

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937**

**RSA.No. 976 of 2011 (G)**

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**AS. 66/2010 OF ADDL.SUB COURT, KOLLAM DATED 05-03-2011.  
OS.340/2001 OF MUNSIF MAGISTRATE COURT, PARAVOOR DATED 28-02-2006.**

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**APPELLANTS/APPELLANTS/DEFENDANTS:**

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- \*1. B.SUDHARMINI, CHARUVILA VEEDU,  
KONAYIL CHERRY, PARAVOOR VILLAGE,  
KOLLAM TALUK.(DIED)**
- 2. BABU RAJAN, CHARUVILA VEEDU,  
KONAYIL CHERRY, PARAVOOR VILLAGE,  
KOLLAM TALUK.**
- 3. AJITH RAJ, CHARUVILA VEEDU,  
KONAYIL CHERRY, PARAVOOR VILLAGE,  
KOLLAM TALUK.**
- 4. SUJITH RAJ, CHARUVILA VEEDU,  
KONAYIL CHERRY, PARAVOOR VILLAGE,  
KOLLAM TALUK.**

**\*APPELLANTS 2 TO 4 ARE RECORDED AS LRS OF DECEASED  
1ST APPELLANT AS PER ORDER DATED 16.1.2014 IN IA.59/2014.**

**BY ADV. SMT.PRABHA R.MENON**

**RESPONDENT/RESPONDENT/PLAINTIFF:**

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**N.DEVARAJAN, BHAKTHANJALI, VAITTILA,  
THAIKKOOTTAM CHURCH ROAD,  
ERNAKULAM.**

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

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD  
ON 17-11-2015, THE COURT ON 03-12-2015 DELIVERED THE  
FOLLOWING:**

**mbr/**

**P.B.SURESH KUMAR, J.**

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**R.S.A. No.976 of 2011**  
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**Dated 3<sup>rd</sup> December, 2015.**

**J U D G M E N T**

The defendants in a suit for eviction and injunction are the appellants in this second appeal.

2. The plaintiff is the brother of the first defendant. According to the plaintiff, the plaint schedule property was obtained by him as per Ext.A1 gift deed executed by his father Krishnan Narayanan. The case set up in the suit is that the parents of the plaintiff were residing in the house situated in the plaint schedule property and that the first defendant and her family who came to the house in the plaint schedule property in connection with the death of their mother refused to leave the house pretending that she also has some rights in the plaint schedule property. The suit was, therefore, filed seeking a decree for eviction of the defendants from the plaint schedule property. A decree for injunction restraining the defendants from committing waste in the property, taking yield from the

property and constructing new structures in the property was also sought. The defendants resisted the suit contending that Ext.A1 gift deed executed by their father Krishnan Narayanan is vitiated by undue influence and that the first defendant is, therefore, a co-owner of the property on the death of the father. There was an earlier suit filed by the first defendant against the plaintiff as O.S.No.24 of 2001, seeking among others, a declaration that Ext.A1 is vitiated by undue influence. The said suit was dismissed. Consequent upon the decision in the said suit, the present suit was decreed as prayed for. Though the defendants have taken up the matter in appeal, the appellate court confirmed the decision of the trial court. Hence, this second appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

4. The decision in O.S.No.24 of 2001 was though challenged by the first defendant in A.S.No.50 of 2010, the said appeal was dismissed confirming the decision in the suit. The first defendant has challenged the decision in A.S.No.50 of 2010

before this Court in R.S.A.No.1084 of 2011. I have dismissed R.S.A.No.1084 of 2011 today by a separate judgment holding that Ext.A1 gift deed on the basis of which the present suit is filed, is a valid document. As noticed above, the only defence set up by the defendants in the suit is that Ext.A1 is vitiated by undue influence. As such, in the light of the decision in R.S.A.No.1084 of 2011, this appeal is liable to be dismissed and I do so. All the interlocutory applications in the appeal are closed.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

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