

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RSA.No. 962 of 2015

**AS 3/2015 OF ADDITIONAL SUB COURT, KOTTAYAM, DATED 10-04-2015
OS 198/2004 OF MUNSIFF COURT, CHANGANACHERRY**

APPELLANT(S)/APPELLANTS/DEFENDANTS:

1. PANKIAMMA,
W/O.KARUNAKARAN, ASWATHY SADANAM HOUSE, PARAL KARA,
VAZHAPPALLY WEST VILLAGE, CHANGANACHERRY, KOTTAYAM.
2. MOHANAN,
S/O.RAGHAVAN, PUTHUPARAMPILAYA MAZHUVANCHERIL,
PUTHUPPARAMBIL, KADAMANCHIRA, THRIKODITHANAM MURI,
THRIKODITHANAM VILLAGE, CHANGANACHERRY, KOTTAYAM.

**BY ADVS.SRI.M.P.MADHAVANKUTTY
SRI.S.RANJIT (KOTTAYAM)
SRI.GOKUL DAS V.V.H.**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**SARADA
W/O.SREEDHARAN, PUTHENPARAMBIL HOUSE,
THRIKODITHANAM KARA, THRIKODITHANAM VILLAGE,
CHANGANACHERRY, KOTTAYAM. PIN - 686 001.**

BY ADV. SRI.C.S.SUNIL

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

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R.S.A.No.962 of 2015.

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Dated this the 3rd day of November, 2015.

J U D G M E N T

Though notice before admission was ordered in this matter on 1.9.2015, there is no appearance for the respondent.

2. The defendants in the suit are the appellants. The suit property is part of a larger extent of 15 cents owned by one Sumathy. As per Ext.A3 settlement deed, Sumathy settled the said 15 cents of property in favour of four persons including defendants 1 and 2. The suit property is C schedule in Ext.A3, which was given to the first defendant. As per Ext.A4 sale deed, the first defendant sold the suit property to one Vasappan and Vasappan in turn, sold the suit property to the plaintiff as per Ext.A1 sale deed. There was an earlier suit by the second defendant against the plaintiff and first defendant for a declaration that

he is in possession of the suit property and the same was dismissed. Thereafter, the first defendant executed Ext.A2 gift deed in respect of the suit property in favour of the second defendant ignoring the earlier sale deed executed by her in favour of Vasappan. The plaintiff thereupon filed the present suit to set aside Ext.A2 gift deed. She also claimed a decree for recovery of possession. The suit was resisted by defendants 1 and 2 contending that even though the first defendant was given the suit property and the second defendant was given the B schedule property in Ext.A3 gift deed, under a mistaken impression as to the identity of the properties, the first defendant was holding the property of the second defendant and the second defendant was holding the suit property. In other words, according to the defendants, the first defendant could not have transferred title and possession over the suit property to Vasappan and consequently, the plaintiff has not acquired any right in the suit property. The trial court rejected the contentions raised

by the defendants and decreed the suit. Though the matter was taken up in appeal by defendants, the appellate court confirmed the decision of the trial court. Defendants 1 and 2 have thus come up in this second appeal challenging the concurrent decisions against them.

3. Heard the learned counsel for the appellants.

4. It is beyond dispute that the suit property is one obtained by the first defendant as per Ext.A3 settlement deed. Ext.A4 sale deed executed by the first defendant in favour of Vasappan indicates that the same is in respect of the suit property. After having executed Ext.A4 sale deed, the first defendant cannot be heard to contend that she has any more rights in the property. Ext.A2 gift deed, in the circumstances, is invalid. The second defendant does not claim title to the property. He only claims possession over the property. The claim of possession raised by the second defendant over the property was turned down in the earlier suit. In the said view of the matter, there is absolutely no

reason for this Court to interfere with the decisions of the courts below, in exercise of the power under Section 100 of the Code of Civil Procedure.

5. The learned counsel for the appellants pleaded that if this Court is not prepared to accept the contentions of the appellants on merits, the appellants may be granted a reasonable time to surrender vacant possession of the suit property. It was pointed out that the wife of the second defendant is a cancer patient undergoing treatment and if the decree is executed forthwith, she will be put to irreparable hardship. Having regard to the facts and circumstances of the case and the plea made by the learned counsel for the appellants as aforesaid, I am inclined to grant time to the appellants to surrender vacant possession of the property to the plaintiff.

In the result, the second appeal is dismissed. However, the appellants are granted time till 15.5.2016 to surrender vacant possession of the suit property to the

plaintiff on condition that they shall file affidavits before the execution court within two weeks from the date of receipt of a copy this judgment, unconditionally undertaking to surrender vacant possession of the property on or before 15.5.2016. All the interlocutory applications in the appeal are closed.

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

Kvs/-

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PA TO JUDGE.