

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

RSA.No. 784 of 2015 ()

AS 1/2012 of SUB COURT, PALA

OS 87/2008 of MUNSIFF MAGISTRATE, ERATTUPETTA

APPELLANT/APPELLANT/PLAINTIFF :

**JOY JOSEPH, AGED 56 YEARS,
S/O JOSEPH, RESIDING AT MOOKKANTHOTTATHIL (H)
PARAPALLI KARA, POOVARANI VILLAGE, MEENACHIL TALUK.**

**BY ADVS.SRI.T.K.PANKAJASHAN PILLAI
SRI.SAJI PANKAJAKSHAN**

RESPONDENT/RESPONDENT/DEFENDANT :

**1. DR.THOMAS T CHOWATTUKUNNEL, AGED 76 YEARS
S/O. OUSEPH, THOMMAN
RESIDING AT CHOWATTUKUNNEL(H)EDAPPADI KARA
BHARANANGANAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT-686578.**

**2. ANNAMMA THOMAS,
W/O.THOMAS CHOWWATTUKUNNEL,
RESIDING AT CHOWATTUKUNNEL (H) EDAPPADI KARA
BHARANANGANAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT-686528.**

R1 BY ADV. SRI.P.C.HARIDAS

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A. No.784 of 2015

Dated 15th October, 2015.

J U D G M E N T

The plaintiff in a suit for dissolution of partnership and settlement of accounts is the appellant in this second appeal.

2. The case of the plaintiff is that he is doing real estate business in partnership with the first defendant since 2005 based on an oral arrangement. According to the plaintiff, the arrangement between the plaintiff and the first defendant was that the plaintiff shall enter into contracts with third parties for purchase and sale of properties with the funds of the first defendant and the profits of the transactions, over and above the interest of the amounts invested by the first defendant worked out at the rate of 10% per annum, will be shared between the plaintiff and the defendant, in the ratio 98:2. It is also the case of the plaintiff that even though the transactions were over by 2008, the accounts between them have not been

settled and hence the suit. The first defendant denied the allegation of the plaintiff that there was an oral partnership between him and the plaintiff to do real estate business. According to the first defendant, the plaintiff is only a broker facilitating real estate transactions for him and though there were a few money transactions between them, there was no partnership at all to do the real estate business.

3. The trial court rejected the case of the plaintiff that there was an oral partnership arrangement between the plaintiff and the first defendant and consequently dismissed the suit. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions of the courts below has thus come up in this second appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

5. The learned counsel for the appellant contended that the materials on record would indicate that the plaintiff has entered into agreements for purchase of properties in the name

of the first defendant. He also contended that the evidence adduced in the suit would show that the plaintiff has remitted money in the bank account of the first defendant. According to the learned counsel, from the above transactions, it has to be inferred that there was an oral partnership arrangement between the plaintiff and the first defendant to do real estate business.

6. As noticed by the appellate court, the plaintiff has admitted that there was no bank account for the partnership. It is conceded that there are no documents also which would indicate that there was an oral partnership arrangement between the plaintiff and the first defendant to do real estate business. As such, merely for the reason that the plaintiff has entered into agreements to purchase properties for the first defendant and merely for the reason that the plaintiff has remitted money in the account of the first defendant, it cannot be inferred that there was an oral partnership arrangement between the plaintiff and the first defendant, especially when the first defendant is working abroad. In the aforesaid facts

and circumstances, I do not find any merit in this second appeal. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the circumstances, is dismissed *in limine*. It is made clear that this judgment will not preclude the plaintiff from instituting appropriate proceedings for recovery of money, if any, due to him from the first defendant in accordance with law. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)