SUPREME COURT OF INDIA

Ranganayakamma

Vs.

K.S. Prakash (D) By Lrs.

(S.B.Sinha L.S.Panta JJ.)

16.05.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 21st September, 2005 passed by a Division Bench of the Karnataka High Court in R.F.A. No. 605 of 1997 dismissing an appeal preferred from the judgment and decree dated 27th May, 1997 passed by the XII Additional City Civil Judge, Bangalore in Original Suit No. 1760 of 1990 partly decreeing the suit for partition and separate possession.

"We may, at the outset, notice the genealogical tree of the family which is as under:

Kasetty Rangappa

Widow Smt. Narmma

Lakshmamma |

Naramma | 2^ndwife
_____|_____ | | | |
| | | | | Smt. K. Sreeni K.
Harida K.R. K.R. Venkatamm | Salu Venkatesulu Sreenivas ulu
|

_____|_____ | | Smt. Singaramma
Smt. Venkatalakshamma 1^st wife 2^nd wife

Children of the 1^st Wife Children of the 2^nd Wife

1. Smt. Jayamma, Deft. No. 3 1. Sri K.S. Mohan

2. Smt. Kanthamma, Plff. No. 1 2. Smt. Susheela (Late)

3. Smt. Ranganayakamma, Plff 3. Smt. Bhagyalakshmi No. 2 Lakshamamma 2^nd wife

4. Smt.Naramma Devi, Deft. No. 4 4. Smt. Lakshmi Devi Lakshmi

5. Smt. Venajakshi 5. Sri K.S. Sudarshan

6. Sri K.S. Prakash, Deft. No. 1 6. Smt. Saraswathi

7. Sri K.S. Ramesh, Deft. No. 2 7. Smt. Rukmini

8. Smt. Sarojamma, Deft. No. 5 8. Sri K.R. K.R. K. Harida Sreenivasa Pasad

Smt. K. Sreeni Venkatamma

9. Smt. Seethqalakshmi, Deft. No. 6 9. Smt. Padmavathi Salu Venkatesulu Sreenivasulu

10. Smt. Bharathi, Deft. No. 7

11. Smt. Kum. Shoba, Deft. No. 8

Smt. Singaramma Smt. Venkatalakshamma 1^st wife 2^nd wife."

3. We are concerned herein with the branch of K. Sreenivasulu. He had two wives, the first wife being Singaramma. Through his first wife Singaramma, he had eleven children. Except Venajakshi, they are parties to the suit. Kanthamma and Ranganayakamma are the plaintiffs. Through his second wife, Shri K. Sreenivasulu had nine children.

4. Allegedly there was a partnership firm through which K. Sreenivasulu was doing business in silk sarees. Whether the said partnership was a firm constituted under the Partnership Act, 1932 or a Hindu joint family Firm is in dispute. However, the said firm was said to have been dissolved. Thereafter K. Sreenivasulu had been carrying on the said business either by himself or as a `Karta' of the joint family in silk sarees. Very valuable properties were acquired by him. Three items of the said properties are involved in this appeal. Item No. 1 is said to be worth 1 crore. Item Nos. 2 is stated to be worth 3 crores, whereas Item No. 4 is said to be worth 1 crore. Although valuations of the said properties are stated by the contesting respondents i.e. respondents Nos. 1 & 2 in their written statement so as to put forth a contention that the valuation of the suit properties as disclosed by the plaintiff being Rs. 10,000/- was not correct and on the aforementioned amounts the court fee would be payable, but there cannot be any doubt whatsoever that the properties are valuable.

"As through the first wife, Sreenivasulu did not have any male issue, he married Venkatalakshamma. Allegedly item Nos. 2 and 3 of the suit properties were

purchased in the name of Sringaramma. The parties are at issue whether the said properties were purchased from the joint family funds or in the name of Srirangama for her own benefit. Indisputably, again item No. 1 was purchased by Sreenivasulu in his own name. He died on 27^th December, 1970. The family allegedly continued to remain joint. One of the daughters of Sreenivasulu being Vanajakshi released her rights by getting a consideration of Rs. 39,615.79. Respondents Nos. 1 and 2 herein, sons of K. Sreenivasulu through Singaramma were the junior members of the family. At the time of her death of Sreenivasulu, they were minors."

5. Indisputably, a suit for partition being O.S. No. 2459 of 1982 was filed by the first respondent K.S. Prakash besides others. Whereas, according to the appellants, the said suit was filed by way of machination on the part of respondent No. 1 herein but admittedly all the parties were plaintiffs therein.

6. The plaint in the said suit discloses that Sreenivasulu and his brothers partitioned their properties in the year 1957 who constituted a Joint Hindu Family. The said Joint Hindu Family had extensive immovable properties in the towns of Bangalore and Darmavara. Allegedly some immovable properties falling in the share of K. Sreenivasulu are still joint. A coparcenary was constituted between him and his sons. Properties were purchased by him out of the nucleus of the immoveable properties, which fell to the share of Sreenivasulu in the said partition meaning thereby that the partition took place in 1957 and several other moveable and immovable properties were acquired in the name of Sreenivasulu and other members of the families. They were in joint possession. Ten items of immovable properties, however, allegedly were the subject matter of joint sale for the purpose of discharge of income tax and wealth tax liabilities. They have been excluded from partition. It was furthermore alleged that some other properties had also been transferred and deeds of sale were executed by the Bangalore Development Authority in favour of plaintiff Nos. 1 and 2 therein. Paragraph 12 of the said plaint reads as under:

"12. Thus, item No. 1 to 8 (one to eight) mentioned in the plaint are the properties now available and standing in the names of persons referred to above. This being a suit for general partition even though some of the properties are in the name of individual members of the family and as per records, but nevertheless shown in detail with a view to avoid unnecessary controversies and to effect just, fair and equitable partition among the members of the family."

7. Indisputably both the branches of Sreenivasulu entered into a compromise, i.e., amongst the children of the first and the second wives. Both the branches divided the properties into half and half. The said compromise was recorded. A final decree was passed on the basis thereof, directing:

"In terms of compromise, it is ordered and decreed that the plaintiffs are the owners of the properties shown in items 1, 2(a) & 2(b) and 3 in the schedule hereto which are allotted to their shares. It is further ordered and decreed declaring that the defendants

are the owners of the properties shown in items 4 and 5 in the schedule hereto which are allotted to their share.

It is further ordered and decreed that properties in items 6 and 7 of the suit schedule properties shall be sold by plaintiffs and defendants and the tax arrears viz., Income Tax, Wealth Tax and Capital Gain Tax in respect of the said items of the Schedule property that is due and payable by the Hindu undivided family be cleared and discharged out of the sale price of the same and further out of the refund amount as shown in item No. 8 of the schedule properties. It is hereby recorded that since the value of items 4 and 5 allotted to the defendants is less than the value of properties allotted to the plaintiffs, the plaintiffs have this day paid to the defendants a sum of Rs. 80,000/- (Rupees eighty thousand only) which together with Rs. 30,000/- (Rupees thirty thousand only) paid earlier by the plaintiff in all amounts to Rs. 1,10,000/- (Rupees one lakh ten thousand only).

It is further ordered and decreed that in case the amounts realized by sale of items 6 and 7 and item 8 are insufficient to clear the Tax arrears, the plaintiffs shall bear 2/5 share, the defendants shall bear 3/5 share of the tax liability and in case the amounts realized by the sale and refund claimed in respect of the said properties are in excess of the Tax liability, the remaining balance amounts shall be shared by plaintiffs and defendants in the proportion of 2/5 and 3/5 share respectively.

It is further ordered and decreed that the plaintiffs and defendants are not liable to each other with regard ti income accruing from the properties allotted to them and also for mesne profits."

8. Allegedly Singaramma was not keeping well. She underwent kidney operation at Vellore.

9. The plaintiffs-appellants alleged that respondent Nos. 1 and 2 used to take signatures them as well as others representing that the same were required for payment of tax and also for managing the properties. The said signatures used to be made as they then had immense faith in their brothers. A Power of Attorney was executed by the first appellant Ranganayakamma in favour of K.S. Prakash on 15^th July, 1983, in terms whereof he was authorized to enter into a partition on her behalf. A recital has also been made therein that Ranganayakamma, appellant No. 2 herein, had agreed to relinquish her right as per the agreement. Another Power of Attorney was executed by the 4^th defendant in favour of Singaramma

10. A deed of partition was executed on 5^th August, 1983 in terms whereof Singaramma was allotted 1/3^rd share in item No. 3 and rest of the properties were retained by the brothers. The sisters allegedly relinquished their share for a consideration of Re. 1/- only; the relevant parts whereof read as under:

"1. The properties described in the Second Schedule hereunder are hereby allotted to the share of the parties of the First and Second Parts.

2. The property described in the Third Schedule hereunder is hereby allotted to the share of the party of the Eleventh part.

3. The parties of the Third, Fourth, Fifth, Sixth, Seventh, Eight, Ninth and Tenth parts do hereby relinquish their right to claim a share in the properties described in the First Schedule in consideration of payment to each of them of a sum of Re. 1/- by parties of the First, Second and Eleventh Parts the receipt of which they hereby acknowledge."

11. Singaramma died on 10^th September, 1983. So far as 1/3^rd share of Singaramma is concerned, no partition had taken place. However, a Special Power of Attorney was executed by the appellants on 20^th December, 1983. In the said Power of Attorney detailed recitals had been made in regard to the source of the properties, the partitions which had taken place and the share of the sisters devolved on them from Singaramma which was calculated at 1/11th.

12. Indisputably, again a deed of lease was executed by plaintiff- appelalnt No. 2 herein in favour of M/s. Voltas Company Ltd.

13. According to the appellants, however, no deed of lease was executed by appellant No. 1, Ranganayakamma. A sum of Rs. 4,050/- was paid to Kanthamma, appellant No. 2, towards rent for the period 1.1.1986 to 31.07.1987.

14. According to the appellants when they came to learn about the fraudulent act(s) on the part of respondent Nos. 1 & 2 in getting the Power of Attorneys executed by them, they cancelled the same.

"They, thereafter, filed a suit for partition and separate possession claiming 1/10^th share each. The said suit was filed on 21^st March, 1990 and was marked as O.S. No. 1760 of 1990."

15. A contention was raised therein that all properties acquired by Sreenivasulu were his self-acquired properties. The plaintiffs-appellants further contended that their brothers used to take their signatures on some papers as they enjoyed immense confidence in them as would appear from paragraph 6 of the plaint, the relevant portion whereof reads as under:

"6. The said power of attorney was got executed by playing a fraud on the 2^nd plaintiff taking advantage of her innocence, ignorance and her sex and in the absence of her husband or any other reliable male member of the family. The second plaintiff was not aware of the contents of the said power-of-attorney nor were they read out to her. It was got executed in the Office of the Advocate of the defendants 1 and 2 and it was drafted and attested by the Advocates belonging to the said Firm of Advocates. Thereafter, in fraudulent abuse of the said power-of-attorney and on the basis of the fraudulent misrepresentations made to the first and second plaintiffs and defendants 3 to 8, an alleged deed of partition was got executed on 5.8.1983, again taking fraudulent advantage of the said innocent and ignorance of the plaintiffs and

defendants 2 to 8, resulting in an unjust, unfair, unequal and fraudulent partition of the schedule properties. The plaintiffs and defendants 3 to 8 were never told by the defendants 1 and 2 that it was a partition deed which was got executed on 5.8.1983 and instead it was misrepresented as on earlier occasion that their signatures were necessary on the document for proper management of the properties and the estate of late K. Srinivasasalu."

16. Respondents, however, in their written statement denied and disputed the averments made in the plaint. They raised various contentions including the maintainability of the suit as also the question of limitation. It was categorically stated that the suit properties were acquired by Sreenivasulu out of the properties allotted to him in the family partition amongst his brothers dated 22^nd June, 1957. It was furthermore contended that the relinquishment of interests by the appellants and other sisters were out of love and affection. They further averred that upon the death of Singaramma the deeds of lease which were executed in respect of her share, vested in the plaintiffs-appellants. It was categorically stated that the Power of Attorneys were executed by the appellants voluntarily. Parties in support of their respective cases adduced their own evidence.

"The learned trial judge framed as many as 12 issues which are as under:

1. Whether the plaintiffs prove that the suit schedule properties are self acquired properties of the deceased Srinivas?

1(a). Whether the defendants prove that the suit schedule properties are the ancestral properties?

2. Does defendant No. 1 prove plaintiffs executing valid powers of attorney on 15.7.1983; 20.12.1983 and 5.8.1985?

3. Do the defendants 1 and 2 prove due execution of release deed dated 5.8.1983 by the plaintiffs for valid and proper consideration.

4. Do the defendants 1 and 2 prove partition deed dated 5.8.1983 is valid one?

5. Whether the plaintiffs and defendants 3 to 8 prove that the defendants 1 and 2 obtained partition deed dated 5.8.1983 by playing fraud?

