

IN THE COURT OF THE SUB JUDGE, CHENGANNUR

Present:- Smt.Veena.V.S, Sub Judge

Wednesday, the 25th September, 2024/03rd Aswinam 1946

IA No. 5/2024 in OS No.7/2024

(Filed on: 22.08.2024)

- Petitioners/Defendants 2& 3 :-**
1. George Issac, aged 67 years,
S/o. Issac, Pandisseril Veettil,
Kuttoor Muri, Kuttoor Village
Thiruvalla Taluk.
 2. Blessy George, aged 62 years,
W/o.George Issac,
Pandisseril Veettil,
Kuttoor Muri, Kuttoor Village
Thiruvalla Taluk.

(By Adv. Suresh Mathai)

- Counter petitioners :-**
1. Jijeesh Kumar.K.G, aged 37 years,
S/o. Krishnankutty,
Manappurathu Veettil,
Kulathoor .P.O,
Attipra Village,
Thiruvananthapuram Taluk,
Thiruvananthapuram District
(Plaintiff)

(By Adv.P.K.Ajithkumar)

2. Eapen George Ittiyerah,
S/o. George Ittiyerah,
Madavana Banglow,
Keezhcherimel Muri,
Chengannur Village,
Chengannur Taluk (1st Defendant)
[present address: Eapen George
Ittiyerah, S/o. George Ittiyerah,
Green Home, Dhaliyur P.O,
Near Delhi Public School,
Coimbatore Pin 641109)

(By Adv. Alen. P. Chacko)

This petition having been finally heard on 25.09.2024 and the court on the same day passed the following.

ORDER

The petition is filed under Order XXXVIII Rule 9 and Sec.151 of CPC.

Petition averments in brief are as follows:

2. The petitioner is the 2nd defendant in the above case. He filed the petition for and on behalf of the 3rd defendant who is his wife. The petition schedule property was purchased by the petitioners from the 1st defendant on 24-06-2002 by virtue of Sale Deed vide No. 1193/2002. The property is well demarcated from the adjacent properties. In the month of April 2023 the 1st

defendant told the petitioners that the survey number of 1 Are 15 Sq. Metre included in the property mentioned in Sale Deed vide No. 1193/2002 is mistakenly incorporated as 257/31 and asked to construct an exchange deed by transferring the said property in the name of the 1st defendant and the 1st defendant would transfer 1 Are 15 Sq. metre in Resurvey No. 257/1. Hence the petitioners executed a Sale Deed vide No. 832/2023 in favour of the 1st defendant and the 1st defendant executed a Sale Deed vide No. 833/2023 in favour of the petitioners. Subsequently, the suit was instituted after 11 months from the date of the execution of the said documents and attached the property of the petitioners. The petitioners purchased the said property on consideration on 24-06-2002. The agreement for sale alleged to be executed in between the plaintiff and the 1st defendant after 21 years from the date of execution of Sale Deed vide No. 1193/2002 executed by the 1st defendant in favour of the plaintiff. The subsequent sale deeds in the year 2023 was executed only for the purpose of curing the defects in the survey numbers mentioned in Sale Deed vide No. 1193/2002. Hence attachment may be lifted from the said property.

3. The plaintiff/1st respondent filed objection by contending that the petition is not maintainable either in law or on facts. The property mentioned in the Sale Deed vide No. 1193/2002 of the petitioners and the property mentioned in the plaint and attached in this case are entirely different. The petitioners purchased the property belonging to the 1st defendant as per Sale Deed vide No. 1193/2002

was mentioned as 3rd schedule in the Partition Deed vide No. 1531/1986. The boundary descriptions are also entirely different from the property mentioned in the present petition. On 13-04-2023 the petitioners purchased the property belonging to Sara Ittiyavara who acquired title over the said property as per Partition Deed vide No. 1531/1986 in which the said property is mentioned as the 4th schedule. After the death of Sara Ittiyavara the said property vested upon 1st defendant and his siblings jointly as her legal heirs. The agreement for sale mentioned in the suit relates to the property of Sara Ittiyavara mentioned as 4th schedule in the Partition Deed vide No. 1531/1986. During the existence of the contract between the plaintiff and the 1st defendant, he transferred a portion of the said property to the petitioners. If there was a mistake in mentioning the survey number in Sale Deed vide No.1193/2002, they ought to have executed a correction deed instead of exchange deed. The documents executed in the year 2023 is only for the purpose of defrauding the plaintiff. The 1st defendant renewed the agreement for sale by suppressing the sale of the portion of the property mentioned in the agreement for sale. So the said transfer in favour of the petitioners in the year 2023 is not binding on the plaintiff. The prayer in the petition is not at all allowable. Hence the petition may be dismissed.

4. From the above petition averments and contentions in the objection the following points were raised for consideration.

1. *Whether the attachment order passed in the above numbered case is liable to be lifted?*

2. *Reliefs and costs?*

5. From the side of the petitioners Exbt. A1 to A3 documents were marked.

6. Heard both sides. Perused the records.

Points No. 1 and 2

7. The suit is for realization of advance money based on an agreement for sale alleged to be executed in between the plaintiff and the 1st defendant. It is further alleged in the plaint that the 1st defendant transferred a portion of the property mentioned in the agreement for sale in favour of 2nd and 3rd defendants without the knowledge of the petitioners before the expiry of the agreement for sale. The property mentioned in the agreement for sale was attached as per the Order passed in IA 1/2024 in the above case. Subsequently, the 2nd and 3rd defendants filed the present petition to lift the attachment by claiming absolute title over the said property.

8. The 2nd and 3rd defendants who are the petitioners in the above petition alleged that they purchased the said property in the year 2002 by virtue of Exbt. A1 Sale Deed vide No. 1193/2002. Since the survey number of 1 Are 15 Sq. Metre of the property was mistakenly shown in the Sale Deed as 257/31, both the petitioners and the 1st defendant executed Exbt. A2 and A3 deeds in the year 2023 and thereby the property having extent of 1 Ares 15 Sq. Metre in Survey No.

257/31 is shown to be transferred in favour of the 1st defendant and the property having extent of 1 Are 15 Sq. Metre in Survey No.257/1 is shown to be transferred in favour of the petitioners. The learned counsel for the petitioners argued that in fact the property purchased by the petitioners as per Exbt. A1 document was attached in this case. So it is highly necessary to lift the attachment as the said property was transferred in favour of the petitioners 21 years ago from the date of the execution of the agreement for sale in between the plaintiff and the 1st defendant.

9. On perusal of Exbt. A1 to A3 documents as well as the description of the plaint schedule property which was attached in this case, I can say without any ambiguity that the property mentioned in Exbt. A1 and the property attached in this case are entirely different. As per Exbt. A1 Sale Deed, the 1st defendant transferred his own property over which he derived title as per the Partition Deed vide No. 1531/1986. In the said partition deed the property of the 1st defendant is shown as the 3rd schedule. Rather in the agreement for sale he agreed to transfer the property of his mother Sara Ittyavara after her death as her legal heir. The property of said Sara Ittyavara is shown as 4th schedule in the said partition deed.

10. Even though 1st defendant did not file objection to the present petition filed by the 2nd and 3rd defendants, he filed written statement by contending that the property transferred to 2nd and 3rd defendants did not cover the property mentioned in the agreement for sale executed in between the plaintiff and the 1st

defendant. According to him, he transferred his property lying on the southern side of MC road to 2nd and 3rd defendants by executing Exbt. A1 Sale Deed in the year 2002. Subsequently, he along with other legal heirs of Sara Ittiyavara transferred the property having extent of 1 Are 15 Sq. Metre comprised in Resurvey No. 257/1 lying on the eastern side of the property covered on Exbt. A1 Sale Deed and on the southern side of MC road, to the 2nd and 3rd defendants by executing Exbt. A2 Sale Deed vide No. 833/2023 in the year 2023. On perusal of the property descriptions and boundary demarcations mentioned in Exbt. A1 and A2 documents it can be seen that as rightly pointed out by the 1st defendant the properties transferred to the 2nd and 3rd defendants who are the petitioners herein as per Exbt. A1 and A2 sale deeds are lying on the southern side of MC road. The property mentioned in the agreement for sale is not lying on the southern side of MC road. The said property is situated on the southern side of the property of Balanandan and George Issac who is the 2nd defendant in this case. So it made clear that the property transferred to 2nd and 3rd petitioners and the property mentioned in the agreement for sale are not one and same. The property mentioned in the agreement for sale was attached in this case.

