

IN THE COURT OF THE MUNSIF, HARIPAD**Present: Sri. Manish.D.A., Munsiff**Monday 5th day of October, 2020/13th Aswinam 1942.**OS. 51/2016**

(Filed on 15.02.2016)

Plaintiff: Karthikeyan, aged 46 years,
S/o Gopalan, Karthikeyam,
Thulamparampu Thekkummuri,
Haripad village,

(By Adv. Sri. G. Anilkumar)

Defendant: Asokan, aged 59 years,
S/o Anirudhan,
Kochupochayil,
Thottappally P.O.,
Karuvatta North,
Karuvatta village.

(By Advs. N. Kumaran Potty & Adv. S. Sanu)

This suit having been finally heard on 24.09.2020 and the court on 05.10.2020 delivered the following:

J U D G M E N T

Suit for declaration and permanent prohibitory injunction.

2. Averments in the plaint, in brief, were as follows:

The plaint schedule property was in the possession and enjoyment of the plaintiff. The plaint schedule property originally belonged to the defendant, who had earlier sold it to one Padmakaran by way of sale deed No.1345/1998. At the time of execution of the sale deed, the building on the plaint schedule property was in existence. There was no specific mention in sale deed No.1345/1998 about the building on the property. Document No.1345/1998 was a legally executed sale deed and thus Padmakaran got ownership over the plaint schedule property and the building. After execution of the sale deed, the defendant and his family vacated

from the plaint schedule property and shifted their residence to a rented house. Padmakaran had taken possession of the plaint schedule property and the building.

3. The plaint schedule property was kept locked by Padmakaran for a long time. In the year 2011, the defendant and his family again started to reside in the building situated on the plaint schedule property as per the permission granted by Padmakaran. While so, sale deed No.1684/2012 was executed by Padmakaran in favour of the plaintiff. Thus the plaintiff got title and possession over the plaint schedule property and the building situated thereon.

4. After purchase of the plaint schedule property, plaintiff demanded the defendant to vacate the building. Defendant had requested the plaintiff to allow him to continue in the building till he arranged an alternate residence. As permitted by the plaintiff, the defendant continued to reside in the building on the plaint schedule property. Such permission was granted on the assurance made by the defendant that he would vacate the building within a short time. Apart from his right of residence in the building, the defendant has no other right over the plaint schedule property. Recently, the defendant raised claim over the plaint schedule property and the building with an intention to delay handing over vacant possession to the plaintiff. The defendant has obstructed the plaintiff from entering the plaint schedule property and also from taking the yield. The defendant has filed O.S.No.12/2016 against the plaintiff and his predecessor Padmakaran. The conduct of the defendant had made the plaintiff to terminate the permission granted to the defendant. Such termination of permission was already informed to the defendant through a legal notice dated 19.01.2016. Now the defendant is an unauthorised

occupant of the plaint schedule property. The occupation by the defendant was illegal and without consent of the plaintiff, who was the true owner of the property. On several occasions, the plaintiff demanded the defendant to vacate from the plaint schedule property, but the defendant was not ready to accede to the genuine demand of the plaintiff. It was highly necessary to evict the defendant from the building on the plaint schedule property. The plaintiff got reliable knowledge that the defendant had made hasty preparations to damage the residential building and to commit waste, so as to wreak vengeance against the plaintiff. Hence this suit was filed with a prayer to eject the defendant from the building on the plaint schedule property and to give vacant possession to the plaintiff. It was also prayed to restrain the defendant and his men by way of a decree of permanent prohibitory injunction from causing any damages to the residential building, committing waste or mischief on the plaint schedule property and also from obstructing the plaintiff to enter the plaint schedule property and taking yield there from.

5. The defendant entered appearance and filed written statement contending as follows:

The suit was not maintainable either in law or on facts and was liable to be dismissed in limine. The defendant had filed O.S.No.12/2016 against the plaintiff as the 2nd defendant and Padmakaran as the 1st defendant, based on the subject matter in issue in the present suit. OS No. 12/2016 is still pending. As such, the present suit is hit by the legal principle of res judicata.

6. An extent of 8.09 ares of property comprised in survey No.3634 (resurvey No.390/7) of Karuvatta Village was purchased by the defendant as per

sale deed No.3613/1989 of Haripad, Sub Registrar Office. Another property having an extent of 16.18 ares comprised in survey No.3633 (resurvey No.390/8) of the same village was purchased by the defendant as per sale deed No.1853/1992 of Haripad, Sub Registrar Office. Property measuring 17.70 ares comprised in survey No.4343/2 (resurvey No.413/7) of Karuvatta Village was purchased by the defendant as per sale deed No.433/1993 of Haripad, Sub Registrar Office. The defendant effected mutation in his favour and was remitting tax. The above said three properties were lying as a compact plot which was described as the plaint schedule property.

