

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

OP(C).No. 541 of 2015 (O)

I.A. 883/2014 IN O.S. NO. 40/2014 OF SUB COURT, KATTAPPANA.

PETITIONER(S):

SULTHAN IBRAHIM,
S/O.IBRAHIM, AGED 49 YEARS, WARD NO.31/13,
BIG MOSQUE STREET,
UTHAMAPALAYAM TALUK, THENI DISTRICT, TAMIL NADU.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENT(S):

SUSAN JOSEPH, S/O.JOSEPH ,
AGED ABOUT 65 YEARS,
GIRIMANDIRAM HOUSE, PULIYANMALA KARA,
VANDANMEDU VILLAGE, UDUMBANCHOLA TALUK -678 119.

BY ADV. SRI.A.C.DEVASIA
BY ADV. SRI.C.K.JACOB

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C).No. 541 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY I.A.NO.883 OF 2014 IN O.S.NO.40 OF 2014 OF
THE
SUBORDINATE JUDGE'S COURT, KATTAPPANA.

EXT.P-2: TRUE COPY OF OBJECTION DTD 4.11.2014 FILED BY THE
RESPONDENT

EXT.P-3: TRUE COPY OF ORDER DATED 19.1.2015 IN I.A.NO.883 OF
2014 IN O.S.
NO.40 OF 2014 OF SUBORDINATE JUDGE'S COURT, KATTAPPANA.

RESPONDENT(S)' EXHIBITS

P. BHAVADASAN, J.

O.P.(C). No. 541 of 2015

Dated this the 8th day of April, 2015.

JUDGMENT

In a suit for realization of the amount paid as advance as per agreement for sale, the petitioner sought to attach a property different from the one which was the subject matter of the agreement. The occasion for the petitioner to do so was that he was informed that the property which is the subject matter of the suit has already been sold to a third party.

2. The court below, when the petitioner sought for attachment of a different property, declined to grant the relief on two grounds, namely, i) that the petitioner did not seek attachment of the property which was agreed to be sold to him and ii) the question as to who is in fault is yet to be decided.

3. The court below also referred to the value of the property which is the subject matter of the agreement.

4. Learned counsel appearing for the petitioner before this Court pointed out that in the light of the fact that the property agreed to be sold to him has already been sold to another person and therefore, he has no other remedy but to seek for the relief as already referred to.

5. The petitioner may not be justified in seeking attachment of another property in the light of Section 55(6) of the Transfer of Property Act. The said provision reads as follows:

“55. Rights and liabilities of buyer and seller

.....

.....

(6) The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property,

as against the seller and all persons claiming under him, b [* * *] to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.”

The petitioner has averred in the petition that he was ready and willing to perform his part of the agreement and the defendant had committed breach of the contract. If he is able to prove the same, a charge runs with the land. The court below is justified in declining to grant the relief, even though for a different reason.

This Original Petition is without merits and it is dismissed.

sb.

P. BHAVADASAN,
JUDGE