 35, 53, 54, 9(1)  
Registration Act, 1908 — Section 47, 75(3)

**Citation :** (2001) 2 RCR(Civil) 217

**Hon'ble Judges :** P. Thangavel, J

**Bench :** Single Bench

**Advocate :** Mr. S. Balasubramanian, for the Appellant; Mr. N. Maninarayanan, for the Respondent

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## Judgement

1. This second appeal has been filed by the 1st defendant, as appellant, against the judgment and decree dated 14.7.1986 and made in A.S.No.71

of 1985 on the file of the learned Subordinate Judge, Arni, North Arcot District, confirming the judgment and decree dated 27.9.1985 and made

in O.S.No.78 of 1979 on the file of the learned District Munsif, Cheyyar.

2. The brief facts that are necessary for the disposal of the appeal are as follows:-

The plaintiff and defendants 1 and 2 are brothers. The 3rd defendant is the undivided son of the the 2nd defendant. The suit properties were

purchased by the plaintiff from defendants 2 and 3 under a sale deed, dated 24.11.1977. Since the defendants 2 and 3 refused to register the

document, at the instigation of the 1st defendant, the said document was registered compulsorily on 2.2.1978. The plaintiff has got right and title to

the suit properties. The defendants 2 and 3 have executed a sale deed fraudulently in favour of the 1st defendant with regard to the suit properties

long after the execution of the sale deed, dated 24.11.1977, in favour of the plaintiff. The document in favour of the 1st defendant was antedated

as 17.9.1977 by purchasing stamp papers with antedate at Kadaladi. The said document in favour of the 1st defendant was registered only on

23.12.1977 and the said fact will disclose the fact of antedating of the said document. That document will not confer any right or title to the 1st

defendant, over the suit properties. Therefore, the plaintiff filed the suit for declaration of his title to the suit properties and for recovery of

possession thereof from the defendants.

3. The 1st defendant resisted the suit claim made by the plaintiff on the following grounds:-

The defendants 2 and 3 executed the sale deed dated 17.9.1977 in favour of the 1st defendant and got the said document registered on

23.12.1977 for proper and valuable consideration. The 1st defendant is a bona fide purchaser for value without notice of the earlier agreement or

any transaction in favour of the plaintiff by defendants 2 and 3. The document compulsorily registered in favour of the plaintiff cannot prevail over

the registered document in favour of the 1st defendant. The plaintiff has not paid a sum of Rs.4000 out of the sale consideration of Rs.6000 and,

therefore, the document, in favour of the plaintiff, is sham and nominal. No document was executed by defendants 2 and 3 in favour of the plaintiff

knowingly and, in any event, if there is any such document executed by the defendants 2 and 3, the plaintiff should have used undue influence and

fraud to get such document from defendants 2 and 3. The said document should have been brought into existence by the plaintiff and defendants 2

and 3 conspiring together, due to enmity that the plaintiff is having with the 1st defendant for the last five years. In the suit filed for partition with

regard to the suit properties and other properties, in O.S.No.101 of 1961, on the file of the learned Subordinate Judge, Vellore, 2/3rd share in the

said properties were given to defendants 1 and 2 jointly and, therefore, the plaintiff as purchaser of an undivided share in the properties has to file a

suit for partition and separate possession and not for declaration and recovery of possession, as prayed for in the suit. This Court has no

jurisdiction to try the suit. Under the said circumstances, the 1st defendant sought for dismissal of the suit.

4. Defendants 2 and 3 resisted the suit claim on the following grounds:-

The plaintiff, 1st defendant and 2nd defendant are brothers and there is long standing enmity between them. The properties that were allotted to the

share of the 2nd defendant were sold to Ethiraj, the son of the plaintiff, by the 2nd defendant and his son, the 3rd defendant. There is no

transaction of any kind between the plaintiff and defendants 2 and 3. No sale deed was executed by defendants 2 and 3 in favour of the plaintiff,

with regard to the suit properties and if there is any sale deed, the signatures of defendants 2 and 3 in such sale deed should have been forged.

Registering the document compulsorily cannot be valid. The document is not supported by consideration and, therefore, it will not confer any right

in the suit properties to the plaintiff. 1/6th share in the house property belongs to the 1st defendant and the plaintiff cannot claim any right over the

said property. The suit has been filed due to enmity. In these circumstances, defendants 2 and 3 sought for dismissal of the suit.

5. After considering the material evidence available on record and after hearing the submissions made by both parties, the learned District Munsif,

Cheyyar, North Arcot District has come to the conclusion that the plaintiff has valued the property correctly for the purpose of filing the suit and,

the said Court has got jurisdiction to entertain the suit. The trial Court has also come, to the conclusion that the sale deed executed by defendants 2

and 3 in favour of the plaintiff is supported by consideration; that the document executed in favour of the 1st defendant by defendants 2 and 3 has

been executed with antedate and that, therefore, the plaintiff is entitled to the reliefs of declaration and recovery of possession as prayed for in the

suit. Aggrieved at the said judgment and decree dated 27.9.1985 and made in O.S.No.78 of 1979 on the file of the learned District Munsif,

Cheyyar, the 1st defendant, as appellant, filed appeal in A.S.No.71 of 1985 on the file of the learned Subordinate Judge, Ami, North Arcot

District. After considering the submissions made on both sides, in the light of the evidence available on record, the learned Subordinate Judge has

concurred with the judgment and decree passed by the trial Court and dismissed the appeal filed by the 1st defendant, as appellant. Aggrieved at

the judgment and decree dated 14.7.1986 and made in A.S.No.71 of 1985 referred to above, the 1st defendant, as appellant, has come forward

with this second appeal.

6. The fact remains that the plaintiff is the brother of defendants 1 and 2 and the 3rd defendant is the son of the 2nd defendant. The fact also

remains that there was a suit for partition and separate possession between the brothers in O.S.No.101 of 1961, on the file of the Subordinate

Judge, Vellore and a decree for partition was passed. Claiming that they are entitled to the suit properties, in view of the partition suit referred to

above, defendants 2 and 3 had executed a sale deed under Ex.A-1, dated 24.11.1977, in favour of the plaintiff for a sale consideration of

Rs.6,000 with regard to the suit properties. Even though in the written statement the 2nd defendant has denied the execution of the sale deed

Ex.A-1, dated 24.11.1977, along with his son, the 3rd defendant in favour of the plaintiff, he has not pursued the said defence at the time of the

trial and had not examined himself as a party to the proceedings before the trial Court. The fact remains that the plaintiff had presented the sale

deed Ex.A-1, dated 24.11.1977, executed by defendants 2 and 3, in his favour for compulsory registration on 2.2.1978, since defendants 2 and 3

refused to register the said document, and after holding an enquiry, the registering authority had directed registration of the said document.

Accordingly, the said document was registered on 3.3.1978 by the 2nd defendant, even though the 3rd defendant had not joined the registration of

the said document. Therefore, the learned counsel appearing for the plaintiff, now for respondents 4 to 7 in this second appeal, contends that the

said document will operate with effect from 24.11.1977 by virtue of Section 47 and Section 75(3) of the Registration Act.

7. The learned counsel for the 1st defendant/appellant herein, contends that defendants 2 and 3 had executed the sale deed Ex.A-2, which was

also marked as Ex.B-2, dated 17.9.1977, in favour of the 1st defendant with regard to the suit properties and got it registered on 23.12.1977 and,

therefore, the said document operates with effect from 17.9.1977. In view of that, the learned counsel appearing for the 1st defendant/appellant,

contends that this document, Ex.A-2, dated 17.9.1977 will have precedence over the document Ex.A-1, which, under law, is deemed to have

been registered only on 2.2.1978. To this contention, the learned counsel for the plaintiff, now represented by respondents 4 to 7, contends that

the document Ex.A-2 is a document created with antedate to defraud the right and tide of the said respondents by the 1st defendant, the appellant

herein, and that therefore the said document cannot have precedence over Ex.A-1, dated 24.11.1977.

