

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

RSA.No. 817 of 2005 ()

**(AGAINST THE JUDGMENT IN AS.NO. 51/1995 OF I ADDL.DISTRICT COURT
PALAKKAD DATED 08-04-2005)**

APPELLANT/2ND RESPONDENT/2ND DEFENDANT :

**THANKA, W/O.SIVASANKARAN,AGED 62 YEARS,
THAMPADI VEEDU, WEST YAKKARA,
YAKKARA AMSOM, PALAKKAD TALUK.**

**BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M
SRI.N.A.SHAFEEK**

RESPONDENT/APPELLANT/PLAINTIFF :

**VELAYUDHANKUTTY,
S/O.VELAN, AGED 52 YEARS, THACHAMOOCHIKKAL,
VILAYANCHATHANOR AMSOM DESOM, ALATHUR TALUK.**

**BY ADVS. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.V.BIPIN**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 03-03-2015 , THE COURT ON 25-05-2015 DELIVERED THE FOLLOWING:**

sts

A.V.RAMAKRISHNA PILLAI, J

RSA No.817 of 2005

Dated this the 25th day of May, 2015

JUDGMENT

The defendant in O.S.No.652/1991 on the file of the Munsiff's Court, Palakkad is in appeal.

2. The respondent filed the said suit for a permanent prohibitory injunction against the appellant alleging that the plaint schedule property was obtained by him as per Assignment Deed No.4578/1985 from one Narayanan and subsequently, he had obtained Purchase Certificate from the Land Tribunal, Palakkad. He further alleges that she, who was in possession of the property later assigned item No.1 in the said document to the first defendant. The remaining property is in her possession and she is cultivating paddy therein. On 22.9.1991, when the respondent prepared to cultivate the second crop, the defendant threatened

and tried to trespass upon the property for cultivating the property. Therefore, he prayed for a permanent prohibitory injunction against the trespass.

3. The first defendant remained *ex-parte*. The second defendant contended that the property was put to her possession as per a written agreement for sale dated 4.1.1977 executed by one Narayanan for a consideration of ₹4,000/- out of which she had paid ₹1365/- as advance. The balance amount was agreed to be paid by discharging mortgage due to Peruvamba Service co-operative Bank and accordingly, she got back the mortgage deed. On the basis of this, she obtained possession and she had been cultivating the property. Though she had paid the entire amount as agreed, the execution of sale deed was denied at the instance of Narayanan. It is further alleged that the first defendant who is the husband of the appellant is not looking after his family and now is a dependent of the respondent. He

further alleged that the respondent, first defendant and the aforesaid Narayanan colluded together and fabricated some documents which are not binding upon her. According to her, Narayanan had no possession of the property at the time of execution of document in favour of the respondent.

4. The trial court after raising proper issues for trial permitted both sides to adduce their evidence. At the trial, Pws.1 to 4 and DW1 were examined. Exts.A1 to A10, B1 to B9 series and X1 to X8 were marked. The trial court after appreciating the evidence found that as per Ext.B1, the appellant was in possession of the property and accordingly, the suit was dismissed.

5. The matter was taken in appeal before the District Court by the respondent as A.S.No.51/1995. The learned District Judge who heard the appeal reversed the judgment and granted injunction as prayed for. Challenging the judgment and decree, the appellant approached this Court with

S.A.No.116/2003 and by judgment dated 26.11.2004, this Court set aside the said judgment and decree and the case was remitted back to the District Court to bring the legal representatives of the first defendant on record. This was on the basis of the submission that the first defendant died on 1.1.1996, i.e. long before the disposal of the A.S. When the matter reached the appellate court again, the respondent filed a memo stating that he is not seeking any relief against the first defendant and hence, no legal heirs were impleaded. The lower court, after reconsidering the appeal, allowed the same and granted the decree for permanent prohibitory injunction as prayed for. It is with this background, the appeal has been preferred.

6. I have heard Mr.C.A.Chacko, the learned counsel for the appellant and Mr.Sajan Varghese K., the learned counsel for the respondent.

7. The argument advanced by the learned counsel for the appellant was that as per Ext.B1 sale

agreement, the appellant was put in possession of the property and the sale deed was not executed on account of the default on the part of the vendor. Therefore, according to the learned counsel for the appellant, the appellant is entitled to protection under Section 53A of the Transfer of Properties Act. It was argued that it was Narayanan who was examined as PW2 who denied the registration. According to the learned counsel for the appellant, the appellant had paid the balance amount as per Ext.B1 agreement and she had requested for registration of the sale deed several times.

8. Originally, the plaint schedule property belonged to Narayanan. The appellant's case is that the aforesaid Narayanan had executed an agreement for sale on 4.1.1977 for a consideration of ₹4,000/- out of which she had paid ₹1365/- and in furtherance of the same, she obtained possession of the property. The respondent, per contra, would contend that he purchased the property from the aforesaid

Narayanan as per Ext.A1 assignment deed dated 27.9.1985 and subsequently, he obtained purchase certificate in respect of the property under Ext.A2 document dated 21.9.1988. Exts.A5 and A6 certificates issued by the Village Officer were also pressed into service to prove the possession of the respondents. The appellant is claiming the benefit of Section 53A of the Transfer of Properties Act to non-suit the respondent.

9. As rightly found by the Appellate Court, there is nothing on record to show that the appellant had done some acts in furtherance of the contract.

10. During the course of the argument, I have put a specific query to the learned counsel for the appellant as to whether the appellant, at any point of time, had issued a notice calling upon the executant of Ext.A1 asking to execute a valid conveyance deed. The learned counsel answered in the negative.

11. The learned counsel for the appellant would argue that as per Ext.A1, the property has been

handed over to the appellant and therefore, the recital in Ext.A2 that the possession has been handed over by Narayanan to the first respondent is an impossibility. But, it is crucial to note that apart from Ext.A1, the respondent has produced Ext.A2 which is the certificate of purchase issued by the Land Tribunal, Palakkad. Such certificate issued under Section 72 of the Land Reforms Act has to be accepted as a conclusive proof of possession of property in the absence of evidence to show that the said document is vitiated by fraud or collusion. Though it was strenuously argued that Ext.A2 happened to be issued on the basis of Ext.A1 which is the product of collusion between the respondent and the aforesaid Narayanan, it is crucial to note that the appellant has not approached this Court for the cancellation of purchase certificate on the ground of fraud. It is also crucial to note that as per Ext.A4 assignment deed executed by the respondent, item No.1 property covered by Ext.A1 assignment deed

was transferred in favour of the husband of the appellant who is the first defendant in the original suit. Though it was made to appear that the first defendant has deserted the appellant, the lower court has taken note of the fact that a joint vakkalath was filed by the appellant and the first defendant before the trial court. The materials now placed on record would indicate that the lower appellate court has considered the evidence in the correct perspective. No question of law has been wrongly decided by the lower court calling for an interference by this Court in this second appeal.

In the result, this appeal fails and accordingly, it is dismissed.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE