IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

AS.No. 923 of 1998 (A)

AGAINST THE JUDGMENT IN OS. NO.497/1990 OF ADDL. SUB COURT, KOTTAYAM.
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APPELLANT/PLAINTIFF:

RAJAN JACOB, S/O.CHACKO,
CHETHIPUZHA HOUSE, KURUMBANANDUM MURI,
MALAPPALLY VILLAGE, CHANGANACHERRY.

BY ADV. SRI.A.K.ALEX.

RESPONDENT/DEFENDANT:
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***1. THANKAPPAN, S/O.SANGHU,**
POIKAPPARAMBIL HOUSE, KURUMBANANDOM MURI,
MADAPPALLY VILLAGE, CHANGANACHERRY. (DIED)

*** <u>ADDL. R2 TO R6 IMPLEADED</u>**

2. THANKAMMA, AGED 60 YEARS,
W/O.LATE THANKAPPAN, POIKAPPARAMBIL HOUSE,
KURUMBANANDOM MURI, MADAPPALLY VILLAGE,
CHANGANACHERRY.

3. SASI, AGED 45 YEARS,
S/O.LATE THANKAPPAN, -DO- -DO-.

4. NALINI, AGED 30 YEARS,
D/O.LATE THANKAPPAN, -DO- -DO-.

5. USHA, AGED 25 YEARS,
D/O.LATE THANKAPPAN, -DO- -DO-.

6. INDIRA, AGED 20 YEARS,
D/O.LATE THANKAPPAN, -DO- -DO-.

*** LEGAL HEIRS OF DECEASED 1ST RESPONDENT ARE IMPLEADED**
AS ADDITIONAL RESPONDENTS 2 TO 6 AS PER ORDER DATED 04/02/2014
IN I.A. NO.2665/2010.

R2 TO R5 BY ADV. SRI.LAL GEORGE.

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 07/04/2015,
THE COURT ON 10/04/2015 DELIVERED THE FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

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A.S.No.923 of 1998.

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Dated this the 10th day of April, 2015.

<u>J U D G M E N T</u>

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

2. The plaint schedule property is a property having an extent of 16 cents. According to the plaintiff, the defendant had agreed to sell the plaint schedule property and the building therein to the plaintiff for a sum of Rs.35,000/- and received a sum of Rs.25,000/- by way of advance sale consideration. Ext.A1 is the agreement for sale claimed to have been executed by the defendant on 24.7.1989. The case of the plaintiff is that the defendant had agreed to execute the conveyance deed of the property, receiving the balance consideration within eleven months from the date of the agreement. It is alleged by the plaintiff that though he was ready and willing to pay the balance sale consideration and get the conveyance deed executed, the defendant was not prepared to convey the property receiving the balance sale consideration. Hence the suit.

3. The defendant filed written statement contending *inter alia* that he had not agreed to sell the plaint schedule property nor did the plaintiff agree to purchase the property. According to him, the plaint schedule property was a property fetching at least a sum of Rs.5,000/- per cent when the alleged agreement for sale was executed by him and there was no reason for him to sell the said property to the plaintiff for a sum of Rs.35,000/- as claimed by him. It was also contended by him that he is engaged in slaughter tapping business with one Thomas Sebastian and he had borrowed a sum of Rs.20,000/- from the plaintiff who is a money lender for the said business agreeing to repay the borrowed amount within a period of eleven months. According to him, the agreement relied on by the plaintiff has been obtained by the plaintiff from him as a security for the loan amount. It was also contended by the defendant that a sum of Rs.8,000/- out of the amount borrowed by him was paid back to the plaintiff and he is liable to pay only the balance Rs.12,000/-.

4. On the side of the plaintiff, Pws.1 to 3 were examined and Exts.A1 to A7 were produced. On the side of the defendants, Dws.1 and 2 were examined and Exts.B1 to B3 were produced.

5. The trial court, on an elaborate consideration of

the materials on record, came to the conclusion that the defendant has not agreed to sell the plaint schedule property to the plaintiff. It was also found by the trial court that Ext.A1 is a document obtained by the plaintiff from the defendant by way of security for the loan given to the defendant. It was further found by the trial court that the defendant has not established the repayment of the loan as claimed by him. Consequently, the trial court granted to the plaintiff a decree for recovery of Rs.25,000/- with interest at the rate of 6% per annum, charged on the plaint schedule property. The plaintiff is aggrieved by the said decision in so far as it declined the decree for specific performance sought by him.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent.

