

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

AS.No. 253 of 2002 (C)

OS 947/1995 SUB COURT, TRIVANDRUM

APPELLANT(S)/PLAINTIFF:

**R.V.SANAL KUMAR, S/O.VELAYUDHAN,
AGED 42, T.C.30/982, "PRATHIBHA"
PALKULANGARA MURI, PETTAH VILLAGE, TRIVANDRUM.**

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT(S)/DEFENDANT:

- 1. N.GANGADHARAN NADAR, S/O.NARAYANAN NADAR, (DIED)
AGED ABOUT 70 YEARS, T.C.19/1087, THERIVILA PUTHEN
VEEDU, AREMADA MURI, THEVANILAM,
THIRUMALA VILLAGE, TRIVANDRUM.**
- * ADDL.R2 TO R5 IMPEADED**
- 2. DEVAKI, W/O.N.GANGADHARAN NADAR,
T.C.19/1087, THERIVILA PUTHEN
VEEDU, AREMADA MURI, THEVANILAM,
THIRUMALA VILLAGE, TRIVANDRUM.**
- 3. NAGENDRAN, S/O.N.GANGADHARAN NADAR,
T.C.19/1087, THERIVILA PUTHEN
VEEDU, AREMADA MURI, THEVANILAM,
THIRUMALA VILLAGE, TRIVANDRUM.**
- 4. RAVI, S/O.N.GANGADHARAN NADAR,
T.C.19/1087, THERIVILA PUTHEN
VEEDU, AREMADA MURI, THEVANILAM,
THIRUMALA VILLAGE, TRIVANDRUM.**
- 5. USHA, D/O.N.GANGADHARAN NADAR,
T.C.19/1087, THERIVILA PUTHEN
VEEDU, AREMADA MURI, THEVANILAM,
THIRUMALA VILLAGE, TRIVANDRUM.**

**THE LEGAL HEIRS OF THE DECEASED SOLE RESPONDENT ARE IMPEADED
AS ADDL.R2 TO R5 VIDE ORDER DT.18/12/13 IN IA.2759/2010.**

**R2,R4 & 5 BY ADV. SRI.P.S.RAMESH KUMAR
BY ADV. SMT.ANNAMMA ABRAHAM**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 29/5/2015 THE
COURT ON 05-06-2015, DELIVERED THE FOLLOWING:**

C.R.

P.B.SURESH KUMAR, J.

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A.S.No.253 of 2002.

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Dated this the 5th day of June, 2015.

J U D G M E N T

The plaintiff in a suit for specific performance of an agreement for sale is the appellant in this appeal.

2. The suit was instituted alleging that on 11.11.1994, a registered agreement was entered into between the plaintiff and the defendant by which the defendant has agreed to sell the plaint schedule property measuring 10 cents to the plaintiff for a sum of Rs.75,000/-. It was also alleged by the plaintiff that on the date of execution and registration of the agreement for sale, a sum of Rs.50,000/- was paid by the plaintiff to the defendant towards advance sale consideration and the balance sale consideration was agreed to be paid within six months thereafter on the defendant complying with the terms usually imposed in such transactions. It was further alleged

by the plaintiff that since the defendant did not come forward to execute the sale deed as per the terms of the agreement, a lawyer's notice was caused to be issued to the defendant on 20.4.1995 calling upon him to execute the sale deed and the defendant who received the same did not respond to the same. It was further alleged by the plaintiff that thereafter on 29.4.1995, yet another lawyer's notice was caused to be issued to the defendant calling upon him to fix a date for registration of the conveyance deed and inform the plaintiff so as to enable him to prepare the sale deed and come to the Sub Registry concerned for the registration of the document. According to the plaintiff, there was no response to the said lawyer's notice as well and it was in the said circumstances, the suit was filed for specific performance of the agreement for sale.

3. The defendant contested the suit by filing a written statement. The execution and registration of the agreement for sale on 11.11.1994 has been admitted by the defendant in the written statement. However, it was

contended by the defendant in the written statement that the plaintiff is a money lender; that the defendant approached the plaintiff for a loan in connection with the marriage of his daughter which was scheduled on 14.11.1994; that the plaintiff has insisted execution of a document in the nature the agreement referred to by the plaintiff towards security for the loan and that since the defendant had no other option to raise the loan for the conduct of the marriage, he had to execute the agreement for sale towards the security of the loan of Rs.50,000/- availed by him from the plaintiff on 11.11.1994. In other words, according to the defendant, the agreement executed by him on 11.11.1994 is a document which was never intended to be acted upon.

4. The evidence in the case consists of the testimonies of Pws.1 and 2 and Exts.A1 to A4 on the side of the plaintiff and the testimony of Dw1 on the side of the defendant.

5. The trial court, on a consideration of the materials

on record, found that the agreement for sale dated 11.11.1994 was never intended to be acted upon. The aforesaid finding was arrived at by the trial court taking note of the fact that the plaintiff is a money lender and the fact that the marriage of the daughter of the defendant was scheduled on 14.11.1994. The trial court also observed that if at all the intention of the plaintiff was to purchase the plaint schedule property, there was no impediment for him to purchase the said property on 11.11.1994 itself. In the light of the said finding, the trial court declined the decree for specific performance sought by the plaintiff and instead, passed a decree permitting the plaintiff to recover the sum of Rs.50,000/- from the defendant with interest. The plaintiff is aggrieved by the said decision of the trial court.

6. Ext.A1 is the agreement entered into between the plaintiff and the defendant on 11.11.1994. The execution and registration of Ext.A1 agreement are not disputed. Likewise, the receipt of the sum of Rs.50,000/- by the defendant from the plaintiff on the date of execution of

Ext.A1 agreement is also not disputed. The contention of the defendant is that Ext.A1 was not an agreement for sale intended to be acted upon and that the same was executed only as a security for the loan of Rs.50,000/- availed by the defendant from the plaintiff on 11.11.1994. True, it is a contention available to the defendant in a suit of this nature. But, the question is whether the defendant in this case has substantiated the said contention by adducing cogent and acceptable evidence. As noticed above, prior to the institution of the suit, the plaintiff has caused to issue Ext.A2 lawyer's notice calling upon the defendant to execute the necessary document to convey the property. No reply was sent by the defendant to the said notice. Later, Ext.A3 lawyer's notice was caused to be sent by the plaintiff to the defendant calling upon him to inform the plaintiff the date on which he could execute the conveyance deed. Though it was contended by the defendant in the written statement that he has caused to sent a reply to the second lawyer's notice, the reply claimed to have been sent by the

defendant has not been produced before the court. Further, in cross examination, the defendant has admitted that he has not sent any reply to the lawyer's notice of the plaintiff. As regards the business of the plaintiff, the specific contention of the defendant in the written statement was that he is a person who lends money on the security of promissory notes and blank cheques. However, in cross examination, the defendant has admitted that the plaintiff has not obtained any cheque or promissory note from him. The plaintiff gave evidence in tune with the case set up by him in the plaint. Though he was thoroughly cross examined, nothing was brought out to discredit his evidence. Further, in the course of the cross examination, the counsel for the defendant himself has brought out from the plaintiff that he does not own any property and that he resides in the house of his wife. It was also brought out from the plaintiff by the counsel for the defendant that there are no subsisting agreements either in his name or in the name of his wife for purchase of any property and that he is not a

party to any pending suit for specific performance or for recovery of money. The scribe of Ext.A1 who was examined by the plaintiff as PW2 gave evidence to the effect that both plaintiff and defendant together came to his office and gave the particulars for the preparation and registration of Ext.A1 agreement for sale. In the said circumstances, merely for the reason that the plaintiff is engaged in money lending business and the marriage of the daughter of the defendant took place a few days after the agreement, it cannot be presumed that the agreement was not genuine. Except the interested testimony of the defendant, there is nothing on record to indicate that the agreement relied on by the plaintiff is not a genuine document. Even going by the case set up by the defendant, had the transaction been a money lending transaction, there is nothing on record to indicate that the defendant has repaid the loan or any portion thereof or interest. The fact that no amount was repaid by the defendant to the plaintiff after Ext.A1 agreement is admitted by the defendant. In the aforesaid facts and

circumstances, I have no hesitation to hold that the defendant has not established the contention that Ext.A1 agreement was not intended to be acted upon. As such, it has to be held that Ext.A1 agreement is a genuine agreement for sale executed between the parties.

7. The next question to be considered is as to whether the plaintiff is entitled to a decree for specific performance sought by him. In the light of the provisions contained in Section 20 of the Specific Relief Act, the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such a relief merely because it is lawful to do so. The provisions in Section 20 of the Specific Relief Act would also indicate that the court may not exercise the discretion to decree specific performance in cases where the conduct of the parties at the time of entering into the contract or other circumstances under which the contract was entered into, are such that the contract gives to the plaintiff an unfair advantage over the defendant. The provisions in the said Section would also indicate that the

court may not exercise the discretion to decree specific performance in cases where the defendant had entered into the contract under circumstances which make it inequitable to enforce specific performance. In the instant case, when Ext.A1 agreement was entered into by the plaintiff to purchase the plaint schedule property from the defendant, the marriage of the daughter of the defendant was already fixed. The marriage was scheduled to take place three days after the agreement. In the said circumstances, in the background of the parties, it can be safely concluded that at the time of execution of Ext.A1 agreement, the defendant was under a pressing need to raise funds for the marriage of his daughter. If the defendant was under a pressing need to raise funds at the time when the agreement was executed, it has to be conceded that the parties to the contract were not enjoying equal bargaining power in the matter of fixing the terms of the contract including the sale price. Though in a different context, the defendant has taken up a contention that the plaint schedule property at the time of execution of

the agreement was worth several lakhs and that there was therefore no occasion for him to sell the said property for a meagre sum of Rs.75,000/-. The possibility of the plaintiff making use of the sombre circumstances in which the defendant was placed to purchase the property at a throw away price cannot, therefore, be ruled out. I am, therefore, of the view that the circumstances under which Ext.A1 agreement was entered into were such that it give to the plaintiff an unfair advantage over the defendant and make it inequitable to enforce specific performance. I, therefore, hold that the plaintiff is not entitled to a decree for specific performance sought by him.

8. What is the relief the plaintiff in a case like this is entitled to is the next question. Can he be turned away with a decree for realization of the advance sale consideration? Definitely not. It is beyond dispute that almost 21 years have elapsed since the execution of Ext.A1 agreement. I have already found that Ext.A1 agreement is a genuine agreement for sale. It is not disputed that the defendant

has received from the plaintiff on the date of execution of the said agreement a sum of Rs.50,000/-. Though the court below granted to the plaintiff a decree for realization of the said amount with interest, it is not disputed that the defendant has not till date paid or deposited the decree amount or any portion thereof. True, going by the terms of the decree impugned in this appeal, the plaintiff will be able to recover Rs.50,000/- with interest from the defendant. In this context, it has to be noted that the said amount of Rs.50,000/- has been paid by the plaintiff to the defendant towards advance sale consideration for purchase of a property. Had Ext.A1 agreement not been entered into, the plaintiff would have purchased some other property in the place of the plaint schedule property. It is common knowledge that the price of the properties in the State has increased many fold and the plaintiff may not be able to purchase a similar property or a portion thereof now with the decree amount. As such, if the plaintiff is not compensated adequately, the court will not be rendering

justice to him. There is no law to take care of a situation of this nature. It is now settled that in the absence of a provision in the Code of Civil Procedure to take care of a particular situation, the inherent powers of the court can be exercised to do justice to the parties [See **State of U. P. v. Roshan Singh** (AIR 2008 SC 1190)]. The learned counsel for the respondents conceded that since the price of the property has gone up substantially since the execution of the agreement, his clients have offered to pay a sum of Rs.5,00,000/- to the plaintiff towards settlement of the dispute. The learned counsel for the appellant also submitted that since the money value has decreased substantially during the last 21 years, the plaintiff is prepared to pay upto Rs.4,00,000/- to the defendant in the place of Rs.25,000/- payable by him as per the terms of the contract towards balance sale consideration. In the light of the submissions made by the learned counsel for the parties and having regard to the facts and circumstances of this case, especially the fact that the prices of properties in the

country have been increasing at a galloping pace during the last two decades, I deem it appropriate to permit the plaintiff to recover a sum of Rs.10,00,000/- (Rupees ten lakhs only) from the defendant in the place of decree for recovery of the advance sale consideration granted by the court below.

In the result, the appeal is allowed in part and the impugned decision of the court below is modified permitting the plaintiff to recover from the defendant a sum of Rs.10,00,000/- (Rupees ten lakhs only) with interest at the rate of 6% from today and costs throughout, charged on the plaint schedule property.

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

Kvs/-

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PA TO JUDGE.