

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

RSA.No. 158 of 2010

**AS 103/2005 OF II ADDITIONAL DISTRICT COURT, KOLLAM.
OS 642/2000 OF MUNSIF COURT, KARUNAGAPPALLY.**
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APPELLANTS/APPELLANTS/DEFENDANTS:

1. SHANMUGAN, AGED 65, S/O.KARUTHAKOCHU,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
2. SAROJAM, AGED 55, W/O.SHANMUGAN,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
3. ANIL KUMAR, AGED 40, S/O.SHANMUGAN,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
4. SHEELA, AGED 31, TEACHER,
D/O.SHANMUGAN, NADASSERIVADAKKATHIL,
PURAYIDOM, MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
5. ANITHA, AGED 29, D/O.SAROJAM,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
6. SUNIL KUMAR, AGED 27, S/O.SHANMUGAN,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.
7. SYAM KUMAR, AGED 23, S/O.SHANMUGAN,
NADASSERIVADAKKATHIL PURAYIDOM,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.

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**8. DEVADAS, AGED 49, S/O.SIVAPRASAD,
GOVT.SERVANT, SADHUPURATHU VEEDU,
MARUTHOORKULANGARA SOUTH MURI,
AYANIVELIKULANGARA VILLAGE.**

BY ADV. SRI.T.K.RAJESHKUMAR

RESPONDENT/RESPONDENT/PLAINTIFF:

**H.MUTHUKOYA, AGED 66,
KALLOOR-7 VEEDU, KOZHIKODU MEEKU MURI,
AYANIVELIKULANGARA VILLAGE.**

**BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE)
SMT.P.A.SHEEJA
SRI.SAJU.S.A
SRI.K.C.KIRAN
SMT.MEENA.A.**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON 25-05-2015 DELIVERED THE
FOLLOWING:**

mbr/

RSA.No. 158 of 2010

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : ORIGINAL PGOTOGRAPHS TAKEN ON THE SUIT PROPERTY.

RESPONDENT'S ANNEXURES:

**ANNEXURE R1: THE ORIGINAL LETTER BY THE ASSISTANT ENGINEER, MINOR
IRRIGATION SECTION, KARUNAGAPPALLY.**

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J

R.S.A.No.158 of 2010

Dated this the 13th day of May, 2015

JUDGMENT

The defendants in O.S.No.642/2000 of Munsiff Court, Karunagappally are the appellants in the second appeal.

2. The suit was filed by the respondent herein for evicting the appellant from plaint B schedule shed and for damages on unauthorised use and occupation of the said shed. The appellant, registered owner of the property, challenging the title of the respondent over the plaint A schedule property, where the B schedule shed is situated. The decree and judgment dated 25.5.2005, the suit was decreed in favour of the respondent and the counter claim was dismissed. Against the same judgment and decree, the appellant filed A.S.No.108/2005 before the II Additional District Court, Kollam. As per the judgment dated 3.8.2009, the appeal was dismissed confirming the judgment and decree of the trial court. It is the said judgment challenged in this second appeal.

3. The respondent alleged that he purchased the plaint A schedule property on 16.12.95 from the 8th appellant as per the sale deed bearing no.3434/95 of the S.R.O., Karunagappally and thereafter the respondent was managing the property. The respondent has got property adjacent to the plaint A schedule property. At the time of execution of the aforesaid sale deed, the 8th appellant was in possession of a total extent of 21 cents of land. Adjacent to those properties his wife was having 4 cents of property. Appellants 1 to 7 were kudikidappukars under a landlord by name Arayisseril Thankappan. From him, the second appellant got some property by way of kudikidappu through land Tribunal proceedings vide O.A.No.88/1971.

4. The respondent was residing away from the plaint schedule property. So he constructed plaint B schedule shed to keep agricultural produce and other things. Subsequently, the 8th appellant approached the respondent and requested to permit the appellants 1 to 7 to reside temporarily in the said plaint B schedule shed.

The respondent agreed and gave consent to appellants 1 to 7 to reside in the plaint B schedule shed. However, later, they were not ready to leave the shed. Finally, a lawyers notice was sent on 11.8.2000 by the respondent. The 2nd and 8th appellant received the notice and others refused it. The said notice was cancelled by the respondent and fresh notice was issued on 1.11.2000. But the notice was returned. In this background the original suit was filed.

5. The appellants filed a joint written statement contenting that they are residing in B schedule property. They denied the execution of sale deed in favour of the 1st respondent. According to them, the alleged sale deed is a sham document which was executed to obtain some loan amount from the 1st respondent. Possession of plaint A schedule property was not transferred to the respondent. The respondent is a money lender and the 8th appellant had borrowed Rs.1,00,000/- from him as a security. The alleged sale deed was executed only for a security of the transaction. The parties had no intention to enter into

such a contract.

6. The trial court, on the basis of the aforesaid pleadings says proper instructions for trial. At the trial, PWs.1 to 3 and DW.1 were executed. Exts.A1 to A9 and Exts.B1 to B6 were marked. The trial court after considering the evidence dismissed the suit which was confirmed by the lower appellate court.

7. Arguments have been heard.

8. The case of the respondent is that plaint B schedule shed was constructed by him in plaint A schedule property which was purchased by him from the 8th appellant. His further case is that the appellants were permitted him to reside temporarily in the shed and at the present they are not leaving the shed, in spite of repeated request. The definite stand taken by the appellants is that the sale deed alleged to have been executed by the 8th appellant was only a security towards a loan transaction. According to them, the possession of the property have never been handed over to the respondent. Ext.A1 is the registry sale deed executed by the 8th appellant in favour

of the respondent. Apart from the blank denial of the appellants that Ext.A1 is not a genuine, no evidence had been adduced by the appellants to substantiate their case. Though there was a heavy burden on their part to prove the said contention. Apart from the interested oral testimony of DW1, nothing is in evidence to show that Ext.A1 is not a genuine document. It is the case of the appellants that the execution of Ext.B1 agreement would show that the intention of the parties at the time of execution of Ext.A1 document was not to make a sale. However, it is crucial to note that the very fact that Ext.B1 was executed, it would indicate that Ext.A1 was an out and out sale. It is also crucial to note that the 8th appellant has not filed any suit for specific performance for Ext.B1 agreement. Therefore, both the courts below have rightly held that Ext.A1 is a genuine document and is not liable to be set aside. If Ext.A1 is a genuine document, the respondent is the title holder of plaint A scheduled property. If he is the title holder of the property the appellants cannot continue the residency in plaint B

schedule shed and they are liable to be evict. Therefore, the decree directing to surrender the claiming possession and also value. On a consideration of entire evidence on record this Court is on the view that no question of law has been wrongly decided by the courts below calling for interference by this Court in this appeal.

In the result, the appeal fails and accordingly dismissed.

**A.V.RAMAKRISHNA PILLAI
JUDGE**

VS