

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

AFA.No. 44 of 1993

AGAINST THE JUDGMENT IN OS 19/1973 of PRINCIPAL SUB COURT, ALAPPUZHA
DATED 30-11-1979

AGAINST THE JUDGMENT IN AS 185/1981 of HIGH COURT OF KERALA
DATED 11-11-1992

APPELLANT/APPELLANT/PLAINTIFF:

HEMALATHA, KANAKA NIVAS, KADAPPAKADA,
QUILON.

BY ADVS. SRI.T.C.SURESH MENON
SRI.A.V.THOMAS (SR.)

RESPONDENTS/RESPONDENTS/DEFENDANTS 1 & 2:

1. S.D.PHARMACY, ALAPPEY REP. BY MANAGING PARTNER,
K. RAMESH, PALAVE WARD, ALAPUZZHA.
2. NAGALAKSHMI AMMAL, THAIPARAMBIL HOUSE, PALACE WARD,
ALAPUZZHA.
3. K. DINESH, S/O LATE P.S.KESAVAN VAIDYAR, PARTNER OF
M/S S.D.PHARMACY, NATHEE PRINTERS, ERNAKULAM.
4. K. RAMESH, DO. DO.
5. K. SATHI, DO. DO.
6. K. LEELA, DO. DO.
7. MISS. K. PRAYA, DO. DO.
8. GOWRI AMMA PANKAJAKSHY AMMA, DHANWANTHARI BHAVAN,
PALACE WARD, ALAPUZZHA.

BY ADV. SUMATHY DANDAPANI (SR.)

THIS APPEAL FROM FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 21-12-2015, ALONG WITH AFA. 46/1993, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

I.A.No.4528 of 2015 in
A.F.A.No.46 of 1993 &
A.F.A.No.44 of 1993

Dated this the 21st day of December, 2015

JUDGMENT

P. N. Ravindran, J.

The prayer in I.A.No.4528 of 2015 jointly filed by the appellants and respondents 1, 2 and 5 to 8 in A.F.A.No.46 of 1993 is to record the compromise entered into between them and to pass a decree in terms thereof. The appellants in A.F.A.No.46 of 1993 are defendants 1 and 2 respectively in O.S.No.7 of 1973 on the file of the Court of the Subordinate Judge of Alappuzha, a suit instituted by the first respondent therein for specific performance of an agreement to sell 17 cents of land situate in Alappuzha town. That suit was tried and disposed of along with O.S.No.19 of 1973 by a common judgment delivered on 30.11.1979. O.S.No.7 of 1973 instituted by the first respondent herein was decreed and O.S.No.19 of 1973 instituted by the second defendant in O.S.No.7 of 1973 was dismissed. The judgment decreeing O.S.No.7 of 1973 and dismissing O.S.No.19 of 1973 was upheld by a learned single Judge of this court in A.S.Nos.189 of 1981 and 185 of 1981 respectively. It is challenging the aforesaid

common judgment that A.F.A.Nos.44 and 46 of 1993 have been filed.

2. The parties have in the joint petition for compromise averred that they have settled the dispute out of court and that defendants 1 and 2 in O.S.No.7 of 1973 have agreed that a decree for specific performance may be passed in favour of the plaintiff in O.S.No.7 of 1973 in respect of 11 cents of land (corresponding to 4.45 Ares) situate in Sy.No.631/4-D of Mullakkal Village (formerly Alappuzha Village), Ambalappuzha Taluk, Alappuzha District, more particularly described as plot-C shaded in green in the sketch prepared by K.Thulasidas, Retd. District Survey Superintendent, Alappuzha, and accompanying the application. The parties have also averred that a decree may be passed directing defendants 1 and 2 in O.S.No.7 of 1973 to execute and register a sale deed in respect of the said parcel of land, for a sale consideration of ₹25,000/- already received in full by them, at the cost and expense of the plaintiff as regards the stamp duty, the registration fee and the documentation charges within a period of two months from 19.12.2015 failing which it may be stipulated that the first respondent will be entitled to get a sale deed executed by the court under section 28(3) of the Specific Relief Act, 1963. It is also stated that respondents 1, 2 and 5 to 8 in the appeal have agreed that the appellants (defendants 1 and 2 in O.S.No.7 of

1973) can retain four cents of land (corresponding to 1.62 Ares) in Sy.No.631/4-D above referred to, lying on the north-western corner of the plaint schedule property (four cents comprised in plot-A shown in red shade in the sketch accompanying the application). The joint petition also sets out the side measurements of the said four cents of land allowed to be retained by the appellants. It is also stated that parties have agreed that the small bit of land shown in blue shade (Plot-B in the sketch accompanying the application) will be left as common property for entry from the main road through the pathway shown in yellow shade (plot-D) to plot-A to be retained by defendants 1 and 2 in O.S.No.7 of 1973 and plot-C to be assigned to the plaintiff therein. The parties have also agreed that the plots marked as 'A' and 'B' shall be demarcated and separated after demolishing the structures presently situate therein and that thereafter a compound wall shall be constructed separating plot-C from plots 'A' and 'B' by the plaintiff in O.S.No.7 of 1973. The parties have also agreed that the existing structures in the plots marked 'A' and 'B' shall be demolished at the cost and expenditure of the plaintiff and possession of plot-A handed over to the defendants 1 and 2 in O.S.No.7 of 1973, within one month from 19.12.2015. The parties have also agreed that the plaintiff and defendants 1 and 2 in O.S.No.7 of 1973 shall have the right to use the

plots marked as 'B' and 'D' in the sketch accompanying the application, except the area occupied by the staircase in plot-D for the purpose of taking motor vehicles to their respective plots. Having regard to the terms of the settlement, we are satisfied that the compromise entered into between the parties can be accepted and a decree in terms thereof passed.

We accordingly record the compromise entered into between the parties as set out in I.A.No.4528 of 2015, and in supersession of the decree passed by the Court of the Subordinate Judge of Alappuzha in O.S.Nos.7 of 1973 and 19 of 1973, pass a decree granting specific performance in respect of 11 cents (corresponding to 4.45 Ares) of land situate in Sy.No.631/4-D of Mullakkal Village (formerly Alappuzha Village), Ambalappuzha Taluk, Alappuzha District, shown as plot-C in green shade in the sketch accompanying I.A.No.4528 of 2015 and further direct defendants 1 and 2 in O.S.No.7 of 1973 to execute and register a sale deed for the agreed sale consideration of ₹25,000/- which has already been received by them in full at the expense and cost of the plaintiff therein, within two months from today. Since the last among the agreements based on which the suit for specific performance was instituted was entered into on 18.10.1972 and the agreement recites that the entire sale consideration of ₹25,000/- has

already been paid, we deem it appropriate to clarify that the plaintiff in O.S.No.7 of 1973 need pay stamp duty only for the sale consideration of ₹25,000/- agreed upon by and between the parties and already paid in full and that the plaintiff or the defendants will not be liable to pay stamp duty based on the fair value for the plaint schedule property presently in force. Having regard to the terms of the compromise, we also pass a decree directing respondents 1, 2 and 5 to 8 in A.F.A.No.46 of 1993 to identify and demarcate the parcel of land having an extent of 4 cents (corresponding to 1.62 Ares), situate in Sy.No.631/4-D of Mullakkal Village (formerly Alappuzha Village), Ambalappuzha Taluk, Alappuzha District shown as plot-A in the accompanying sketch as also the plot marked 'B' in the accompanying sketch and demolish the existing structures therein within one month from 19.12.2015 and put up in accordance with the side measurements given in the sketch as also in the compromise petition, a compound wall separating plots 'A' and 'B' from plot-C and hand over possession of plot-A to the appellants. We also pass a decree declaring that the plaintiff in O.S.No.7 of 1973 and defendants 1 and 2 therein shall have the right to use the plot marked 'D' shaded in yellow in the accompanying sketch as a pathway and also for the purpose of taking motor vehicles to their respective properties and that they will also have the exclusive

right to use plot-B shaded in blue in the accompanying sketch for ingress to and egress from their respective properties, namely plots 'A' and 'C'. We also deem it appropriate to direct that plot-B in the accompanying sketch shall be kept in common and no structure shall be put up therein either by the plaintiff in O.S.No.7 of 1973 or defendants 1 and 2 therein or their successors-in-interest and that they will have no right whatsoever in that regard. A copy each of the compromise petition and the sketch accompanying it shall be appended to this judgment and the original thereof shall be preserved. Needless to say, a copy of the said sketch shall also be appended to the sale deed to be executed and registered in terms of this judgment. The parties shall bear their respective costs throughout.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