8. A perusal of the pleadings in the plaint and the evidence of P.W.1 Srinivasalu Naidu, the plaintiff in the suit, would disclose that the defendants 2

and 3 had executed the sale deed Ex.A-1, dated 24.11.1977 in favour of the plaintiff with regard to the suit properties for a sale consideration of

Rs.6,000 and the said sale consideration was already paid after the exchange of notice between the plaintiff and the 1st defendant, the appellant

herein, as seen in Ex.B-1, dated 25.12.1977 and B-3 dated 28.12.1977. Of course, the 1st defendant has contended that the plaintiff paid only

Rs.2,000 out of the total sale consideration of Rs.6,000 and hence he has no locus standi to contend so, since he was not a party to the above said

transaction. The defendants 2 and 3 have not pursued their claim that the sale deed Ex.A-1 was not supported by consideration, at the time of trial

or even thereafter, though a written statement was filed by the 2nd defendant stating that the sale transaction relating to Ex.A-1 was not supported

by consideration. It is a matter between the plaintiff and defendants 2 and 3 and the 1st defendant cannot contend that there was no passing of sale

consideration to an extent of Rs.4,000 out of Rs.6,000 toward Ex.A-1 sale transaction, while defendants 2 and 3 themselves have not pursued

their defence in that respect. Admittedly, the plaintiff has presented Ex.A-1 dated 24.11.1977 on 2.2.1978 for compulsory registration before the

Joint Registrar, Cheyyar, since the defendants 2 and 3 refused to register the said sale deed and after enquiry by the competent authority, the said

document was ordered to be registered and it was accordingly registered by the 2nd defendant on 3.3.1978, even though the 3rd defendant had

not joined the registration of the said document. Admittedly, the date of registration will take back from 3.3.1978 to 2.2.1978, the date of

presentation of the document for compulsory registration, in view of Section 75(3) of the Registration Act and the document Ex.A-1 will operate

from the date of execution viz., 24.11.1977, on completion of registration, in view of Section 47 of the Registration Act.

9. The fact remains that the 1st defendant had purchased stamp papers for Rs.200, on 17.9.1977, at Kadaladi, which is 70 miles away from

Cheyar, where the document has to be registered in the office of the Joint Registrar. It is also not in dispute that the value of the stamp papers to be purchased for registration of the sale deed Ex.A-2 was more than that and the 1st defendant had paid in cash the difference between the value of the stamp paper purchased and the stamp papers to be purchased for engrossing the sale deed before the Joint Registrar, Cheyyar, only at the time of registration on 23.12.1977 even though the document is purported to have been executed on 17.9.1977. No acceptable explanation has been forthcoming as seen from the evidence of D.W. 1 for not purchasing the stamp papers for the value for which they should have been purchased. There is also no explanation on the side of the 1st defendant as to why stamp papers for Rs.200 alone were purchased at Kadaladi, instead of at Cheyyar. No evidence was let in on the side of the 1st defendant to establish non-availability of stamp papers at Cheyyar on 17.9.1977. It is also not explained on the side of the 1st defendant as to why the document said to have been executed on 17.9.1977 was presented only on 23.12.1977 for registration. No attesor or scribe of Ex.A-2 was examined to prove the execution of Ex.A-2 on 17.9.1977. D.W.1 would admit in his evidence that he went and met the 2nd defendant and both of them went to meet the advocate Thiru Bhoopalan, who appeared for defendants 2 and 3 in the suit before the trial Court, even though he had gone back on his admission in subsequent part of the cross examination on the next hearing. If the admission referred to above by D.W.1 is taken into consideration in the light of the support extended by the 2nd defendant in the pleadings in the written statement with regard to the execution of Ex.A-2 in connection with the suit properties, it is evident that defendants 1 to 3 are sailing in the same boat. If that be so, it is not known as to why that 1st defendant has not chosen to examine either the 2nd defendant or the 3rd defendant to establish that the document Ex.A-2 was executed on 17.9.1977 even though the same was presented for registration on 23.12.1977. No explanation is forthcoming for the non-examination of either the 2nd defendant or the 3rd defendant on the side of the 1st defendant for establishing the execution of Ex.A-2 on 17.9.1977. It is under the said circumstances the trial Court as well as the first appellate Court have concurrently found that the document Ex.A-2 was written with antedate of 17.9.1977 with the stamp papers purchased for a

sum of Rs.200 from Kadaladi, which is 70 miles away from Cheyyar and presented for registration on 23.12.1977 to make it appear that the said

document has come into existence even on 17.9.1977 with a view to defraud the right of the plaintiff got under Ex.A-1 on 24.11.1977. There is no

reason to differ from the concurrent findings of the Courts below on facts, in view of the decision reported in S. Arunachalam Asari (died) and

Others Vs. Sivan Perumal Asari and Another, , wherein a learned single Judge of this Court has held as follows:-

...The findings of fact reached by the lower appellate Court have to be accepted as final in view of the provisions of Section 100, C.P.C. The

lower appellate Court did have adequate materials and evidence to reach the conclusion it did, and even assuming that this Court may take a

different view on the evidence, it is not a ground for interference in second appeal.

10. The learned counsel for the appellant relied on the decision reported in M. Narayanaswami Kone v. Arigonda Narayanaswami Mudaliar and

others, 1953 (1) MLJ 465 and would contend that the document Ex.A-1 registered compulsorily on 3.3.1978 u/s 75(3) of the Registration Act

will be deemed to have been registered only on the date of presentation for compulsory registration by the plaintiff on 2.2.1978 and that the

document Ex.A-2, the original of which is Ex.B-2, dated 17.9.1977 was presented and registered on 23.12.1977 and that, therefore, the

document Ex.B-2 will have precedence over Ex.A-1. Therefore, the learned counsel for the appellant would contend that the plaintiff cannot file a

suit for declaration and possession without canceling the document Ex.B-2, registered on 23.12.1977, which was prior to 2.2.1978. In that case,

one Narayanaswami Mudaliar and his younger brother Ramakrishna Mudaliar executed two mortgage deeds, one for Rs.10,000 and the other for

Rs.27,500 in favour of one Sundararaja Iyengar on 5.8.1947. Both the documents were presented for registration on 19.11.1947. The documents

were registered on 8.12.1947, so far as one of the mortgagors, Ramakrishna Mudaliar, is concerned. But for registration of the sale by

Narayanasamy Mudaliar, it was presented for compulsory registration and the same was compulsorily registered on 17.2.1948. On 14.4.1948,

two creditors filed petition u/s 9 of the Provincial Insolvency Act to adjudicate Narayanasamy Mudaliar and Ramakrishna Mudaliar and three other

persons of his family as insolvents. The learned Subordinate Judge dismissed the petition filed for adjudication as mentioned above against

Ramakrishna Mudaliar on the ground that the petitions were presented by the creditors more than three months after the date of registration of the

document and the petition against Narayanasamy Mudaliar was dismissed on the ground that he had already been adjudicated as insolvent in Sub

Court, Guntur. The learned District Judge concurred with the conclusion of the learned Subordinate Judge and dismissed the appeal. The matter

was taken up to the High Court. The question that arose for consideration before the High Court was whether the transfer complained of was

made within three months preceding the date on which the Insolvency Petition was filed by the two creditors. To answer that question, the learned

Single Judge of this High Court was constrained to find out as to when the transfer became complete. In that context, it was held by the learned

single Judge of this Court that u/s 75 of the Registration Act, the registration shall take effect from the time when the document was first duly

presented for registration and it follows that the time must be computed from the date of presentation of the document for registration to ascertain

whether the application was made within three months from the date of registration.

11. In the said matter, the learned counsel for the creditors brought to the notice of the Court that Section 47 of the Registration Act provides that

a registered document shall operate from the time from which it would have commenced to operate, if no registration thereof had been required

and not from the time of registration. The learned counsel has also brought to the notice of the learned single Judge that the principle lying u/s 47 of

the Registration Act was not applied by this Court in the earlier decisions in computing the period of three months referred to in Section 54 of the

Provincial Insolvency Act and, therefore, contended that the same principle should also be applied for Section 75(3) of the Registration Act for the

purpose of computing the period of three months from the date of registration. While rejecting the submission made by the learned counsel

appearing for the creditors, the learned single Judge of this Court in the above said case has held that the learned Judge was unable to see any

logical connection between these two provisions for computing the period of three months for filing the petition by the creditors u/s 54 of the

Provincial Insolvency Act. A careful perusal of the decision would disclose that application of Section 75(3) of the Registration Act for computing the period of three months mentioned in Section 54 of the Provincial Insolvency Act has been considered and held that the period mentioned above should be computed from the date on which the document is presented for registration, which date, by force of statute, is deemed to be the date of registration. The provision of Section 47, under which a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required, and not from the date of its registration, was not at all considered in the decision referred to above, as it was not a point at issue in the case cited above. Therefore, I am afraid that this decision may not help the appellant in any respect to advance his case.

