

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP(C).No. 3715 of 2013 (O)

AGAINST THE ORDER/JUDGMENT IN IA 11/11 IN OS 1269/2008 of
PRL.SUB COURT,TRIVANDRUM DATED 16.07.2013

PETITIONER(S)/PLAINTIFFS:

1. JAYAPRAKASH
S/O. KUMARESAN, T.C. 41/419, AVITTAM
KURIATHY, MANACAUD P.O., THIRUVANANTHAPURAM.
2. PRADEEP
S/O. MUTHUSWAMY, T.C.39/1599, LEKSHMY BHAVAN
KILLIPPALAM, BYE-PASS ROAD, MANACAUD
THIRUVANANTHAPURAM.

BY ADVS.SRI.M.R.ANANDAKUTTAN
SMT.M.A.ZOHRA
SRI.MAHESH ANANDAKUTTAN

RESPONDENT(S) :/RESPONDENTS

1. R.VALSA
D/O. RAJESWARY AMMA, SREE THIRUMALA, 6TH CROSS
BRINDAVAN NAGAR, MATHEKAVU, BANGALORE-54.
2. K.S.ROY
S/O. K.G.SUKUMARAN NAIR, SQUADRAN LEADER,
P 127/2, AIR FORCE OFFICERS QUARTERS,
JALAHALLI, BANGALORE-560013.
3. R.REENA
D/O. RAJESWARI AMMA, PRATHIBA BYLANE,
PALARIVATTOM, COCHIN-682 025.

R2 BY ADV. SRI.R.S.KALKURA
R2 BY ADV. SRI.M.S.KALESH
R2 BY ADV. SMT.A.V.PRIYA
R2 BY ADV. SRI.HARISH GOPINATH
R2 BY ADV. SMT.R.BINDU
R2 BY ADV. SRI.SANIL KUNJACHAN
R2 BY ADV. SRI.K.KURIAN KOSHY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 3715 of 2013 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- COPY OF AGREEMENT FOR SALE DATED 3-5-2008 BY THE PLAINTIFFS AND DEFENDANTS IN O.S.1269/2008.

EXHIBIT P2- COPY OF THE PLAINT IN SUIT OS. 1269/08 OF THE PRINCIPAL SUB-COURT, THIRUVANANTHAPURAM.

EXHIBIT P3- COPY OF THE WRITTEN STATEMENT DATED 30-6-2009 FILED BY THE DEFENDANTS IN O.S. 1269 OF 2008.

EXHIBIT P4- COPY OF THE AMENDMENT PETITION IA. 11 OF 2011 IN OS. 1269/2008.

EXHIBIT P5- COPY OF THE OBJECTION FILED BY THE 2ND DEFENDANT IN OS. 1269/08 DATED 19-3-2011.

EXHIBIT P6- COPY OF THE ORDER DATED 16-7-2013 IN I.A. 11/11 IN O.S. 1269/08 OF THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

jg-4/11

THOTTATHIL B.RADHAKRISHNAN, J.

OP(C) No.3715 of 2013

Dated this the 16th day of September, 2015

J U D G M E N T

1. Heard the learned counsel for the petitioners and the learned counsel for the respondents.
2. The plaintiffs have invoked Article 227 of the Constitution of India. They seek interference with an order by which the court below refused to grant leave to amend the plaint in a suit instituted for recovery of money allegedly paid as advance for a contract for sale. The court below held that amendment incorporating the plea for specific performance of the contract cannot be granted.
3. In answer to the suit for return of advance, the defendants took up the stand that they were prepared to alienate the property to the plaintiffs, but challenged the plaint claim on different other grounds. Plaintiffs then applied seeking leave to amend the plaint by contending that they have suffered damages and

also for specific performance of the contract, in the light of the defendants' plea that they were prepared to sell.

4. The court below granted leave to amend the plaint to incorporate the relief relating to the claim for damages but refused leave to amend the plaint to incorporate the relief of specific performance. The suit for return of advance on the basis of a contract for sale can be founded on the causes of action of repudiation following alleged breach by the defendants. Once such a suit is laid, the principal allegation is the defendants' breach of their obligations under the contract for sale and the resultant right of the plaintiffs to repudiate the obligations to buy. This would generate an eligibility to raise a claim for return of advance. This would be the situation, even in case where the contract is given a go by, on the consent of parties. However, it would not be possible to permit a plaintiff, who has sued for recovery of advance, to turn round and to have the suit converted into one for specific performance of the self same contract for sale. Therefore, the impugned order of

the court below is not vitiated on any ground warranting its visitation in exercise of authority under Article 227 of the Constitution of India. This original petition, therefore, fails.

In the result, this original petition is dismissed. No costs.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)