IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,

TALIPARAMBA

Present:- Sri.**Prasanth.K.N**, Additional District and Sessions Judge

Tuesday, the 24th day of March, 2026/ 3rd Chaithra, 1948

APPEAL SUIT NO. 111 OF 2017

1. Mottammal Raghu, S/o.Krishnan, Aged 46 Karivellur amsom, Vadakkumbad desom, Onakkunnu (PO), Taliparamba Taluk, Kannur Dt. Rep. By Power of Attorney Holder and brother Mottammal Dileep, S/o.Krishnan, aged 44, Karivellur amsom, Vadakkumbad desom, Onakkunnu (PO), Taliparamba Taluk, Kannur Dt.	Appellant

Vs.

1. Kadan Veettil Ganeshan, S/o.Kunhikkannan, Aged 49 years, Residing at Kadan Veettil, Padappengad desom, Kooveri amsom, Taliparamba Taluk. 2. Perumbadath Raveendran, S/o.P.Kunhiraman, Aged 45, Perumbadath House, Padappengad desom, Kooveri amsom, Taliparamba Taluk. 3. Perumbadath Sankaran, Aged 50 years, Perumbadath House, Padappengad desom, Kooveri amsom, Taliparamba Taluk.	Respondents

On appeal against the Decree and Judgment dated 16-09-2017 on the file of the Subordinate Judge's Court, Payyannur and made in.

OS.No. 75 OF 2007

1. Kadan Veettil Ganeshan	Plaintiff

Vs.

1. Perumbadath Raveendran and others	Defendants

This appeal coming on the 16th day of March, 2026 for final hearing before me in the presence of S/Sri.Sunil Kumar.K.G & P.M.Sajitha, Advocates for the Appellant; and of Sri.M.Vinod Raghavan, Advocate for the 1st respondent; 2nd respondent is being called absent set exparte; 3rd respondent served called absent and having stood over for consideration till this day, and the tribunal passed the following:-

O R D E R

The beginning

1. This captioned civil appeal was patently preferred under **Section 96** and **Order XLIV Rule 1** of the **Code of Civil Procedure,** against the order of the Sub Court, Payyannur.

2. For the sake of convenience, **Code of Civil Procedure, 1908,** hereinafter referred to as **CPC**, the Transfer of Property Act, 1882, referred to as **TP Act**, and the Specific Relief Act, 1963, referred to as **SR Act**. The parties will be referred to as their respective litigating status before the trial court. Therefore, the appellant is hereinafter referred to as the **third defendant/buyer**, the first respondent is referred to as the **plaintiff,** the second respondent is referred to as the **second defendant/buyer**, the third respondent is referred to as the **first defendant/seller**, and the plaint schedule property is referred to as the **property.**

Details of Appeal

3. This was an appeal preferred by the third defendant against the judgment and decree passed by the Sub Court, Payyannur, in **OS 75/2007** on

16.09.2017. The original suit is for specific performance, with an alternative prayer for return of the advance amount. The suit was instituted in 2007, and in 2017, the suit was decreed against the defendants to refund the advance amount with interest and create a charge over the property in question. Against the order of the trial court, the third defendant filed this appeal, incorporating the plaintiff as the first respondent and the other defendants as respondents. Amid the proceedings, the plaintiff filed a cross-objection against the defendants seeking specific performance.

The trial court proceedings

4. The defendants entered an appearance and filed their written statements. During the evidence to substantiate his case, the plaintiff and his witnesses were examined as PW1 and PW2, and Exts.A1 to A7 documents were marked. On the side of the defendant, the witnesses DW1 to DW6 were examined, and the documents Ext.B1 to B9 were marked.

Trial court finding

5. Based on a elaborated appreciation of evidence, the prayer of specific performance was rejected by the trial court and the suit was decreed by allowing the alternative remedy of returning the advance amount as in the result **"Suit decreed directing the defendants to refund the amount of ₹1,50,000 within one month with 9% interest from the date of suit till realization charged on the suit property as per Section 55(6)(b) of Transfer of Property Act with costs."**

Appeal and cross objection

6. In appeal, it is urged that the lower court failed to frame the issue regarding the bona fide purchaser and erroneously created a charge on the suit property as per **Section 55(6) (b)** of the **TP Act**. Being aggrieved by the judgment, the third defendant preferred this appeal, contending that he is not liable to refund the amount and that the charge was created against the property of a bona fide purchaser.

7. The plaintiff appeared at the appellate stage and filed a cross-objection under **Order XLI Rule 22** of the CPC, contending that the trial court failed to appreciate the evidence and to grant specific performance.

8. They contended that, as per paragraph fourteen of the judgment, there was a clear finding that the second and third defendants are not bona fide purchasers. Therefore, the trial court is bound to grant the first prayer for specific performance under **Section 19** of the **SR Act**. They urged that the trial court erred in granting discretionary relief by returning the advance money under **Section 20**, without explaining the circumstances under which the contract could not be specifically enforced.

Appeal procedure

9. During the appellate stage, the third respondent raised a contention that no issue was raised by the trial court regarding whether the second and third defendants are bona fide purchasers of the plaint schedule property. There was a finding of paragraph number fourteen of the judgment that, "***On analyzing the***

evidence on record, it is clear that the second and third defendants are not bona fide purchasers." It is trite that, even though the evidence upon the record is sufficient to enable the appellate court to pronounce the judgment, it is necessary to resettle the issue in accordance with **Section 107** and **Order XLI Rule 24** of the **CPC.** Upon reviewing the records, this court found that the evidence is sufficient to enable it to pronounce the judgment, and there is no need to remand the case. Thus, an additional issue is raised regarding the bona fides of the subsequent purchasers.

10. Apart from that, the plaintiff filed an additional document, the judgment in CC 404/2015 of the Judicial First-Class Magistrate Court, Taliparamba, the acquittal judgment. This court found that the adducing of additional evidence is necessary to make a reasonable decision in the case and to ensure the dispensation of justice, and is relevant to enabling the court to pronounce judgment and determine the substantive cause. Consequently, in accordance with **Order XLI Rule 26,** the document was received by this court and marked as Ext. A8 on the plaintiff's side. No fresh evidence was adduced by the defendants during the appellate stage.

11. In alignment with statutory procedure, both sides were heard, and the records were perused. The plaintiff and third defendant filed detailed argument notes, along with decisions, to strengthen their arguments. Having heard the compilation of the arguments, the points as subjoined arise for consideration.

Point for consideration

1. **Has the first defendant executed an agreement for the sale of the plaint schedule property with the plaintiff and received advance sale consideration?**
2. **Whether the second and third defendants are bona fide purchasers of the plaint schedule property?**
3. **Is the plaintiff entitled to a decree of specific performance of the contract or, in the alternative, a remedy of refund of the advance money?**
4. **Will the charge over the property be sustained if the defendants are bona fide purchasers of the plaint schedule property?**
5. **Does the impugned judgment passed by the trial court require any interference?**
6. **If so, what reliefs and costs should be granted?**

Case of the plaintiff

12. According to the plaint and the evidence of the plaintiff, he contended that the plaint schedule property was transferred to the plaintiff by virtue of the sale deed No 3618/2004 of Taliparamba SRO. On 27.02.2006, the first defendant executed a sale agreement with the plaintiff for a total sale consideration of ₹1,70,000, and the plaintiff received ₹1,50,000 as an advance, with a condition that the balance purchase amount of ₹20,000 shall be paid on

or before 30.04.2006, and the period of the agreement was fixed accordingly. Despite the demands, the first defendant refused to execute the sale deed. Therefore, the plaintiff issued a lawyer notice on 30.03.2007, calling upon him to execute the sale deed by accepting the balance sale consideration. In response, the first defendant sent a reply stating that the property had been transferred to the second and third defendants. It is contended that the second defendant was a relative and the third defendant was a close friend, and the transactions are collusive and not binding on the plaintiff. Therefore, the plaintiff seeks the remedy of specific performance or, in the alternative, return of the advance amount with interest.

Case of the defendant

13. *Per contra*, as per the written statements and the evidence of the defendants, they set up their version. The first defendant contended that he availed a loan from the Syndicate Bank, Taliparamba, by mortgaging the property to discharge the liability. He sold the property in favour of the other defendants on 03.04.2007 as per the sale deeds No. 1206/2007 and 1207/2007 of Taliparamba SRO. He specifically denied the execution of the sale agreement, contending that, due to financial constraints, he had borrowed ₹25,000 from the plaintiff and his friend, Nijesh, who were engaged in an illegal money-lending business. The plaintiff had paid ₹22,500, and between 10.05.2006 and 05.03.2007, his mother paid ₹2,20,000 in various instalments, due to their threats. The first defendant contended that two signed stamp papers were handed

over to the plaintiff as security for the transaction. Subsequently, the plaintiff forcefully collected a motorcycle and four signed blank cheques from the first defendant. Therefore, in pursuance of a petition lodged by the defendant, a criminal case was registered against the plaintiff. Moreover, he specifically denied the sale agreement, the transaction, and the advance amount, and prayed for the suit to be dismissed.

14. The second and third defendants filed a written statement with a contention that they purchased the property for valuable consideration, after executing a sale agreement. They purchased the property as bona fide purchasers without knowledge of any charge or encumbrance on the property. Later, the mutation was effected, and buyers paid the land tax for the property. It is alleged that the suit was instituted as a result of a collision between the plaintiff and the defendant, and they prayed for a dismissal.

Sequence of transactions

Date	Description	Exhibits
27.02.2006	Sale agreement	Ext.A1
30.04.2006	Agreement period	Ext.A1
27.03.2007	Lawyer notice	Ext.A2
30.03.2007	Postal receipt	Ext.A2(a)
02.04.2007	Acknowledgment card	Ext.A2(b)
03.04.2007	Sale deed No. 1207/2007	Ext.A3
03.04.2007	Sale deed No. 1206/2007	Ext.A4/B8
11.04.2007	Reply notice	Ext.B3
13.04.2007	A/D of reply	Ext.B4
21.06.2007	FIR & Petition	Ext.B1, B2

Point No.1/ Agreement for sale

15. To prove the foundational facts of the case, it is incumbent on the plaintiff to establish that the Ext.A1 agreement was executed by the first defendant after receiving the sale consideration of ₹1,50,000. Admittedly, it was not a bank transaction; therefore, proof of the transaction hinges on the oral evidence of PW1 and the authenticity of the agreement. Ext.A1 is a unilateral agreement executed by the first defendant in favour of the plaintiff to sell the property having an extent of 42.500 cents, which was derived to him by virtue of a sale deed no. 3618/2004 of Taliparamba SRO on 14.10.2004. As per the agreement, the total sale consideration is ₹1,70,000, and the advance amount of ₹1,50,000 was received by the first defendant. The period of agreement is mentioned as 30.04.2006, and the balance sale consideration is ₹20,000. It was executed in the presence of Ajithkumar and PW2 Joy.

16. The plaintiff and witness to the agreement deposed in tune with the plaint regarding the execution and consideration. Nothing has been elicited in cross-examination to discredit their oral testimony, which is substantiated by Ext.A1 agreement. The first defendant contended that two blank signed stamp papers were handed over to the plaintiff as security for a debt of ₹25,000 in the first week of February 2006, and that the first defendant repaid ₹22,500 and the mother repaid ₹2,20,000 in different instalments. They produced Ext.B1 and B2 documents, which shows that in pursuance of Ext.B2 petition filed by the first defendant before the DYSP Taliparamba, Ext.B1 FIR was registered on

21.06.2007 as FIR No.433/2007 of Taliparamba Police station under **Section 420** of the **IPC** and **Sections 18A, 17, 15** of the **Money Lenders Act** against the plaintiff and Mr. Nijil. However, the Ext.A8 judgment shows that the case was pending before the Judicial First-Class Magistrate Court, Taliparamba, as CC 404/2015, which was acquitted on 25.04.2022 due to the plaintiff's repeated absence to adduce evidence. Ext. A6 series shows that the plaintiff took up the matter before the Hon'ble High Court in Crl. MC. 2501/2008 to quash the proceedings. **Anyhow, the final outcome of the case was an acquittal, and the judgment shows that the first defendant was not interested in pursuing the case and was unable to adduce evidence.**

17. Significantly, in the Ext.B2 petition and Ext.B1 FIR, it is alleged that one blank stamp paper was entrusted in 2006 February. After that, the plaintiff took away a Hero Honda motorcycle worth ₹30,000 and four blank cheques from the first defendant's house and office. Subsequently, on 10.05.2006, they threatened the mother of the first defendant and collected ₹2,20,000 in 18 instalments till 05.03.2007. The alleged atrocities by the plaintiff from 2006 February to September, and the first defendant lodged the Ext. B2 petition after one year, on 21.06.2007. Before the petition, he received a registered lawyer notice for specific performance on 02.01.2007 and sent a reply notice on 11.07.2007. And after the institution of the suit and the attachment of the property, on the very next day, he lodged Ext.B2 petition. **After going through the sequence of dates and the unpardonable delay in filing a**

petition, this court of view that the case set up by the first defendant was unbelievable and was made for a strategic defence in the civil suit, as per legal opinion.

18. Apart from that, for a debt of ₹25,000, by way of repayment, ₹2,42,500 and a motorcycle of ₹30,000 were obtained by the plaintiff as alleged by the first defendant. So, according to the plaintiff, he had been repaid ten times the indebted amount, and made no complaint until the institution of suit, which indicates the falsity of his defence. Furthermore, the first defendant implicitly admitted the financial transaction and the collection of some amount from the plaintiff. The first defendant contended in his written statement, the FIR, and the petition that he had handed over only one signed stamp paper to the plaintiff. Nevertheless, the Ext.A1 agreement contained three pages, two stamped papers and one printed form. At any stage of the trial, the first defendant did not deny the signature on pages two and three. **The first defendant abstains from explaining the proved fact of how the signed printed paper and two stamped papers came into the possession of the plaintiff.** In the absence of an explanation, the preponderance of probability favours the case of the plaintiff as the sale agreement was executed between the parties, and the first defendant collected ₹1,50,000 as the advance sale consideration. Thus, point no.1 is found in favour of the plaintiff accordingly.

Point No.2/ Bonafide purchaser

19. A bona fide purchaser is a person who purchases the property for valuable consideration, in good faith and without notice of any prior claim. A transferee for value who has paid his money in good faith and without notice of the original contract is entitled to statutory protection as a bona fide purchaser. The contract of specific performance cannot be enforced against a bona fide purchaser, even if the title arises subsequently to the contract under **Section 19(b)** of the **SR Act.** The question is whether the second and third defendants can be treated as bona fide purchasers of the property described in the plaint schedule.

20. According to the plaintiff, the Ext.A1 agreement was executed on 27.02.2006, and its period was on or before 30.04.2006. The plaintiff issued Ext.A2 lawyer notice on 27.03.2007, with a postal receipt of Ext.A2(a) dated 03.03.2007. The suit was instituted, and the property was attached on 20.06.2007, and the Ext.B2 petition was initiated on 21.06.2007. Neither oral nor documentary evidence has been adduced by the plaintiff to prove why he did not approach the defendant for the completion of the sale agreement for one year from 2006 March to 2007 March. The registered lawyer notice was received by the defendant on 02.04.2007 as per Ext.A2(b), and on the very same date, he transferred the property in favour of the second and third defendants by registered sale deeds Ext.A3 and Ext.A4.

21. The plaint schedule property has a total extent of 42.500 cents, and only 0.600 cents were transferred by Ext.A3 sale deed, as a pathway to the homestead of the second defendant. The homestead of the second respondent is shown in the sale deed on the western side of the property in the boundary as “നിങ്ങളുടെ വീടും സ്ഥലവും”. By Ext.A4 sale deed, the balance portion of 41.900 cent (17.2 Are) was transferred to the third defendant and its western side was mentioned as the property of the second defendant “ശങ്കരന് കൊടുത്ത സ്ഥലവും, ശങ്കരന്റെ വീടും സ്ഥലവും”. In both sale deeds, it is categorically stated that the transaction was made for adequate consideration, and they received the consideration in good faith, believing there was no encumbrance on the property, as mentioned in the sale deed itself.

22. The plaintiff contended that there was no consideration for the sale deeds, and the second and third defendants are the relative and friend of the first defendant, and the transactions are collusive in nature. He pleaded his readiness and willingness to perform his part of the contract and the transaction made by the first defendant to defeat his rights in the property.

23. The stamp paper for the sale deed was purchased, and the document was prepared on 02.04.2007, and the deed was executed on 03.04.2007. Admittedly, on the date of the sale deed on 03.04.2007, the third defendant was not in India, and the amount was paid by his brother, DW3. The witness DW4, the third defendant DW3, his brother DW6, and the broker categorically stated the transaction, consideration, execution, registration, and

sale during the examination. DW1, the first defendant, and DW5, the attesting witness, also deposed in tune with the defendants' case. All were cross-examined in detail, but nothing was elicited to discredit their evidence except some minor contradictions. **The transaction was made in 2007, and they provided evidence in 2017, ten years later. Therefore, some natural variations in their statements are pardonable. The minor discrepancies in a statement are insignificant to hit the core of their case and the transaction. The parties cannot expect to possess a photographic memory and to recall all the details of the incident after ten years. A prudent man should think that the testimony is not as if a video type is replayed with the recall of memories from a mental screen.** Thus, the natural variations in their evidence are negligible.

24. The first defendant purchased the property on 14.10.2004 by Ext.B7 sale deed No. 3618/2004 for ₹1,25,000 in the year 2006 the agreement was executed for ₹1,70,000. The Ext.B8/A4 sale deed was executed for ₹3,36,000, almost double the amount. The period from 2006 to 2007 was a real estate boom in Kerala, and the court can take judicial notice of the same. Thus, doubling the value for a 42-cent rubber estate is not abnormal in such a scenario. Apart from that**, if it were a collusive transaction, the amount shown in the sale deed would be comparatively lesser, which is close to the sale agreement, but the sufficient consideration itself shows the genuineness of the transaction.**

25. If it were a collusive transaction, there is no necessity to sell the property to two persons by transferring half a cent as a pathway to the neighbour and the major share to another person. It is easy for a collusive transaction to transfer the entire property to a single person for lesser consideration. **Here, the property was transferred to two different persons, each with a different extent, and the buyers have no direct connection with each other.**

26. Admittedly, the Ext.A2 lawyer notice was received by the first defendant on 02.03.2006. If the allegation is true, it would be compelled to believe that, on the very same date, the first defendant found two persons to purchase the property, collected the stamp paper on the same day, and had the sale deeds registered on the next day, which is humanly impossible. **So, the probability is that, after obtaining the knowledge of the sale of the property in question, the plaintiff sent a lawyer notice with a prior date and instituted the suit by impleading the buyers after 20 days.** On the other hand, a person who paid 90% of the total sale consideration as an advance and waited for the transaction for a year after the expiry of the sale agreement is beyond imagination.

27. The concept of notice includes the actual or constructive notice as mentioned in **Section 3** of the **TP Act**. The encumbrances do not show the agreement between the plaintiff and the first defendant, and the plaintiff did not inform the purchasers about the agreement. No notice has been sent by the plaintiff within the period of the sale agreement or immediately after its

expiration. Thus, there is no chance for actual or constructive notice to the buyers regarding the sale agreement. It is a settled position of law that if the plaintiff asserts that the transaction was collusive in nature and the defendants are not bona fide purchasers, it is the duty of the plaintiff to prove the same. The plaintiff failed to establish the absence of consideration and bona fides of the purchasers either by cogent evidence or by preponderance of the probabilities. By adducing the oral evidence of DW1 to DW6, coupled with Ext.B6, Ext.B8, and Ext.B9, this court found that the transaction between the defendants was genuine and the second and third defendants are the bona fide purchasers of the plaint schedule property. Thus, point no.2 is found against the plaintiff accordingly.

Points against the plaintiff

a. The plaintiff failed to prove his readiness and willingness in the agreement period or immediately after the agreement.

b. The plaintiff sent the notice after one year of expiration of the agreement with a prior date, proved by the postal receipt.

c. The 90% of the amount was paid in advance, and the remaining amount is being held for one year without making any steps indicates doubt regarding the plaintiff's genuineness.

d. The plaintiff sent the lawyer notice just two days before the sale, with the intention of preventing the sale between the defendants.

e. The property was transferred for sufficient consideration, and the sale deed was executed in favour of two persons, including a pathway to the neighbour.

<u>Point No.3/ Specific performance of the contract</u>

28. The discretion of decreeing specific performance is guided by the judicial principles under **Sections 10, 14, 16, 19 and 20** of the **SR Act**. The plaintiff has to prove his continuous readiness and willingness to perform his part from the execution of the agreement till the last. Willingness is the mindset to perform the contract, and readiness is the positive act performed by the plaintiff in pursuance of that willingness. As discussed in the first point, this court has already found that the execution of the Ext.A1 sale agreement was genuine and that the agreement is enforceable in law. The plaintiff paid the ₹1,50,000 as an advance amount to the first defendant and executed the agreement. The question is whether the petitioner is entitled to a decree of specific performance as prayed for.

29. It is also found in the second point that the second and third defendants are the bona fide purchasers of the plaint schedule property. After obtaining the title, the mutation was recorded, and the purchasers paid the property tax to the appropriate authority through Ext.P9 series from 2008 to

2015. Thus, the sale deed was acted upon by the purchasers and came into force. It was an agreement of 2006, and the plaintiff made an advance payment before the twenty years, and it is not legally or practically possible to grant a decree for specific performance against the bona fide purchasers, as enumerated in ***George M. Mathews V. Muhammed Haneefa Rawther, 2023 KHC 9023***.

30. During the agreement period, 27.02.2006 to 30.04.2006, and after 11 months of the expiration of the agreement, there was no evidence of the readiness and willingness to fulfil the contract by the plaintiff. He sent the Ext.A2 lawyer notice after one year on 30.03.2007. There was no positive act done by the plaintiff within a span of one year to perform the contract. Even though the plaintiff proved the execution of the agreement and the payment of an advance, the hardship has resulted from any act subsequent to the contract in consequence of the non-performance, which has not been proved. The plaintiff has not suffered any substantial loss in consequence of the non-performance of the agreement. Therefore, the discretionary relief under **Section 20** of the **SR Act** cannot be exercised in a case of mere breach of contract. Thus, this court rejected the specific performance of the contract.

31. However, it is a proven fact that the plaintiff has paid an advance amount of ₹1,50,000 at the time of the execution of the agreement. There is no material to show that the first defendant has suffered any quantifiable loss warranting forfeiture of the advance amount. According to **Section 22** of the **SR Act,** the court has **the power to grant a refund of advance money in**

substitution for the unlawful enrichment of the first defendant, who has held the possession of the advance money for a long period. In the absence of proof of loss, the forfeiture of the advance amount would be inequitable, and justice demands restitution.

32. Therefore, this court found that the first defendant is bound to refund the advance amount of ₹1,50,000 within one month from the date of this order with 9% interest from the date of the suit till realization. Significantly, at the same time, the second and third defendants are not personally liable to pay the amount, and the direction of the trial court against the defendants is liable to be interfered with and substituted with the words **"as the first defendant is only liable."** Thus, point no.3 is found accordingly.

<u>Point No.4/ Charge over the property</u>

33. A charge is created by operation of law as per **Section 100** of the **TP Act.** The section says that, where immovable property of one person is, by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property. As per the proviso, a charge shall not be enforced against a transferee for consideration without notice of the charge. Thus, a charge does not override the rights of a bona fide purchaser for value without notice. According to **Section 55(6)(b),** the buyer is entitled to a charge on the property for the amount of any purchase money properly paid in

anticipation of delivery and for interest thereon if the seller fails to complete the same.

34. As per **Section 55(6)(b)**, the statutory charge will be created in favour of a purchaser who has paid the advance money. This charge is attached to property and runs with the land, and it can be enforced against the seller and binds all subsequent transferees, if they have notice. In plain reading, there is an inconsistency between both sections, and it is found that the provision under **Section 100** is general in nature, whereas **Section 56(6)(b)** is a specific provision. As per the concept of *generalia specialibus non derogant*, the special provision of **Section 55 (6) (b)** will override the general provision of **Section 100.** The second paragraph of **Section 100** provides an exception to the general preposition.

35. The words *"Save as otherwise expressly provided by any law for the time being in force"* indicate that a charge can be enforced against a transferee without notice when an express provision of law exists. However, it should be construed on the factual scenario of each case. The principles have been explained in a catena of decisions, such as ***Sabu Thomas V. N. Narayanan Namboothiri 2025 (7) KHC 437, Ahammedkutty Bran V. Sukumaran, 2024 (3) KHC 494,*** and ***Venugopalan V. Anilkumar 2012 KHC 6053.*** Despite that, there are some contrary opinions on this point, and in such a scenario, the question of the charge against a bona fide purchaser has to be considered by constitutional courts in light of precedents.

a. It is held in ***K.A. Sebastian V. Bibin, 2004 KHC 29,*** that *"while considering the impact of Section 100 and Section 55(6)(b), the charge will be binding on all persons even if it is a transfer for consideration and without notice."*

b. It is held in ***Krishnamenon V. Pradeepkumar, 2017 (1) KHC 283,*** that *"Section 55(6)(b) makes the charge of the buyer for the purchase money properly paid effective not only against the seller but also against the person claiming under him, regardless of notice of such payment of purchase money. Thus, the charge is available even against a bona fide transferee for value from the seller."*

c. It is held in ***Shaji V. Danish, 2024 KHC 7299,*** that "*when there is a sale agreement and payment of sale consideration either in part or in full, if the sale deed could not be executed the proposed buyer is entitled to get back the sale consideration in view of the statutory charge and the title of the subsequent purchaser is subject to such statutory charge and property remains liable for realization of amount due under decree for recovery of advance payment"*

d. It is held in ***Madhava Kamathi V. Gopala Pai, 1965 KHC 233,*** that *"charge under Section 55(6)(b) is available even against a bona fide transferee who got value from the seller. Section 55(6)(b) is not saved in the second paragraph of Section 100"*

36. There is no case for the first defendant that the plaintiff improperly declined to accept the delivery. Thus, the plaintiff is entitled to charge over the property for the purchase price and interest. Therefore, it is found that the charge under **Section 55(6)(b)** will run with the land and will sustain against all subsequent purchasers under the same title, even if they were bona fide purchasers. Thus, even though the second and third defendants are the bona fide purchasers of the plaint schedule property, **the charge will be created over the property for the amount decreed against the first defendant**. Thus, point no.4 is found in favour of the plaintiff accordingly.

Findings

37. Therefore, in light of the above discussions regarding the appreciation of the facts and evidence in the aforesaid points, the challenges raised by the plaintiff and the defendants must fail. Thus, the findings of the trial court in the impugned judgment require only limited interference regarding the bona fide purchaser and the liability of all the defendants. The other part of the impugned judgment requires no interference and is hereby confirmed. Consequently, the appeal and the cross objection are left to their fate.

38. Before parting with the judgment, it would be improper if I did not express my gratitude to the counsels appearing for the parties, ***Adv. Vinod Raghavan*** and ***Adv. Sunil Kumar*** for enlightening me and their cooperation with the court proceedings.

Resultantly,

1. The appeal and cross objection are dismissed.
2. The finding of the trial court decreeing the suit, directing **the first defendant** to refund the amount of the advance money ₹1,50,000 within one month with 9% interest from the date of suit till realization, is hereby confirmed.
3. It is clarified that the personal liability only extends to the first defendant, and the other defendants are not personally liable.
4. For the decree amount, the plaint schedule property is charged under **Section 55(6)(b)** of the Transfer of Property Act.
5. The appellant and the respondents shall suffer their respective costs.

(Dictated to the confidential assistant, transcribed by her, corrected by me and pronounced in open court on this, the 24th day of March 2026)

Sd/
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TALIPARAMBA

Plaintiff's Exhibits in OS. 75/2007

A1	27-02-2006	Sale Agreement
A2	27-03-2007	Copy of lawyer notice
A2(a)	30-03-2007	Postal receipt
A2(b)	02-04-2007	Postal Acknowledgement card

A3	02-04-2007	Certified copy of Jenm Deed No. 1207/1/07
A4	02-04-2007	Certified copy of Jenm Deed No. 1206/1/07
A5	24-04-2007	Encumbrance Certificate
A6	17-07-2008	True copy of Order in CRMC No.2501/2008 of the Hon'ble High Court of Kerala
A6 (a)	11-08-2008	True copy of Order in CRMC No.2501/2008 of the Hon'ble High Court of Kerala
A6(b)	11-08-2008	Case status report
A7	23-12-2019	Certified copy of Judgment in STC 862/2006 of JFCM, Taliparamba

<u>Appellant's Exhibits in AS 111/2017</u>

A8	25-04-2022	Digital copy of the Judgment taken from E courts in CC No. 404/2015 of JFCM, Taliparamba.

<u>Plaintiff's Witnesses</u>

PW1 - K.V.Ganesan

PW2 - P.O.Joy

<u>Defendant's Exhibits in OS. 75/2007</u>

B1	21-06-2007	Copy of First Information Report
B2	21-06-2007	Petition submitted by Perumbadath Raveendran
B3	11-04-2007	Reply notice
B4	13-04-2007	Postal Acknowledgement Card
B5	22-06-2007	Desabhimani Daily
B6	27-06-2007	True Photocopy of relevant pages in a note book in Crime No. 433/07 of Taliparamba Police Station.
B7	14-10-2004	Jenm Deed No. 3618/2004
B8	02-04-2007	Jenm Deed No. 1206/2007
B9	13-10-2008	Basic Tax receipt
B9 (a)	07-06-2007	Basic Tax receipt
B9 (b)	24-07-2013	Basic Tax receipt
B9 (c)	09-02-2015	Basic Tax receipt

Defendant's Witnesses

DW1	P.Ravindran
DW2	Vijayan.K.K
DW3	Mettammal Dileep
DW4	Raghu Mettammal
DW5	Krishnan
DW6	Parameswaran Nair

Sd/

ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TALIPARAMBA