

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

RSA.No. 905 of 2014 (G)

AGAINST THE JUDGMENT IN AS. NO. 306/2006 OF ADDITIONAL DISTRICT COURT,
IRINJALAKUDA DATED 29-02-2012.

AGAINST THE JUDGMENT IN OS. NO.261/2002 OF PRINCIPAL SUB COURT,
IRINJALAKUDA DATED 29-08-2005.

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APPELLANT/APPELLANT/PLAINTIFF AND THE
RESPONDENT IN THE COUNTER CLAIM :

SASIDHARAN, AGED 49 YEARS,
S/O.THUMBARATHY BALAN, CHUNGAL DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR),
SMT.PREETHY KARUNAKARAN.

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. SIVARAMAN, AGED 62 YEARS,
S/O.THUMBARATHY BALAN, CHUNGAL DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK-680 001.

2. ABHILASH, AGED 32 YEARS,
S/O.THUMBARATHY SIVARAMAN, CHUNGAL DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK-688 001.

3. ANEESH, AGED 27 YEARS,
S/O.THUMBARATHY SIVARAMAN, CHUNGAL DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK-688 001.

BY ADVS. SRI.A.N.SANTHOSH,
SRI.G.BALAMURALEEDHARAN.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.905 of 2014

Dated this the 16th day of November, 2015

JUDGMENT

The plaintiff in a suit for specific performance of an agreement for sale is the appellant in the second appeal.

2. The case of the plaintiff is that there was an oral agreement between the plaintiff and first defendant by which the first defendant agreed to sell the plaintiff schedule shop room to the plaintiff for a consideration of Rs.1,10,000/- and that even though the plaintiff was ready and willing to pay the balance sale consideration and get the conveyance deed, the first defendant was not prepared to convey the suit property as per the terms of the agreement. The first defendant resisted the suit disputing the oral

agreement for sale. He also raised a counter claim for recovery of the plaint schedule shop room on the basis of his title. The trial court, on an appraisal of the materials on record, dismissed the suit and decreed the counter claim and the said decision was though taken up in appeal by the plaintiff, the appellate court confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in the second appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

4. The learned counsel for the appellant contended that there was only one appeal against the decree in the suit as also against the decree in the counter claim and therefore, the appeal on which the impugned judgment was rendered was incompetent. A perusal of the

impugned judgment does not indicate that such a contention was raised by the plaintiff before the lower appellate court. It is now settled that a point which has not been raised by the appellant before the lower appellate court cannot be raised for the first time in a second appeal. In the said view of the matter, I am of the view that the impugned judgment cannot be attacked on that ground.

5. The learned counsel for the appellant then sought time to surrender vacant possession of the plaint schedule shop room on the ground that he is running a business therein. Having regard to the facts and circumstances of the case, I am inclined to grant time to the plaintiff to surrender vacant possession.

In the result, the appeal is dismissed. However, the plaintiff is granted time till 31.3.2016 to surrender vacant possession of the plaint schedule shop room on

condition that the plaintiff shall file an affidavit before the execution court within two weeks from the date of receipt of a copy of this judgment, unconditionally undertaking to surrender vacant possession of the plaint schedule shop room on or before 31.3.2016.

P.B.SURESH KUMAR, JUDGE.

smm