

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

RSA.No. 533 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 3/2005 of SUB COURT, KOTTARAKKARA
DATED 25-11-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 79/2002 of MUNSIFF COURT, PUNALUR
DATED 18-10-2004.**

APPELLANT/APPELLANT/PLAINTIFF:

**P.N.SAGAR, S/O.LATE NANU, AGED 68 YEARS,
SREEKOVIL PANANGADU, VALAKKODU VILLAGE, PUNALUR.**

BY ADV. SRI.T.RAJESH.

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. MUBARAK BEEVI, W/O.BABU MUTHUMEERAN, AGED 42 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.**
- 2. A.S.M. SHERIEF, AGED 43 YEARS,
S/O.LATE SAITH MOHAMMED SHAH,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.**
- 3. IBRAHIM SHERIEFM AGED 52 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.**
- 4. AHAMADALI, AGED 50 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.**
- 5. SEENATH S, AGED 47 YEARS,
W/O.SHOWKATHALI, RESIDING AT SHAH MANZIL, PANANGADU
VALACODE VILLAGE, PUNALUR - 695 026.**

6. PARISHA BEEVI, D/O.AMINA BEEGUM, AGED 46 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.
7. BABU MUTHUBEERAN, AGED 47 YEARS,
HUSBAND OF MUBARK BEEVI, RESIDING AT SHAH MANZIL
PANANGADU, VALACODE VILLAGE, PUNALUR - 695 026.
8. ZEENATH ANEESA, W/O.IBRAHIM SHERIEF, AGED 47 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.
9. SHOWKATHALI, AGED 55 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.
10. ANWARSHAH, S/O.IBRAHIM SHERIEF, AGED 24 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.
11. ANUSHA, D/O.IBRAHIM SHERIEF, AGED 20 YEARS,
RESIDING AT SHAH MANZIL, PANANGADU, VALACODE VILLAGE
PUNALUR - 695 026.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

amk

A.HARIPRASAD, J.

R.S.A No.533 of 2015

Dated this the 06th day of July, 2015.

J U D G M E N T

Appeal by the plaintiff in O.S No.79 of 2002 on the file of the Court of Munsiff, Punalur. The suit was dismissed with compensatory cost finding that the plaintiff is not entitled to get any declaration and consequential injunction sought for in the plaint. The plaintiff took up the matter in first appeal. Learned appellate Judge after considering the evidence found that there is no merit in the appeal. Hence the appeal was dismissed with costs.

2. Heard the learned counsel for the appellant and perused the impugned judgments.

3. Plaint schedule property belonged to deceased Saithu Mohammed Shah and Aminabegum along with other items. Later, he died and the property devolved on his legal heirs. A line building constructed by Aminabegum, the widow of

deceased Saithu Mohammed Shah was let out to the appellant for conducting Bharat Technical College, a tutorial college as per a deed dated 23-07-1980 on a monthly rent of Rs.160/-. It is the contention that later Aminabegum received Rs.1,20,000/- from the plaintiff as advance for the sale consideration of 40 cents of land to the plaintiff. The parties executed an agreement for sale on 10-09-1980. Therefore, the plaintiff contended that he is legally entitled to get the reliefs claimed.

4. The contesting defendants admitted that the plaintiff was conducting a tutorial college in the shed located in their property. There was another suit between the parties as O.S No.284/2000 before the Munsiff's Court, Punalur. Plaintiff atoned to the first defendant as land lord and was paying rent to her till 13-07-2000. Though he agreed to surrender vacant possession on or before 30-07-2001, he did not comply with the same and he fabricated a false document, purported to be an

agreement to assign. Therefore, the plaintiff is not entitled to get any relief.

5. The courts below after analyzing evidence found that the agreement to assign put forward by the appellant/plaintiff is a false document. It was also found that the plaintiff's claims for adverse possession and limitation are baseless as he has never pleaded that at any point of time, he changed the nature of his possession from permissive to a hostile one. Therefore, the contradictory contentions placed by the appellant was rejected by the courts below for legal and factual reasons. I do not find any substantial question of law arising in this appeal. Hence the regular second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

Sd/-

**A.HARIPRASAD,
JUDGE.**