6. Whether the plaintiffs are estopped from filing this suit due to decree in O.S. 2459/1982?

7. Whether the suit is barred by limitation?

8. Whether the suit is bad for non-joinder of necessary parties?

9. Whether the valuation made is insufficient?

10. Do the plaintiffs prove their right for partition and possession of 1/10 share to each?

11. To what shares the defendants are entitled?

12. To what reliefs the parties are entited?"

17. On issue No. 1, the learned trial judge found that the same had not been proved by the plaintiffs-appellants stating that they have failed to explain the admission made by them in the earlier plaint. In regard to issue Nos. 2 and 3 it was held that the properties were ancestral properties and not separate properties of Sreenivasulu. As regards execution of Power of Attorneys as also the Deeds of Release, the trial court opined that they were voluntary in nature. In regard to issue No. 7 pertaining to limitation, it was held that the suit was barred by limitation as the plaintiffs had not sought for cancellation of deed of partition. It was held that since after partition, the deeds of lease have come into existence in February, 1985, the suit filed in 1990 without praying for cancellation of the deed of partition was not maintainable.

On the said findings, the suit was dismissed.

18. However, it was held that plaintiff Nos. 1 and 2 alongwith defendant Nos. 3 to 8 and defendants 1 and 2 were entitled to the share of 1/33 each in Item No. 2 of the suit schedule properties.

19. Appellants preferred an appeal thereagainst. Before the High Court an application was filed under Order VI Rule 17 read with Section 151 of the *Code of Civil Procedure* praying for the following amendments in the plaint:

"1. To Add at the end of para 5:

It is learnt that two other properties belonging to our father are also available for partition which are required to be included in the plaint schedule as item Nos. 5 and 6, as otherwise the suit might become bad for partial partition or it might necessitate avoidable multiplicity of proceedings.

2. To add the following as item Nos. 5 and 6 after item No. 4 of the plaint Schedule.

5. Site bearing No. 1 suburb Rajajinagar, Bangalore admeasuring east-west 140 feet and north-south 336' + 350'/2 and bounded on the east by vacant land, west by T.B. Road, north by road and south by site No. 1/A.

6. Vacant site bearing No. 17-B, Industrial suburb, Bangalore, measuring on the east 242 ft., on the west 298 ft., on the north 236 ft. and on the south 160 feet, and

bounded on the east by 60 feet main road, on the west by old No. 13/14, on the north by Seethalakshmi Hall Flour Mills and on the south T.B. Road."

20. The High Court in its judgment held:

"1) In the absence of any issue having been framed as regards the validity or otherwise of the deed of relinquishment, there was no occasion for the defendants to adduce any evidence.

2) The plea of the appellants that the deed of relinquishment was hit by Section 25 of the Contract Act cannot be permitted to be raised at the appellate stage.

3) It was open to the parties to arrive at an arrangement and to release their respective rights wherefor no consideration was necessary to be passed.

4) The suit was not maintainable as the appellants had not sought for any declaration that the partition deed was void.

5) The contention of the appellants that they came to know about the fraud in 1988 was not correct and thus the suit was barred by limitation.

6) The holder of the Power of Attorney executed by defendant No. 8 having received the benefit of the partition, the appellants were estopped and precluded from challenging the same.

7) In view of the admission made by the appellants that the suit properties were the joint family properties, they are bound thereby.

8) As both the deed, viz. the deed of partition as also the deed of lease were written in English language and the appellants could speak in that language fluently, allegations of mis- representation have not been proved."

21. Mr. G.V. Chandrasekhar, learned Counsel appearing on behalf of the appellants, in support of this appeal, raised the following contentions:

"i) The courts below committed a serious error in not drawing adverse inference against respondents Nos. 1 & 2 as the said purported deed of partition dated 2^nd July, 1957 and the other deeds including the Power of Attorney executed by the 4^th defendant had not been produced. The purported application for adducing additional evidence to prove the deed of partition dated 22^nd July, 1957 thus should not be allowed by this Court.

ii) The averments made in the 1982 suit being fraught with the elements of fraud and mis-representation, no reliance could have been placed thereupon nor the plaintiffs-appellants could be said to have voluntarily made admissions in the said pleading.

iii) As the deed of partition and the deed of relinquishment were void ab initio being hit by Section 25 of the Indian Contract Act, it was not necessary to pray for any relief for setting aside the said deeds.

iv) The partition deeds as also the deed of relinquishment were void being hit by Section 25 of the Indian Contract Act as for the said purpose passing of adequate consideration was necessary, love and affection being not the requisite consideration therefor.

The partition of the properties being unfair and unequal, reopening of the partition is permissible, wherefor also it is not necessary to seek cancellation of the documents.

(v) In the event it be held that it is not necessary to seek declaration of the deed of partition and deed of release being void, Article 65 or Article 110 of the Schedule appended to the Limitation Act would be attracted and not Article 59 thereof.

(vi) As there is a mis-representation in regard to the nature of the document as the deed of partition ultimately turned out to be a deed of relinquishment and even otherwise, the same was opposed to public policy as contained in Section 25 of the Contract Act,. Article 59 of the Limitation Act would not be attracted.

(vii) Gross inadequacy of price, which is a principle applied in the suits for specific performance of a contract, may be applied even in a case of this nature.

viii) The trial court as also the High Court committed a serious illegality in opining that no issue had been framed in regard to the validity of the deeds, although such an issue being Issue No. 3 had in fact been framed. Burden to prove that the transactions were valid, although was on the defendants, but neither any evidence had been let on their behalf, nor the courts below had answered the said issue and in that view of the matter the impugned judgments cannot be sustained.

ix) The principle of estoppel in a case of this nature will have no application as both the appellants had not acted upon the documents of lis.

x) The properties of joint families and the self acquired properties and in particular the properties standing in the name of Singaramma could not be put into hotchpotch of joint family properties.

xi) Consideration within the meaning of Section 25 of the Indian Contract Act, love and/or affection being consideration must be disclosed in the document, which having not been done, the impugned judgments could not have been sustained.

xii) Power of attorney having not been witnessed by a close relative in a case of this nature, the impugned judgment cannot be sustained."

