

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

RSA.No. 1332 of 2014

**JUDGMENT DATED 25-07-2014 IN AS 346/2009 OF I ADDL. DISTRICT COURT,
PALAKKAD**

JUDGMENT IN OS 689/1996 OF PRINCIPAL SUB COURT, PALAKKAD
.....

APPELLANT(S)/1ST RESPONDENT/PLAINTIFF:

**C.VENUGOPALAN, AGED 58 YEARS,
S/O.CHAMI THARAKAN, COOLIMUTTAM, POLPULLY AMSOM - 678 552,
PALAKKAD TALUK, PALAKKAD DISTRICT..**

**BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T. MATHEW**

RESPONDENT(S)/APPELLANT AND RESPONDENTS 2 TO 5/DEFENDANTS:

- 1. KAMAKSHI THARAKATHIAR, AGED 66 YEARS,
W/O.CHAMI THARAKAN, PUTHENPOTTA KALAM,
MUTHALAMADA POST-678 507, KAMBARATHCHALLA,
CHITTUR TALUK, PALAKKAD DISTRICT.**
- 2. VIJAYAN, AGED 45 YEARS,
KAMAKSHI THARAKATHIAR, PUTHENPOTTA KALAM,
MUTHALAMADA POST-678 507, KAMBARATHCHALLA,
CHITTUR TALUK, PALAKKAD DISTRICT.**
- 3. BABY ANITHA, W/O.SELVAN, AGED 39 YEARS,
PERUMCHIRA HOUSE, POTHAMPADAM,
MUTHALAMADA POST-678 507, KAMBARATHCHALLA,
CHITTUR TALUK, PALAKKAD DISTRICT.**
- 4. RADHA VENUGOPALAN, W/O.VENUGOPALAN, AGED 47 YEARS,
COOLIMUTTAM, POLPULLY AMSOM-678 552,
PALAKKAD TALUK PALAKKAD DISTRICT.**
- 5. NARENDRAN, S/O.CHATHUNNI, AGED 73 YEARS,
MECHIPARACHALLA, AZHICHIRA HOUSE,
MUTHALAMADA POST-678 507,
CHITTUR TALUK, PALAKKAD DISTRICT.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A. No.1332 of 2014

Dated 9th October, 2015.

J U D G M E N T

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

2. The plaint schedule property measuring 2.5 acres belongs to defendants 1 to 4. The case of the plaintiff is that on 21.5.1996, the defendants have agreed to sell the plaint schedule property to him for a consideration of Rs.1,10,000/-, after accepting a sum of Rs.80,000/- by way of advance sale consideration. The first defendant is the mother-in-law of the plaintiff and the fourth defendant is the wife of the plaintiff. Defendants 3 and 4 are the siblings of the fourth defendant. According to the plaintiff, though the defendants have agreed to sell the plaint schedule property to him, they have not executed the sale deed in respect of the same as agreed within the time stipulated and hence the suit.

3. The first defendant filed written statement contending that the suit property was outstanding on a mortgage in favour of the fifth defendant and when the fifth defendant brought the property for sale pursuant to a money decree obtained by him against the first defendant, the plaintiff came forward to help her and settled her liability. According to the first defendant, the plaintiff later represented that the fifth defendant is likely to raise some claims in respect of the plaint schedule property and it is necessary for her to execute an agreement for sale in favour of the plaintiff to protect the property from such claims. The case of the first defendant is that the agreement for sale relied on by the plaintiff has been executed by her and others accordingly. Thus, the essence of the contention of the first defendant is that the agreement for sale relied on by the plaintiff was not an agreement intended to be acted upon.

4. The trial court accepted the case of the plaintiff and decreed the suit. The first defendant challenged the decision of the trial court in appeal. In appeal, the appellate court though found that Ext.A1 is a document executed by the

defendants, vacated the decree passed by the trial court in so far as the specific performance is concerned. Instead, the appellate court granted to the plaintiff a decree for realization of the advance sale consideration. The plaintiff who is aggrieved by the decision of the appellate court has thus come up in this second appeal.

5. Heard the learned counsel for the appellant as also the learned counsel for the first respondent/first defendant.

6. As noticed above, the appellate court also found that Ext.A1 agreement relied on by the plaintiff is an agreement for sale executed by defendants 1 to 4 in favour of the plaintiff. The view taken by the appellate court for declining the decree for specific performance sought by the plaintiff is that the trial court has not exercised its discretion to order specific performance correctly as provided for under Section 20 of the Specific Relief Act. After having found that the trial court has not correctly exercised the discretion to order specific performance, the appellate court proceeded to consider the facts of the case as available on record to decide the issue as to whether the plaintiff is entitled to a decree for specific

performance as claimed by him. It was noticed by the appellate court that the suit property is a property having an extent of 2.5 acres and that the same was agreed to be sold by the defendants to the plaintiff for a meagre amount of Rs.1,10,000/-. The appellate court also noticed that the plaintiff is none other than the son-in-law of the first defendant who helped her financially not only to settle her liability to the fifth defendant but also for the marriage of the second defendant. The inference made by the appellate court from the circumstances of the case was that the first defendant must have agreed to sell the property to the plaintiff as she had no other option to settle the financial obligations towards him. It is in the said view of the matter, the appellate court held that it is not a fit case where a decree for specific performance is to be granted. I do not find any reason to interfere with the decision of the appellate court. Section 20 of the Specific Relief Act categorically provides that where the terms of the contract or the conduct of parties at the time of entering into the contract or other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the

plaintiff an unfair advantage over the defendant, the court shall not decree specific performance. From the facts and circumstances stated above, it cannot be said that the appellate court went wrong in holding that this is not a fit case to order a decree for specific performance. On the facts of this case, it is evident that the contract conferred on the plaintiff an unfair advantage over the defendants.

7. The learned counsel for the appellant, relying on the decision of the Apex Court in **Prakash Chandra v. Narayan** [(2012) 5 SCC 403], contended that the defendants have not raised a specific defence as to the hardship caused to them on account of the agreement and that the question of hardship was decided by the appellate court without framing an issue to that effect. The question of hardship is considered in suits for specific performance in the light of the provision contained in Section 20 of the Specific Relief Act. It has been held, time and again, by the Apex Court that the courts have a duty in all cases of specific performance to consider and decide the issue as to whether on the facts of the case, a decree for specific performance can be granted or not. As far as the

present case is concerned, I find that the appellate court has framed a separate issue for the said purpose, which reads thus :

“Whether the plaintiff is entitled to get assignment of the plaint schedule properties and if not, to get return of advance amount?”

According to me, issue No.3 framed by the appellate court is the issue relating to the hardship and therefore, there is no substance in the argument raised based on the above judgment of the Apex Court. 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.

tgs

(true copy)