12. In *Nandigam Ramarao and Others Vs. Burugupalli Srikrishnamurthi and Others*, , a Division Bench of the High Court of Andhra Pradesh has held that the fiction of relation back which is provided for under Sections 47 and 75 of the Registration Act does not find a place in the Provincial Insolvency Act and therefore the date of the transfer of property for purposes of Sections 9(1)(c), 53 and 54 is date on which the document of transfer is registered and not the date on which it was executed or the date when it was first presented for registration. While deciding so, the decision reported in *M. Narayanaswami Kone v. Arigonda Narayanaswami Mudaliar and others*, 1953 (1) MLJ 465 was dissented by the Division Bench of the Andhra Pradesh High Court.

13. In *Bibi Zamirunissa Vs. Sk. Qudoos and Others*, , a learned single Judge of High Court of Patna has held that while a document was presented for compulsory registration, the said document will take effect not from the date of execution, but from the date of presentation for registration. The said decision was in line with the decision rendered by the High Court of Judicature, Madras reported in *M. Narayanaswami Kone v. Arigonda Narayanaswami Mudaliar and others*, 1953 (1) MLJ 465, while computing the period of three months for presenting a petition by creditor to adjudicate the debtor within the period of three months from the date when the transfer became complete.

14. A learned single Judge of the High Court of Mysore in *Azeezulla Sheriff v.*

Bhabhutitnul, AIR 1973 Mys. 276, has held as follows:-

Sub-section (3) of Section 75, only determines the deemed date of registration in respect of documents compulsorily registered in pursuance of an

order made u/s 75(1). Sub-section (3) of Section 75 does not deal with the effect of registration of a document, That topic is dealt with by Section

47 which states that once a document is registered, it shall operate from the time from which it would have commenced to operate if no registration

thereof had been required or made, and not from the time of its registration. The expression ""Not from the time of its registration"" used in Section

47 makes it clear that the date of registration, whether actual or the deemed date u/s 75(3), has no relevance whatsoever for determining the time

from which the registered document operates. Once the document is registered, whether it is on admission of execution u/s 35 or by way of

compulsory registration under Part XII of the Act, the provisions of Section 47 are attracted for the purpose of determining the time which the

registered document operates.

15. In Jamuna Prasad Vs. Bhuneshwar Thakur and Others, , a Division Bench of the Patna High Court has held as follows:-

..In my opinion, reading the different provisions of the Act, there does not appear to be any reason to hold that a document executed through

normal procedure is to be operative with effect from the date of its execution; whereas a document executed through the procedure of compulsory

registration is to operate only with effect from the date it is presented for registration. If the contention raised on behalf of the appellant is accepted,

it will lead to an absurd result inasmuch as the person who had to pursue the procedure for compulsory registration, a view of the denial of

execution by the executant, ultimately for no fault of his, may lend to a situation, where he finds that the whole exercise has ended in futility, as his

vendor had executed another sale deed before the earlier sale deed had been presented for registration. The framers of the Act while enacting sub-

section (3) of Section 75 of the Act only wanted to bridge the gap between the date of the presentation for registration and the date of the

compulsory registration by the statutory fiction. Thereafter, in my view, Section 47 of the Act shall be, applicable even in respect of such registered

documents. In other words, Sections 47 and 75(3) of the Act have to be read

together harmoniously. The result whereof will be that after a document is registered compulsorily by virtue of sub-section (3) of Sections 75 and Section 47, it shall become operative not only from the date of presentation for registration but from the date of its execution.

In holding so, the Division Bench has overruled the decision reported in *Bibi Zamirunissa Vs. Sk. Qudoos and Others*, and approved the decision reported in *Azeezulla Sheriff v. Bhabhutimul*, AIR 1973 Mys. 276.

16. The learned counsel for the 1st defendant, the appellant herein, and the plaintiff represented by respondents 4 to 7, could not place any direct ruling of the High Court of Judicature, Madras, except the decision reported in *M. Narayanaswami Kone v. Arigonda Narayanaswami Mudaliar* and others 1953 (1) MLJ 465, which has, already been distinguished by this Court as not applicable to the facts and circumstances of this case. I

am in agreement with the decision of the Division Bench of the High Court of Patna that Sections 47 and 75(3) of the Registration Act have to be

read together harmoniously and if it is so read, the result whereof will be that after the document is registered compulsorily by virtue of Section

75(3) and Section 47 of the Act, it shall become operative not from the date of presentation for registration but from the date of its execution.

17. If that be so, the document Ex.A-1, dated 24.11.1977, registered on 3.3.1978, will be deemed to have been registered on 2.2.1978 when the

said document was presented for compulsory registration by the plaintiff u/s 75(3) of the Registration Act and the document Ex.A-1, dated

24.11.1977 shall operate with effect from 24.11.1977 in view of Section 47 of the Registration Act. Since the document Ex.B-2, dated

17.9.1977, which was already held to be an antedated document, in the light of the concurrent findings of the Courts below, was presented for

registration by the 1st defendant on 23.12.1977 and the said document was registered only on 23.12.1977, therefore, the said document Ex.B-2,

which was held as antedated as 17.9.1977, cannot have precedence over Ex.A-1, dated 24.11.1977, executed by defendants 2 and 3 in favour

of the plaintiff. Therefore, the question of cancellation of the said document for seeking relief sought for in this suit by the plaintiff will not arise and

therefore the contention raised by the learned counsel for the appellant as mentioned above cannot be sustained.

18. The learned counsel for the appellant/1st defendant contends that the 1st defendant is the bona fide purchaser for value without notice and,

therefore, the right, title and possession of the 1st defendant to the properties in question cannot be questioned by the plaintiff. It has already been

held that the sale deed Ex.A-1, dated 24.11.1977 is deemed to have come into force with effect from 24.11.1977 and the document Ex.B-2,

though dated 17.9.1977, should have been executed with antedate and presented for registration on 23.12.1977 and got registered on that date.

D.W.1 himself would admit that the son of the plaintiff was present at the time of registration of Ex.B-2 in the Joint Registrar's office. Cheyyar and

objected to the registration of Ex.B-2 stating that a document is already there in their favour from the defendants 2 and 3 with regard to the suit

properties, but, inspite of such objection, the document Ex.B-2 was registered. It is highly improbable for the 1st defendant to contend that he was

not aware of the enquiry for compulsory registration of the document Ex.A-1, dated 24.11.1977 between the plaintiff and defendants 2 and 3

while the 1st defendant and the plaintiff are living in one and the same building as brothers. Therefore, the contention raised on behalf of the 1st

defendant, the appellant herein, that he is a bona fide purchaser for value without notice cannot also be accepted.

19. The learned counsel for the 1st defendant, the appellant herein, contends that there is no partition by metes and bounds between the 1st

defendant and defendants 2 and 3 with regard to the properties described in the plaint and that therefore the plaintiff cannot come forward with the

suit for the reliefs of declaration and possession without filing a suit for general partition with regard to the properties purchased under Ex.A-1,

dated 24.11.1977. The learned counsel appearing for the plaintiff, now represented by respondents 4 to 7, contends contrary to such contention.

The 1st defendant, as D.W.1, would admit while he was examined as a witness before the trial Court that defendants 1 and 2 were allotted 1/3

share; that he and the 2nd defendant are entitled to 1/6 share each; that he and the 2nd defendant, i.e., the father of the 3rd defendant, had taken

the properties half share each separately; that he is residing in the back portion of the property while the other shared is residing in the front portion

by partitioning equally and that they enjoyed the property as mentioned above till the date of execution of the sale deed Ex.B-2, dated 17.9.1977.

D.W.1 would further admit that the elder son of the plaintiff is residing in the 1/3 portion of the house separately, while he is residing in 2/3 share

(1/3 to himself and another 1/3 share to the 2nd defendant) separately. The above said admissions would go to show that the sharers are living

separately by identifying their shares in occupation and therefore the contention raised by the learned counsel for the 1st defendant, the appellant

herein, that the enjoyment is common and not separate cannot be sustained. Therefore, the contention that the plaintiff has to file a suit only for

general partition and not for the reliefs sought for in this suit cannot also be sustained.

20. In view of the foregoing reasons, this Court concurs with the concurrent findings of the Courts below.

21. In fine, the Second Appeal is dismissed and the judgment and decree passed by the first appellate Court are confirmed. In the circumstances

of this case, both the parties are directed to bear their own costs.