

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

RSA.No. 1180 of 2014

**JUDGMENT DATED 25-06-2014 IN AS 293/2005 OF ADDITIONAL DISTRICT COURT I,
THALASSERY
JUDGMENT DATED 31-10-2005 IN OS 139/2003 OF PRINCIPAL SUB COURT,
THALASSERY
.....**

APPELLANT(S)/RESPONDENT NO 13:

**THUNDIYIL MANOHARAN, AGED 42 YEARS,
S/O.ANANDAN, AGRICULTURIST,
RESIDING AT THUNDIYIL HOUSE, KOTTAYAM AMSOM,
KINAVAKKAL DESOM, THALASSERY TALUK.**

**BY ADVS.SMT.REKHA C.NAIR
SRI.R.SUDHEER
SRI.P.SAJU
SRI.R.PRATHEESH (ARANMULA)**

RESPONDENT(S)/PLAINTIFFS/RESPONDENTS 3 TO 12/DEFENDANT NOS 1 TO 12:

- 1. C.M.JANAKI AMMA, AGED 68 YEARS,
D/O.LAKSHMI AMMA, SWASTHAM,
RESIDING AT CHERIYAPPIL'CHELORA AMSOM,
THILANUR DESOM, KAPPAD P.O, KANNUR TALUK
KANNUR DISTRICT**
- 2. M.SURENDRAN, AGED 43 YEARS,,
S/O.KRISHNAN, DRIVER, RESIDING AT 'THOTTUMBHAGAM'
KANDAMKUNNU AMSOM, MAMBARAM DESOM,
P.O AYTHARA MAMBRAM,
THALASSERY TALUK, KANNUR DISTRICT.**
- 3. KUTTICHI RETHI, AGED 49 YEARS,
W/O.LATE KUNIYIL VASU, RESIDING AT KATTILEPURAYIL,
KOTTAYAM AMSOM, KINAVAKKAL DESOM,
KUTHUUPARAMBA THALASSERY TALUK, KANNUR DISTRICT.**

Msv/

RSA.No. 1180 of 2014

4. VINSHA, AGED 29 YEARS,
D/O.LATE KUNYIL VASU, RESIDING AT "KATTILEPURAYIL",
KOTTAYAM AMSOM, KINAVAKKAL DESOM,
KUTHUPARAMBA THALASSERY TALUK, KANNUR DISTRICT
5. NIVYA, AGED 25 YEARS,
D/O. KUNYIL VASU, RESIDING AT "KATTILEPURAYIL",
KOTTAYAM AMSOM, KINAVAKKAL DESOM,
KUTHUPARAMBA THALASSERY TALUK, KANNUR DISTRICT.
6. KELOTHKANDY DEVAKI, AGED 79 YEARS,
W/O.LATE PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT;
7. KELOTHKANDY PADMINI, AGED 61 YEARS,
D/O.LATE PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT.
8. KELOTHKANDY MUKUNDAN, AGED 57 YEARS
S/O.PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT.
9. KELOTHKANDY KUNHIKANNAN, AGED 52 YEARS,
S/O.LATE PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT.
10. KELOTHKANDY SHYLAJA, AGED 49 YEARS,
D/O.PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT.
11. KELOTHKANDY PRAKASAN,S/O.PUTHALATH KRISHNAN,
AGED 47 YEARS, KRISHNA SADANAM,KANDAMKUNNU AMSOM,
MAMBARAN DESOM,P.O AYITHRA MAMBARAM,
THALASSERY TALUKE,KANNUR DISTRICT.

Msv/

RSA.No. 1180 of 2014

**12. KELOTHKANDY PUSHPA, AGED 49 YEARS,
D/O.PUTHALATH KRISHNAN, KRISHNA SADANAM,
KANDAMKUNNU AMSOM, MAMBARAN DESOM,
P.O AYITHRA MAMBARAM, THALASSERY TALUK,
KANNUR DISTRICT.**

**R1 & R2 BY ADV. SRI.R.SURENDRAN
R6-R12 BY ADV. SMT.KEERTHI SOLOMON**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
6-11-2015, THE COURT ON 26-11-2015, DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

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R.S.A.No.1180 of 2014.

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Dated this the 26th day of November, 2015.

J U D G M E N T

This second appeal is preferred challenging the decision in A.S.No.293 of 2005 on the file of the District Court, Thalassery. The additional 13th respondent in the said appeal is the appellant.

2. A.S.No.293 of 2005 was preferred challenging the decision in O.S.No.139 of 2003 on the file of the Sub Court, Thalassery. O.S.No.139 of 2003 was a suit for declaration and injunction. The plaint A schedule property in the suit is a property having an extent of 1 acre and 7 cents. The plaint B schedule property in the suit is part of the plaint A schedule property. The extent of the plaint B schedule property is 42 ½ cents. The plaint A schedule property originally belonged to the first defendant.

