

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

RFA.No. 640 of 2005

OS 192/1995 OF SUB COURT, THRISSUR

APPELLANT/PLAINTIFF:

**R.P.ABDUL KHADER, AGED 62 YEARS,
S/O.REJUVEETIL PAPPA RAWTHER, SUBHASH NAGAR,
CHIYYARAM VILLAGE, THRISSUR TALUK.**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR**

RESPONDENT(S)/DEFENDANTS:

- * 1. NARASIMHA IYER, AGED 91 YEARS, (DEID)
S/O.VISWANATHA IYER, ZENANA MISSION ROAD,
CHEMBUKKAVU VILLAGE, THRISSUR TALUK.**
- 2. KRISHNAMOORTHY, AGED 52 YEARS,
S/O.NARASIMHA IYER, ZENNA MISSION ROAD,
CHEMBUKKAVU VILLAGE, THRISSUR TALUK.**
- * R1 DIED AND R2 IS RECORDED AS THE LEGAL HEIR OF THE DECEASED R1
AS PER ORDER DTD.3/1/2012 IN MEMO DTD.9/12/2011.**

**BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.F.A.No.640 of 2005

Dated this the 30th day of June, 2015

JUDGMENT

The plaintiff in O.S.No.192 of 1995 on the file of the Sub Court, Thrissur is the appellant in this appeal. The suit was one for specific performance of an agreement for sale.

2. The case of the plaintiff is that on 20.7.1984, the first defendant as the power of attorney holder of the second defendant, entered into Ext.A1 agreement with the plaintiff by which he had agreed to sell 59 cents of property to the plaintiff for a sum of Rs.45,000/-; that a sum of Rs.22,500/- was paid by the plaintiff to the first defendant towards advance sale consideration on the date of execution of the agreement; that the plaintiff was put in possession of the plaint schedule property by the first defendant pursuant to the agreement for sale and that the defendants have executed sale deed in respect of only 22 ¼ cents as per the terms of the agreement and hence the suit for

specific performance of the agreement for sale in respect of the remaining 36 $\frac{3}{4}$ cents, namely the plaint schedule property. The defendants contested the suit contending, *inter alia*, that there was no agreement between them and the plaintiff for sale of the plaint schedule property; that Ext.A1 agreement dated 20.7.1984 relied on by the plaintiff is a forged document and that they have not put the plaintiff in possession of the plaint schedule property as claimed by the plaintiff.

3. After the institution of the suit, the second defendant filed O.S.No.327 of 1997 against the plaintiff seeking a decree of permanent prohibitory injunction restraining the plaintiff from trespassing into the plaint schedule property, alleging that the plaintiff who is holding properties adjacent to the plaint schedule property is attempting to trespass into the plaint schedule property. The said suit was contested by the plaintiff contending that he is in possession of the plaint schedule property on the strength of the agreement for sale dated 20.7.1984.

4. O.S.No.327 of 1997 was tried along with

O.S.No.192 of 1995. The trial court, on an elaborate consideration of the materials on record, came to the conclusion that the agreement dated 20.7.1984 relied on by the plaintiff is not a genuine document and consequently, dismissed the suit O.S.192 of 1995 and decreed O.S.No.327 of 1997, restraining the plaintiff from trespassing into the plaint schedule property by a decree of permanent prohibitory injunction. The plaintiff is aggrieved by the decision of the court below in O.S.No.192 of 1995 and hence this appeal.

5. Heard the learned counsel for the appellant as also the learned Senior Counsel for the respondents.

6. As noticed above, O.S.No.327 of 1997 was resisted by the plaintiff contending that he is in possession of the plaint schedule property pursuant to the agreement for sale dated 20.7.1984. The main issue in O.S.No.327 of 1997 was as to whether the plaintiff is in possession of the plaint schedule property. The trial court held in the said case that the plaintiff is not in possession of the plaint schedule property as claimed by him. In other words, the court has not accepted Ext.A1 as a

genuine document in O.S.No.327 of 1997. The plaintiff has not challenged the decision in O.S.No.327 of 1997 and the same has become final. The said finding, according to me, would operate as *res judicata* against the plaintiff in the present suit for enforcement of the said agreement.

7. That apart, I do not find any substance in the case set up by the plaintiff on merits also. Though Ext.A1 recites that the defendants have agreed to sell the plaint schedule property to the plaintiff, an outer time limit is not seen fixed in the agreement for execution of the sale deed. Further, though Ext.A1 agreement is claimed to have been executed on 20.7.1984, the suit was filed only after about ten years. The absence of an outer time limit in the agreement for execution of the sale deed and the long delay in filing the suit creates suspicion as to the genuineness of the agreement. Further it is seen that except the oral testimony of the plaintiff, no other evidence was let in by the plaintiff to prove the execution of the agreement which was denied by the defendants. It was brought out in evidence that the scribe of the document was very much

available when the suit was tried. There was however no attempt to examine him to prove the execution of the agreement. It is seen that there are two attesting witnesses to the agreement and both of them were not examined. Further, as per the terms of Ext.A1 agreement for sale, the balance sale consideration payable was only Rs.22,500/-. But, it is seen that the plaintiff has paid more than what is due under the agreement to the plaintiff towards the sale consideration of Exts.A2 to A4 documents claimed to have been executed pursuant to the terms of Ext.A1 agreement for sale. Further, the specific contention of the defendants as regards the execution of Ext.A1 agreement was that the first defendant was not in station on 20.7.1984 when Ext.A1 agreement claimed to have been executed. According to them, the first defendant was present on the said day at the City Civil Court, Madras in connection with a case between the second defendant and his wife. DW2 is the counsel appearing for the wife of the second defendant in the said case. DW2 has stated that he was appearing for the wife of the second defendant in the case referred to above and the first defendant

was present on that day before the said court. Exts.B5 and B7 documents were also produced by the defendants to show that the matrimonial case referred to by the defendants viz., M.O.P.No.57 of 1984 was disposed of 20.7.1984. Above all, I have also examined the alleged signature of the plaintiff contained in Ext.A1 agreement for sale with his admitted signature in Ext.A3 sale deed. I do not find any similarity between the said signatures. In the said circumstances, the court below cannot be faulted for having rendered a finding that the agreement for sale relied on by the plaintiff is not genuine.

There is, therefore, no merit in the appeal and the same is accordingly dismissed. All the pending interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm