

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

RFA.No. 530 of 2008 ()

AGAINST THE JUDGMENT IN OS 101/2005 of SUB COURT, NEYYATTINKARA
DATED 31-01-2007

APPELLANTS/PLAINTIFFS:

1. MOHANDAS, S/O. RAMASWAMI NADAR,
AGED 43, RESIDING AT KAILAS BHAVAN, ANTHIYOOR DESOM
KOTTUKAL VILLAGE, BALARAMAPURAM.
2. VALSALA, D/O. KAMALA BAI,
AGED 40, RESIDING AT KAILAS BHAVAN, ANTHIYOOR DESOM
KOTTUKAL VILLAGE, BALARAMAPURAM.

BY ADVS.SRI.B.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS/DEFENDANTS:

1. KRISHNANKUTTY, S/O. KUTTAN NADAR,
AGED ABOUT 42, SUSHALAYAM, AZHAKULAM
PANGODE DESOM, VENGANOOR VILLAGE, VIZHINJAM.P.O.
2. SUKUMARAN, AGED 38, SUSHALAYAM,
AZHAKULAM, PANGODE DESOM, VENGANOOR VILLAGE
VIZHINJAM.P.O.
3. T. ROBISON, S/O.TITUS, AGED 43,
PERUMARAM VARUTHATTU VEEDU, PANGODE DESOM
VENGANOOR VILLAGE, VIZHINJAM.P.O.

R1 & 2 BY ADV. SRI.P.S.RAMESH KUMAR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

**K. SURENDRA MOHAN
&
SHAJI P.CHALY, JJ.**

R.F.A.No.530 of 2008

Dated this the 23rd day of November, 2015.

J U D G M E N T

Surendra Mohan, J.

This appeal is against the judgment and decree dated 31.01.2007 of the Sub Court, Neyyattinkara. As per the said common judgment, two suits viz.; O.S.No.101 of 2005 and O.S.No.115 of 2005 were disposed of together.

2. As per an agreement dated 06.05.2005 executed between the appellants and the first respondent, an item of property was agreed to be sold. An amount of ₹50,000/- was paid as advance sale consideration. The appellants herein had filed O.S.No.101 of 2005 for cancellation of the agreement for sale alleging that, it was vitiated by fraud and misrepresentation. The first defendant had instituted O.S.No.115 of 2005 for specific performance of the agreement of sale. As per the judgment and decree appealed against, the relief for specific performance was declined. However, the suit was partly decreed allowing the 1st respondent to recover the amount paid as advance with interest thereon at 12% per

annum. The suit filed by the appellants herein was dismissed. This appeal is against the dismissal of the said suit.

3. The 1st respondent had filed R.F.A.No.294 of 2008 against the judgment in O.S.No.115 of 2005 declining the relief of specific performance. The said RFA has been dismissed by this Court on 13.01.2015 for non-payment of the balance court fee. In view of the dismissal of the said appeal, according to the counsel for the appellants, the appellants have no objection to this appeal also being dismissed. However, their apprehension is that, in the event of this Court restoring RFA No.294 of 2008, they would be prejudiced for the reason that, the likelihood of facing a decree for specific performance would loom large. In view of the above, the learned counsel submits that, adequate provision may be made for restoring this appeal also, in the event of the other appeal being restored to file.

4. Having considered the contentions of the learned counsel for the appellants, we are of the view that, it is necessary to protect the interests of the appellants. As at present advised, this appeal would be of no consequence at all, since RFA No.294 of 2008 has already been dismissed. In view of the above, this appeal is also liable to be dismissed.

For the foregoing reasons, this appeal is dismissed. However, it is made clear that the dismissal of this appeal is without prejudice to the rights of the appellants to get the same restored, if RFA No.294 of 2008 is restored to file by this Court.

Sd/-
K. SURENDRA MOHAN, JUDGE

Sd/-
SHAJI P.CHALY, JUDGE

AV

/True Copy/

P.A to Judge