7. The north-eastern portion of the plaint schedule property was developed by the defendant and he constructed a residential building. Construction was completed in the year 1993. The defendant, his wife and two children started living in the said house from 1993 onwards. Building number was allotted by Karuvatta Grama Panchayat and building tax was also being paid for the said house. Now the residential building was numbered by Karuvatta Grama Panchayat as XV/220. After construction of the residential building the defendant developed a portion of the plaint schedule property on the southern side and constructed a pump house for the purpose of agriculture. The said pump house was numbered by Karuvatta Grama Panchayat as XV/221. During the period 1994-1999, the defendant was engaged in contract works for construction of bunds, etc. in the paddy field of Purakkad area. For executing contract works, the defendant borrowed money from Padmakaran on different occasions, totaling ₹5 lakhs. Padmakaran demanded a signed blank cheque of the defendant and also a signed

stamp paper towards security for repayment of the money. The defendant had regularly paid the monthly interest to Padmakaran during the initial period. He had also paid ₹1.5 lakhs to Padmakaran. While so, the defendant sustained heavy loss in his contract works and was unable to make payment of monthly interest for the balance amount of ₹3.5 lakhs. Thereafter, Padmakaran started troubling the defendant and a suggestion was put forth for executing a sale deed in respect of the plaint schedule property in favour of Padmakaran as a security for repayment of the outstanding amount of ₹6.8 lakhs. The understanding was that on repayment of the amount to Padmakaran he would reconvey the plaint schedule property to the defendant. As insisted by Padmakaran and his men, the defendant was compelled to execute sale deed No.1345/1998 of Haripad, Sub Registrar Office on 29..05..1998. On 01..06..1998, Padmakaran executed a consent letter on stamp paper in the presence of witnesses consenting to execute the sale deed in the name of the defendant on repayment of ₹6.8 lakhs. The sale deed No.1345/1998 was executed only as name sake towards assurance for the repayment of the loan due to Padmakaran. The consideration shown in the sale deed was a meager consideration of ₹20,000/- and a sale transaction has not taken place. Possession was not handed over to Padmakaran. The defendant was in absolute possession and enjoyment of the plaint schedule property even after execution of the sale deed. He is still residing in the house with his family and is continuing his cultivation on the plaint schedule property. The non mentioning of the building in the sale deed itself showed that it was executed only for name sake. The defendant and his family were in possession without any interference by Padmakaran. During the year 2000, the

defendant arranged ₹6.8 lakhs and requested Padmakaran to execute sale deed in his favour. Instead of acting as per the earlier agreement, Padmakaran avoided execution of the sale deed in favour of the defendant. On 19.12.2015, the defendant got information that the plaintiff had submitted an application before the Secretary, Karuvatta Grama Panchayat for changing the ownership of the building Nos.220 and 221/XV of Karuvatta Grama Panchayat. The defendant has been remitting tax for the said building. The plaintiff had submitted a fake consent letter in the name of the defendant by forging the signature. An application was submitted by the defendant before the Secretary, Karuvatta Grama Panchayat with a request not to consider the application submitted by the plaintiff. On 31.12.2015, a written objection was also submitted by the defendant before the Panchayat regarding change of ownership. On enquiry, the defendant came to know that Padmakaran had executed sale deed No.1684/2012 of Haripad, Sub Registrar Office with respect to the plaint schedule property in favour of the plaintiff. Padmakaran had no valid title over the property to transfer it in favour of the plaintiff. Sale deed No.1345/1998 was a sham document and the sale deed No.1684/2012 was void ab initio. The defendant was entitled to get reconveyed the plaint schedule property in his favour from Padmakaran on payment of ₹6.8 lakhs. Sale deed No.1684/2012 was liable to be cancelled and set aside. The defendant got reliable information that the plaintiff was trying to trespass into the plaint schedule property to forcefully evict the defendant and his family. In the above circumstances, the defendant had filed O.S.No.12/2016 before the Munsiff Court to cancel and set aside sale deed No.1684/2012 of Haripad, Sub Registrar Office and

to direct Padmakaran to accept ₹6.8 lakhs from him and to reconvey the plaint schedule property. In O.S.No.12/2016 an order of injunction was passed on I.A.No.64/2016 to restrain Padmakaran and the present plaintiff from committing any waste on the plaint schedule property or creating documents until further orders. On 19.01.2016 the plaintiff issued a lawyer's notice to the defendant directing him to vacate from the plaint schedule property. A detailed reply was issued by the defendant to the plaintiff. The present suit was filed only as a counter blast to O.S.No.12/2016. The defendant would not cause any damage to the building on the plaint schedule property since it belonged to him. The plaintiff has no right to enter the plaint schedule property or to take yield. The plaintiff has no cause of action to file the suit. The plaintiff was not entitled to get any of the reliefs in the suit. The defendant has prayed for dismissal of the suit with compensatory costs.

8. On the basis of the pleadings and the documents on record, the issues already framed were recasted as under:

1. Whether the suit is properly valued for the purpose of court fee?
2. Whether the suit is barred by res judicata?
3. Whether the plaintiff is entitled for eviction and recovery of possession as prayed for?
4. Whether the plaintiff is entitled for a decree of permanent prohibitory injunction as prayed for?
5. What is the order as to costs?

9. From the side of the plaintiff, PW1 to PW4 were examined and Exts.A1 to A11 were marked. From the side of the defendant, DW1 to DW9 were examined and Exts.B1 to B19 were marked. Exts.C1, C1(a) and X1 to X8 were also marked.

10. Heard the learned counsel for the plaintiff and defendant.

11. **Issue No.1** :- The suit was filed by the plaintiff claiming his title over the plaint schedule property on the basis of sale deed No.1684/2012, which was marked as Ext.A1. The plaintiff purchased the property from one Padmakaran by way of Ext.A1. The above said Padmakaran had purchased the plaint schedule property from the defendant by way of sale deed No.1345/1998, which was marked as Ext.A2. It was the case of the plaintiff that the defendant was in occupation of the plaint schedule property on the basis of the permission given by his predecessor in interest. At the time of execution of Ext.A1 sale deed also, the defendant was in occupation of the building on the plaint schedule property. As per the pleadings there was no landlord – tenant relationship between the plaintiff and defendant. Recovery of possession was sought for on the strength of title. The relief of recovery of possession after evicting the defendant was valued as per Section 30 of the Kerala Court Fees and Suit Valuation Act, which deals with suits for possession of immovable property not otherwise provided for. The court fees was computed by valuing the plaint schedule property and the building upto ₹25,000/- and for which the court fee was paid under the said Section. The defendant in his written statement has not taken any specific pleading that the suit was not properly valued. Considering the nature of pleadings and the relief claimed for recovery of possession after evicting the defendant it was held that the suit was properly valued for the purpose of court fee and hence this issue is found in favour of the plaintiff.

12. **Issue Nos.2 and 3** :- PW1 was the plaintiff, who filed affidavit in lieu of examination in chief in accordance with the averments in the plaint. Ext.A1 was

the original sale deed No.1684/2012 by which PW1 purchased the plaint schedule property from one Padmakaran. Padmakaran had purchased the said property by way of sale deed No.1345/1998 from the defendant. Original sale deed No.1345/1998 was produced and marked as Ext.A2. PW1 deposed that as per Ext.A2, Padmakaran obtained absolute ownership and possession over the plaint schedule property and the building constructed thereon. After execution of Ext.A2, the defendant and his family shifted their residence to a rented house and then Padmakaran had taken possession of the plaint schedule property. The building on the plaint schedule property was kept locked for a long time. During the year 2011, the defendant requested Padmakaran to permit him to occupy the building on the plaint schedule property. On the basis of the permission given by Padmakaran, the defendant and his family again started residing in the building situated on the plaint schedule property. It was thereafter Padmakaran had executed Ext.A1 in favour of the plaintiff. PW1 stated that even though he demanded the defendant to vacate from the plaint schedule property, he requested to continue there till he arranged an alternate accommodation. It was permitted by the plaintiff also. In order to prove his possession, the plaintiff has produced the copy of tax receipt dated 13..10..2015, which was marked as Ext.A3. Ext.A4 was the tax receipt dated 10..05..2017 issued from Village Office, Karuvatta. Ext.A7 was the tax receipt dated 30..12..2019 issued from Village Office, Karuvatta in favour of the plaintiff. PW1 has produced a possession certificate dated 12..06..2017 issued from Village Office, Karuvatta stating that he was in possession of 42.20 ares of property in resurvey No.390/7, 390/8 and 413/7 of Karuvatta Village. The said possession certificate was marked as

Ext.A8. Ext.A9 was a receipt dated 10..05..2018 issued to the plaintiff from the Kerala Farmers' Welfare Board, Thrissur. PW1 deposed that Ext.A9 was issued in his favour with respect to the agricultural activities conducted on the plaint schedule property.

13. It was the plaintiff's case that the defendant started raising unnecessary claims with respect to the plaint schedule property and he prevented the plaintiff from entering the property and also from taking yield. PW1 has stated about O.S.No.12/2016 filed by the defendant against him and Padmakaran. PW1 categorically deposed that thereafter he had terminated the permission given to the defendant to occupy the plaint schedule property and then issued a legal notice dated 19..01..2016 to the defendant demanding vacant possession of the plaint schedule property. Ext.A5 was the office copy of the notice dated 19..01..2016. The postal receipt was marked as Ext.A6. PW1 further stated that the defendant had damaged the building situated on the plaint schedule property and also committed waste thereon.

14. PW2 was the advocate commissioner, who visited the plaint schedule property and prepared the report, mahazar and rough sketch, which were marked as Exts.C1 and C1(a). The lie and nature of the plaint schedule property and its boundaries were reported in Ext.C1. Yielding coconut trees were standing on the plaint schedule property. A shed was found on the south-eastern corner of the plaint schedule property. PW2 has reported the existence of a residential house facing towards east on the plaint schedule property. It was stated in Ext.C1 that the defendant along with his family is residing in that building.

15. PW3 was the Secretary, Karuvatta Grama Panchayat, who was summoned to produce the application submitted by the plaintiff to change the ownership of plaint schedule property. Ext.X1 was the application dated 12..06..2017 submitted by the plaintiff to PW3 for change of ownership. She deposed that the applicant had to produce the consent letter of the earlier owner, tax receipt, possession certificate and the original title deed along with its copy for change of ownership. The plaintiff could not produce the consent letter of the earlier owner before PW3. The plaintiff has produced an order dated 21..07..2018 in CMA 30/2018 of the Hon'ble Additional District Court, Mavelikara before PW3. She further stated that ownership was not changed in favour of the plaintiff due to pendency of the case before Hon'ble District Court. During the examination of PW3, a letter dated 17..06..2017 issued from Karuvatta Village Panchayat to the plaintiff was shown to the witness. She identified the letter as a reply issued to the plaintiff under the Right to Information Act. The said letter dated 17..06..2017 was marked as Ext.A10. In Ext.A10 there was mention about a case before the Hon'ble High Court of Kerala and it was also stated that only after receipt of orders from the Hon'ble High Court, steps would be taken in Ext.X1 application submitted by the plaintiff. However, the details of the parties or the nature of proceedings before the Hon'ble High Court were not mentioned in Ext.A10. Ext.A11 was the receipt issued from the panchayat to the plaintiff after receiving Ext.X1 application for change of ownership. PW3 was not aware whether there was any order in favour of the defendant restraining change of ownership to the plaintiff. She then stated that documents were available at the panchayat regarding the objection filed by

defendant for change of ownership of the building.

16. PW4 was a witness of the plaintiff, who deposed that the plaintiff and defendant were known to him. PW4 had gone to the plaint schedule property along with the plaintiff and saw the plaintiff taking yield from the plaint schedule property. He further stated that during December 2012, he went along with the plaintiff to the plaint schedule property for plucking coconuts.

17. PW1 was cross examined in detail by the learned counsel for the defendant. He deposed that the defendant and the plaint schedule property were known to him from the year 2011 onwards. He stated the lie and nature of the plaint schedule property and also about the building constructed thereon. According to PW1, a residential building and a shed were situated on the plaint schedule property. There was electricity connection for the building, but the earlier owner was shown as the consumer of the electric connection. PW1 was not aware about any telephone connection in the building situated on the plaint schedule property. During cross examination, he stated that since the defendant had not allowed him to enter the building, he was not aware about the details of telephone connection. He was also not aware whether separate electricity and telephone connections were available in the shed on the plaint schedule property. According to PW1, the plaint schedule property was in ward No.VI of Karuvatta Panchayat during the year 2012. He specifically stated that at the time of execution of Ext.A1, the ownership of the building in the plaint schedule property was in the name of the defendant as per panchayat records. He was aware that the number of the residential building was 221. PW1 stated about the application given by him to the panchayat for change of

ownership, but it was objected by the defendant. So he could not change the ownership in his name. It was in the year 2017, he had given application to the panchayat. He further stated about a case filed by the defendant against him and also the legal notice issued by the plaintiff to the defendant. PW1 could not specifically state the date from which the defendant had not allowed him to enter the plaint schedule property. It was also stated by PW1 that at the time of purchase of the plaint schedule property by him, the defendant was residing in the house on the plaint schedule property. According to PW1, his vendor had informed him that the defendant was his relative and he allowed him to reside in the house since the year 2011. He was not aware about any rent deed executed by the defendant in favour of Padmakaran. PW1 has also not demanded for execution of any rent deed in his favour. He then stated that the electricity connection was in the name of the wife of the defendant. He had not enquired the reason why the connection was not changed in the name of Padmakaran. When he submitted an application before the panchayat for change of ownership, PW1 came to know that the two buildings situated on the plaint schedule property were in the name of the defendant. PW1 was not aware about the number of the shed situated on the plaint schedule property. When a suggestion was put by the learned counsel for the defendant that the defendant had remitted tax for the plaint schedule property during the year 2019, PW1 replied that he was not aware. PW1 stated about a complaint filed before the Magistrate Court against the defendant. The certified copy of private complaint dated 17.06.2017 was confronted to PW1 during his examination and it was marked as Ext.B1. Ext.B2 was the certified copy of FIR in crime No.1514/2017

of Haripad Police Station in which the plaintiff was the defacto complainant. PW1 was not aware about the outcome of investigation by police. Ext.B3 was the certified copy of another private complaint filed by the plaintiff against the defendant in the year 2016 before the Magistrate Court, Haripad. PW1 during his cross examination further stated about the exparte decree passed in favour of him in this suit and the execution petition filed by him for getting recovery of possession. The learned defence counsel has put another suggestion to PW1 that even prior to the execution of Ext.A2, the defendant was residing in the house situated on the plaint schedule property and was in enjoyment and possession of the same. PW1 replied that he was not aware whether the defendant was in possession before execution of sale deed by Padmakaran in his favour.

18. During cross examination of PW3, a building tax receipt dated 06..03..2004 produced by the defendant was shown to the witness. He stated that it was the receipt issued in favour of the defendant when he remitted tax for the building bearing No.VI/515B of Karuvatta Panchayat. The said receipt was marked as Ext.B4. Ext.B5 was another tax receipt dated 27..02..2003 issued in favour of the defendant while remitting tax for the building No.515/A and 515/B of the said Village. Ext.B6 was a certificate dated 31..03..1998 issued by the Secretary, Karuvatta Grama Panchayat stating that as per the assessment register of building for the year 1993-1994 to 1997-1998, the defendant was the owner of the building bearing No.VI/515A. During re-examination of PW3, another document dated 09..03..2018 was shown to the witness. She replied that it was the application submitted by the plaintiff on 09..03..2018 for change of ownership of the building

on the plaint schedule property in his favour. The said letter was marked as Ext.X2.

19. DW1 was the defendant in the suit, who also filed affidavit in lieu of examination in chief. According to DW1, he has been residing in the house bearing No.XV/220 of Karuvatta Panchayat since the year 1998. DW1 has produced the photocopy of a letter dated 29..05..2020 issued by the Deputy General Manager, BSNL, Alappuzha under the Right to Information Act, stating that a telephone was working at the residence of the defendant with effect from 16..12..2000. The said letter was marked as Ext.B7. Ext.B8 was the certified copy of refer charge in crime No.1514/2017 of Haripad Police Station in which the defendant was the accused. Ext.B9 was the certified copy of the refer report in another crime bearing No.694/2016 registered by Haripad Police against the defendant. DW1 further submitted that he had applied for electricity connection in the building having number XV/221 on the plaint schedule property. The provisional invoice card issued from KSEB in favour of the defendant in the year 2000 was produced and marked as Ext.B10. He further stated that the electricity connection in the building bearing No.XV/220 was in the name of his wife. DW1 has deposed about O.S.No.12/2016 before the Munsiff Court against the plaintiff and Padmakaran. Certified copy of the plaint in the said suit was produced and marked as Ext.B11. Ext.B12 was the certified copy of the written statement filed by Padmakaran in the said suit. He also stated about the exparte decree passed in the present suit against him on 06..01..2018 and the Execution Petition filed by the plaintiff. Ext.B13 was the copy of the execution petition received by defendant from the court. DW1 has also produced the copy of the legal notice dated 19..01..2016 received by him from the

plaintiff and its reply dated 30..01..2016 given by him through his advocate. The notice and its reply were marked as Exts.B15 and B14 respectively. (Ext B15 notice was marked from the side of plaintiff also as Ext.A5). Ext.B16 was the original ration card of DW1 in the address 'Kochupochayil, Karuvatta'.

20. DW2 was the Panchayat Secretary, Karuvatta Grama Panchayat, who was summoned to produce the assessment register containing the details of building No.220 of ward No.XV. The electronic copy of the Assessment Register produced by the witness from the year 2013 onwards was marked as Ext.X3. Ext.X4 was the print out of the details of tax remittance from the year 2013 maintained at the panchayat. DW2 has also produced the photocopy of a register maintained at the panchayat stating that the details of tax assessed for the building and the name of assessee could be seen from it. The said document does not bear any seal or signature of the authority, competent to issue it. The defendant wanted to mark the said document as Ext.X5. Since Ext.X5 was only a photocopy, it is not admitted in evidence. DW3 deposed that the electronic document produced was digitally signed as per the existing software and no separate registers were kept at present. She stated that she could certify that the documents produced by her were true and correct. As per the records produced by DW2, it was the defendant who has remitted tax for the building bearing No.220. It was also spoken by her that as per the existing records, the defendant was stated as the owner of the building having No.220. He was also the assessee of the building bearing No.221. According to DW2, tax was being remitted since the year 2013. It was also stated that from the demand register, it could be ascertained as to who had remitted tax before the year 2013. It was also

stated that the building would be assessed in the name of the property owner. Her cross examination would reveal that she had joined as secretary during June 2020 and she had no direct knowledge about the contents of Exts.X3 and X4. Those documents were not seen attested by anybody. The seal or signature of the Secretary was not found on Exts.X3 and X4.

21. DW3 was the Sub Inspector of Police, Haripad Police Station, who was summoned to produce the certified copies of the refer report in crime Nos.694/2016 and 1514/2017 of that police station. The certified copy of refer report in Cr. No. 694/2016 was marked as Ext.X6. It is observed that Ext.X6 was the same document, which was already marked from the side of the defendant as Ext.B9. DW3 has also produced the certified copy of refer report in crime No.1514/2017 and the defendant wanted to mark the said document as Ext.X7. (It was already marked as Ext.B8 from the side of the defendant). Exts.X6 and X7 were marked subject to the objection raised by the learned counsel for the plaintiff that those could not be marked through DW3 since he was not the investigating officer. However those were public documents. DW3 has also submitted that he was not the investigating officer in the above said cases.

22. DW4 was the Assistant Engineer, KSEB Electrical Section, Karuvatta, who produced the system generated details of the consumer connection bearing no.1155256010444 of KSEB Section Office, Karuvatta. She stated that the said connection was in the name of one Sujatha. The document which was an electronic record, produced by DW4 was marked as Ext.X8. She further stated that there was no specific certificate appended with Ext.X8 stating that it was a computer

generated document and was true and correct. It was not admissible in evidence in view of the bar under section 65 B of the Evidence Act. She has stated about the address of the above said consumer as "Kochupachayil, Karuvatta". The electricity connection was given on 07..08..2007. It was spoken by her that ownership was required during the year 2007 for obtaining electricity connection. Sujatha is still continuing as the consumer of the above said connection. During cross examination she stated that the files pertaining to Ext.X8 were available at her office.

23. DW5 was the Junior Telecom Officer, BSNL Office, Karuvatta, who was summoned to furnish the details of the telephone connection bearing No.2492426. He deposed that the said connection was in the name of Asokan, Kochupochayil House, Karuvatta. The date of activation of the said connection was 16..12..2000. DW5 was not specifically aware about the details of the document produced by the customer at the time of obtaining the connection. DW5 has produced the computer generated details from his office, but those were not marked by the defendant through DW5.

24. DW6 was one Bhas Mohan, who deposed that his family house was near to the house of the defendant. He was aware about the construction of the house by the defendant and his residence in that house for the last more than twenty years. DW7, Viji Chacko, deposed before court that he has property near to the house of the defendant. Workers from his property would go to the canal near to the house of the defendant for cleaning purposes and also approached the house of the defendant when they required drinking water. DW7 stated that he knew the defendant even from the date when the defendant had reclaimed his land for constructing house. He

had not seen any others taking yield from the property of the defendant. DW8 was also cited by the defendant to prove his possession over the plaint schedule property. DW8 deposed that he was a neighbour of the defendant and was aware about the purchase of property by the defendant more than thirty years ago. He also stated about the construction of the house by the defendant and his residence along with his family in that house. The wife of the defendant was examined as DW9. She stated about the electricity connection applied by her to the house bearing No.XV/220 of Karuvatta Grama Panchayat. At the time of submitting application, the defendant was not in station. So it was applied in the name of DW9. She stated about the electricity bills received from KSEB in her name. Ext.B17 was a bill dated 19..10..2015 issued from KSEB in the name of DW9. Ext.B18 was another bill dated 06..04..2009 issued in her name. She has produced a receipt dated 12..11..2015 stating to be the receipt received by her from KSEB on payment of electricity charges. The said receipt was marked as Ext.B19.

