

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP(C).No. 2861 of 2015 (O)

(I.A.NO.290/2015 IN OS.NO. 24/2012 OF SUB COURT, CHENGANNUR)

PETITIONER/FIRST PETITIONER/FIRST PLAINTIFF :

SAM CHERIYAN, S/O.CHERIYAN, AGED 52 YEARS,
EDATHVAPEEDIKAYILLAYA SAM SADANAM, ANGADICAL MURI,
CHENGANNUR VILLAGE, CHENGANNUR TALUK,
ALAPUZHA DISTRICT.

BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT(S)/COUNTER PETITIONERS/DEFENDANTS & 2 PETITIONER:

-
1. T.K. VIJAYAKUMARI, AGED 67 YEARS,
W/O. SHANMUKHAN PILLAI, THURUTHIYIL SELVA BHAVAN,
VALLAMKULAM MURI, ERAVIPEEROOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN-689 542.
 2. SELVAKUMAR, AGED 47 YEARS, S/O. SHANMUKHAN PILLAI,
THURUTHIYIL SELVA BHAVAN, VALLAMKULAM MURI,
ERAVIPEEROOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN-689 542
 3. SHINDHU, AGED 42 YEARS, D/O.SHANMUKHAN PILLAI,
THURUTHIYIL SELVA BHAVAN, VALLAMKULAM MURI,
ERAVIPEEROOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN-689 542
 4. SOORAJKUMAR, AGED 37 YEARS, S/O. SHANMUKHAN PILLAI,
THURUTHIYIL SELVA BHAVAN, VALLAMKULAM MURI,
ERAVIPEEROOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA DISTRICT, PIN-689 542
 5. MANOJ KURUVILA, AGED 40 YEARS, S/O. KURUVILA THOMAS,
VATTOLIL VEEDU, PADIJATOOTHARA.P.O., KUTTOOR VILLAGE,
THIRUVALLA AND PATHANAMTHITTA DISTRICT, PIN-689 106
 6. T.J. JACOB, AGED 40 YEARS, S/O. JOSEPH, THAYYIL VEEDU,
KUTTOOR.P.O., KUTTOOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA, PIN-689 106

OP(C).NO.2861/2015

7. ABHEY THOMAS, AGED 42 YEARS, S/O. JOHNN THOMAS,
THITTAMEL MURI, CHENGANNUR VILLAGE,
CHENGANNUR TALUK, ALAPUZHA DISTRICT.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).NO.2861/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE JUDGMENT IN OS.NO.24/2012 OF SUB COURT, CHENGANNUR**
- P2 COPY OF THE I.A.NO.542/2013 IN O.S.NO.24/2012 OF SUB COURT,
CHENGANNUR DATED 30/11/2013**
- P3 COPY OF THE I.A.NO.290/2015 IN O.S.NO.24/2012 OF SUB COURT,
CHENGANNUR DATED 10/11/2015**
- P4 COPY OF THE ORDER I.A.NO.290/2015 IN O.S.NO.24/2012 OF SUB COURT,
CHENGANNUR DATED 16/11/2015.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2861 of 2015

Dated this the 26th day of November, 2015

J U D G M E N T

Petitioner is the first plaintiff and the 7th respondent is the second plaintiff in OS.24 of 2012 of Sub Court, Chengannur. Respondents 1 to 6 are the defendants. The suit is based on an alleged agreement between the plaintiffs and the defendants for sale of the plaint schedule property belonging to the defendants 1 to 4. The prayer in the suit is only for refund of pre-paid purchase price. Defendants 1 to 4 alienated the property after the institution of the suit. The alienees have been impleaded as additional defendants 5 and 6. The petitioner filed an application to amend the plaint to incorporate the relief of cancellation of the document executed by defendants 1 to 4 in favour of the other defendants. By Ext.P4 order the learned Sub Judges has dismissed it.

2. Heard.

3. The suit is only for refund of pre-paid purchase price. There is no prayer for specific performance of the

agreement. Under Section 55 (6) (b) of the Transfer of Property Act the vendees have a statutory charge on the property as against the vendor as well as all persons claiming under him. It is clear that the right cannot be defeated by subsequent alienation. The petitioner has no right to pray for cancellation of the sale deed executed by defendants 1 to 4 in favour of defendants 5 and 6. The learned Sub Judge has rightly dismissed the application.

In the result, this OP is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge