

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RSA.No. 1136 of 2010

A.S.NO.51/2003 OF SUB COURT, OTTAPALAM

O.S.NO.97/2001 OF MUNSIF COURT, OTTAPALAM

APPELLANT(S)/APPELLANTS/DEFENDANTS :

- 1. PANAKKATTIL MANAPULLI,
AGED 55 YEARS, S/O.NANCHAN,
RESIDING AT VENGASSERI AMSOM & DESOM, P.O.VENGASSERI,
AMABALAPPARA, OTTAPALM TALUK, PALAKKAD DISTRICT.**
- 2. OMANA, AGED 49 YEARS,
W/O.PANAKKATTIL MANAPPULLI,
RESIDING AT VENGASSERI AMSOM & DESOM, P.O.VENGASSERI,
AMABALAPPARA, OTTAPALAM TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.P.JAYARAM

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS :

- 1. KUNDUKAVIL RADHAKRISHNAN,
AGED BAOUT 45 YEARS, S/O.RAMASWAMY,
P.O.VENGASSERI-679 516, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**
- 2. PANKAJAKSHI,
AGED ABOUT 53 YEARS, W/O.KUNDUKAVIL RADHAKRISHNAN,
P.O.VENGASSERI-679 516, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**

**BY ADVS. SRI.SANTHEEP ANKARATH
SMT.M.SINDHU THANKAM**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 30-09-2015, ALONG WITH RSA.NO.1152 OF 2010, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.Nos. 1136 & 1152 of 2010

Dated this the 30th day of September, 2015

JUDGMENT

These second appeals arise from O.S.Nos.97 and 250 of 2001 on the file of the Munsiff's Court, Ottapppalam which were tried jointly. The parties are referred to in these appeals as they appear in O.S.No.250 of 2001.

2. O.S.No.250 of 2001 is a suit for specific performance of an agreement for sale. The plaint schedule property in the said suit belonged to the first defendant. The second defendant is the wife of the first defendant. The case of the plaintiff is that on 12.2.1994, an oral agreement was entered into between the plaintiff and the first defendant by which the first defendant agreed to sell the

plaint schedule property to the plaintiff for a sum of Rs.36,000/-. According to the plaintiff, a sum of Rs.18,000/- was paid by him to the first defendant on the date of the agreement by way of advance sale consideration and the balance sale consideration was agreed be paid on or before 12.2.2001. It is alleged that even though the plaintiff was ready and willing to pay the balance sale consideration and get the sale deed executed in respect of the property, the first defendant refused to accept the balance sale consideration and execute the sale deed.

3. The first defendant contested the suit by filing a written statement. Though the first defendant conceded that there was an oral agreement to sell the plaint schedule property to the plaintiff, he contended that the oral agreement was entered into between the parties during March 1997. According to the first defendant, the total sale

consideration agreed upon between them was Rs.30,000/- and the plaintiff has paid only a sum of Rs.1000/- by way of advance sale consideration. The case of the first defendant is that the plaintiff did not pay the balance sale consideration of Rs.29,000/- and it is on account of the said reason that the document was not executed in favour of the plaintiff. In other words, the case of the first defendant was that even though he was willing to transfer the property in terms of the oral agreement, the plaintiff was not ready and willing to pay the balance sale consideration of Rs.29,000/- agreed.

4. Prior to the institution of O.S.No.250 of 2001, the defendants had filed O.S.No.97 of 2001, alleging that the suit property was given to the plaintiff in furtherance of an oral agreement for sale and that since the plaintiff has committed breach of the terms of the agreement entered

into between them, they are entitled to recover possession of the same from him.

5. The suits were tried together and by a common judgment, the trial court decreed O.S.No.97 of 2001 and dismissed O.S.No.250 of 2001. The plaintiff challenged the decision in O.S.No.250 of 2001 in A.S.No.52 of 2003 and the decision in O.S.No.97 of 2001 in A.S.No.51 of 2003. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court and hence these second appeals.

6. The fact that there was an oral agreement between the plaintiff and the defendants for the sale of the plaint schedule property is not in dispute. The dispute is as to the time when the parties have entered into the oral agreement and the terms of the oral agreement. The case the plaintiff is that the agreement was entered into during

February 1994 and the first defendant has agreed to sell the plaint schedule property for a sum of Rs.36,000/-, after accepting an advance amount of Rs.18,000/-. According to the defendants, the agreement was entered into during March 1997 and the plaintiff has agreed to purchase the plaint schedule property for a sum of Rs.30,000/-, after paying a sum of Rs.1000/- by way of advance sale consideration. The courts below noticed that the plaintiff has no consistent case as regards the terms of the oral agreement. Though the plaintiff attempted to prove the terms of the oral agreement relying on Ext.A1 agreement, the courts below took the view that the said document being one obtained by the plaintiff and his party colleagues, after summoning the first defendant to their party office, it is not safe to rely on the same for any purpose whatsoever. On an evaluation of the entire materials on record, the courts

below came to the conclusion that the oral agreement entered into by the first defendant was to sell the plaint schedule property to the plaintiff for a sum of Rs.30,000/- and only a sum of Rs.1000/- was received by the first defendant from the plaintiff by way of advance sale consideration. Since the plaintiff has no case that he was ready and willing to pay the sum of Rs.29,000/- as per the terms of the oral agreement to the first defendant and to get the sale deed executed, the courts below found that the plaintiff has not established his readiness and willingness to perform his part of the obligations under the agreement. The courts below also noticed that the suit for specific performance of the agreement for sale was filed several years after the agreement and therefore, it is not a fit case where the discretionary jurisdiction to order specific performance can be exercised. The view taken by the courts

below, in the facts and circumstances of the case, cannot be held to be illegal in any manner. Naturally when it is found that the plaintiff is not entitled to the decree for specific performance sought in the suit, the suit filed by the first defendant for recovery of possession of the plaint schedule property from the plaintiff was decreed. I do not find any grounds to interfere with the impugned decisions.

7. The learned counsel for the plaintiff contended that the courts below acted illegally in rejecting Ext.A1 document produced by the plaintiff to prove the terms of the agreement for sale. According to the learned counsel, the terms of the oral agreement for sale entered into between the parties are reduced into writing in Ext.A1 document. Relying on Section 53A of the Transfer of Property Act, the learned counsel for the plaintiff also contended that the first defendant is not entitled to a decree for recovery of

possession of the plaint schedule property as he has parted with the possession of property as per the terms of an agreement for sale. According to the learned counsel, the benefits of Section 53A is available to those who obtain possession of immovable properties based on oral agreements for sale as well, if the terms of the agreement are reduced into writing later. He relied on the decision of the Andhra Pradesh High Court in **A.Gangadhara Rao v. G.Gangarao** (AIR 1968 A.P.291) in support of the said contention.

8. Ext.A1 recites that the plaintiff has agreed to purchase the plaint schedule property from the first defendant and obtained possession of the property after paying a sum of Rs.18,000/- by way of advance sale consideration. The document also recites that the plaintiff has now agreed to pay to the first defendant sale

consideration at the rate of Rs.2000/- per cent and that he will pay the balance sale consideration due within three months. Going by the terms of Ext.A1 document, it can be inferred that the sale consideration of the property was either not fixed at the time when the possession of the property was handed over to the plaintiff or there was a subsequent dispute between the parties as to the sale price. As such it is clear that it is due to the said reason that a document in the nature of Ext.A1 was happened to be executed at the mediation of the local committee secretary of the Communist Party of India. Ext.A1 cannot, therefore, be considered as a document by which the terms of the oral agreement for sale entered into earlier was reduced into writing. In the said circumstances, the courts below cannot be faulted for having not relied on the said document to establish the terms of the original oral agreement for sale.

Since Ext.A1 cannot be accepted as a document by which the terms of the earlier oral agreement for sale was reduced into writing, the argument advanced by the learned counsel for the plaintiff that he is entitled to the benefits of section 53A of the Transfer of Property Act cannot also be accepted, for, the benefits of Section 53A of the Transfer of Property Act can be claimed only when the transferee takes possession of the property in part performance of a written agreement for sale.

The second appeals, in circumstances, are devoid of merit and the same are accordingly dismissed *in limine*. All the interlocutory applications in the appeals are closed.

P.B.SURESH KUMAR, JUDGE.

smm