

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

RSA.No. 625 of 2014

A.S.NO.157/2012 OF II ADDITIONAL DISTRICT COURT, KOZHIKODE

O.S.NO.462/2006 OF III ADDITIONAL SUB COURT, KOZHIKODE

APPELLANT/1ST RESPONDENT/DEFENDANT NO.1 :

**SAJI KALLATT, AGED 69 YEARS,
S/O.KALLATT VASUDEVAN, 3/1579, "SREEVAS",
CHOYUNNI MASTER ROAD, NADAKKAVU.P.O.,
KATCHERI AMSOM, KURUMBRAKATTASSERY DESOM,
KOZHIKODE TALUK.**

BY ADV. SRI.P.VKUNHIKRISHNAN

**RESPONDENT(S)/APPELLANT & RESPONDENTS 2 & 3/PLAINTIFF AND
SUPPLEMENTARY DEFENDANT 3 & 4 :**

- 1. A.C.RAJENDRAN, AGED 54 YEARS,
S/O.EDATHUMKANDY CHUDUKATTIL BASKARAN, 3/1581 A,
'KARTHIKA'(NADAKKAVU.P.O.), KATCHERI AMSOM,
KURUMBRAKATTUSSERY DESOM, KOZHIKODE TALUK-673 005.**
- 2. NAVEENA, AGED 38 YEARS,
W/O.P.K.SHAJI, "PREMANIKETAN", MADAVOOR VILLAGE,
MADAVOOR DESOM, P.O.MADAVOOR, KOZHIKODE TALUK-673 585.**
- 3. MALLIKA, AGED 20 YEARS,
D/O.P.K. SHAJI, 'PREMANIKETAN', MADAVOOR VILLAGE,
MADAVOOR DESOM, P.O.MADAVOOR, KOZHIKODE TALUK-673 585.**

**R1 BY ADVS. SRI.PHILIP ANTONY CHACKO
SRI.P.M.SEBASTIAN**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 02-11-2015, ALONG WITH RSA.NO.741 OF 2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

NIL

RESPONDENT(S)' ANNEXURES :

ANNEXURE R1(A): THE CERTIFICATE DATED 03.06.2015 ISSUED BY THE SECRETARY, LIFE INSURANCE CORPORATION OF INDIA STAFF CO-OPERATIVE BANK LTD.NO.3314, JEEVAN PRAKASH, PATTOM, THIRUVANANTHAPURAM-4, LIC STAFF CO-OP. BANK LTD., CALICUT BRANCH SHOWING THAT THE WIFE OF THE PETITIONER SMT.SINDHU.K WAS HAVING CASH DEPOSIT OF RS.81,200/- (RUPEES EIGHTY ONE THOUSAND ONLY) IN THE PERIOD 01.10.2005 TO 31.01.2006.

ANNEXURE R1(B): THE SALARY CERTIFICATE DATED 03.06.2015 ISSUED BY THE OFFICER IN CHARGE LIFE INSURANCE CORPORATION OF INDIA, CALICUT I BRANCH SHOWING THAT THE WIFE OF THE PETITIONER SMT.SINDHU.K IS DRAWING A TOTAL SALARY OF RS.60,911.75 (RUPESS SIXTY THOUSAND NINE HUNDRED AND ELEVEN AND SEVENTY FIVE PAISA ONLY) AND AFTER DEDUCTION OF RS.18,039.75 (RUPEES EIGHTEEN THOUSAND AND THIRTY NINE AND SEVENTY FIVE PAISA ONLY) A GETTING A NET AMOUNT OF RS.42,872/- (RUPEES FORTY TWO THOUSAND EIGHT HUNDRED AND SEVENTY TWO ONLY).

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.B.SURESH KUMAR, J.

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R.S.A.Nos.625 of 2014

& 741 of 2015.

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Dated this the 2nd day of November, 2015.

J U D G M E N T

These appeals are preferred challenging the decree and judgment in A.S.No.157 of 2012 on the file of the District Court, Kozhikode.

