

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937**

**RFA.No. 180 of 2006 ( )**

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AGAINST THE JUDGMENT IN OS. NO. 85/1993 OF SUB COURT, OTTAPPALAM.  
DATED 18-10-2005.  
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**APPELLANT/PLAINTIFF:**

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T.K. SANKARA MENON, AGED 58 YEARS,  
S/O.LATE KOTTIYEDATHU PARUKUTTY AMMA,  
THRIKKADEERI AMSOM AND DESOM,  
OTTAPALAM TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.C.K.KARUNAKARAN,  
SRI.C.E.UNNIKRISHNAN,  
SRI.M.P.HARIKUMAR,  
SMT.T.P.LEKSHMI VARMA.**

**RESPONDENTS/DEFENDANTS:**

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- 1. MAMMED, AGED ABOUT 82 YEARS,  
S/O.LATE CHAKKINGAL MOIDEEN,  
RESIDING AT THRIKKADEERI AMSOM AND DESOM,  
OTTAPALAM TALUK, PALAKKAD DISTRICT. (DIED)**
  - 2. ABDUL KHADER, AGED 46 YEARS,  
S/O.CHAKKINGAL MAMMED, RESIDING AT  
THRIKKADEERI AMSOM AND DESOM,  
OTTAPALAM TALUK, PALAKKAD DISTRICT.**

**\* ADDL. R3 TO R6 IMPLEADED**

- 3. ABDUL K., S/O.CHAKKINGAN MAMMAD,  
THRIKKADEERI AMSOM DESOM,  
OTTAPALAM TALUK, PALAKKAD DISTRICT.**
- 4. RUKHIA, D/O.CHAKKINGAN MAMMAD,  
-DO- -DO-.**
- 5. FOUSIA, D/O.CHAKKINGAN MAMMAD,  
-DO- -DO-.**

**RFA.No. 180 of 2006**

**6. NOOR HABEEVA, D/O.CHAKKINGAN MAMMAD,  
-DO- -DO-.**

**\* IT IS RECORDED THAT R2 IS THE LR OF R1 &  
LR'S OF DECEASED R1 ARE IMPEADED AS ADDL. R3 TO R6  
AS PER ORDER DATED 02/03/2015 IN I.A. NO.1109/2013.**

**R2 BY ADVS. SRI.R.SREEHARI,  
SRI.P.B.KRISHNAN.**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 15/09/2015, THE COURT ON 06/10/2015 DELIVERED THE  
FOLLOWING:**

**rs.**

**P.B.SURESH KUMAR, J.**

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**R.F.A.No.180 of 2006**  
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**Dated 6<sup>th</sup> October, 2015**

**J U D G M E N T**

The plaintiff in a suit for recovery of possession is the appellant.

2. The suit was initially filed before the Munsiff's Court, Ottappalam as O.S.No.201 of 1987 and later, represented before the Sub Court, Ottappalam on 29.3.1993 and re-numbered as O.S.No.85 of 1993. The suit properties comprise of three items, of which item No.1 is a property measuring 1 acre 19 cents and 250 sq. links, item No.2 is a property measuring 7 acres and 33 cents and item No.3 is a plot of 33 koles x 18 koles. The suit properties belonged to one Appunni Menon, who died on 12.8.1975. The plaintiff is one of the legal representatives of Appunni Menon. Appunni Menon had earlier filed a suit as O.S.No.155 of 1956 before the Munsiff Court, Ottappalam for recovery of possession of the suit properties from one Moideen, the father of the defendant. The said suit was decreed as prayed for by this Court in S.A.No.966

of 1967. According to the plaintiff, late Appunni Menon executed the decree in O.S.No.155 of 1956 and obtained possession of the suit properties on 8.10.1969. The case of the plaintiff is that while the suit properties were in the possession of the legal representatives of Appunni Menon, the first defendant who is the son of the defendant in O.S.No.155 of 1956 trespassed into the suit properties during the end of the year 1980.

3. The defendant filed written statement resisting the suit. The main contention raised by the defendant was that the suit properties were not delivered over to Appunni Menon as claimed by the plaintiff pursuant to the decree in O.S.No.155 of 1956. It was also contended by the defendant that the Land Tribunal, Sreekrishnapuram had issued certificates of purchase in respect of the suit properties to him and others. According to the defendant, he obtained a certificate of purchase from the said Land Tribunal in respect of 1.79 acres of land, and two others, namely, Thottiyil Kunjunniyan and Alikkal Mohammedkutty obtained certificates of purchase in respect of

1.13 acres and 4.13 acres of land respectively. According to the defendant, he has purchased the rights of Thottiyil Kunjunniyan from his legal representatives and he is in possession of the properties covered by the purchase certificate obtained by him as also the purchase certificate obtained by Thottiyil Kunjunniyan. As far as the property covered by the purchase certificate obtained by Alikkal Mohammedkutty is concerned, the contention of the defendant was that he is in possession of the said property jointly with Alikkal Mohammedkutty. It was further contended by the first defendant that in so far as the purchase certificates referred to above have been issued in the proceedings initiated against Appunni Menon and his legal representatives, the same would operate as res judicata against the plaintiff. It was further contended by the defendant that in so far as Thottiyil Kunjunniyan and Alikkal Mohammedkutty are not impleaded in the suit, the suit is bad for non-joinder of necessary parties. Yet another contention raised by the defendant was that the suit properties are not identifiable. The defendant has also

contended that the suit is barred by limitation.

4. The power of attorney holder of the plaintiff gave evidence in the suit on behalf of the plaintiff as PW1. Exts.A1 to A6 are the documents produced by the plaintiff. The defendant gave evidence as DW1. Exts.B1 to B19 are the documents produced by the defendant. The documents called for at the instance of the plaintiff were marked in the proceedings as Exts.X1 to X10.

5. Though the trial court held that the suit is not barred by limitation, it found that the suit is bad for non-joinder of necessary parties. The trial court also found that the suit properties have not been identified. The trial court further found that the suit properties were not delivered over to the plaintiff in O.S.No.155 of 1956, as claimed by the plaintiff. The trial court further found that in the light of the purchase certificates obtained by the defendant and two others, the suit is barred by res judicata. In the light of the aforesaid findings, the suit was dismissed. The plaintiff is aggrieved by the decision of the court below.

6. Heard the learned Senior Counsel Sri.M.C.Sen for the appellant/plaintiff and the learned counsel Sri.P.B.Krishnan for the legal representatives of the respondent/defendant.

7. I shall first deal with the correctness of the finding rendered by the court below that the suit is bad for non-joinder of necessary parties. The court below has taken the view that since Thottiyil Kunjunniyan and Alikkal Mohammedkutty have obtained purchase certificates in respect of portions of the plaint schedule properties, they are necessary parties to the suit, especially when the suit is for recovery of possession of the properties from the defendant. When the Advocate Commissioner appointed in the suit inspected the property, he found that two persons namely, Pulakundaparambil Bava and Pulakundaparambil Hassan are occupying the two houses constructed in the plaint schedule properties. According to the court below, the said persons are also necessary parties to the suit. As stated above, the case of the plaintiff is that the suit properties are the properties delivered over to his predecessor Appunni Menon in execution of the decree in O.S.NO.155 of

1956 and that the defendant has trespassed into the property some time during the end of the year 1980. Though the defendant contended that Thottiyil Kunjunnyan and Alikkal Mohammedkutty have also obtained purchase certificates in respect of portions of the plaint schedule properties, he maintained the stand that he is in possession of the said properties as well. As far as the property covered by the purchase certificate obtained by Thottiyil Kunjunnyan is concerned, the stand taken by the defendant is that on the death of Thottiyil Kunjunnyan, he purchased the rights obtained by him over the property from his legal representatives. As far as the property covered by the purchase certificate obtained by Alikkal Mohammedkutty is concerned, the stand taken by the defendant is that he is in joint possession of the said property with Alikkal Mohammedkutty. In so far as the defendant who contended that Thottiyil Kunjunnyan had obtained a purchase certificate in respect of a portion of the suit properties himself took the stand that Thottiyil Kunjunnyan has no subsisting right in the property, he

cannot be heard to contend that Thottiyil Kunjunniyan is a necessary party to the suit. Likewise, since the defendant who contended that Alikkal Mohammedkutty has obtained a purchase certificate in respect of a portion of the suit properties himself has taken the stand that he is in possession of the said property, he cannot be heard to contend that Alikkal Mohammedkutty is a necessary party to the suit, especially when the suit is to recover possession of the said property along with other properties from the defendant. A close reading of the written statement filed by the defendant indicates that he is in possession of the entire plaint schedule properties. He has no case that any other person is holding possession of any portion of the plaint schedule properties. As such, merely for the reason that the Commissioner appointed in the suit found that Pulakundaparambil Bava and Pulakundaparambil Hassan are residing in the houses constructed in the plaint schedule properties, it cannot be contended that they are necessary parties to the suit. In the light of the contention taken by the defendant as aforesaid, Pulakundaparambil Bava and

Pulakundaparambil Hassan can only be regarded as persons put in possession by the defendant under him. The finding rendered by the court below that the suit is bad for non-joinder of necessary parties, in the circumstances, is liable to be vacated and I do so.

8. The written statement filed by the defendant in the suit does not indicate that the defendant is disputing the identity of the plaint schedule properties. That apart, as noticed above, the specific case of the plaintiff is that the plaint schedule properties are the properties which are delivered over to the plaintiff in O.S.No.155 of 1956 in execution of the decree in the said suit. It is also the case of the plaintiff that the defendant obstructed the delivery of the property in execution of the decree in O.S.NO.155 of 1956 and that the property was delivered over to the plaintiff therein after removing the obstruction caused by the defendant. Ext.X8 is the order passed by the execution court in the said case for removal of the obstruction caused by the defendant. It is also the case of the plaintiff that the defendant instituted O.S.No.32 of 1969

challenging Ext.X8 order. Ext.A3 is the plaint in O.S.No.32 of 1969. A perusal of Ext.A3 plaint would indicate that the suit property in the said suit is described by the defendant exactly as the suit property in O.S.No.155 of 1956 as described in Ext.A1 delivery account in O.S.No.155 of 1956. The description of the suit property in Ext.A3 plaint and the description of suit property in the plaint in the present suit are also one and the same, except to the extent the plaint schedule description was amended to exclude the 3 cents of property and the house therein which is not delivered over to the plaintiff in O.S.No.155 of 1956. It is thus evident that the defendant has no doubt in his mind concerning the identity of the suit property. Further, Ext.X5 is the plan prepared by the Advocate Commissioner appointed in O.S.No.155 of 1956 identifying the plaint schedule properties therein. The court below has found that the Amin who effected delivery of the properties in the earlier suit has stated that the delivery was effected in accordance with Ext.X5 plan prepared by the Advocate Commissioner. In Ext.X5, the plaint schedule properties are clearly demarcated. The

defendant has no case that demarcation of the plaint schedule properties in Ext.X5 plan is incorrect. The finding rendered by the court below that the plaintiff is not entitled to the reliefs claimed in the suit as he failed to establish the identity of the plaint schedule properties is therefore unsustainable in law.

9. Now, I shall deal with the correctness of the finding rendered by the court below that the suit property has not been delivered over to the plaintiff in O.S.No.155 of 1956. While considering the said aspect, the court below took the view that though the Amin deputed from the court reported that Thottiyil Kunjunniyan and Alikkal Mohammedkutty have obstructed the delivery of the property to the plaintiff therein, the plaintiff filed application before the execution court to remove only the obstruction caused by the defendant. According to the court below, since the plaintiff in the said suit has not obtained orders for removal of all the obstructors, it can be inferred that they were not dispossessed and that the property has not been delivered over to the plaintiff. Ext.B6 is the report of the Amin deputed to effect delivery in O.S.No.155

of 1956 stating that when he went to the property on 19.3.1969 to effect delivery, his attempt was forcibly resisted by Thottiyil Kunjunniyan and Alikkal Mohammedkutty. Ext.X8 is the order passed by the execution court for removing the obstruction caused by the defendant. Ext.X8 was rendered on 12.3.1969. It is thus evident that initially when the property was attempted to be delivered, the delivery proceedings were obstructed only by the defendant. Thottiyil Kunjunniyan and Alikkal Mohammedkutty came to the scene only after Ext.X8 order. There is nothing on record to indicate that prior to Ext.X8 order, the Amin deputed from the court reported that Thottiyil Kunjunniyan and Alikkal Mohammedkutty have obstructed the delivery of the property in execution of the decree. True, on three subsequent occasions, the Amin was obstructed by the aforesaid persons. Exts.B6, B7 and B8 are the reports submitted by the Amins in this connection. The said reports are dated 21.3.1969, 26.3.1969 and 5.4.1969 respectively. It was thereafter, the property was delivered over to the plaintiff by the Amin deputed from the court on 8.10.1969 with the aid of

