

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

RFA.No.100 of 2015

AGAINST THE ORDER/JUDGMENT IN OS 210/2012 OF
THIRD ADDL.SUB COURT, KOZHIKODE DATED 30-09-2014

APPELLANT : PLAINTIFF :-

KOOVAPPARA GEORGE, AGED 59 YEARS,
S/O.CHACKO, THIRUVAMBADI AMSOM & DESOM,
KOZHIKODE TALUK.

BY ADVS.SRI.DEVAPRASANTH.P.J.
SRI.R.SREEHARI

RESPONDENTS : DEFENDANTS :-

1. KOOVAPPARA JOSE, AGED 63 YEARS,
S/O.CHACKO, 81.11.260 STREET, FLOREL PARK, NEW YORK,
UNITED STATES OF AMERICA.

2. LEELAMMA JOSE, AGED 57 YEARS,
W/O.JOSE, 81.11.260 STREET, FLOREL PARK, NEW YORK,
UNITED STATES OF AMERICA.

REPRESENTED BY POWER OF ATTORNEY HOLDER MR.K.C.SUNNY,
S/O.CHACKO, KOOVAPPARA, PUNNAKKAL POST,
THIRUVAMBADI AMSOM DESOM, KOZHIKODE TALUK,
PIN 673 603.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A.No.100 of 2015

Dated this the 24th day of February, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.210 of 2012 on the file of the Court of the Third Additional Subordinate Judge of Kozhikode. The respondents are the defendants therein. The suit instituted by the appellant for specific performance of Ext.A7 agreement dated 10.10.2006 was dismissed after trial by judgment delivered on 30.09.2014. The appellant has aggrieved thereby filed this appeal. The brief facts of the case are as follows:-

2. The appellant, who is none other than the younger brother of the first defendant, instituted the suit seeking specific performance of Ext.A7 agreement dated 10.10.2006 contending that, though the suit properties were transferred to the second defendant as per Ext.A3 assignment deed dated 16.11.1985, the transfer was not intended to be acted upon and the first defendant continued to be the owner. He contended that the first defendant had executed Ext.A7 agreement agreeing to transfer the plaint schedule property to him as remuneration for the work done by him as his power of attorney. The court below after considering the rival contentions held that the second defendant had

pursuant to Ext.A3 assignment deed executed Ext.A2 power of attorney on the very same day appointing the plaintiff as her power of attorney and therefore, it cannot be said that Ext.A3 assignment deed was not intended to be acted upon. The trial court also found that in view of Ext.A3 assignment deed, which was executed on 16.11.1985, the first defendant had no interest in the plaint schedule property on 10.10.2006, when he entered into Ext.A7 agreement.

3. The fact that the first defendant had transferred the plaint schedule property to the second defendant and the second defendant had on the same day appointed the plaintiff as her power of attorney is not in dispute. The contention of the plaintiff is that Ext.A3 sale deed was not intended to be acted upon. If that be so we fail to understand how the plaintiff could have been appointed as the second defendant's power of attorney by Ext.A2 dated 16.11.1985 which, refers to the jenm assignment in her favour. With the execution of Ext.A3 the first defendant ceased to be the owner and therefore, he had no right to enter into Ext.A7 agreement on 10.10.2006 agreeing to transfer the plaint schedule property to the plaintiff. The agreement if at all should have been one entered between the plaintiff on the one hand and the second defendant on the other. We are therefore in agreement with the court below that in such circumstances as the first defendant ceased to be the owner of the

property on 16.11.1985 and the second defendant has not agreed to sell the plaint schedule property to the plaintiff, a decree for specific performance cannot be passed. That apart, the second defendant, the owner of the property has not consented to the transaction. We therefore find no grounds to entertain the appeal. The appeal fails and it is dismissed in limine.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRA, JUDGE

skj