

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RSA.No. 567 of 2014 ()

**(AGAINST THE JUDGMENT IN AS.NO. 121/2004 OF SUB COURT, KOTTARAKKARA
DATED 07-11-2013)**

**(AGAINST THE JUDGMENT IN OS.NO. 751/1999 OF MUNSIF COURT,
KOTTARAKKARA DATED 23-02-2004)**

APPELLANT(S)/RESPONDENTS/DEFENDANTS:

- 1. DAVEED THANKACHAN, AGED 61 YEARS,
H.NO.71, CHARUVILA VEEDU, HARIJEN COLONY,
ARYANKAVU VILLAGE, KOTTARAKKARA, KOLLAM DT.**
- 2. DAVEED PAPPACHAN, AGED 56 YEARS,
H.NO.72, CHARUVILA VEEDU, HARIJEN COLONY,
ARYANKAVU VILLAGE, KOTTARAKKARA, KOLLAM DT.**
- 3. DAVEED JOHN, AGED 54 YEARS,
CHARUVILA MELATHIL, THRIKKALATHOOR MURI,
MAZHUVANNOOR VILLAGE, MUVATTUPUZHA.**
- 4. DAVEED ACHANKUNJU, AGED 51 YEARS,
SUJA VILASOM, ACHANKOVIL, KOTTARAKKARA.P.O.,
KOLLAM DT.**
- 5. DAVEED ISACC, AGED 49 YEARS,
CHARUVILA PUTHEN VEEDU, ANDUPOIKA, IPPALLOOR MURI,
MELILA VILLAGE, KOTTARAKKARA, KOLLAM DT.**

**BY ADVS.SRI.V.PREMCHAND
SRI.V.TEKCHAND**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**ACHAMMA MARIAKUTTY, AGED 51 YEARS,
CHARUVILA PUTHENVEEDU, KARICKAMATTATHU MURI,
VETTIKKAVALA VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DISTRICT. PIN-691 228.**

**BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 13-10-2015,ALONG WITH R.S.A.NO.573 OF 2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. Nos.567 & 573 of 2014

Dated 13th October, 2015.

J U D G M E N T

These second appeals arise from two suits, viz., O.S.No.751 of 1999 and O.S.No.239 of 2001 respectively on the file of the Munsiff Court, Kottarakkara. The appellants are the defendants in O.S.No.751 of 1999 and the plaintiffs in O.S.No.239 of 2001. The suits were tried jointly, treating O.S.No.751 of 1999 as the lead case.

2. The case of the plaintiff in O.S.No.751 of 1999 is that a portion of the plaint schedule property in the said suit originally belonged to one Daveed; that Daveed executed Ext.A2 sale deed in respect of the property in favour of one Thankamma; that Thankamma later assigned the property covered by Ext.A2 sale deed to one Achamma as per Ext.A3 sale deed and that the plaintiff purchased the said property from Achamma as per Ext.A1 sale deed. It is alleged in the plaint that the defendants who are the successors of Daveed are attempting to trespass into the plaint schedule property.

The suit was, therefore, filed seeking a decree declaring the title and possession of the plaintiff over the plaint schedule property and for consequential injunction. The defendants contested the suit, contending among others, that Ext.A2 document is not a document executed by Daveed. In the meanwhile, the defendants have also filed O.S.No.239 of 2001 seeking a decree declaring their title and possession over the portion of the plaint schedule property in O.S.No.751 of 1999 covered by Ext.A2 sale deed alleged to have been executed by Daveed. The suits were tried together. Since the defendants have not disputed the title of the plaintiff in respect of the property other than the property covered by Ext.A2 sale deed, the only point considered by the trial court was as to whether Ext.A2 sale deed was valid or not. On an appraisal of the materials on record, the trial court found that Ext.A2 is a valid document and consequently decreed O.S.No.751 of 1999 and dismissed O.S.No.239 of 2001. The defendants challenged the decisions in the suits in appeals and the appellate court confirmed the decision of the trial court. The defendants in

O.S.NO.751 of 1999 who are aggrieved by the decisions in the suits referred to above have come up in these second appeals.

3. Heard the learned counsel for the appellants as also the learned counsel for the respondent/plaintiff in O.S.No.751 of 1999.

4. As noticed above, the only point arising for consideration in the second appeals is as to the genuineness of Ext.A2 sale deed. Ext.A2 is a registered document. It is a document purported to have been executed by Daveed. Ext.A2 contained the signature of Daveed. The case of the defendants is only that Ext.A2 is not a document executed by Daveed. In the light of the presumption contained in Section 114(e) of the Evidence Act and Section 60 of the Registration Act, it is for the defendants to establish that Ext.A2 is not a document executed by Daveed. The defendants have not established that the signature contained in Ext.A2 is not that of Daveed. Instead, they rely on the evidence tendered by DW1 who is the son of Daveed and a signatory to Ext.A2 document, to the effect that the signature contained in Ext.A2 as that of DW1, is not one put

by him. The courts below took the view that merely for the reason that DW1 disowned the signature put by him in Ext.A2 as a witness, it cannot be said that the signature in Ext.A2 document is not one put by Daveed. In the absence of any evidence to show that the signature contained in Ext.A2 is not one put by Daveed, the courts below cannot be faulted for having rendered the impugned decisions. There is no question of law, much less any substantial question of law, involved in these second appeals. The second appeals, in the circumstances, are devoid of merits and the same are, accordingly, dismissed in limine. All the interlocutory applications in the appeals are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)