

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

RSA.No. 726 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN AS NO.24/2007 of SUB
COURT, KOTTARAKKARA DATED 16-12-2014

AGAINST THE JUDGMENT AND DECREE IN OS NO.302/2003 of MUNSIF COURT,
KOTTARAKKARA DATED 19-12-2006

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

1. SANTHAMMA, D/O.RETNAMMA, THUNDILVEEDU,
KUDAVATTOOR MURI, ODANAVATTOM VILLAGE,
KOTTARAKKARA TALUK.
2. SREEKUMAR, S/O.SANTHAMMA, THUNDILVEEDU,
KUDAVATTOOR MURI, ODANAVATTOM VILLAGE,
KOTTARAKKARA TALUK.
3. SREEVIDHYA, D/O.SANTHAMMA, THUNDILVEEDU,
KUDAVATTOOR MURI, ODANAVATTOM VILLAGE,
KOTTARAKKARA TALUK.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/RESPONDENT/DEFENDANT/ADDL.RESPONDENTS 2 AND 3:

1. VIJAYABHANU PILLAI, S/O.NARAYANA PILLAI,
DIVYA DEEPAM, KUDAVATTOOR MURI,
ODANAVATTOM VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DISTRICT-691512.
2. AYISHA BHAI, AGED 45 YEARS, D/O.BHARGAVI,
THODIYIL PUTHENVEEDU, KUDAVATTOOR (P.O.),
KUDAVATTOOR MURI, VELIYAM VILLAGE,
KOLLAM DISTRICT-691540.
3. GIREESH, AGED 30 YEARS, S/O.PADMAKARAN,
PADMALAYAM, KUDAVATTOOR MURI,
ODANAVATTOM VILLAGE, KOLLAM DISTRICT-691512.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.726 of 2015

Dated this the 28th day of July, 2015

JUDGMENT

Second appeal by the plaintiffs in a suit for setting aside Ext.A1 document, declaration and consequential injunction.

2. Facts, in brief, are as follows: First plaintiff is the mother and the second and third plaintiffs are the children. When the first plaintiff was in dire need of money, she borrowed ₹40,000/- from the defendant. At that time, the defendant insisted that the first plaintiff should execute a security document with respect to 75 cents of property. As further insisted by the defendant, the first plaintiff executed Ext.A1 document and it was registered. The parties intended the document as one only for securing the loan amount. In the property, there are yielding rubber trees. In spite of offering the amount to the defendant by the plaintiffs, he was not prepared to receive it. As he set up title over the property, the plaintiffs approached the court with the suit. Defendant filed a written statement contending that the suit is not maintainable. Plaintiffs are not illiterate persons. First plaintiff executed the document with an intention to assign the property in favour of the defendant. After the assignment, the defendant is in possession of the property. There is no loan transaction as alleged in the

plaint.

3. After considering the evidence adduced, the trial court found that the plaintiffs are not entitled to get any of the reliefs claimed in the plaint.

4. The plaintiffs took up the matter in appeal before the first appellate court. On re-appreciation of facts, the first appellate court dismissed the appeal finding that no legal reason was made out to set aside Ext.A1 document and for declaration as claimed by the plaintiffs. Apparent tenor of Ext.A1 (which is same as Ext.B1) is a sale deed. There is no legal reason brought out in evidence to find that the parties never intended to go for an assignment as described in Ext.A1. Therefore, I am of the view that there is no substantial question of law arising in this appeal and the questions are only factual in nature, which have been concurrently and correctly decided by the courts below.

In the result, the appeal is dismissed.

A. HARIPRASAD, JUDGE.

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