2. A.S.No.157 of 2012 was an appeal preferred by the plaintiff in O.S.No.462 of 2006. O.S.No.462 of 2006 was a suit for specific performance of an agreement for sale. The suit property originally belonged to the first defendant. On 13.10.2005, as per Ext.A1 agreement, the first defendant agreed to sell the suit property to the plaintiff for a sum of Rs.1,25,000/-, after receiving from him a sum Rs.15,000/- by way of advance sale consideration. As per

the terms of Ext.A1 agreement, the first defendant should have conveyed the suit property to the plaintiff within three months from the date of the agreement. It is alleged by the plaintiff that though he was ready and willing to pay the balance sale consideration to the first defendant within the time stipulated in the agreement, it was revealed on enquiry that the suit property is outstanding on a mortgage in favour of Federal Bank and since the first defendant had not liquidated the mortgage liability, the said bank had instituted a suit against the first defendant and obtained an order of attachment over the suit property. It is also alleged by the plaintiff that when the first defendant was confronted with the said liability, he sought time to liquidate the liability in respect of the property and accordingly, the term of the contract was extended orally by eight months. It is further alleged by the plaintiff that thereafter, the first defendant in collusion with the second defendant executed a conveyance

deed in respect of the property in favour of the second defendant. The suit was laid on the aforesaid allegations.

3. The defendants contested the suit. The first defendant contended, among others, that time was the essence of the contract; that he was ready and willing to perform his part of the obligations under the contract and that the property could not be conveyed since the plaintiff was not ready and willing to get the conveyance deed after paying the balance sale consideration. The contention raised by the second defendant was that he was a *bona fide* purchaser entitled to protection under Section 19 of the Specific Relief Act.

4. The trial court rejected the case of the plaintiff and dismissed the suit. The plaintiff took up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, reversed the decision of the trial court and decreed the suit as prayed for. As noticed above,

the decision of the appellate court is under challenge in these appeals. Among the appeals, R.S.A.No.625 of 2014 is filed by the first defendant and R.S.A.No.741 of 2015 is filed by the legal representatives of the second defendant, who died pending suit.

5. Heard the learned counsel for the appellants.

6. The fact that the suit property belonged to the first defendant and he agreed to sell the same to the plaintiff for a sum of Rs.1,25,000/- after accepting an advance payment of Rs.15,000/- is not in dispute. Ext.A1 is the agreement. The case of the first defendant is that time was essence of the contract and the plaintiff was not ready and willing to perform his part of the obligation under the contract within the time stipulated in the agreement. The case of the plaintiff, on the other hand, is that he was ready and willing to perform his part of the obligation under the agreement and that he did not get the conveyance deed

executed within three months as stipulated in the agreement as the parties have extended the period of contract by eight months on a mutual agreement. The question for consideration, therefore, is whether the case set up by the plaintiff that the period of agreement was extended by eight months. As such, if it is found that there was a subsequent agreement between the parties extending the period of agreement by eight months as contended by the plaintiff, the conclusion arrived at by the appellate court that the plaintiff has to succeed in the suit has to be accepted.

7. The plaintiff gave evidence as PW1. In his evidence, he categorically deposed about the encumbrance over the property as also the agreement arrived at between him and the first defendant to extend the period of the agreement by eight months. The first defendant who contended that there was no extension of the period of

contract has not mounted the box and gave evidence in support of his case. Further, the fact that the suit property was encumbered and was under court attachment at the time when the plaintiff was to get the conveyance deed from the first defendant is also not in dispute. It is in the said circumstances, the appellate court came to the conclusion that the case of the plaintiff that the period of agreement was extended by the parties is correct. The said finding rendered by the appellate court being on a pure question of fact, the correctness of the same cannot be challenged by the first defendant in this second appeal filed under Section 100 of the Code of Civil Procedure. As regards the contention raised by the second defendant that he is entitled to the protection of Section 19 of the Specific Relief Act, it is beyond dispute that the second defendant is none other than the sister's son-in-law of the first defendant. It is in view of the aforesaid close relationship between defendants

1 and 2, the appellate court inferred that the second defendant cannot be reckoned as a *bona fide* purchaser of the property for value. There is, therefore, no merit in the second appeals and the same are, accordingly, dismissed. All the interlocutory applications in the appeals are closed.

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

Kvs/-

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PA TO JUDGE.