22. Mr. S.S. Javali, learned senior counsel appearing on behalf of respondent Nos. 1 and 2, on the other hand, urged:

> "i) All the documents being registered documents, they carry a presumption of proper execution as also the contents thereof and in that view of the matter the burden was on the appellants to prove that they were vitiated by fraud or misrepresentation. Presumption of validity strengthens with the passage of time.
>
> ii) Appellants having themselves admitted that the properties in question were the joint family properties and not the self acquired properties are bound thereby, which they themselves admitted in the list of dates.
>
> iii) The contention having been raised for the first time in this Court that there had been no partition in the year 1957, the respondents have produced the said document, which being a registered one, may be taken into consideration.
>
> iv) Institution of the partition suit in the year 1992 being not in dispute, and the factum of partition entered into between K. Sreenivasulu and his brothers having been stated therein, there is no reason as to why 1957 partition should not have been believed by the courts below.
>
> v) In view of the fact that co-parcenary consisted of K. Sreenivasulu, the respondent Nos. 1 and 2 and his three sons through his second wife Venkatalakshamma, it was permissible for the parties to partition the properties half and half between two branches, which per se was not an illegal transaction.
>
> vi) The fact that Venajakshi had relinquished her share and ten items of properties had been jointly sold in respect whereof no accusation had been made as against the respondents, the partition of the properties consisting of four houses must have to be considered in the said back drop of events, particularly the fact that they are not the subject matter of challenge.
>
> vii) The conduct of the parties, i.e., three amongst eight sisters did not claim any share and only one sister having filed her written statement supporting the case of the appellants, two others merely had adopted the said written statement was a relevant factor which has rightly been taken into consideration by the courts below. However, defendant No. 5 in her deposition before the trial judge as DW-4 stated that she had not instructed any lawyer to file the written statement, the case of three others must also fall wherefrom it is evident that out of nine sisters, six did not contest, which would go to show that all the sisters had voluntarily relinquished their shares in the joint family properties. Attention in this behalf has also been drawn to the deposition of appellant No. 1 as PW-1 wherein the fact of that earlier partition had taken place, has categorically been admitted which clearly proves not only 1957 partition but also the 1982 partition is legal and valid.

viii) Plaintiff-appellants made only general allegations of fraud and mis-representation without giving any particulars thereof, which being mandatory in nature, no evidence could have been led in that behalf.

ix) As the deposition of the appellants categorically show that all the documents were executed with their knowledge and their signatures had not been obtained on blank papers, this Court should not entertain the plea of fraud, mis- representation on their part particularly when they had admitted their knowledge about the nature of the document.

x) Even Appellant No. 2, deposing as PW-2, has accepted execution of the power of attorney which was prepared at Cuddpath. It was only in respect of the mother's 1/3^rd share in one of the properties that the plaintiffs had 1/11^th share, which they had not only accepted in the power of attorney executed by them, but also in the list of dates stating that not only a lumpsum amount had been paid to the appellant No. 1, but also the fact that they had been getting their share of rent through cheques and appropriating them. This conduct on the part of the appellant would clearly show that they not only executed the deeds voluntarily, but also have been getting the benefit thereof by way of receiving rent. Even she identified the document as a power of attorney and as such she would be deemed to have known about the nature thereof."

23. The source of title in respect of properties in suit is not in question. It was Kasetty Rangappa's property. K. Sreenivasulu being son of Kasetty Rangappa used to do business in partnership. There were some joint family properties. The business was a joint family business.

"There exists a presumption in law that a family holding joint properties and joint business would constitute a joint family.

In Mst. Rukhmabai v. Lala Laxminarayan and Ors. , this Court held:

There is a presumption in Hindu law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process....

Even after the dissolution of the partnership, the fact that it had all along been treated as a joint family property by both the branches of K. Sreenivasulu through his two wives Singaramma and Venkatalakshamma is evident as they were the subject matter

of the O.S. No. 2459 of 1982. The fact that in the said suit the properties of K. Sreenivasulu were described as the joint family coparcenary property is not in dispute. Plaintiffs contended that it was K.S. Prakash who was behind the said machination. That may be so or may not be.

The fact remains that a consent decree was passed pursuant to a settlement arrived at between the two branches. They decided that the properties may be divided half and half. Indisputably, the said consent decree has been acted upon. Once that consent decree has been acted upon, the question of reopening the entire suit by setting aside the decree passed in the said O.S. No. 2459 of 1982 would not arise. It is also not in dispute that the properties which fell in the share of the parties hereto and Smt. Venajakshi are only four houses. It is also of some significance to note that the plaintiffs initially filed a suit in respect of the house in which Singaramma had been given one-third share, after the partition was brought about in terms of the decree passed in the said O.S. No. 2459 of 1982. The basis for the entire suit being commission of fraud in obtaining the said consent decree, it was obligatory on the part of the plaintiffs to pray for setting aside the said decree. The pleadings of the appellants in the said suit in which they were parties are binding on them in the subsequent proceedings proprio vigore. Unless fraud was proved, they could not have got rid of the same.

The said decree has been acted upon. Pursuant to or in furtherance of the said decree, ten sale deeds have been executed."

24. It may be true that although the properties were described as coparcenary property and both the branches were granted equal share but it must be remembered that the decree was passed on the basis of the settlement arrived at. It was in the nature of a family settlement. Some `give and take' was necessary for the purpose of arriving at a settlement. A partition by meets and bounds may not always be possible. A family settlement is entered into for achieving a larger purpose, viz., achieving peace and harmony in the family.

"In Hari Shankar Singhania and Ors. v. Gaur Hari Singhania and Ors. , this Court held:

43. The concept of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in Ram Charan Das v. Girjanandini Devi [See also Govt. of A.P. and Ors. v. M. Krishnaveni and Ors. and Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel]"

25. One of the grievances raised by Mr. Chandrasekhar is that the original deed of partition 22^nd July, 1957 was not produced. It was, however, a registered document. A perusal of the averments made in the plaint categorically goes to show that the partition referred to therein by and between K. Sreenivasulu and his brothers related to the partition effected in 1957. The plaintiffs - appellants were, thus, aware thereof. They did not contend in the plaint that the said deed of partition dated 2^nd July, 1957 was in effect and substance a deed of dissolution of partnership. They stated so for the first time in the list of dates in the Special Leave Petition. In response thereto, only the respondents have produced the said deed and sought to adduce additional evidence to prove the said fact. In our opinion, it is not necessary to do so as the admissions made by the appellants in their pleadings themselves are sufficient to hold that the property was a joint family property and by reason of the said deed of settlement culminating in passing of the compromise decree dated 20.12.1982, a valid consent decree was passed. It is not a case that there had been a fraud or misrepresentation on the part of K.S. Prakash Respondent No. 1 alone herein but if a fraud or misrepresentation is to be attributed, the same must be attributed to the entire family representing both the branches. They must have thought that by reason of such averments a settlement can be brought about. The averments made in the suit filed by one branch were accepted by the other branch without any demur whatsoever.

