

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

RSA.No. 371 of 2003 (C)

**AGAINST THE JUDGMENT & DECREE IN AS 47/1999 OF ADDL.SUB COURT,
THALASSERY DATED 07-10-2002
AGAINST THE JUDGMENT & DECREE IN OS 328/1997 OF MUNSIF COURT,
KUTHUPARAMBA DATED 31/03/1999**

APPELLANTS/RESPONDENTS/DEFENDANTS :

- 1. KURIYATH JOY
S/O. THOMAS, AGED 43 YEARS
AGRICULTURIST, VELLARVALLY AMSOM
THIRUVONAPRAM DESOM
P.O. PERAVOOR, THALASSERY TALUK.**
- 2. MANIKKATHAZHA ALFONZA
FATHER'S NAME NOT KNOWN
RESIDING AT VELLARVALLY AMSOM DESOM
IMPLEADED AS NECESSARY PARTY AS PER
ORDER ON I.A. 2304/2001 AND AMENDED AS PER
ORDER ON IA NO. 2305/2001 DATED 4.1.2002.**

***SUPPLEMENTAL APPELLANT NO. 3 IS IMPLEADED**

- *ADDL.A3. KUNNUMBRATH PUTHIYA PURAYIL ABDUL RAZAK
AGED 39 YEARS, S/O. MAMMU HAJI
P.O. KAKKAYANGAD, MUZHAKUNNU AMSOM
PALA DESOM, KANNUR DISTRICT, PIN – 670 673
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
OMBAN ABDULKHADER, AGED 56 YEARS, S/O. MOIDEEN HAJI
“SHAFEENAS’ OF MUZHAKUNNU AMSOM,
AVILAM VILAKODE DESOM IN THALASSERY TALUK
P.O. VILAKODE, KANNUR DISTRICT.**

***SUPPLEMENTAL APPELLANT NO. 3 IS IMPLEADED AS PER THE ORDER
DATED 9.10.14 IN IA NO. 2353/2014.**

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT/APPELLANT/PLAINTIFF :

*KALAPPURAKKAL SOSAMMA
D/O. YOHANNAN, AGED 62 YEARS
RETIRED TEACHER, MUZHAKKUNNU AMSOM DESOM
THALASSERY TALUK (*DIED, LR'S ARE IMPEADED)

*ADDL. R2 TO R4 IMPEADED

*ADDL.R2. ABHI K. JACOB
S/O. CHACKO, AGED 37 YEARS
KALAPPURATH HOUSE
P.O. KAKKAYANGAD, MUZHAKKUNNU AMSOM
PALA DESOM, THALASSERI TALUK
KANNUR DISTRICT.

*ADDL.R3. SHIBI K. JACOB
S/O. CHACKO, AGED 33 YEARS
KALAPPURATH HOUSE
P.O. KAKKAYANGAD, MUZHAKKUNNU AMSOM
PALA DESOM, THALASSERI TALUK
KANNUR DISTRICT.

*ADDL.R4. K.A. CHACKO
AGED 76 YEARS, S/O. ABRAHAM
KALAPPURATH HOUSE, MUZHAKKUNNU AMSOM
PALA DESOM, THALASSERI TALUK
KANNUR DISTRICT.

*ARE IMPEADED AS ADDL. RESPONDENTS R2 TO R4 BEING LR'S OF
DECEASED SOLE RESPONDENT AS PER ORDER DATED 15/11/12
IN IA NO. 2559/12.

R2 TO R4 BY ADVS. SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SMT. GRACY PAULOSE

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON 25/05/2015 DELIVERED THE FOLLOWING:

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...3/-

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE I IN IA NO. 2353/2014	ASSIGNMENT DEED 2016/2002 BEFORE THE S.R.O., PERAVOOR DATED 25.9.2002.
ANNEXURE I IN IA NO. 2354/2014	: POWER OF ATTORNEY DEED EXECUTED BY SRI. KUNNAMBRATH PUTHIYA PURAYIL ABDUL RAZAK IN FAVOUR OF OMABAN ABDULKHADER DATED 14.6.2013.
ANNEXURE II IN IA NO. 2353/2014	ASSIGNMENT DEED 2017/2002 BEFORE THE S.R.O., PERAVOOR DATED 25.9.2002.
ANNEXURE III IN IA NO. 2353/2014	DOCUMENT NO. 817/2004 OF S.R.O., PERAVOOR DATED 4.4.2004.
ANNEXURE IV IN IA NO. 2353/2014	DOCUMENT NO. 4419/2011 OF S.R.O., PERAVOOR DATED 2.11.2011.
ANNEXURE V IN IA NO. 2353/2014	DOCUMENT NO. 4080/2012 OF S.R.O., PERAVOOR DATED 9.11.2012.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J

R.S.A.No.158 of 2010

Dated this the 15th day of May, 2015

JUDGMENT

The defendants in O.S.No.328/97 on the files of the Munsiff's Court, Kuthuparamba, who in turn were the respondents in A.S.No.47/99 on the files of Additional Sub Court, Tellicherry, are in appeal.

2. The respondent/plaintiff approached the trial court with the suit for specific performance on the basis of a compromise in respect of the plaint schedule property. It was alleged that there was an earlier suit as O.S.No.268/94 filed by the plaintiff in the Munsiff's Court, Kuthuparamba in respect of the same property for permanent prohibitory injunction against the first plaintiff herein and others to restrain them from trespassing into the property or interfering with the peaceful possession and enjoyment of plaintiff. The suit was compromised. As per Ext.B12, by which plaintiff and others agreed that the first defendant would execute the sale deed in respect of the plaint schedule property in favour of the plaintiff, on

payment of Rs.90,000/-. The amount was payable by the plaintiff on 30.5.1997, when the sale deed has to be registered. The compromise was referred and the suit was dismissed.

3. The plaintiff alleges that the 1st defendant has refused to execute the assignment deed as agreed to in Ext.B12 agreement. She further alleges that on 30.5.97 she went to the Peravoor Sub Registry Office for execution of the registration of the sale deed in compliance with the compromise and the 1st defendant refused to come to the Sub Registry Office and that an injunction has also been obtained against the 1st defendant in O.S.No.211/97 on the file of the Munsiff's Court, Kuthuparamba. The plaintiff further alleges that she was ready and willing to perform her part on the contract. The defendant refused to perform his part on the contract. She had made claim for compensation to the tune of Rs.18,530/- as damages.

4. The 1st defendant contended that the plaintiff was not ready and willing to execute the document as per

the contract and that she did not earn up with the money and registration could not taken place.

5. The trial court raise proper issues for trial. At the trial, PWs.1 to 3 as well as DWs.1 and 2 were examined. Exts.A1 to A8, Exts.B1 to B11 and Exts.C1 to C9 were marked. The trial court after considering the evidence, dismissed the suit. The plaintiff took the matter in appeal before the lower appellate court, which after the reappraisal of evidence, allowed the appeal in part and decree directing the 1st defendant to assign the plaint schedule property on deposit of Rs.90,000/- before the trial court with in a time frame and the 1st defendant was directed to put the appellant in possession of the property in pursuant to such assignment. Though, the plaintiff had sought for a set off Rs.18,530/- against the sale consideration. The claim was negated by the lower appellate court. It is against this judgment, this appeal has been preferred.

6. I have heard Mr.P.U.Shailajan, learned counsel for the appellant and Mr.Abdul Raouf, the learned

counsel for the respondent.

7. It was on account of the failure on the part of the plaintiff that the sale could not be taken place. It was argued that the plaintiff was not ready with the money on 30.5.97. It was argued in view of the demand for a set off for Rs.18,530 claimed to be the damages said to have been committed in the property after the compromise in O.S.No.268/94, which was not in the part of the compromise. The lower appellate court ought to have found that the plaintiff was not ready and willing to perform her part.

8. Though much was argued regarding the circumstances which lead to Ext.B12 compromise, it is quite unnecessary to go into those questions at this point of time as both parties would admit that there was such a compromise. It was on the basis of Ext.B12 that this present suit has been filed. The date fixed for performance of the agreement as per Ext.B12 is 30.5.97. The plaintiff as well as the defendants claimed that they were at the Sub Registry Office on that date. As rightly

pointed out by the lower appellate court, this would given an indication that the parties were of the view that the agreement had to be carried on that day itself. As per Ext.B12, admittedly, an amount of Rs.19,000/- had to be paid by the plaintiff for getting the deed executed in her favour. Though, she claimed a set off Rs.18,530/-. The same was neglected by the lower appellate court. The lower appellate court relied on the evidence of PW.2, the scribe, who was asked to prepare the deed. That witness was confronted with Ext.A8, was a note prepared by him in which it was clearly stated that he received Rs.9,000/- from the plaintiff for the purchase of stamp papers. Ext.A8 was admitted by DW2 also. In Ext.A8, it is stated that the plaintiff and the defendant were at his office of DW2 and the plaintiff had given Rs.9,000/- to him for the purchase of stamp papers. The lower appellate court observed that the quarrel between the parties as per the evidence of DW2 was non account of the failure of the plaintiff to ready money but because the defendant was not ready to assign the property to a person other than the plaintiff.

Therefore, as per the case put forwarded by the defendant that the plaintiff was not ready and willing to get the property assign goes. Definite reasons are stated by the lower appellate court in disagreeing the findings of the trial court as these findings are purely on questions of law, this Court cannot reverse the said finding.

9. It was argued by the learned counsel for the appellant inviting my attention to **Saradamani Kandappan v. Rajalakshmi** [2011 (3) KLT SN 43 (C.No.43)SC] that the lower appellate courts could not be exercised discretion for granting the decree in favour of the plaintiff as the plaintiff has not taken steps for the completion of the transaction. But, from the circumstances pointed out on above, the lower courts as come to the conclusion that the plaintiff was ready to get the assignment deed in her favour and she was present in the Sub Registry Office. It is come out in evidence that the execution did not take place on account of some other issues.

10. On a consideration of the materials now

placed on record, this Court is on the definite view that no substantial question of law has been wrongly decided by the lower appellate court, calling for an interference by this Court.

In the result, the appeal fails and accordingly dismissed.

A.V.RAMAKRISHNA PILLAI
JUDGE

VS