

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

FAO.No. 122 of 2015 ()

(AGAINST ORDER IN I.A.NO.1651 OF 2014 IN O.S.NO.85 OF 2014
DATED 06.04.2015 OF SUB COURT, ERNAKULAM.)

APPELLANT(S)/PETITIONER/PLAINTIFF:

ABDUL KALAM, AGED 55 YEARS,
S/O LATE SEYTH MUHAMMED, THEKKEVELIYIL
PATTANAKKADU PO, CHERTHALA, ALAPPURZHA.

BY ADV. SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENT/DEFENDANTS:

P.K. ASHARAF
S/O KUNJIMUHAMMED, MADATHIPPARAMP
ERNAKULAM VILLAGE ERNAKULAM NORTH PO, SRM ROAD
ERNAKULAM 682 018.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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FAO No.122 of 2015
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Dated this the 15th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard the learned counsel for the appellant.
2. The plaintiff sued the defendant for specific performance of an alleged contract for sale fixing total consideration at ₹45 lakhs. The plea is that an amount of ₹35 lakhs has been paid as advance and one year time was given because the defendant was staying in the building with his wife. An order of temporary injunction against alienation of that property was granted ex parte ad interim. Later, on opposition, the court below has modified that order restraining the defendant from alienating the property, however giving him the liberty to give any portion of the building on lease. This was on the premise that the defendant had denied the alleged agreement and had pleaded that he had settled the property in favour of his daughters and holds a life estate and

intends to lease out the portions which are not required for him; so as to generate sufficient income for his utility.

We are of the view that the court below has adopted a reasonable and rational approach balancing the convenience of the plaintiff vis-à-vis the inconvenience that may be caused to the defendant and vice versa, more particularly, when the trial court was of the view that having regard to the contrasting pleadings, it was improper to enter any final conclusion on prima facie case. We have perused the photocopy of the so-called agreement, which the learned counsel for the appellant has shown us. We are not impressed to take a different view either. We, therefore, dismiss this appeal, however clarifying that the trial court will decide the suit untrammelled by anything stated in the impugned order.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)