

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

AS.No.116 of 1997 (E)

AGAINST THE JUDGMENT IN OS 44/1995 of ADDL.SUB COURT,
KOCHI, DATED 21-03-1996.

APPELLANTS/DEFENDANTS:-

1. MARY, AGED 45,
D/O.CHERIYAPADATHU PIUS,
PERUMAL PADI EAST,
ELAMKUNNAPUZHA,
VYPIN ISLAND.
2. ROSILY, AGED 26,
D/O.MARY, PUTHENPURAKKAL,
PERUMAL PADI, LEKSHAM VEEDU COLONY,
ELAMKUNNAPUZHA, VYPIN ISLAND.

BY ADVS.SRI.B.RAMACHANDRAN
SRI.P.R.JAYAKRISHNAN

RESPONDENT/PLAINTIFF:-

MOHAMED SAGEER, AGED 37 YEARS,
S/O.KADER, PIGMI COLLECTOR,
PALLICKS VALIYE VEETIL HOUSE,
EDAVANAKKAD, KOCHI TALUK.

BY ADV. SRI.THOMAS CHAZHUKKARAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

A.S. No.116 of 1997.

Dated this the 12th day of February, 2015.

J U D G M E N T

The decision in O.S.No.44 of 1995 on the file of the court of the Additional Subordinate Judge, Kochi is under challenge in this appeal. The defendants in the suit are the appellants.

2. O.S.No.44 of 1995 was a suit for specific performance of an agreement for sale with an alternative prayer for return of the advance sale consideration. The case of the plaintiff is that on 29.7.1994, the defendants have executed Ext.A1 agreement for sale with the plaintiff and thereby agreed to sell the plaint schedule property to him for a consideration of Rs.60,000/-, after receiving a sum of Rs.40,000/- by way of advance. According to the plaintiff, though the plaintiff was ready and willing to perform his part of the agreement and kept the balance sale consideration ready, the defendants did not execute the required conveyance document despite specific demands.

3. The second defendant contested the suit contending *inter alia* that the defendants have not agreed to sell the plaint schedule property to the plaintiff and that Ext.A1 is a

document obtained by the plaintiff from the defendants by threat and coercion. According to the second defendant, the first defendant introduced the plaintiff to one Mohammed Ali to enable him to get a visa and the said Mohammed Ali though obtained a sum of Rs.40,000/- from the plaintiff, did not arrange visa for the plaintiff and consequently the plaintiff forced the defendants to execute Ext.A1 agreement for sale in respect of the plaint schedule property. Though, it was contended by the second defendant in the written statement filed by her that Ext.A1 is not a genuine document and that she has not received the advance sale consideration as claimed by the plaintiff, she has specifically stated in her written statement that she is prepared to return the sum of Rs.40,000/- alleged to have been paid by the plaintiff to Mohammed Ali. The first defendant filed a written statement adopting the contentions of the second defendant.

4. The court below, on an appraisal of materials on record, found that Ext.A1 is a genuine document executed by defendants 1 and 2 agreeing to sell the plaint schedule property to the plaintiff and that the said document is not vitiated in any manner. Nevertheless, the court below did not grant a decree for

specific performance to the plaintiff on the ground that it is not a fit case where the discretionary jurisdiction to grant a decree for specific performance is to be exercised. However, in the light of the finding that Ext.A1 is a genuine document, the court below passed a decree permitting the plaintiff to recover Rs.40,000/- from the defendants with interest and costs. The defendants are aggrieved by the said decision of the court below and hence this appeal.

5. Heard the learned counsel for the appellants.

6. Though, it was contended by the defendants in the written statements that they have not received the sum of Rs.40,000/- claimed to have been paid by the plaintiff towards advance sale consideration, as pointed out earlier, the second defendant has stated in the written statement filed by her that she is prepared to pay Rs.40,000/- to the plaintiff with interest. The said written statement of the second defendant has been adopted by the first defendant as well. Paragraph 5 of the written statement of the second defendant reads thus:

“However this defendant is only a silent witness in the transaction between the plaintiff and first defendant. This defendant had already informed the first defendant of the

matter. However this defendant is ready to return the payment of Rs.40,000/- to the plaintiff provided some time is granted, with 6% interest per annum."

That apart, the court below has categorically found that Ext.A1 is a genuine document and that the defendants have agreed to sell the plaint schedule property to the plaintiff, after accepting a sum of Rs.40,000/- by way of advance sale consideration. I do not find any infirmity in the said findings of the court below also.

In the above circumstances, there is no reason to interfere with the impugned decision of the court below. There is therefore, no merit in the appeal and the same is, accordingly, dismissed.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

Kvs/-

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PA TO JUDGE.