the police. Ext.X9 is the delivery report. Ext.X9 recites that when the property was attempted to be delivered with the aid of the police, there were about 25 Muslim women in the building in item No.3 property who refused to vacate the suit properties. In Ext.X9, the Amin also reports that since women police constables were not available at that point of time, the decree schedule properties except the building was delivered over to the authorised representative of the decree holder. In Ext.X9, the Amin further reports that the delivery was effected in the presence of the Revenue Divisional Officer, Ottappalam, Dy.S.P., Shoranur, Sub Inspector of Police, Ottappalam, Sub Inspector of Police, Pattambi and large number of police personnel. The defendant who gave evidence as DW1 in the suit has admitted in cross examination that the aforesaid officers and police came to the property to effect delivery. He has also stated in his cross examination that he did not obstruct the delivery process in the presence of the aforesaid officers. In other words, the defendant cannot plead ignorance of the factum of delivery. In the light of the recitals in Ext.X9

delivery report and the evidence tendered by the defendant as DW1, it cannot be contended that physical delivery of the property has not been effected at all. If that be so, it has to be presumed that Thottiyil Kunjunnyan and Alikkal Mohammedkutty were also evicted from the suit property, if at all they were in possession of the same. There is nothing on record to indicate that the aforesaid persons had filed any application before the execution court seeking relief alleging that they have independent right over the suit properties. In the matter of effecting delivery of the property pursuant to the decree in O.S.No.155 of 1956, the Amin deputed from the court was performing an official act, if not a judicial act. As such, in the light of the provisions contained in Section 114 of the Evidence Act, the court is entitled to presume the existence of the facts reported by the Amin in Ext.X9 delivery report. The defendant has not attempted at all to adduce evidence to show that what is stated by the Amin in Ext.X9 delivery report is incorrect. The inference drawn by the court below that the decree schedule property in O.S.No.155 of 1956 might not have

been delivered to the plaintiff is, therefore, unsustainable. The court below has also relied on Ext.B13 series payments of land revenue and a few property tax receipts in respect of the buildings in the suit properties for the period from 13.3.1972 to hold that the defendant continued to be in possession of the suit properties even after Ext.X9 report. According to me, Ext.B13 series land revenue receipts and the property tax receipts in respect of the buildings in the suit properties do not improve the case of the defendant at all. The plaintiff is not disputing the fact that after the delivery of the property, the defendant has approached the Land Tribunal constituted under the Land Reforms Act and obtained a purchase certificate in respect of a portion of the suit properties. Ext.B13 series receipts evidencing payment of land revenue and property tax receipts are in respect of the property covered by the said purchase certificate and the buildings therein obtained by the defendant. The specific case of the plaintiff is that the purchase certificate obtained by the defendant is without notice to deceased Appunni Menon or to his legal representatives and

therefore, not binding on them. As such, the said documents cannot be relied on by the defendant to contend that he continued to be in possession of the suit properties even after Ext.X9 report. I do not think that a person who executed a decree for recovery of possession of an item of property obtained after a long drawn litigation would keep mum and abandon his rights under the decree, even after removing the obstruction caused to the delivery by the judgment debtor. On an appraisal of the facts and circumstances of the case, I have no hesitation to hold that the decree schedule property in O.S.No.155 of 1956 was delivered over to the decree holder in the said suit as claimed by the plaintiff on 8.10.1969. In the light of the said finding, since the defendant asserts that he is in possession of the property, it is only reasonable to accept the case set up by the plaintiff that the defendant has trespassed into the property after the delivery.

10. Sustainability of the contentions raised by the defendant on the strength of Exts.B9, B10 and B11 purchase certificates is the next point to be considered. Ext.B9 is the

purchase certificate obtained by Thottiyil Kunjunniyan and Ext.B10 is the purchase certificate obtained by Alikkal Mohammedkutty. Ext.B11 is the purchase certificate obtained by the defendant. As noticed earlier, the case of the defendant is that he has obtained the rights of Thottiyil Kunjunniyan under Ext.B9 purchase certificate from his legal representatives on his death and he is in possession of the properties covered by Ext.B10 purchase certificate on the basis of the agreement entered into with Alikkal Mohammedkutty. In other words, the defendant is claiming title and possession over portions of the plaint schedule properties on the strength of Ext.B9 and B11 purchase certificates and possession of the remaining portion on the strength of Ext.B10 purchase certificate. The case pleaded by the plaintiff in paragraph 5A of the plaint as regards the aforesaid purchase certificates is that the same were obtained without notice to Appunni Menon or his legal representatives and that therefore the same are vitiated by fraud. The stand of the defendant in relation to the said purchase certificates on the other hand is that the same are

duly issued by the Land Tribunal after notice to Appunni Menon. In **Shahul Hameed v. Lakshmi** (1987 (1) KLT SN Case No.31), this Court held that purchase certificate issued without notice will not bind the persons against whom such certificates are issued and that such persons who do not have notice of the proceedings need not have to prove fraud or collusion for the purpose of successfully contending that the purchase certificate will not bind them. In **George v. State of Kerala** (1987(1) KLT SN Case No.67), it was held that a purchase certificate is not conclusive as against a person to whom individual notice has not been issued before passing such an order directing issuance of the purchase certificate. Ext.B9 purchase certificate is seen to have been obtained by Thottiyil Kunjunniyan on 10.11.1975 as per order in O.A.No.421 of 1973. Likewise, Ext.B10 purchase certificate is seen to have been obtained by Alikkal Mohammedkutty on 28.5.1975 as per order in O.A.No.1055 of 1972. Again, Ext.B11 purchase certificate is seen to have been obtained by the defendant on 28.5.1975 as per order in O.A.No.1055 of 1972. I have found that the suit

properties were delivered over to the plaintiff in O.S.No.155 of 1956 in execution of the decree passed therein on 8.10.1969. If that be so, when Thottiyil Kunjunniyan, Alikkal Mohammedkutty and defendant instituted proceedings before the Land Tribunal for purchase certificates alleging that they are cultivating tenants of the plaint schedule properties, they were not in possession of the suit properties at all. As noticed above, when the plaint schedule properties were attempted to be delivered over to the plaintiff in O.S.No.155 of 1956, the defendant has obstructed the delivery and it is after removing the obstruction caused by the defendant that the property was delivered over to the plaintiff therein. Exts.X1, X2 and X4 are the files relating to the original applications filed by Thottiyil Kunjunniyan, Alikkal Mohammedkutty and defendant before the Land Tribunal. The said files indicate that the aforesaid persons applied for purchase certificates in respect of the suit properties suppressing the fact that they are not in possession of the properties. Further, it is seen that O.A.No.1055 of 1972 was filed by the defendant at a point of time when O.S.No.32 of

1969 filed by him challenging Ext.X8 order passed by the execution court for removing the obstruction caused by him to the delivery of property was pending. According to me, the said facts alone are sufficient to hold that the said purchase certificates obtained by the aforesaid persons are vitiated by fraud. It is now settled that fraud vitiates solemn among the solemn acts and a document can be attacked on the ground of fraud even collaterally.

11. Further, as noticed above, Ext.X1 is a file relating to O.A.No.421 of 1973 filed by Thottiyil Kunjunniyan. Ext.X1 file does not indicate that notice has been issued on the application to Appunni Menon. The endorsement in Ext.X1 regarding the service of notice on Appunni Menon by the process server is that Appunni Menon is no more and since the enquiry revealed that the son of his brother Krishnankutty Menon is taking care of the affairs of Appunni Menon, notice was affixed at the residence of Krishnankutty Menon. Ext.X2 is the file relating to O.A.No.420 of 1973 filed by Alikkal Mohammedkutty. The endorsement in Ext.X2 as regards the

service on Appunni Menon is exactly the same as in Ext.X1 file. In both the said proceedings, though the children of Appunni Menon are seen impleaded on his death, notice is not seen issued to the legal representatives of Appunni Menon in the said proceedings. Ext.X4 is the file relating to O.A.No.1055 of 1972 filed by the defendant. Ext.X4 however, recites that notice has been served on Appunni Menon. True, Ext.X4 file indicates that notice of O.A.No.1055 of 1972 was served on a person whose signature is available in the file. The power of attorney holder of the plaintiff has categorically stated while giving evidence as PW1, that the signature contained in Ext.X4 file is not that of Appunni Menon. There is nothing on record to indicate that the signature contained in Ext.X4 file is that of Appunni Menon. It is thus evident that Exts.B9, B10 and B11 purchase certificates have been issued without issuing notice to Appunni Menon or his legal representatives and as such, the same are not binding on them and that the same will not operate as *res judicata* against the plaintiff in the present suit.

12. Now, it is time to deal with the various

arguments raised by the learned counsel for the defendant. The learned counsel for the defendant, at the outset, pointed out that the present suit is not a continuation of O.S.No.201 of 1987 and as such, the same instituted on 29.3.1993 alleging that the plaintiff was dispossessed from the suit properties during the year 1980 is barred by limitation being one filed beyond twelve years, as provided for in Article 65 of the Limitation Act. He relied on the decision of the Apex Court in **Amar Chand Inani v. Union of India** (AIR 1973 SC 313), the decision of the Bombay High Court in **Hirachand v. G.I.P. Ry. Co.** (AIR 1928 Bombay 421) and the decision of the Patna High Court in **Ram Kishun Rai v. Ashirbad Rai** (AIR 1950 Patna 473), in support of the said contention. True, a suit returned for re-presentation in a proper court will be deemed to have been instituted only on the day on which the suit is re-presented. The period of limitation prescribed under Article 65 of the Limitation Act for recovery of possession of immovable properties based on title is twelve years when the possession of the defendant becomes adverse to the plaintiff. In other words, if the possession of the

defendant does not become adverse to the plaintiff, the suit can be instituted at any time (See **Saroop Singh v. Banto and others** [(2005)8 SCC 330]. The defendant has no case that he is in possession of the suit properties adverse to the interest of the plaintiff and others. It is settled that to possess a property adverse the interest of its owner, one should first recognize the title of the owner. In the instant case, the defendant does not admit the title of the plaintiff and others over the suit properties. The question of holding the property adverse to the interest of the plaintiff, in the circumstances, does not arise. There is, therefore, no substance in the contention of the defendant that the suit is barred by limitation.

13. The learned counsel for the defendant also contended that Thottiyil Kunjuniyan and Alikkal Mohammedkutty were necessary parties to the suit as the validity of the purchase certificates obtained by them which arise for consideration in the suit cannot be adjudicated in their absence. As noticed above, the specific case of the defendant is that he purchased the rights obtained in respect of the suit

property as per Ext.B9 purchase certificate on the death of Thottiyil Kunjunnyan from his legal representatives and that he is in possession of the said property on that basis. In other words, according to the defendant, Thottiyil Kunjunnyan has no subsisting interest in the suit property. As such, it cannot be contended that the validity of the purchase certificates obtained by Thottiyil Kunjunnyan cannot be adjudicated in his absence. As far as the purchase certificates obtained by Alikkal Mohammedkutty are concerned, the case of the plaintiff is that he is in possession of the property covered by the said purchase certificates based on an agreement entered into with him. The case of the defendant that he obtained possession of the property from Alikkal Mohammedkutty has not been established by him. In the absence of any evidence to the effect that the defendant was put in possession of the property covered by Ext.B10 purchase certificate, the validity or otherwise of the purchase certificate obtained by Alikkal Mohammedkutty does not arise for consideration in the suit. There is, therefore, no substance in the said contention also.

14. The learned counsel for the defendant further contended that even if it is conceded that the purchase certificates relied on by the defendant are vitiated by fraud, the suit instituted without a prayer to set aside the said purchase certificates is incompetent. He relied on the decision of the Apex Court in **Inderjit Singh Grewal v. State of Punjab and another** [(2011)12 SCC 588] in support of the said contention. As noticed above, I have found that the purchase certificates relied on by the plaintiff are purchases certificates obtained without notice to Appunni Menon and his legal representatives. As pointed out earlier, in **Shahul Hameed v. Lakshmi** (supra), this Court held that purchase certificate issued without notice will not bind the persons against whom such certificates are issued and that such persons who do not have notice of the proceedings need not have to prove fraud or collusion for the purpose of successfully contending that the purchase certificate will not bind them. There is, therefore, no substance in the said contention also. In the light of the aforesaid facts and circumstances, the impugned judgment is

unsustainable and is liable to be reversed.

In the result, the appeal is allowed, the impugned judgment is set aside and the suit O.S.No.85 of 1993 on the file of the Sub Court, Ottappalam is decreed as prayed for with costs throughout. All the interlocutory applications in the appeal are closed.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

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(true copy)