

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

RSA.No. 11 of 2008

**AS 80/2003 OF SUB COURT, PALA DATED 26-11-2005.
OS 335/2001 OF MUNSIF COURT, PALA DATED 19-09-2003.**
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APPELLANTS/APPELLANTS/DEFENDANTS:

- 1. SHYNI, W/O.JAYAN, AGED 34 YEARS,
RESIDING AT CHELLATHAL HOUSE,
MARIDOM KARA, KIDANGOOR.**
- 2. JAYAN, S/O.THAMBY, RESIDING AT
CHELLATHAL HOUSE, MARIDOM KARA,
KIDANGOOR.
(IT IS WRONGLY NOTED IN THE AS JUDGMENT
AS "PELLATHAL" HOUSE)**

BY ADV. SRI.P.C.HARIDAS

RESPONDENT/RESPONDENT/PLAINTIFF:

**BHANUMATHY, W/O.SREEDHARAN,
CHELLATHAL HOUSE, MARIDOM KARA,
KIDANGOOR.
(IT IS WRONGLY NOTED IN THE AS JUDGMENT
AS "PELLATHAL HOUSE")**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

mbr/

P.B.SURESH KUMAR, J.

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R.S.A.No.11 of 2008.

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Dated this the 20th day of October, 2015.

J U D G M E N T

The defendants in a suit for prohibitory injunction are the appellants in this appeal.

2. The first defendant is the daughter of the plaintiff. The second defendant is the husband of the first defendant. The suit was for a decree of mandatory injunction directing the defendants to vacate from the building in the plaint schedule property. The case of the plaintiff is that the defendants who have no right in the plaint schedule building are staying therein and harassing the plaintiff. The defendants contended that at the time of the marriage proposal of the first defendant with the second defendant, there was an oral arrangement between the plaintiff and the father of the second defendant that

defendants 1 and 2 shall be permitted to reside in the building in the plaint schedule property. According to the defendants, after the marriage, they are residing in the building on the basis of the said arrangement and that they have all the rights to reside in the building in the plaint schedule property. The trial court found that the defendants have not established the oral arrangement pleaded by them and consequently decreed the suit as prayed for. The defendants have taken up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The defendants who are aggrieved by the concurrent decisions of the courts below have come up in this Second Appeal.

3. Heard the learned counsel for the appellants.

4. The fact that the building in the plaint schedule property is owned by the plaintiff is not in dispute. The defendants do not have any right in the building. As noticed above, the only contention raised by them in the

suit was that they are entitled to reside in the building in the plaint schedule property on the basis of the oral agreement entered into between the plaintiff and the father of the second defendant. Both the courts below have concurrently found that the defendants could not establish the oral arrangement pleaded by them. The defendants are attempting to challenge the said factual finding in this second appeal. I am afraid, the defendants cannot canvass the correctness of the said factual finding in this second appeal filed under section 100 of the Code of Civil Procedure. There is no question of law, much less any substantial question of law, involved in this Second Appeal. The Second Appeal is, accordingly, dismissed *in limine*. All the interlocutory applications in this appeal are closed.

**Sd/-
P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

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PA TO JUDGE.