

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

RSA.No. 691 of 2014

A.S.NO.195/2010 OF ADDITIONAL DISTRICT COURT,THALASSERY

O.S.NO.354/2008 OF ADDITIONAL SUB COURT, THALASSERY

APPELLANT(S)/APPELLANT/1ST DEFENDANT :

**T.N.SURENDRAN, AGED 62 YEARS,
S/O.T.N.DEVAKI, THUNDIKOTH NUNCHUNTHODI HOUSE,
VALIYANNUR AMSOM, VARAM DESOM, KANNUR DISTRICT.**

**BY ADVS.SRI.R.SREEHARI
SRI.K.RAJESH SUKUMARAN**

RESPONDENT(S)/RESPONDENTS/PLAINTIFF & 2ND DEFENDANT :

- 1. K.V.ABDUL KHADER, AGED 60 YEARS,
S/O.MOHAMMED SEETHI,
KUTTIYALIPURATH VANNAMKANDI HOUSE,
IRIVERI AMSOM DESOM AND POST,
KANNUR DISTRICT, PIN-670 614.**
- 2. M.SAJIDA , AGED 35 YEARS,
D/O. MOIDU, KANNUR I AMSOM, URUVACHAL WARD,
NEAR CHANDINI COMPLEX, POST THAYYIL,
KANNUR DISTRICT-670 001.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

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R.S.A.No.691 of 2014.

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Dated this the 12th day of October, 2015.

J U D G M E N T

The first defendant in a suit for specific performance is the appellant in this Second Appeal.

2. The facts relevant for the disposal of the Second Appeal are the following:

The plaint schedule property is part of a larger extent of 29 cents owned by the first defendant. There were three agreements, one after another by the first defendant in favour of the plaintiff for the sale of the said 29 cents for a sum of Rs.5,70,000/-. During the subsistence of the agreements, 16 cents of property out of the 29 cents was sold by the first defendant to the nominees of the plaintiff by two separate sale deeds. According to the plaintiff, on measurement, it was found that the remaining extent of the property available with the first defendant was only 7.5 cents and as such, he is bound to pay

only the proportionate sale consideration for the said 7.5 cents. However, the first defendant insisted that the plaintiff should pay the entire balance sale consideration agreed as per the terms of the agreement for transferring the remaining extent of 7.5 cents to the plaintiff. The plaintiff, therefore, instituted the suit for specific performance of the agreements to get the remaining property from the first defendant. During the pendency of the suit, the remaining property was sold by the first defendant to the second defendant. Consequently, the plaint was amended incorporating a prayer for recovery of Rs.1,15,518/- from the first defendant. Since the plaint schedule property has already been transferred by the first defendant, the trial court decreed the suit permitting the plaintiff to realize Rs.1,15,518/- from the first defendant and the appellate court confirmed the said decision of the trial court. The first defendant, who is aggrieved by the aforesaid concurrent decisions of the courts below has come up in this Second Appeal.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that

there is nothing on record to indicate as to how the plaintiff has arrived at the amount of Rs.1,15,518/- allegedly remaining with the first defendant as the balance advance sale consideration. As such, according to the learned counsel, the impugned decisions of the courts below have to be set aside.

5. There is no dispute between the parties that the total amount agreed to be paid by the plaintiff to the first defendant towards the sale consideration of the 29 cents of property covered by the agreements for sale is Rs.5,70,000/-. Ext.A3 is the third agreement for sale entered into by the first defendant with the plaintiff. Ext.A3 agreement for sale was executed on 5.11.2007. Ext.A3 recites that a sum of Rs.1,50,000/- has been received by the first defendant from the plaintiff towards advance sale consideration. There are three endorsements on the rear side of the first page of Ext.A3, of which the first endorsement is dated 14.12.2007, the second endorsement is dated 13.3.2008 and the third endorsement is dated 31.3.2008. Going by the three endorsements referred to above, an additional amount of Rs.2,80,000/- has also been received by the first defendant from

the plaintiff. The endorsements on the rear side of the first page of Ext.A3 agreement for sale are not disputed by the first defendant. It is thus evident that the first defendant was received a total sum of Rs.4,30,000/- from the plaintiff towards advance sale consideration. In the circumstances, the courts below worked out the unit price of the property, namely, the price per cent of the property agreed to be paid by the plaintiff, at Rs.19,655.17. Thereafter, the advance sale consideration remaining with the first defendant, namely, Rs.1,15,518/- was arrived at by deducting the unit price of the 16 cents of property sold pursuant to the agreements, namely, Rs.3,14,482/- from the total advance of Rs.4,30,000/- (Rs.4,30,000-3,14,482). True, there is no pleading in the plaint as to how the plaintiff has arrived at the figure Rs.1,15,518/- as the amount due to him from the first defendant. However, since it was found by the appellate court that the aforesaid figure has been arrived at by the plaintiff on a rational basis, I do not think that the decisions of the courts below are liable to be set aside on the sole ground that the plaintiff has not pleaded in detail as to how the amount

claimed in the suit has been arrived at.

There is no question of law, much less any substantial question of law, involved in this matter. 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.

Kvs/-

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PA TO JUDGE.