25. Issue No.2 framed in the suit was whether the suit was barred by the principle of res judicata. The defendant in his written statement pleaded about O.S.No.12/2016 filed by him to set aside sale deed No.1684/2012 (Ext.A1 herein) and to direct Padmakaran to execute a deed of reconveyance regarding the plaint schedule property. Ext.B11 was the certified copy of the plaint in that suit and Ext.B12 was the written statement filed by 1st defendant in O.S.No.12/2016. The plaintiff or defendant has not adduced any evidence regarding the outcome of O.S.No.12/2016. The defendant has not produced the copy of judgment or decree in O.S.No.12/2016 to prove that the subject matter in dispute in that suit was already

decided by a competent Court. As per Section 11 of Code of Civil Procedure, no court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they claim or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court. There was no evidence on record to prove that any such issue in O.S.No.12/2016 was heard and finally decided by a competent court. In the absence of such evidence, it is held that the present suit is not barred by res judicata. Hence issue No.2 is answered in favour of the plaintiff.

26. In view of the elaborate discussion of facts and evidence above, it is not necessary to consider the issue of eviction and recovery of possession under separate heading. DW1 was also subjected to lengthy cross examination by the learned counsel for the plaintiff. He stated during cross examination that he had executed a document as security in favour of his relative for the money borrowed from him. According to DW1, the said document was not a sale deed. He stated that even though the document was styled as a sale deed, there was no intention for DW1 to execute it as a sale deed, but was only a security document. The purchaser named Padmakaran had informed him that only if recitals were incorporated in the document regarding transfer of ownership and possession, then only it could be registered at the Sub Registrar Office. DW1 specifically stated that he had not handed over possession to the purchaser and also not received any amount as sale consideration. He further stated about another agreement executed between him

and Padmakaran in a stamp paper for reconveyance of the property. The said document was not produced by DW1 or marked in evidence. DW1 was aware that Padmakaran had effected mutation in the revenue records and subsequently sold the property to another person. He stated about the notice received by him from the panchayat requesting to submit his objection for change of ownership in favour of the subsequent purchaser. He has also stated about the complaints given by him before the panchayat and the case filed before the Hon'ble High Court against the plaintiff. DW1 has denied the suggestion put by the plaintiff's counsel that after purchase of the property by Padmakaran, the building was lying closed and thereafter DW1 started residing there on account of the permission granted by Padmakaran. It was also stated by him that after execution of Ext.A1, the plaintiff never demanded him to vacate from the plaint schedule property. He further admitted the receipt of legal notice from the plaintiff. During cross examination also DW1 reiterated that the plaint schedule property was in his possession and enjoyment.

27. The learned counsel for the defendant submitted that the title of the plaintiff is in dispute and mere production of Exts.A3, A4, A7 tax receipts and Ext.A8 possession certificate was not sufficient to prove conclusive title. Relying on a decision of the Hon'ble Supreme Court in **Ramlal and Another v. Phagua and Others, AIR 2006 SC 623**, the learned counsel submitted that mere mutation of name in the revenue records does not confer any right, title or interest in the absence of real transactions of the property. It was also submitted that Ext.A2 was not a sale deed, but was by way of surety. It did not pass any right, title or interest

in favour of the vendor. Admittedly, Ext.A2 was a document executed on 29.05.1998 having the nomenclature as sale deed. In **Suresh C.V. v. Tobin (minor) and Another, ILR 2013 (1) Kerala 30**, the Hon'ble High Court held that, if a buyer pays price for the sale to the seller and such fact is stated in a document (whether it be in a letter or a registered document), it constitutes only a 'statement of fact' incorporated in the document. By mere production of the document, all what may be proved is that the document contains a 'statement of fact' that the buyer paid price for sale to the seller, but, whether such payment was actually made or not will not be proved by such production or marking. The fact that there was payment of price has to be proved by oral evidence, going by Section 3 and Section 59 read with Section 61 and Section 62 of Evidence Act. The recitals in a document were not substantive evidence relating to a disputed fact. A disputed fact cannot be resolved by merely interpreting the recitals in the document, in the absence of oral evidence on such facts. The Hon'ble High Court further held that there is no bar either under Section 91 or Section 92 of Evidence Act to adduce oral evidence to prove payment of price for sale or the very existence of sale. In **Kavukutty and Another v. Baby and Others, ILR 2016 (1) Kerala 92**, the Hon'ble High Court held that, normally the ownership and title to the property will pass to the purchaser on registration of the sale deed. The same, however, is not an invariable rule. The real test is the intention of the parties. In order to constitute a sale, the parties must intend to transfer the ownership of the property and to pay the price either in praesenti or in futuro. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer. In case of disputes, the intention is to

be gathered from the recitals in the sale deed, conduct of parties and the evidence on record.

28. It was the specific case of the defendant that the transaction between him and the prior owner of the plaintiff was a financial transaction and Ext.A2 was never intended to be executed as a sale deed for transferring ownership and possession. The learned counsel for the defendant further relied on a decision of the Hon'ble High Court of Kerala in **George and Another v. Annakutty and Others**, **ILR 2017 (4) Kerala 839** and argued that when the transaction between the parties was on some other agreement not recorded in the document, oral evidence is admissible to show that document executed was never intended to operate as an agreement but some other agreement altogether, not recorded in the document, was entered into between the parties. Coming to the facts of this case, Exts.A1 and A2 were registered documents. It, therefore, carries a presumption that the transaction was a genuine one. There were no recitals in Ext.A2 to the effect that the transaction was a money lending one and the parties have agreed for reconveyance after return of money by the vendor. The pleadings of the parties, it is trite, are required to be read as a whole. Ext.A2 contained stipulations as regards passing of the consideration, lawful title of the vendor, description of the property, conveyance of the right, title, interest, etc. In **R.Janakiraman v. State represented by Inspector of Police, CBI, 2006 CrI.LJ 1232**, the Hon'ble Supreme Court has held that, indisputably when a true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible. In **Vimal Chand Ghevar Chand Jain and Others v. Ramakanth Eknath Jajoo, (2009) 5 SCC 713**, the Hon'ble Supreme

Court held that right of possession over a property is a facet of title. As soon as a deed of sale is registered, the title passes to vendee. The vendor, in terms of the stipulations made in the sale deed, is bound to deliver possession of the property sold. If he does not do so, he makes him liable for damages. If the purchaser was able to prove that the deed of sale was duly executed and it was neither a sham transaction nor represented a transaction of different character, a suit for recovery of possession was maintainable. A heavy onus lay on the other side to show that apparent state of affairs was not the real state of affairs. The Hon'ble Supreme Court further observed that it was for the defendant in a case of this nature to prove his defence. A heavy burden of proof lay upon the defendant to show that the transaction was a sham one.

29. The present suit was filed by the plaintiff for a decree of recovery of possession and injunction after evicting the defendant. He has not sought for any declaration of his title. From Ext.B11, it was seen that the defendant had filed a suit as O.S.No.12/2016, challenging Ext.A2 sale deed. The present suit was filed after institution of suit by the defendant. In **Thulasidhara and Others v. Narayanappa and Others, (2019) 6 SCC 409**, the Hon'ble Supreme Court observed that the defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff. This would also include in the plea that the sale deed by which the title to the property was intended to be conveyed to the plaintiff was void or fictitious or for that matter, collusive and not intended to be acted upon. Thus the whole question would depend upon the pleadings of the parties, the nature of suit, the nature of the deed, the evidence led by the parties in the suit and other

attending circumstances.

30. PW1 himself admitted during cross examination that at the time of execution of Ext.A1, the defendant was in possession of the house on the plaint schedule property. PW1 has stated that he was not permitted to enter the house by the defendant. It was revealed in evidence that both buildings on the plaint schedule property were not assessed in the name of PW1 or his prior owner Padmakaran. The plaintiff or defendant has not taken any steps to examine Padmakaran as a witness. It was an admitted fact that even prior to the execution of Ext.A1, the defendant was in occupation of the building on the plaint schedule property. The plaintiff has not produced any property tax receipt or building tax receipt in the name of Padmakaran. It was not clear why the plaintiff had given permission to the defendant, if any, after purchase of the plaint schedule property. As per the evidence on record, there is no much acquaintance between plaintiff and the defendant. The plaintiff has no case that he had collected any license fee or premium from the defendant for his occupation. Even though the plaintiff contended that he had terminated the permission given to the defendant by way of Ext.A5 notice (same was marked as Ext.B15 also), the plaintiff has not claimed for any damages for use and occupation.

31. PW4 was cited to prove the possession of the plaintiff over the plaint schedule property. His oral evidence is not sufficient to prove that the plaintiff was in possession and enjoyment of the plaint schedule property and was taking yield without any interruption. DW6 to DW8 per contra stated about the income taken by the defendant from the plaint schedule property. It could be seen from Exts.B17 to

B19 that the electricity bill during the years 2009 and 2015 were issued in the name of DW9, the wife of the defendant. DW5 has stated about the telephone connection in the name of the defendant, which was activated in the year 2000. Even after execution of Ext.A2 in the year 1998, Padmakaran had not taken any steps to change the assessment of the building tax in his name or to change the name of the consumer with KSEB. Plaintiff had no case that Padmakaran had resided in the plaint schedule property after his purchase. There is no evidence to the effect that the residence of the defendant in the plaint schedule property was interrupted during any specified period. PW1 was not even aware about the number of trees or yielding coconut trees standing on the plaint schedule property. It was also worth to note that the details of the residential building and other building on the plaint schedule property were not stated in Exts. A1 and A2 sale deeds. Plaintiff's case that the defendant shifted his residence to another house after execution of Ext A2 and thereafter obtained possession in 2011 as permitted by Padmakaran was not believable, particularly in view of the electricity bills produced by PW9. There were admittedly litigations both civil and criminal between the parties. Refer reports were filed by police after conducting investigation against the defendant. The available evidence reveals that even after lapse of 14 years from the date of execution of Ext A2, Padmakaran had not taken any steps to transfer ownership of buildings in his favour. The available evidence is sufficient to prove that the plaintiff had not obtained actual physical possession of the plaint schedule property on the basis of Ext.A1. In **Jharkhand State Housing Board v. Didar Singh and Another, 2018 KHC 6853**, the Hon'ble Supreme Court held that a suit for mere injunction does not

lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction. In **Anathula Sudhakar v. P.Buchy Reddy (Dead) By LRs and Others, AIR 2008 SC 2033**, the Hon'ble Supreme Court held that where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. Where the plaintiff is in possession, but his title to the property is in dispute or under a cloud or where the defendant asserts title thereto and there is also a threat of dispossession, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction. In Ext.C1 report also the advocate commissioner stated about the residence of the defendant in the house on the plaint schedule property. The assessment of the shed (motor shed) on the plaint schedule property in the name of the defendant was also revealed in evidence. Oral evidence of PW1 would suggest that he could not enter the plaint schedule property for taking yield in view of the resistance by the defendant. Ext.A10 would go to show that the defendant had already approached the panchayat against change of ownership of the building in favour of the plaintiff. The defendant has discharged his burden regarding his possession over the plaint schedule property and the residential building thereon. As such, there is a cloud over the title of the plaintiff not only over the residential house but also over the plaint schedule property in toto. It is true that there is no issue

raised in the suit regarding the validity of Exts.A1 or A2 sale deeds. The plaintiff ought to have sought a declaration of his title and sought for recovery of possession and also injunction. The case of the defendant appears to be probable. The evidence on record does not entitle the plaintiff to seek eviction of the defendant from the residential house and its recovery of possession on the strength of title. Hence issue No. 3 is found against the plaintiff.

