

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

RSA.No. 115 of 2012 ()

AGAINST THE JUDGMENT IN AS. NO.228/2010 OF ADDITIONAL DISTRICT COURT-II,
THIRUVANANTHAPURAM DATED 27-08-2011.

AGAINST THE ORDER IN I.A. NO.2017/2009 IN OS. NO.181/2006 OF SUB COURT,
NEYYATTINKARA DATED 08-03-2010.

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APPELLANT/APPELLANT/CLAIM PETITIONER:

RAJAN, S/O.PAULOSE, AGED 47 YEARS,
R.S. COTTAGE, VADACODE DESOM,
PERUMPAZHUTHOOR, NEYYATTINKARA.

BY ADVS.SRI.M.R.ANANDAKUTTAN,
SMT.M.A.ZOHRA,
SRI.R.S.MADHU.
SRI.MAHESH ANANDAKKUTTAN.

RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANTS:

- 1. R.S. MADHU, S/O. RAMACHANDRAN,**
AGED 44 YEARS, USHUS, THOZHUKAL,
NEYYATTINKARA - 695 121.
- 2. K.S. JOSE, S/O. KUTTAPPAN, AGED 39 YEARS,**
JAYA BHAVAN, KILIYODE, MEKKUMKARA,
PERUMPAZHUTHOOR, NEYYATTINKARA - 695 126.
- 3. JAYAKUMAR, S/O. GOPI PILLAI, AGED 40 YEARS,**
AMBIKA VILASOM, NARUVAMOODU, PALLICHAL,
THIRUVANANTHAPURAM - 695 020.

R1 BY ADV. SRI.J.HARIKUMAR.
R3 BY ADVS. SRI.M.I.JOHNSON,
SRI.T.K.MOIDEEN KUTTY.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 29-10-2015, ALONG WITH RSA. NO.196 OF 2012, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

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R.S.A.No.115 & 196 of 2012.

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Dated this the 29th day of October, 2015.

J U D G M E N T

The order on I.A.No.2017 of 2009 in O.S.No.181 of 2006 as confirmed in A.S.No.228 of 2010 is under challenge in R.S.A.No.115 of 2012. The decree in O.S.No.181 of 2006 as confirmed in A.S.No.367 of 2010 is under challenge in R.S.A.No.196 of 2012.

2. O.S.No.181 of 2006 is a suit for specific performance of an agreement for sale. The suit property belonged to the first defendant. On 21.10.2003, the first defendant had agreed to sell the suit property to the plaintiff for a sum of Rs.1,50,000/-, after accepting a sum of Rs.1,30,000/- by way of advance sale consideration. However, the property was not conveyed to the plaintiff as per the terms of the agreement. Instead, the first defendant

conveyed the property to the second defendant. The second defendant later conveyed the property to the third defendant. The suit was filed, in the circumstances, seeking a decree of specific performance as against all the defendants. After the institution of the suit, the property was again conveyed by the third defendant to the petitioner in I.A.No.2017 of 2009 referred to above. The plaintiff, in the circumstances, obtained an order of attachment of the property, obviously with a view to prevent further alienation of the property. When the property was attached, I.A.No 2017 of 2009 was filed by the person who purchased the property pending suit alleging that he was not aware of the agreement for sale as also the subsequent transactions and that therefore, the attachment ordered over the property is liable to be vacated. I.A.No.2017 of 2009 was considered by the trial court along with the suit. On an appraisal of the materials on record, the trial court dismissed I.A.No.2017 of 2009 and decreed the suit. The petitioner in I.A.No.2017 of

2009 thereupon challenged the order therein in A.S.No.228 of 2010. He also challenged the decree in O.S.No.181 of 2006 in A.S.No.367 of 2010. The appeals were disposed of by a common judgment by which the appellate court confirmed the decision of the trial court. The petitioner in I.A.No.2017 of 2009 has thus come up in these second appeals.

3. Heard the learned counsel for the appellant as also the learned counsel for the first respondent.

4. The first defendant who was the original owner of the property and who had agreed to sell the property to the plaintiff has not challenged the decision in the suit. The decision in the suit, on the other hand, was challenged only by the subsequent purchaser of the property. It is beyond dispute that the purchase of the property by the petitioner in I.A.No.2017 of 2009 was during the pendency of the suit. As such, the rights if any, acquired by the petitioner in I.A.No.2017 of 2009 over the

property are subject to the rights of the plaintiff as determined in the suit. The petitioner in I.A.No.2017 of 2009, in the circumstances, cannot raise any sustainable claim over the suit property. As far as the subsequent transferees of the property are concerned, the only protection available to them in a case like this is the protection contained in Section 19(b) of the Specific Relief Act. Section 19(b) of the Specific Relief Act provides that a contract for specific performance can be enforced against a person claiming title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Though the petitioner in I.A.No.2017 of 2009 has a case that he is a transferee for value who has paid his money in good faith and without notice to the original contract, the courts below found that he is not entitled to the protection of clause (b) of Section 19 of the Specific Relief Act as he is a transferee *pendente lite*, as held by this Court in **Padmaja**

v. Sajeev (2006(1)KLT 265). There is no question of law, much less any substantial question of law, involved in these Second Appeals. The Second Appeals, in the circumstances, are devoid of any merits and the same are, accordingly, dismissed *in limine*. All the interlocutory applications in the appeals are closed.

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

Kvs/-

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PA TO JUDGE.