26. Even otherwise, in view of the well-settled principles of law that when a son gets a property from his father, as soon as sons are born to him, a joint family is constituted. It is not a case that sons from either side of the family were born before the Hindu Succession Act 1956 came into force.

27. The said compromise decree was acted upon. A deed of partition was entered into.

28. All the parties including Singaramma came to the office of the Sub-Registrar for the said purpose. There is nothing to show nor the plaint contains any averments that a fraud or mis-representation had been practised on Singaramma. It is true that she was not well and had undergone an operation at Vellore but bereft of that there is nothing to show that she was keeping unwell for a long time so as not to possess a sound disposing mind. Before the said deed of partition was entered into, on 15^th July, 1983 a special power of attorney was executed by Ranganayakamma in favour of Respondent No. 1. A clear recital was made therein that she had agreed to relinquish her interest. The power of attorney was being executed pursuant thereto.

> "Mr. Chandrasekhar has drawn our attention to the statements made in the power of attorney to contend that no other or further agreement was entered into and the power of attorney should have been preceded by a regular deed. In our opinion, it was not necessary. Relinquishment may be unilateral. A sister relinquishing her right in favour of the brothers may do so in various ways. Expression to that effect may be made in several ways."

29. A power of attorney need not disclose the purpose for which the relinquishment is made or the consideration thereof. Another power of attorney was executed by Defendant No. 4 in favour of Singaramma to enter into a deed of partition. It was not produced. But, the said power of attorney concededly had nothing to do with the said property. It was in respect of other business. Defendants - Respondents rely thereupon only to show that for the purpose of better management of the properties and business, the sisters used to execute power of attorneys. They knew about the nature and character of the said documents. They never stated that any fraud or misrepresentation had been practised in regard to the character of the document; the effect whereof we would discuss a little later.

30. Coming now to the deed of partition, admittedly, one-third share in Item No. 3 had been given to the mother. Appellants and other sisters relinquished their right, title and interest therein. The materials brought on records by the parties would clearly go to show that they had taken a decision in unison. A similar power of attorney was executed by one of the sisters being Smt. Venajakshi, who, as noticed hereinbefore, upon receipt of a sum of about Rs. 40,000/-, relinquished her right. It may be true that in the said deed of partition dated 5^th August, 1983, the amount of consideration was shown at Re. 1/-. But whether the same by itself would invalidate the said deed of partition is another question which we intend to deal with at an appropriate stage. The fact, however, remains that in the plaint filed in the present suit by the appellants, the execution or validity of the document including the registered power of attorneys and deeds of lease being Exhibit Nos. 9, 10, 11, 12, 13 and 14 executed between 1983 and 1985 are not in question. These documents in categorical terms go to show that the partition effected in 1983 had been acted upon.

31. It would be of some importance, furthermore, to notice that the plaintiff - Appellant No. 1 Kanthamma in her deposition before the learned Trial Judge admitted:

> "(i) Her father was carrying on business in Sarees.
>
> (ii) Each of the sisters had been given one rupee and their signatures were obtained on the partition deed dated 5^th August, 1983. There was some function on that date, on which occasion all the sisters had put their respective signatures. There had been a partition between the children of the second wives of Sreenivasulu and children of her mother.
>
> (iii) A suit was instituted which ended in compromise. She had affection for and faith in Defendant Nos. 1 and 2.
>
> (iv) She was told by others that she had been cheated by their brothers. She, however, could not say as to who they were. She speaks fluent English. She signed the documents in English. She had been running a poultry business under the name and style of Kantha Poultry Farm. She had also been doing saree business with her husband. Her husband had a roller flour mill business. He is also one of the partners in Singaramma Flour Mills, Bangalore.

(v) One of the sisters of the plaintiff, viz., Defendant No. 8 was a Science graduate from Mount Carmel College. Ranganayakamma although made an attempt to show that she had not signed any power of attorney but accepted that once she had signed some power of attorney. It is accepted that the power of attorney was executed at Cuddapah, her own place. (vi) From the deposition of the appellants it would further appear that they had accepted that the documents had been executed either in the office of the advocates or at Cuddappah, which is their place of residence in presence of their own advocates and/or they had visited the registration office and put their signatures/thumb impressions before the Registrar, no case of fraud or mis-representation has been made out.

(vii) She had been going to the Sub-Registrar's office as also to the offices of the Advocates. The power of attorney was signed in the Chamber of the Advocates. She accepted that her mother had been given one- third share in Item No. 2 properties. She accepted her signatures in the power of attorney dated 20.12.1983 and the signature of her Advocate Mr. T.S. Ranganaikalu which was marked as Exhibit D-9.

(viii) It is also accepted that after the death of her father she had been given 1/11^th in Item No. 2 of Schedule property.

(ix) One of the documents was attested by Mr. T.S. Ranganaikalu and Mr. N.K. Swamy, Advocates.

(x) She also accepted that a deed of lease was executed in favour of Defendant No. 9 M/s. Voltas Limited and she had been receiving Rs. 9000/- per month from the said Company. In one of the documents even her husband is an attesting witness. He is also a lawyer.

It was, therefore, difficult to arrive at a conclusion that the plaintiffs - appellants were not aware of the nature of the document or any fraud had been practiced on them."

32. The aforementioned findings have a direct bearing on the question as to whether the deed of partition as also the power of attorneys were vitiated by reason of any fraud or mistake on the part of the respondent Nos. 1 and 2 herein. It is a well-settled principle of law that a void document is not required to be avoided whereas a voidable document must be. It is not necessary for us to advert to a large number of decisions of this Court and other High Courts on this issue as more or less it is concluded by a decision of this Court in Prem Singh v. Birbal and Ors. wherein this Court held:

"16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is nonest in the eye of the law, as it would be a nullity."

33. Section 16 of the Indian Contract Act provides that any transaction which is an outcome of any undue misrepresentation, coercion or fraud shall be voidable.

"If, however, a document is prima facie valid, a presumption arises in regard to its genuineness.

In Prem Singh (supra), it was stated:

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.

It was opined:

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

In Mst. Rukhmabai (supra), this Court held:

In unraveling a fraud committed jointly by the members of a family, only such letters that passed inter se between them can give the clue to the truth....

Yet again in A.C. Ananthaswamy v. Boraiah , this Court categorically laid down that in establishing alleged fraud, it must be proved that the representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. Level of proof required in such a case was held to be extremely high."

34. Another aspect of the matter cannot also be lost sight of.

"Order VI, Rule 4 of the Code of Civil Procedure reads as under:

4. Particulars to be given where necessary In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

35. When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed.

36. We have been taken through the averments made in the plaint. The plea of fraud is general in nature. It is vague. It was alleged by the plaintiffs that signatures were obtained on several papers on one pretext or the other and they had signed in good faith believing the representations made by the respondents, which according to them appeared to be fraudulent representation. When such representations were made, what was the nature of representation, who made the representations and what type of representations were made, have not been stated. Allegedly, on some occasions, respondent Nos. 1 and 2 used to secure the signatures of one or more of the plaintiffs and defendants No. 3 to 8 on several papers but the details therein had not been disclosed.

37. Admittedly, the papers were signed either in the office of the advocate or before the Sub-Registrar. It was, therefore, done at a public place. No signature was obtained on the blank paper. No document was executed in a hush-hush manner. It has been alleged that taking fraudulent advantage of the innocence and ignorance of the plaintiffs and Defendant No. 2, the said deed of partition was executed resulting in an unjust, unfair and unequal fraudulent partition of the unequal properties. If their signatures had not been obtained on blank sheets of papers, it was for the plaintiffs - appellants to show who had taken advantage and at what point of time. Both the courts below have come to the conclusion that the sisters jointly had taken a stand that they would not claim any share in the property. One of the sisters, who wanted a share in the property, had been paid a sum of Rs. 40,000/- and she had executed a deed of relinquishment. The said fact is not denied. All other sisters were, thus, aware thereof. They knew what was meant by relinquishment. All deeds including the said deed of partition was executed with the knowledge that they had been signing the deed of partition and no other document.

> "This has categorically been stated by the plaintiff No. 1 Kanthamma in her evidence which we may notice in the following terms:
>
> 1. Each of the sisters have been given one rupee and signatures were obtained on partition deed on 5.8.1983
>
> 2. I had gone to Sub-Registrar's office at the time of registration of the said partition deed. Sub-Registrar did not explain the contents of the said partition deed.
>
> 3. I do not remember the date on which I affixed my signature on partition deed. We all the sisters and mother had gone to Sub-Registrar's Office at the time of registration of the partition deed.
>
> They were, therefore, aware that the deed in question was a deed of partition. They admitted that they had put their signatures before the Sub-Registrar and no where else. Their statements appear to be far- fetched and beyond the ordinary human conduct. If a plea was to be raised and evidence was required to be addressed that there had been a fraudulent misrepresentation as regards the character of partition deed (Exhibit D-6) and in absence of any particulars having been furnished as regards

alleged fraud and misrepresentation, the said deeds would not be void but only voidable."

38. We are, however, not oblivious of the decisions of this Court and other High Courts that illegality of a contract need not be pleaded. But, when a contract is said to be voidable by reason of any coercion, misrepresentation or fraud, the particulars thereof are required to be pleaded.

"In Chief Engineer, M.S.E.B. and Anr. v. Suresh Raghunath Bhokare , the law is stated in the following terms:

...The Industrial Court after perusing the pleadings and the notice issued to the respondent came to the conclusion that the alleged misrepresentation which is now said to be a fraud was not specifically pleaded or proved. In the show-cause notice, no basis was laid to show what is the nature of fraud that was being attributed to the appellant. No particulars of the alleged fraud were given and the said pleadings did not even contain any allegation as to how the appellant was responsible for sending the so-called fraudulent proposal or what role he had to play in such proposal being sent....

[See also Prem Singh (supra)]

In Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors. , this Court emphasized the necessity of making requisite plea of Order VI, Rule 4 stating:

22. Undoubtedly, Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. The particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard.

In Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (Dead) through LRs. and Ors. , this Court held:

207. We may now consider the submissions of Mr Desai that Appellant 1 herein is guilty of commission of fraud. Application filed by Respondent 1 before the Gujarat High Court does not contain the requisite pleadings in this behalf, the requirements wherefor can neither be denied nor disputed.

208. It is not in dispute that having regard to Rule 6 of the Companies (Court) Rules, the provisions of the Code of Civil Procedure will be applicable in a proceeding under the Companies Act. In terms of Order 6 Rule 4 of the Code of Civil Procedure, the plaintiff is bound to give particulars of the cases where he relies on misrepresentation, fraud, breach of trust, etc."

39. Strong reliance has been placed by Mr. Chandrasekhar on a decision of the Orissa High Court in Sundar Sahu Gountia and Ors. v. Chamra Sahu Gountia and Ors. , wherein it was opined:

> "12. The principles deducible from a consideration of these authorities may be summarised as follows:
>
> (i) To constitute a valid family arrangement the transaction should be one which is for the benefit of the family generally.
>
> (ii) The consideration for the arrangement may be preservation of the family property, preservation of the peace and honour of the family, or the avoidance of litigation.
>
> (iii) It is not essential that there should be a doubtful claim, or a disputed right to be compromised. If there is one, the settlement may be upheld if it is founded on a reciprocal 'give and take and there is mutuality between the parties, in the one surrendering his right and in the other forbearing to sue. In such cases the Court will not too nicely scrutinise the adequacy of the consideration moving from one party to the other.
>
> (iv) In any case, if such an arrangement has been acted upon the Courts will give effect to it on the ground of estoppel or limitation and the like. (v) A family arrangement may also be upheld if the consideration moves from a third party.
>
> (vi) If it appears to the Court that one party has taken undue advantage of the helplessness of the other and there is no sacrifice of any right or interest, the agreement is unilateral and is devoid of consideration.
>
> (vii) The consent of the parties should be freely given to the arrangement and gross inadequacy of consideration may be a determining factor in judging whether the consent was freely given.
>
> (viii) If the agreement involves or implies an injury to the person or property of one of the parties, the Courts retain an inherent power to prevent injustice being done.
>
> In that case, the court refused to record the alleged settlement between the parties. It was in that situation, the appeal was filed before the High Court. The ratio enunciated therein, that preserving the family property cannot, therefore, form the ground or consideration for the arrangement by the party to forgo a substantial part of his share so as to make the compromise binding upon him, ex facie appears to be contrary to the decision of this Court in Hari Shankar Singhania (supra) and Ramdev Food Products (P) Ltd. (supra).
>
> In Ramdev Food Products (P) Ltd. (supra), this Court held:

35. We may proceed on the basis that the MoU answers the principles of family settlement having regard to the fact that the same was actuated by a desire to resolve the disputes and the courts would not easily disturb them as has been held in S. Shanmugam Pillai v. K. Shanmugam Pillai, Kale v. Dy. Director of Consolidation and Hari Shankar Singhania v. Gaur Hari Singhani.

When there arises a question as to whether the suit was to be regarded as having adjusted by way of mutual agreement so that it can be disposed of on the said terms, in the event of a dispute, the consideration is different. However, where a settlement had been arrived at and a decree has been passed on the premise that the said compromise was lawful, we are of the opinion that the same cannot be permitted to be reopened only on the question as to whether the properties were joint properties or the self-acquired property of Sreenivasulu.

The said decision, therefore, in our opinion cannot be said to have any application whatsoever."

40. It is also not a case where the settlement was contrary to any statutory provision or was opposed to public policy as envisaged under Section 23 of the Indian Contract Act. If the principle ex turpi causa non oritur actio is to be applied in respect of the consent decree, the matter might have been different. The court shall apply the statute for upholding a compromise unless it is otherwise vitiated in law. It is not required to go into the question as to whether the contents of the said settlement are correct or not. Only in a case where fraud on the party or fraud on the court has been alleged or established, the court shall treat the same to be a nullity. Fraud, as is well known, vitiates all solemn acts. [See Ganpatbhai Mahijibhai Solanki v. State of Gujarat and Ors.] but the same must be pleaded and proved.

41. We may now consider the submission of Mr. Chandrasekhar as to what is meant by `release'. Reliance has been placed on De'Souza's Conveyancing, page 1075, wherein it has been stated:

"A deed of release does not create title. A release may be drafted in the same form as a deed of transfer or simply as a deed poll or a deed to which both parties may join stating the circumstances under which the release is based. Either the monetary consideration or "the premises", i.e., facts in consideration of which the release is made shall be stated."

42. Our attention has also been drawn to essentials of `release' from the said treatise, which are as under:

"(i) Full recitals of the origin of the claim, which form the most important part;

(ii) knowledge of the releaser about the claim, intended to be released;

(iii) words and expressions sufficiently clear to convey the intention of the releaser to discharge the right or the claim."

43. A deed of `release' for a consideration is a transaction. When, thus, a release is made for consideration, the particulars of consideration and other particulars which are required to be averred in the deed being essential elements thereof. Relinquishment of a property by a sister in favour of her brother for a consideration or absence of it, stands on a different footing. Section 25 of the Indian Contract Act must be read and construed having regard to the fact situation obtaining in the cases.

"In Smt. Manali Singhal and Anr. v. Ravi Singhal and Ors. , it was held:

20. Learned Counsel for the defendants has then argued that the impugned settlement is without any consideration. Hence the same is hit by Section 25 of the Contract Act. The contention of the learned Counsel may be an ingenious one but can be brushed aside without any difficulty. Parties more often than not settle their disputes amongst themselves without the assistance of the Court in order to give quietus to their disputes once and for all. The underlying idea while doing so is to bring an era of peace and harmony into the family and to put an end to the discord, disharmony, acrimony and bickering. Thus the consideration in such type of settlements is love and affection, peace and harmony and satisfaction to flow therefrom."

44. We would proceed on the basis that the consideration of rupee one shown in the deed of partition is no consideration in the eye of law. However, the question is as to whether a partition deed would be violative of Section 25 of the Indian Contract Act for want of consideration. It is per se not a void document. No such plea was raised. No issue has been framed. No evidence has been adduced. No ground has been taken even in the memo of appeal before the High Court. The validity of the partition deed (Ex. D-6) by reference to the recitals of the release of shares by the daughters of Sreenivasulu has not been questioned.

45. Renunciation in the Indian context may be for consideration or may not for consideration. This has been so held by this Court in Kuppuswamy Chettiar v. A.S.P.A. Arumugam Chettiar and Anr. in the following terms:

"In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under Section 123 of the *Transfer of Property Act, 1882*, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-l stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true

construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.

The said principle has been noticed by a Full Bench of the Madras High Court in Chief Controlling Revenue Authority, Referring Officer v. Rustorn Nusserwanji Patel stating:

(8) In the present case, prima facie, it may be contended with great force and plausibility that the document rightly purports to be a release and should be received as such. For it cannot be disputed, we think, that the estate in question is owned by two parties or co-owners, that the releasee has already an undivided half share in the estate and that what the releasor purports to do by the document is to effect himself, in respect of both this title and his right to possession in favour of the releasee. Nevertheless, Sri Ramaswami for the State has contended, upon two main lines of reasoning, that the document has to be interpreted as a conveyance or should be held essentially to be such. The first line of reasoning is based upon the distinction well known to law borrowed from the English law of real Property between a joint tenant and a tenant-in-common. This distinction has also been applied to the concept of a Hindu Coparcenary as existing before a division in status and the state of rights between erstwhile co-parceners after division is status as would be apparent from cited passages in Mulla's Hindu law. The other line of reasoning is that upon the actual phraseology of Article 55 of Schedule I such a document as this cannot amount to a release."

46. The question again came up for consideration before a Special Bench of the Madras High Court in The Chief Controlling Revenue Authority, Board of Revenue, Madras v. Dr. K. Manjunatha Rai , in the context of the Payment of Stamp Duty wherein it was categorically held:

"...For a release, in law, may be effected either for consideration or for no consideration. In either case, if the transaction operates as a relinquishment or a renunciation of a claim by one person against another or against a specified property, it will be a release....

It is, therefore, not a pure question of law."

47. Section 25 of the Indian Contract Act contains several exceptions, that is to say : (i) if it is in writing; (ii) if it is registered or (iii) if the same has been executed on account of love and affection. The deed of partition is both in writing and registered. One of the questions which had been bothering this Court is as to whether a document had been executed out of love and affection or not. The fact that the parties are near relatives is not in dispute. The love and affection of the sisters on the brothers has categorically been accepted by Plaintiff No. 1 Kanthamma in her deposition, stating:

In the house of defendants 1-2 whenever there is a function, as our father died and since we had more affection and faith on defendants 1-2, we used to sign the documents without going through the contents.

48. The deed of partition could have also been entered into by way of family arrangement where no registration was required. Such a course of action had not been taken. The parties knew the nature of the document. Appellants and other sisters being highly educated were supposed to know the contents thereof. Their husbands are well-off in the society. The transaction, therefore, was transparent. Furthermore, the mother was alive. She was also a party to the deed of partition. She must have played a pivotal role. She even if suffering from illness might be anxious to see that family properties are settled. Release by an heir other than a co-parcenar does not need any consideration. A release is valid even without consideration.

