

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

RSA.No. 591 of 2012 ()

AGAINST THE JUDGMENT IN AS 105/2009 of DISTRICT COURT, ALAPPUZHA DATED 25-01-2012

AGAINST THE JUDGMENT IN OS 38/2004 of SUB COURT, CHERTHALA DATED 29-09-2006

APPELLANT/APPELLANT/PLAINTIFF:

**P.OMANAKUTTIAMMA
AGED 57 YEARS, D/O PADMAVATHY AMMA, ARUNIMA
PANAVALLY MURI, PANAVALLY VILLAGE.**

**BY ADVS.SRI.K.G.PAVITHRAN
SRI.V.N.SUBHANGAN**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. A.S.RAJU
AGED 55 YEARS, S/O SANKARA PILLAI, VRINDAVANAM
THEVAVATTOM MURI
THYKATTUSSERY VILLAGE FROM ALUNKAL HOUSE
PANAVALLY MURI, PANAVALLY VILLAGE -688566.**
- 2. PUSHPAVALLY @ PUSPALATHA
AGED 48 YEARS, W/O A.S. RAJU, VRINDAVANAM
THEVAVATTOM MURI
THYKATTUSSERY VILLAGE FROM ALUNKAL HOUSE
PANAVALLY MURI, PANAVALLY VILLAGE -688566.**
- 3. SATHI
AGED 58 YEARS, D/O AMMU AMMA, ALUNKAL VEEDU
PANAVALLY MURI, PALAVALLY VILLAGE-688566.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. No.591 of 2012

Dated this the 26th day of November, 2015

JUDGMENT

The plaintiff in a suit for specific performance of an agreement for sale is the appellant in this second appeal.

2. The suit property belongs to the defendants. The case of the plaintiff is that on 09.08.2002, the defendants agreed to sell the suit property to her for a consideration of Rs.1,50,000/-, after receiving a sum of Rs.1,35,000/- by way of advance, as per Ext.A1 agreement. The defendants contended that they have borrowed a sum of Rs.35,000/- from the plaintiff and as a security for the return of the said amount, a cheque and two blank signed papers were entrusted to the plaintiff and Ext.A1 is a document prepared by the plaintiff making use of the blank signed papers entrusted to her.

3. The trial court, on an appraisal of the materials on record, found that Ext.A1 is not a genuine agreement for sale and consequently dismissed the suit. Though, the matter was taken up by the plaintiff in appeal, the appellate court confirmed

the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions against her, has thus come up in this second appeal.

4. Heard the learned counsel for the appellant.

5. The question as to whether a document is genuine or not is a pure question of fact. Two courts have concurrently found on facts that Ext.A1 is not a genuine agreement for sale. The said decisions rendered on facts cannot be challenged in a proceedings under Section 100 of the Code of Civil Procedure.

The second appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

SD/-
P.B. SURESH KUMAR,
JUDGE