

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

RSA.No. 453 of 2013 ()

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AGAINST THE JUDGMENT AND DECREE PASSED IN AS 48/2003 of ADDITIONAL.
DISTRICT COURT, OTTAPALAM DATED 18-02-2013**

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AGAINST THE JUDGMENT D DECREE PASSED IN OS 9/1997 of MUNSIFF-
MAGISTRATE COURT,MANNARKAD DATED 14-01-2003**

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APPELLANT(S)/APPELLANT/APPELLANT/PLAINTIFF:**

**PRABHAKARAN, 80 YEARS
S/O.MADHAVAN, VALIYACHIRAYIL HOUSE, KALLUVAZHI POST
OTTAPALAM TALUK, PIN-679514.**

BY ADV. SRI.R.SREEHARI

**RESPONDENT(S)/R2/LRS OF 1ST RESPONDENT/SUPPLEMENTAL
RESPONDENTS/2ND DEFENDANT& LEGAL HEIRS OF 1ST DEFENDANT:**

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- 1. ABDUL AZEEZ, 56 YEARS
S/O.ABU, THETTATH HOUSE, THIRUVAZHAKUNNU AMSOM
DESOM AND POST, MANNARKKAD TALUK, PALAKKAD DISTRICT
PIN-678601.**
 - 2. AYISHA, AGED 62 YEARS
W/O.ALI.**
 - 3. HAMEED, AGED 43 YEARS
S/O.ALI.**
 - 4. KAMARUDHEEN, AGED 41 YEARS
S/O.ALI.**
 - 5. SULU, AGED 36 YEARS
D/O.ALI.**
 - 6. ASHARAAF, AGED 33 YEARS
S/O.ALI.**
 - 7. SAINABA, AGED 29 YEARS
D/O.ALI**
 - 8. FAZEELA, AGED 23 YEARS
D/O.ALI.**
 - 9. SUHARA, D/O.ALI, AGE NOT KNOWN TO THE PETITIONER**

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10. SAJANA, D/O.ALI, AGE NOT KNOWN TO THE PETITIONER

**2 TO 10 ARE RESIDING AT THALIYIL HOUSE
KACHERIKUNNU, THIRUVAZHAMKUNNU AMSOM, DESOM
MANNARKKAD TALUK, PIN-678601.**

BY ADV. SRI.P.JAYARAM

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

R.AV

K. ABRAHAM MATHEW, J.

R.S.A.No.453 of 2013

Dated this the 8th day of September, 2015

J U D G M E N T

Appellant was the plaintiff in O.S.No.9 of 1997 on the file of the Munsiff, Mannarkkad. The first respondent was the second defendant and Ali, predecessor in interest of the other respondents was the first defendant. The suit was for specific performance of a contract for sale of the plaint schedule property which belonged to Ali, the predecessor in interest of the respondents two and others. The appellant alleged that on 03.10.1977 he and Ali entered into an agreement for sale of the plaint schedule property by which Ali undertook to sell the property to the appellant for Rs.500/- and received the whole sale consideration. He further alleged that he had been put in possession of the property pursuant to an earlier agreement of 1968. As no objection certificate was necessary for the forest department and it was not available execution of sale deed was allegedly postponed.

On 18.11.1996, the appellant issued a notice asking Ali to complete the transaction by executing the sale deed. In the reply notice Ali denied agreement for sale and contended that the plaint scheduled property was sold to the first respondent in this appeal in 1991. The prayer in the suit was to declare that the sale deed executed in favour of the first respondent is invalid and for specific performance of agreement for sale and in the alternative for refund of the purchase price. In the written statement the defendants contended that the agreement for sale relied on by the appellant is not genuine and pursuant to an agreement for sale entered into between Ali and the first respondent on 15.08.1975, the former sold the property to the latter in 1991 and put him in possession of the property. The lower court found that the agreement for sale is not genuine and dismissed the suit AS.No.48 of 2003 filed challenging the decree of dismissal by the Additional District Judge, Ottapalam also was dismissed.

2. Heard the learned counsels for both sides.
3. In the plaint the alleged transaction between

Ali and the appellant is not narrated with clarity. There is a reference to an agreement for sale between the plaintiff and Ali which allegedly took place in 1968. But even the sale consideration is not mentioned.

4. The plaintiff was examined as PW2. Even in his examination in chief he did not state that he saw the first defendant signing Ext.A1 agreement for sale relied on by him. The scribe was examined as PW1. He had no acquaintance with the plaintiff or Ali or the witnesses who have allegedly attested the document. His deposition that Ali signed Ext.A1 agreement for sale cannot be accepted. He pleaded ignorance when it was suggested to him in the cross-examination that Ext.A1 agreement was written up on a signed blank stamp paper. There was no denial. I take judicial notice that the practice of the scribes in Kerala is to write the name and addresses of the witnesses in the documents. But in Ext.A1 the addresses of the witnesses are not seen. There is no explanation for omitting to give their addresses. The courts below rightly held that the appellant failed to prove the agreement for sale alleged

by him. There is no reason to take a different view.

This appeal is without any merit.

In the result, this appeal is dismissed.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge