

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

FRIDAY, THE 12TH DAY OF NOVEMBER 2021/21ST KARTHIKA, 1943

RSA NO.733 OF 2021

AGAINST THE JUDGMENT AND DECREE DTD.9.8.2021 IN
A.S.No.35/2016 OF SUB COURT, SULTHANBATHERY ARISING FROM
THE JUDGMENT AND DECREE DTD.25.6.2016 IN O.S.No.60/2015
OF MUNSIFF COURT, KALPETTA

APPELLANTS/APPELLANTS/DEFENDANTS 3 & 4:

- 1 AMINA.K.P.,
AGED 38 YEARS,
D/O.ABDU RAHIMAN, KAVUNGATHODI HOUSE, CHARITY,
OLD VYTHIRI, KUNNATHIDAVAKA VILLAGE,
VYTHIRI TALUK, WAYANAD DISTRICT.
- 2 ABDURAHIMAN,
AGED 63 YEARS,
KAVUNGATHODI HOUSE, CHARITY, OLD VYTHIRI,
KUNNATHIDAVAKA VILLAGE, VYTHIRI TALUK,
WAYANAD DISTRICT.

BY ADV SRI.RAKESH.K.

RESPONDENTS/RESPONDENTS 1, 3, 4 & 5/PLAINTIFF, 1st

DEFENDANT & LEGAL HEIRS OF THE 2nd DEFENDANT:

- 1 C.MOHAMMED BAVA,
AGED 64 YEARS,
S/O.MOIDEEN KUTTY, SAKREENA MANZIL,
KRIPA HOSPITAL ROAD, KALPETTA POST, PIN-673121.
- 2 PUTHAN VEETIL SHARAFUDHEEN,
AGED 42 YEARS,
S/O. MUHAMMED, PUTHAN VEETIL HOUSE,
KALPETTA VILLAGE, MUNDERI, VYTHIRI TALUK,
WAYANAD DISTRICT, PIN-673121.
- 3 THAJUNNISA,
W/O.ARAFATH, THARAMMEL PARAMBIL HOUSE, MUNDERI,
KALPETTA P.O. AND AMSOM,
WAYANAD DISTRICT, PIN-673121.

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4 SARJILA,
W/O.FAJIS,
VALIYAPARAMBATH HOUSE,
MEPPADAYIL ROAD, VADAKARA P.O. AND AMSOM,
KOZHIKODE DISTRICT, PIN-673101.

BY ADV SMT.M.B.SHYNI

THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 11.11.2021, THE COURT ON 12.11.2021
DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the judgment and decree dated 9.8.2021 in A.S.No.35/2016 of the Sub Court, Sulthanbathery (hereinafter referred to as 'the first appellate court') arising out of the judgment and decree dated 25.6.2016 in O.S.No.60/2015 on the file of the Munsiff's court, Kalpetta (hereinafter referred to as 'the trial court').

2. The appellants are the defendants 3 and 4 in the original suit. The suit was filed by the plaintiff/1st respondent seeking for recovery of possession and injunction relying on Ext.A1 jenmam assignment deed dated 30.10.2014. The parties are hereinafter referred to as referred in the original suit unless otherwise stated.

3. The gist of pleading in the plaint is that the plaint schedule property was purchased by the plaintiff/1st respondent by virtue of Ext.A1 assignment deed and he

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had been in possession and enjoyment of the property. The plaintiff purchased the property from the 1st defendant and the deceased 2nd defendant whose legal heirs are the respondents 3 and 4. The defendants 3 and 4 wrongfully trespassed into the plaint schedule property and the defendants 1 and 2 colluded with the defendants 3 and 4 and filed an original petition before the Family Court, Kalpetta to set aside the sale deed in favour of the 1st respondent. Hence, the suit was filed for recovery of possession and enjoyment on the strength of Ext.A1 assignment deed.

4. The suit was resisted by the defendants 3 and 4. However, the defendants 1 and 2 did not participate in the trial. They were set exparte. It is the contention of the defendants 3 and 4 that the transfer of property is malafide and intended to defeat the right of the defendants 3 and 4. It is also contended that the property

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is unidentifiable and was purchased utilizing the amount gifted by the parents of the 3rd defendant at the time of her marriage with the 2nd respondent. The 3rd defendant filed M.C.No.68/2014 before the CJM, Kalpetta and it is after receiving notice in the above M.C. the 2nd respondent and his deceased mother, 3rd defendant executed sale deed in favour of the 1st respondent.

5. The trial court framed issues and during the trial, PWs.1 to 3 were examined and marked Exts.A1 to A14 on the side of the plaintiff. DW1 was examined on the side of the defendants and marked Exts.B1 to B20 series. Exts.C1 and C2 were also marked.

6. On evaluation of the evidence, the learned Munsiff decreed the suit directing the defendants 3 and 4 to surrender the vacant possession of the plaint B schedule property to the plaintiff. Consequential permanent prohibitory injunction restraining the

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defendants from trespassing into the plaint C schedule property and from causing any damage to the plaint B and C schedule properties was also granted.

7. The judgment and decree was challenged before the first appellate court. The first appellate court dismissed the appeal confirming the judgment and decree of the trial court.

8. Heard Sri.Rakesh.K., the learned counsel for the appellants.

9. According to the learned counsel for the appellants, the 1st appellant is the legally wedded wife of the 1st defendant and she has got an inherent right to live in the shared household and such a right cannot be defeated by deceitful transfer of property. According to the learned counsel, the transfer is effected after filing of M.C. as per the provisions of the Protection of Women from Domestic Violence Act and the parties to the sale deed

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miserably failed to prove that there was passing of consideration in connection with the sale. The learned counsel contended that the constitutional right of a wife prevails upon the civil right if any conveyed in favour of the assignee of the land.

10. As per Section 2(s) of the Domestic Violence Act, 2005, a shared household is where the aggrieved person or a woman lives in a domestic relationship, either singly or along with a man against whom the complaint is filed. It may also imply a household where a woman has lived in a domestic relationship but has been thrown out. This may include all types of situations whether the household is owned by the husband or it is a rented accommodation. It also includes a house either owned jointly by the aggrieved person and the respondent or both may have jointly or singly, any right, title or interest. The Domestic Violence Act recognizes a woman's right to

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reside in a shared household. Needless to say, a woman cannot be thrown out of such a household except in accordance with the procedure established by law. In case she is thrown out, she is at liberty to make an application before the court concerned and she can be brought back again after obtaining the order from the court.

11. A woman to claim the protection of right in shared household has to establish that the relationship with the opposite party is domestic relationship and that the house in respect of which she seeks to enforce the right is shared household. An aggrieved woman, in order to file a complaint for domestic violence may approach the police station and register the complaint or file a complaint to a protection officer or service provider or directly approach the jurisdictional Magistrate. Section 27 of the Domestic Violence Act provides that a First Class Judicial Magistrate or Metropolitan court shall be

competent to grant a protection order and other orders under the Domestic Violence Act.

12. In the case on hand, the plaintiff seeks recovery of vacant possession of the plaint B schedule property from the defendants 3 and 4. It is based on valid title deed in his favour. This cannot be resisted on the ground that the 3rd defendant filed M.C.No.68/2014 before the CJM, Kalpetta and it is after receiving notice in the M.C., the 2nd respondent and his deceased mother 3rd defendant executed the sale deed in favour of the plaintiff dishonestly. Based on the strength of title, the trial court decreed the suit which was confirmed in appeal. However, the right of the 3rd defendant, if any, can be invoked in accordance with the provisions of the Domestic Violence Act. Such a right cannot be enforced through the civil court. No substantial questions of law arise for consideration in this appeal. Hence, the second appeal is

liable to be dismissed without prejudice to the rights of the appellants to invoke the provisions under the Domestic Violence Act in accordance with law.

Resultantly, this appeal is dismissed without prejudice to the rights and liberties of the appellants to invoke the provisions under the Domestic Violence Act in accordance with law. This appeal is devoid of merit and is dismissed accordingly. There will be no order as to costs. Pending applications, if any, stand closed.

Sd/-

**N.ANIL KUMAR,
JUDGE**

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