

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

RSA.No. 632 of 2014

A.S.NO.13/2005 OF SUB COURT, SULTHAN BATHERY

O.S.NO.103/2004 OF MUNSIF MAGISTRATE COURT, MANANTHAVADY

APPELLANT(S) :

**O.J.VARGHESE, AGED 70 YEARS,
S/O.OUSEPH, KANANGAMPOTHI VEEDU, PAYYAMPILLY P.O.,
PAYYAMPILLY VILLAGE, MANANTHAWADY TALUK,
WYNADU DISTRICT.**

**BY ADVS.SRI.A.CHERIAN
SRI.NAVEEN THOMAS**

RESPONDENT(S) :

**INDIKKUZHA LISSY, AGED 36 YEARS,
W/O.JOY, POST VEMOM, PAYYAPPILLY VILLAGE,
MANANTHAWADY TALUK-670 645.**

**BY ADVS. SRI.M.P.ASHOK KUMAR
SRI.P.C.GOPINATH**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A. No.632 of 2014

Dated 19th October, 2015.

J U D G M E N T

The defendant in the suit is the appellant. The suit was one for specific performance or in the alternative, for recovery of the sale consideration.

2. According to the plaintiff, she has agreed to purchase the plaint schedule property from the defendant for a sum of Rs.50,000/- and pursuant to the said agreement, she obtained Ext.A1 sale deed from the defendant, after paying the entire sale consideration. The case of the plaintiff is that after having received the entire sale consideration, the defendant failed to appear before the Sub Registry concerned to enable the plaintiff to get the sale deed registered and hence, the suit. The defendant contested the suit. The contention raised by the defendant was that he has executed the sale deed on the representation made by the plaintiff that the sale consideration

will be paid at the Sub Registry at the time of registration and since the plaintiff failed to pay the sale consideration as agreed at the Sub Registry, he has not appeared before the Sub Registrar for registration of the document. In other words, according to the defendant, he has not received any money from the plaintiff towards sale consideration.

3. In the course of the trial, the plaintiff gave up the claim for specific performance and insisted for a decree for recovery of the sum of Rs.50,000/- paid towards sale consideration. The trial court accepted the case of the plaintiff and decreed the suit. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The defendant 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.

5. In the light of the decree sought by the plaintiff, the only question arising for consideration is as to whether the plaintiff has paid Rs.50,000/- to the defendant as claimed by

her and as endorsed in Ext.A1 sale deed executed by the defendant. This question being a pure question of fact, the correctness of the same cannot be raised by the appellant in a second appeal filed under Section 100 of the Code of Civil Procedure. That apart, the appellant is not disputing the fact that it is recited in Ext.A1 sale deed that he has received the sum of Rs.50,000/- by way of sale consideration from the plaintiff. The appellant is also not disputing the fact that the signature contained in Ext.A1 sale deed is that of him. His contention, as indicated above, is only that he did not receive any money at the time of execution of Ext.A1 sale deed as claimed by the plaintiff. The appellate court, relying on the provision contained in Section 114 of the Evidence Act, took the view that the case set up by the defendant is against the common course of natural events, human conduct and private business, and consequently rejected the case of the defendant. In other words, the view of the appellate court is that nobody would sign on the original of a sale deed without receiving the sale consideration. In the facts and circumstances of this case,

the courts below cannot be faulted for having arrived at the finding against the defendant. There is, therefore, no illegality in the decisions impugned in the appeal. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed in limine. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)