

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

RSA.No. 685 of 2015

A.S.NO.73/2013 OF DISTRICT COURT,PATHANAMTHITTA

O.S.NO.215/2008 OF SUB COURT, THIRUVALLA

APPELLANT(S)/APPELLANT/1ST DEFENDANT :

**A.RAMACHANDRAN PILLAI, AGED 63 YEARS,
S/O.LATE ACHUTHAN NAIR, MAROTTIKULATHU HOUSE,
EZHUMATTOOR MURI, & VILLAGE, MALLAPPALLY TALUK,
PATHANAMTHITTA DISTRICT**

**BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX**

RESPONDENT(S)/RESPONDENTS/PLAINTIFF AND DEFENDANTS 2 & 3 :

**1. B.INDIRA DEVI @ INDIRAMMA, AGED ABOUT 63 YEARS,
D/O.BHARATHI AMMA, JAYA NIWAS, PALLICKAL P.O.,
KATTANAM VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**

**2. SUSAMMA, AGED 57 YEARS,
W/O.A.RAMACHANDRAN PILLAI, MAROTTIKULATHU HOUSE,
EZHUMATTOOR MURI & VILLAGE, MALLAPALLY TALUK.**

**3. SIVARAJ, AGED 29 YEARS,
S/O.A.RAMACHANDRAN PILLAI, MAROTTIKULATHU HOUSE,
EZHUMATTOOR MURI, & VILLAGE, MALLAPPALLY TALUK**

**R1 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.685 of 2015.

= = = = =

Dated this the 12th day of November, 2015.

J U D G M E N T

The first defendant in a suit for declaration of title, fixation of boundaries and injunction is the appellant in this second appeal.

2. The first defendant is the brother of the plaintiff. The plaint schedule properties belonged to the first defendant. He sold the plaint schedule properties to his parents as per Ext.B2 sale deed. Later, the parents transferred the properties to the plaintiff as per Exts.B3 and B4 settlement deeds. The plaintiff, in turn, transferred the plaint schedule item No.2 property to the first defendant as per Ext.A4 sale deed and retained the plaint schedule item No.1 property. According to the plaintiff, there are no boundaries separating the plaint schedule item Nos.1 and 2

properties. It is also her case that the first defendant is asserting title to the plaint schedule item No.1 property. The suit was filed, in the circumstances, seeking a declaration of title, fixation of boundary separating the properties, and injunction. The first defendant contested the suit. The main contention raised by the first defendant was that Ext.B2 sale deed was not supported by consideration and hence void. According to the first defendant, the plaintiff cannot, therefore, claim any right over the plaint schedule item No.1 property. The first defendant has also raised a counter claim in the suit seeking declaration of his title and possession over the plaint schedule item No.1 property. The trial court did not accept the case of the first defendant. Consequently, the suit was decreed and the counter claim was dismissed. The first defendant challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The first defendant who is aggrieved by the concurrent

decisions against him has thus come up in this second appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the first respondent, who appeared through caveat.

4. Going by the admitted facts, the short issue arising for consideration is as to whether Ext.B2 document is valid. As noticed above, the case of the first defendant as regards Ext.B2 is that it is not supported by consideration and hence void. He has also a case that Ext.B2 document was executed involuntarily out of compulsion at the instance of his parents as he was in an affair with a person not belonging to their community. The question as to whether Ext.B2 is supported by consideration is a pure question of fact. Two courts have concurrently found that the said document is supported by consideration. That apart, it cannot be contended that the document is void for the mere reason that no consideration was passed between the parties while executing the document. (See the decision of

this Court in RFA.No.126 of 2005). True, the said principle is not an invariable rule. The real test is the intention of the parties. In order to constitute a sale, the parties must intend to transfer the ownership of the property and to pay the price either in *praesenti* or in *futuro*. Though registration is *prima facie* proof of an intention to transfer the property, it is not proof of operative transfer. In case of disputes, the intention is to be gathered from the recitals in the sale deed, conduct of parties and the evidence on record. [See **Vidhyadhar v. Mankikrao** (AIR 1999 SC 1441) & **Kaliaperumal v. Rajagopal** (AIR 2009 SC 2122)]. As noticed above, the first defendant has no case that he never intended to transfer the property and the same is a sham document. His case is only that he has not received any consideration for the document. As such, according to me, Ext.B2 cannot be construed as a void document at all. Then comes the question as to whether Ext.B2 is a document executed voluntarily or not. Assuming that Ext.B2 is an involuntary document, a suit is required to be

filed for cancelling the same. Such a suit, which would fall under Article 59 of the Limitation Act, needs to be filed within 3 years. In the instant case, the suit in respect of Ext.B2 document was filed almost after a period of eight years. As such, the first defendant cannot be heard to contend that Ext.B2 is vitiated. In the said view of the matter, there is no merits in the second appeal and the same is accordingly dismissed *in limine*. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

// true copy //

P.A. TO JUDGE.