11. The learned counsel for the petitioners argued that the property having extent of 1 Are 15 Sq. Metre comprised in Resurvey No. 257/1 was transferred to them by the 1st defendant in the year 2022. But in Exbt. A1 sale deed the said survey number is mistakenly shown as 257/31. Thereby Exbt. A2 and A3

documents were created in the year 2023. But the said contention is not at all sustainable as the property descriptions mentioned in Exbt. A1, A2 and A3 documents negated the same. As stated earlier as per Exbt. A1 document the 1st defendant transferred his own property lying on the southern side of MC road to the petitioners and the said property mentioned in the prior deed as 3rd schedule in the partition deed whereas the property mentioned in the agreement for sale originally belongs to his mother Sara Ittiyavara and the said property mentioned in the prior deed as 4th schedule in the partition deed. Further the 1st defendant transferred 1 Are 15 sq, metre of property of Sara Ittiyavara to 2nd and 3rd defendants by executing Exbt. A2 document. The said property is also situated on the southern side of MC road and the eastern side of the property of the 2nd and 3rd defendants. So the averments in the petition that Exbt. A2 and A3 were subsequently created only for curing the mistake in the survey number mentioned in Exbt. A1 sale deed is not correct. If that be so, the boundary descriptions in Exbt. A2 should tally with the boundary descriptions in Exbt. A1 document. Moreover, as rightly pointed out by the learned counsel for the plaintiff, for the purpose of curing the defects in the survey number of the property, they ought to have executed a correction deed instead of creating sale deeds.

12. For the sake of argument even if it is believed that the property mentioned in Exbt. A2 document executed in the year 2023 covers some portion of the property mentioned in the agreement for sale executed in between the

plaintiff and the 1st defendant, then also the prayer in the petition is not at all allowable. Because Exbt. A2 document made it clear that it was executed before the expiry of the period mentioned in the agreement for sale executed in between the plaintiff and the 1st defendant. So in a suit for realization of advance money based on the said agreement for sale, a statutory charge U/S. 56 (6) (b) of the Transfer of property Act is created upon the property mentioned in the said agreement for sale. In **Ibrayi v. Pokkan reported in 1989 KHC 141** it was held that U/s. 55 (6) (b) of the Transfer of Property Act the buyer has got a charge for the price prepaid, in anticipation of the completion of the agreement. This charge attaches from the moment the buyer pays any part of purchase money and is only lost in case of his own subsequent default. This charge on the property is enforceable not only against the seller but all persons claiming under him. A transferee for value with notice or without would be liable to under Sec.56 (6) (b) of the Act. The buyer's charge under this Section is a statutory charge and he is entitled to enforce against property and the plea of want of notice by third party purchaser is of no avail. The said dictum was upheld subsequently in **Sebastian v. Bibin reported in 2004 KHC 29 and Illickal Joseph and others v. Cholapurathu Vrinda Devi and others reported in 2008 (2) KHC 379**. Relying on the above dictum I hold that if any portion of the property mentioned in Exbt. A2 deed is attached in this case as the property covers in the agreement for sale, the petitioners who are the purchasers claiming title under the 1st

defendant before the expiry of the agreement for sale are bound by the decree as a statutory charge is in existence upon the property mentioned in the agreement for sale.

13. From the above discussion I hold that the property attached in this case is the property mentioned in the agreement for sale executed in between the plaintiff and the 1st defendant. The said property and the property mentioned in Exbt. A1 sale deed are not one and same. So the prayer in the petition is not at all allowable.

In the result, the petition is dismissed. No order as to costs.

Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 25th day of September 2024.

Sd/-
Veena. V.S
Sub Judge

Appendix :

Exhibits from the side of the petitioners:

- | | | | | |
|----|---|------------|---|--|
| A1 | - | 24.06.2002 | - | Sale deed vide No.1193/2002 issued by SRO, Chengannur. |
| A2 | - | 13.04.2023 | - | Sale deed No. 833/2023 issued by SRO, Chengannur. |

A3 - 07.09.2024 - Sale deed No.832/2023 issued by SRO,
Chengannur

Witness from the side of the petitioner : Nil

Exhibits and witness from the side of the Counter petitioners : Nil

Id/-
Sub Judge

//True Copy//

Sub Judge

Typed By: Sandhya
Comp.d By: Hedwin