49. Mr. Chandrasekhar, however, has drawn our attention to Anson's Law of Contract, page 154, wherein the law is stated to be as under:

> "...Some additional factor is required to bring a case within one of the exceptions: for example, the existence of a relationship in which one party is able to take an unfair advantage of the other. In the absence of some such factor, the general rule applies that the courts will enforce a promise so long as some value for it has been given.
>
> As regards, nominal and inadequate consideration, the learned Author states:
>
> 'Nominal consideration' and `nominal sum' appear..., as terms of art, to refer to a sum or consideration which can be mentioned as consideration but is not necessarily paid. This view was expressed by Lord Wilberforce (in a speech with which all the other members of the House of Lords concurred) in Midland Bank & Trust Co. Ltd. v. Green. In that case a husband sold a farm, said to be wroth 40,000, to his wife for 500. It was held that the wife was, for the purposes of Section 13(2) of the *Land Charges Act 1925*, a "purchaser for money or money's worth" so that the sale to her prevailed over an unregistered option to purchase the land, which had been granted to one of the couple's children. It was not necessary to decide whether the consideration for the sale was nominal but Lord Wilberforce said that he would have "great difficulty" in so holding; and that "To equate `nominal' with `inadequate' or even `grossly inadequate' consideration would embark the law on inquiries which I cannot think were ever intended by Parliament. On the facts of the case the 500 was in fact paid and was more than a mere token, so that the consideration was not nominal on either of the two views stated above. But if the stated consideration had been only 1, or a peppercorn, it is submitted that it would have been nominal even if it had been paid, or delivered, in accordance with the intention of the parties."

50. The same principle might have been applied in the Indian Contract Act. "Consideration" has been defined in Section 2(d) of the Indian Contract Act, which reads as under:

> "(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;"

51. Consideration even in the Indian context would mean a reasonable equivalent or other valuable benefit passed on by the promiser to the promise or by the transferor to the transferee. Love and affection is also a consideration within the meaning of Sections 122 and 123 of the Transfer of Property Act.

52. In Mt. Latif Jahan Begam v. Md. Nabi Khan , the Allahabad High Court rightly held that a question in regard to the adequacy of consideration for the purpose of attracting Section 25 of the Indian Contract Act is a mixed question of fact and law and not a pure question of law stating:

> "...The question did not involve a mere point of law. It required the determination of a question of fact, viz., whether the agreement was made on account of natural love and affection. The Court below was not justified in recording a finding that the plaintiff had not proved that there was any affection between herself and her father in law. There was no occasion in this case for the plaintiff to offer any proof on a point which was not raised at the trial. We are of opinion that the learned District Judge has erred in entertaining and giving effect to this plea.
>
> Yet again in Gauri Shanker v. Hindustan Trust (Pvt.) Ltd. and Ors. , this Court did not permit an amendment of the pleadings in that behalf after a long time.
>
> We are, however, not oblivious of the fact that this Court in some of its decisions opined that the court should allow amendment of the plaint liberally as was done in the case of Bhikhubhai Vithlabhai Patel and Ors. v. State of Gujarat and Anr. but the factual matrix involved therein is completely different.
>
> In John Tinson and Co. Pvt. Ltd. and Ors. v. Mrs. Surjeet Malhan and Anr. , it is stated that a distinction must be made between a transaction which is invalid in law being ultra vires the Articles of Association and other transactions. What is contemplated is the sense of ad idem for a concluded contract but when a document can be executed for no consideration, pleading in that behalf would be a must."

53. The High Court, therefore, in our opinion, was correct in not allowing the appellants to raise the said contention.

54. We may, furthermore, notice that the deed of partition (Ex. D-6) had been acted upon by the appellants and other sisters. They executed a deed of lease in respect of their 1/11^th share each in the 1/3^rd share in one of the items of the properties in favour of the tenant, Defendant No. 9. The lease deed executed by Plaintiff No. 1 (Ex. D-14) is dated 16.02.1985. In terms of the deed of partition, one of the plaintiffs received rentals in respect of her share

from the tenants. There are a large number of documents brought on records by the parties wherefrom a positive knowledge of execution of the said partition deed on the part of the sisters is possible to be attributed. The said documents are:

> "1. Exhibit D-4 dated 4-2-1985, Power of Attorney executed by Plaintiff No. 1 mentioning D-6
>
> 2. Exhibit D-9 dated 20-12-1983, Power of Attorney by Plaintiff No. 2 referring to D-6
>
> 3. Exhibit D-14 dated 16-2-1985, Registered lease deed by Plaintiff No. 1 referring to Exhibit D-6 and also two other registered lease deeds by Defendants Nos. 1-8 and Plaintiff No. 2.
>
> 4. Exhibit D-19 to D-22 rent receipts having received rents by the sisters.
>
> 55. As regards, Power of Attorney executed by Ranganayakamma Plaintiff No. 2. It appears that there were three such documents, viz.:
>
> 1. Ex. D - 9 is a Special Power of Attorney executed at Cuddappah appointing K.S. Prakash to execute lease deed with respect to 1/11^th of 1/3^rd share of mother's share. It was attested by T.S. Ranganaikalu and N.K. Swamy, Advocates.
>
> 2. Ex. D - 10 is a Power of Attorney dated 20.12.1983 executed at Cuddappah appointing K.S. Prakash relinquishing her share in M/s. Singaramma Flour Mills. It was attested by T.S. Ranganaikalu and N.K. Swamy, Advocates.
>
> 3. Ex. D-11 is an affidavit of Ms. Ranganakayamma stating on oath that Ex. D-9 is valid and subsisting. It was attested by R.V. Prasad, Advocate."

56. It may be true that there is nothing on record to show that a lease deed was executed by other plaintiff but then there is nothing to show that she was not aware thereof. If she had not been paid her share from the rental income, she had not prayed for mesne profit.

57. We may now consider the question of limitation raised by Mr. Chandrashekhar.

> "Applicability of Article 65 or Article 110 of the Limitation Act, on the one hand, and Article 59 thereof, on the other, would depend upon the factual situation involved in a case.
>
> Article 59 reads as under:
>
> 59. To cancel or set aside an Three years When the facts entitling the instrument or decree or for plaintiff to have the the rescission of a instrument or decree contract. cancelled or set aside or the contract rescinded first become known to him.

A decree for setting aside a document may be sought for in terms of Section 31 of the Specific Relief Act.

Applicability of Article 59 would indisputably depend upon the question as to whether the deed of partition was required to be set aside or not. In view of our findings aforementioned, it was required to be set aside. It is not a case where the deed of partition by reason of purported wrong factual contention raised in the plaint leading to grant of a consent decree was void ab initio. It was not. The effect of it would be that the same was required be set aside. [See Prem Singh (supra), Bay Berry Apartments Pvt. Ltd. and Anr. v. Shobha and Ors. and Utha Moidu Haji v. Kuningarath Kunhabdulla and Ors.]

It must, therefore, be held that the suit was barred by limitation."

58. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. No costs.