The first defendant created Ext.A12 mortgage in respect of 68 cents out of the plaint A schedule property including the plaint B schedule property in favour of one C.M.Krishnan Nambiar on 3.8.1989. Later, on 12.10.1989, the first defendant created Ext.A1 mortgage in respect of the very same property in favour of the first plaintiff. Since the first defendant did not discharge the mortgage debt due to C.M.Krishnan Nambiar, he filed O.S.No.63 of 1991 and obtained a decree for realisation of the mortgage debt by sale of the mortgaged property. On the death of C.M.Krishnan Nambiar, the first plaintiff and others filed an execution petition to execute the decree in the said suit in their capacity as legatees of C.M.Krishnan Nambiar and when the mortgaged property was brought for sale in the said execution petition, the first plaintiff purchased the same. Ext.A4 is the sale certificate obtained by the first plaintiff in the said suit. In the meanwhile, the first plaintiff instituted another suit as O.S.No.423 of 1992 for realisation

of the mortgage debt due to her under Ext.A1 mortgage, obtained a decree and purchased the plaint A schedule property including the property already purchased by her in the earlier suit. Ext.A5 is the sale certificate in O.S.No.423 of 1992. Exts.A4 and A5 are dated 12.11.1998. According to the plaintiffs, thereafter, the first plaintiff has obtained possession of the suit property through the process of the court on 25.1.1999. It is also the case of the plaintiffs that thereupon, the first plaintiff has transferred her rights over the suit property to the second plaintiff. Thus, according to the plaintiffs, the second plaintiff became the absolute owner in possession of the suit properties. It is alleged by the plaintiffs that the second defendant is asserting title over the plaint B schedule property and the suit is necessitated in the said circumstances for declaration of the title and possession of the second plaintiff over the plaint B schedule property and consequential injunction restraining the second defendant and persons claiming under him from

trespassing into or otherwise interfering with the possession of the second plaintiff. The second defendant contested the suit, contending among others, that the first defendant had executed Ext.B6 agreement for sale in respect of the plaint B schedule property in his favour on 1.6.1989; that since the first defendant did not execute the conveyance deed as per the terms of the agreement, he filed O.S.No.219 of 1989 against the first defendant and obtained a decree for specific performance of the agreement for sale on 27.6.1990. According to the second defendant, later, he obtained Ext.B4 sale deed in respect of the suit property through the process of the court on 15.1.2003 in execution of the said decree and thus he became the absolute owner of the property. The trial court dismissed the suit. The plaintiffs took up the matter in appeal. In the meanwhile, the second defendant assigned all his rights in the property in favour of the appellant and consequently he got himself impleaded in the appeal before the lower appellate court as

additional 13th respondent. The appellate court reversed the decision of the trial court and decreed the suit declaring the title and possession of the second plaintiff over the suit properties. The decree of permanent prohibitory injunction sought by the plaintiffs was also granted. The additional 13th respondent is aggrieved by the decision of the appellate court and hence this second appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for respondents 1 and 2.

4. The learned counsel for the appellant, relying on the decision of the Apex Court in **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan** [(1990)3 SCC 291), contended that since Ext.B6 agreement for sale was obtained by the second defendant long before the sale certificates in favour of the first plaintiff, the conveyance of the property by the court pursuant to the decree in O.S.No.219 of 1989 confers on the second defendant title to the suit property. He also contended that

since the property was obtained by the first plaintiff pending O.S.No.219 of 1989, the sale certificates cannot affect the title of the second defendant pursuant to the decree in the said suit.

5. It is beyond dispute that Ext.B6 agreement for sale in favour of the second defendant in respect of the suit property was on 1.6.1989 and the first plaintiff has obtained title to the property only on 12.11.1998. It is now settled that an agreement for sale does not create any interest in the property in favour of the purchaser. As noticed above, the property was conveyed to the second defendant by the court pursuant to the decree in O.S.No.219 of 1989 only on 15.1.2003. In the meanwhile, on 12.11.1998, the first plaintiff obtained title to the property pursuant to Exts.A4 and A5 sale certificates. As such, the second defendant cannot claim any preferential right over the suit property on the strength of Ext.B6 agreement for sale. The next aspect to be considered is

whether Exts.A4 and A5 sale certificates are hit by *lis pendens*. In **Kumaran v. Kumaran** (2011(1) KLT 252), this Court took the view that right to immovable property cannot be regarded as the subject matter in a suit for specific performance of a contract for sale. It is beyond dispute that O.S.No.219 of 1989 was a suit for specific performance of Ext.B6 agreement for sale. If the right to the suit property was not the subject of O.S.No.219 of 1989, it cannot be said that the sale certificates obtained by the first plaintiff on 12.11.1998 in respect of the suit property is hit by *lis pendens*. Coming to the argument advanced by the learned counsel for the appellant based on the decision of the Apex Court in **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan** (supra), it is seen that the question considered in the said case was whether a conveyance after the attachment in pursuance of a contract passes on the buyer good title in spite of the attachment. The said question does not arise for

consideration in this matter.

In the result, the second appeal is devoid of merits and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

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

Kvs/-

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PA TO JUDGE.