32. Issue No 4: The plaintiff has sought for a decree of permanent prohibitory injunction restraining the defendant from causing damages to the building on the plaint schedule property, committing mischief and also not to restrain the defendant from entering the building and taking yield from the property. It shows that at present the plaintiff was not taking any yield from the property. Plaint schedule description was made in such a way so as to include the residential house also. There is no evidence on record that the defendant had caused any damage to the residential building. Ext. C1 report is also silent about any such damage to the house. It was already held that the plaintiff could not prove his possession over the plaint schedule property. A finding was also arrived at on issue No.3 that the plaintiff was not entitled for recovery of possession on the strength of title. As such he is not entitled for a decree of permanent prohibitory injunction also, as prayed for. So this issue is also found against the plaintiff.

In the result,

- (i) The suit is dismissed.
- (ii) Considering the facts and circumstances, there is no order as to costs.

Dictated to the Confl. Asst., transcribed and typed by her, corrected and

pronounced by me in open court on this the 5th day of October, 2020.

**MANISH D.A.
MUNSIFF , HARIPAD**

Appendix

Exhibits for the plaintiff

A1	- dtd. 14.06.2012	-	Original sale deed No. 1684/12
A2	- dtd. 29.05.1998	-	Original sale deed No. 1345/98
A3	- dtd. 13.10.2015	-	Tax receipt
A4	- dtd. 10.05.2017	-	Tax receipt
A5	- dtd. 19.01.2016	-	Legal notice
A6	- dtd. 20.01.2016	-	Postal receipt
A7	- dtd. 30.12.2019	-	Tax receipt
A8	- dtd. 12.06.2017	-	Possession Certificate
A9	- dtd. 10.05.2018	-	Receipt of Kerala Karshaka Thozhilali Kshemanidhi Board, Thrissur
A10	- dtd. 17.06.2017	-	Letter
A11	- dtd. 18.07.2017	-	Receipt

Exhibits for the defendants

B1	- dtd. 17.06.2017	-	Certified copy of private complaint
B2	- dtd. 16.09.2017	-	FIR 1514/2017
B3	- dtd. 11.04.2016	-	Certified copy of private complaint
B4	- dtd. 06.03.2004	-	Tax receipt of Karuvatta Panchayat No.VI 515 B
B5	- dtd. 27.02.2003	-	Tax receipt
B6	- dtd. 31.03.1998	-	Certificate. No. C4. 315/97
B7	- dtd. 29.05.2020	-	Copy of letter issued by Deputy General Manager BSNL, Alappuzha
B8	- dtd. 06.11.2018	-	Final Report in Cr. No. 1514/2017
B9	- dtd. 20.07.2017	-	Final Report in Cr. No. 694/2016
B10	- dtd. 15.03.2002	-	Provisional invoice Card issued by KSEB
B11	- dtd. 08.01.2016	-	Certified copy of plaint
B12	- dtd. 07.02.2018	-	Certified copy of written statement
B13	- dtd. 29.05.2020	-	Certified copy of Execution petition
B14	- dtd. 30.01.2016	-	Notice
B15	- dtd. 19.01.2016	-	Legal notice
B16	- dtd. 12.06.2020	-	Original Ration Card
B17	- dtd. 19.10.2015	-	Demand & Disconnection notice of KSEB
B18	- dtd. 06.04.2009	-	Demand & Disconnection notice of KSEB
B19	- dtd. 12.11.2015	-	Receipt of KSEB

Court Exhibits

C1 and C1(a) dtd. 23.11.2016 - Report, Mahazar and Rough sketch prepared by Adv. K. Umesh

Witness Exhibits

X1 - dtd. 12.06.2017 - Application for change of ownership
 X2 - dtd. 09.03.2018 - Letter
 X3 - - Electronic copy of assessment Register
 X4 - - Printout of the details of tax remittance
 X5 - - Photocopy of register
 X6 - dtd. 20.07.2017 - Photocopy of refer report in Cr. No. 694/16
 X7 - dtd. 06.11.2018 - Photocopy of refer report in Cr. No. 1514/17
 X8 - dtd. 24.08.2020 - Electronic Record.

Witness for the plaintiff

PW1 - dtd. 02.06.2020 - Karthikeyan
 PW2 - dtd. 12.06.2020 - K. Umesh
 PW3 - dtd. 17.06.2020 - R. Thara
 PW4 - dtd. 18.06.2020 - P. Jayadevan

Witness for the defendants

DW1 - dtd. 25.06.2020 - Ashokan. A
 DW2 - dtd. 14.08.2020 - Nisha. N. Thayyil
 DW3 - dtd. 24.08.2020 - Rajeev
 DW4 - dtd. 28.08.2020 - Lekha
 DW5 - dtd. 24.08.2020 - Denni
 DW6 - dtd. 26.08.2020 - Bhas Mohan
 DW7 - dtd. 26.08.2020 - Viji Chacko
 DW8 - dtd. 26.08.2020 - Mohanan
 DW9 - dtd. 26.08.2020 - Sujatha

MUNSIFF