7. The short question that falls for consideration is as to whether Ext.A1 agreement relied on by the plaintiff is genuine or not. At the outset, it has to be pointed out that going by the terms of Ext.A1 agreement, though a very substantial portion of the sale price has been received by the defendant by way of advance, an unusually long period of eleven months was prescribed in the agreement for transferring the property. There is nothing on record to indicate as to the reason for prescribing such a long period for completing the sale formalities. Further, it

is seen that the title deeds of the plaint schedule property have been obtained by the plaintiff from the defendant at the time of execution of the alleged agreement for sale. The conduct on the part of the defendant in entrusting the title deeds of the property is not a conduct usually expected from the vendor in an agreement for sale. In **Lalithambika v. Varghese** (2004(3) KLT 892), this Court took the view that such conducts are indicative of the fact that the plaintiff was in a position to dictate and the defendant had no option but to oblige him to receive the money paid as per the document. The said view was reiterated by this Court in **Sarada v. Divakara Kurup** [2012(4) KLT SN 152 (Case No.148)]. In the said case, this Court took the view that the conduct of the seller in handing over the title deeds of the property is a circumstance which would indicate that the transaction was not one for purchase of the property but a money transaction. Further, Ext.B2 is the reply sent by the defendant to Ext.A2 lawyer's notice caused to be sent by the plaintiff. In Ext.B2, the defendant, while denying the agreement for sale, had stated that the plaintiff is a money lender. The plaintiff has not denied the said statement in the plaint. As such, it can be safely inferred that the plaintiff is a money lender. The fact that the plaintiff is a money lender would probabilise the case of the defendant that the transaction between the parties was a money transaction.

8. Further, the trial court found that the plaintiff who gave evidence as PW2 was not in a position to give the particulars of the plaint schedule property during cross examination. It was found that PW2 was not in a position even to depose before the court as to whether there is any attached toilet to the building in the plaint schedule property. According to the court below, the inability of the plaintiff to give the particulars of the property which he had allegedly agreed to purchase gives an indication that the alleged agreement for sale is not a genuine one. The trial court also found that Ext.B1 agreement would indicate that the defendant was engaged in slaughter tapping business with one Thomas Sebastian and that he along with the said Thomas Sebastian had paid a sum of Rs.35,000/- to one Varghese Philip on 15.9.1989 while undertaking the slaughter tapping work in a property held by the said Varghese Philip. According to the trial court, Ext.B1 would probabilise the case set up by the defendant in the written statement that he had borrowed a sum of Rs.20,000/- from the plaintiff on 24.7.1989 on the strength of Ext.A1 agreement for sale. It is in the aforesaid circumstances, the trial court came to the conclusion that the defendant had not intended to sell the plaint schedule property. I agree with the reasons stated by the trial court to arrive at the

said conclusion as well.

9. The learned counsel for the appellant has contended that the impugned judgment rests solely on the finding rendered by the court below that the plaintiff has not established that the defendant had executed Ext.A1 agreement for sale for raising money in connection with the marriage of his daughter. True, it is not obligatory for the plaintiff to establish the reason for the defendant to sell a property owned by him to sustain a suit for specific performance on the strength of the agreement executed by the defendant. But I do not agree with the contention that the judgment rests on the said finding. It was only an observation made by the court below in the course of discussion of the evidence in the matter and the judgment stands on other findings.

10. As noticed above, the trial court found that the defendant had borrowed a sum of Rs.25,000/- from the plaintiff and the said amount was not returned as promised by him. It is on that finding, the trial court passed a decree permitting the plaintiff to recover from the defendant the said amount with interest at the rate of 6% per annum. On an evaluation of the facts and circumstances of this case, I am of the view that the rate of interest granted by the trial court is unreasonably low. According to me, in the facts and circumstances of this case,

interest should have been granted at the rate of 12% per annum. The impugned decree, in the circumstances, is liable to be modified to that limited extent.

In the result, the appeal is allowed in part, the impugned decree and judgment are modified, permitting the plaintiff to recover the sum of Rs.25,000/- with interest at the rate of 12% per annum from 24.7.1989 till realization together with costs from the defendant charged on the plaint schedule property.

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

Kvs/-

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PA TO JUDGE.