

**IN THE COURT OF II ADDITIONAL DISTRICT JUDGE OF THRISSUR**

**Present:-**

**Smt. JAYA PRABHU, ADDITIONAL DISTRICT JUDGE -II.**

Wednesday the 8<sup>th</sup> day of April , 2026/ 18<sup>th</sup> Chaithram 1948.

**AS 36/2016**

OS 5959/2013 of Munsiff Court Thrissur

**Appellant:-**

Nithin, Aged 26 Years, (Business), S/o Thettayil Thomas,  
House No.11/336/5, Edakkunni Village & Desom, Thrissur  
Taluk & Corporation .

By Adv. K.D Babu

**Respondents:-**

1. Laila, Aged 45 Years, W/o Late Rajan, Kalarikkal House,  
Vallachira Village & Desom, Thrissur Taluk.
2. Liya Rajan, Aged 20 Years, Student, D/o Late Rajan,  
Kalarikkal House, Vallachira Village & Desom Thrissur  
Taluk.
- 3 Laya Rajan , Aged 17 Years, D/o Late Rajan Kalarikkal  
House, Vallachira Village & Desom, Thrissur Taluk, Rep.by  
Guardian Mother
- 4 Appu, Aged 57 Years, S/o Sankaran, Kalarikkal House,  
Vallachira Village & Desom, Thrissur Taluk,
- 5 Chandran, Aged 50 Years, S/o Sankaran, Kalarikkal House,  
Vallachira Village & Desom, Thrissur Taluk
- 6 Mohanan, Aged 46 Years, S/o Sankaran, Kalarikkal House,  
Vallachira Village & Desom, Thrissur Taluk
- 7 Latha, Aged 42 Years, W/o Korambil Balan, D/o Sankaran,  
Kalrikkal House, Vakllachira Village & Desom, Thrissur  
Taluk

By Adv.C.D Pradeep

Petition has been come up before me for hearing on this day the court passed the following :-

### **JUDGMENT**

This is an appeal filed by the defeated defendant in OS.5959/2013 on the file of Principal Munsiff Court, Thrissur against the judgment and decree dated 21.12.2015. For convenience the parties are herein after referred as per their status before the trial court.

2. The case of the plaintiffs is that, the plaint schedule property is a flat having an extent of 86 square metre in the 2<sup>nd</sup> floor of the building named 'Chinnarome Residency'. One Smt.Sonia Tom Kanady, D/o.Kanady Thomas was the owner of the said flat. The defendant along with his mother and sister were residing in the said floor as tenants. The husband of 1<sup>st</sup> plaintiff and the father of 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs viz., Rajan was the real estate broker. Rajan and the 1<sup>st</sup> plaintiff were having close relationship with the defendant and his family. Rajan used to help with the family of the defendant in so many ways. When the owner of the flat Smt.Sonia Tom Kanady informed her intention to sell the flat, Rajan contacted her and negotiated the matter and a sale agreement was executed between Rajan and Smt.Sonia Tom Kanady. Subsequently, as per sale deed No.4031/2012 of SRO, Cherpu, the flat was purchased by one Rajan. For that Rajan has auctioned

kuri subscribed to him in Monetary Kuries, Thrissur by pledging the property and house in the name of the 1<sup>st</sup> plaintiff as security. Apart from that he arranged loan from third party for the said purchase. Though the entire sale consideration he was paid by Rajan, due to love and affection of Rajan towards the defendant and considering the good relationship between the family of the plaintiff and defendant and name of defendant was included in the sale deed as a co-purchaser. The defendant had no financial capacity to purchase the said property. Since the defendant was residing in the said flat on rent, it was orally agreed by him that instead of paying the sale consideration he shall pay the installments of the kuri auctioned by Rajan and on payment of the entire kuri installments he will be entitled to get half right in the property. While being so, Rajan died in a road accident on 03.11.2012 and thereafter the relationship between two families were became strained. The defendant failed to pay the kuri installments. After death of Rajan, the plaintiffs become the exclusive owners of the plaint schedule property and defendant has no manner of right over the same. The defendant made an attempt to change the tax of the property in his name and alienate the property to third parties. Hence the suit is filed for declaration that the plaint schedule property exclusively belonged to plaintiffs and for a permanent prohibitory injunction restraining the defendant from alienating, encumbering or transferring

the property covered by sale deed No.4031/2012 and also for mandatory injunction directing the defendant to vacate from the flat.

3. The defendant entered appearance and filed written statement and admitted the relationship between Rajan and his family. The defendant contended that, when the owner of the flat informed her willingness to purchase the same on 20.07.2011 he entered into an agreement for sale and he arranged Rs.6,25,000/- by way of sale of the property in the name of his father and mother comprised in survey No.191/2 situated in Edakkunni Village and an amount of Rs.2,75,000/- secured by Rajan by auctioning kuri from Monitary Kuries also was utilized for payment of the sale consideration. The flat was purchased for the residence of the defendant and his family. The name of Rajan was included in the sale deed due to the reason that he helped the defendant by paying Rs.2,75,000/- for purchasing the said flat. Rajan had promised to release his half right to the property in favour of defendant on payment of Rs.2,75,000/- to the Monitary Kuries. Due to the love and respect of the defendant towards Rajan without obtaining any security for the said amount Rajan helped him by paying an amount of Rs.2,75,000/-. By believing the words of Rajan the defendant had paid an amount of Rs.1,36,000/- to the Monitary Kuries. After death of Rajan, the plaintiffs have raised allegation against the defendant that he has involvement in the death of Rajan and when he was called

before the Police Station, he informed the real facts to the Police. He stopped the payment of kuri installments. The plaintiffs have filed this suit with a view to dispossess the defendant and his family from the flat and to grab the property. Rajan was a real estate business man and for several purposes he had auctioned the kuries from the Monetary Kuries. The defendant and his family occupied the flat and possessed the property till date. The plaintiffs have only the right to get Rs.1,39,000/- from the defendant and he is ready to pay the same. Hence the suit is liable to be dismissed with cost.

4. On the basis of the above pleadings, the trial court framed the following issues for trial:

- 1) Whether the plaintiffs alone are entitled for plaint schedule property?
- 2) Whether the plaintiffs are entitled for a decree of declaration as sought for?
- 3) Whether the plaintiffs are entitled for a decree of permanent prohibitory injunction as prayed for?
- 4) Reliefs and costs?

5. On the side of 1<sup>st</sup> plaintiff, PW1 was examined and Ext.A1 to A18 documents were marked. On the side of the defendant, DW1 was marked and Ext.B1 to B3 were marked.

6. After hearing both sides and on appreciating the evidence on record the trial court has decreed the suit as per the judgment dated 21.12.2015. Aggrieved by the same this appeal is filed.

7. The contention of the appellant that, the trial court failed to properly appreciate the evidence on record. There was no proper appreciation of Ext.A1 sale deed and Ext.B1 agreement for sale. The defendant and his family are residing in the flat covered by Ext.A1 document, but it was not considered by the trial court. The trial court ought to have found that, the defendant has half right over the plaint schedule property. The trial court wrongly found that, the predecessor of plaintiffs alone has paid the consideration covered by Ext.A1. The learned counsel for the appellant argued in tune with the contentions in the written statement and the grounds alleged in the appeal memorandum and sought for allowing the appeal.

8. The learned counsel for the respondent argued that, the evidence adduced by plaintiffs shows that, the predecessor of plaintiffs viz. Rajan has paid the entire sale consideration covered by Ext.A1 document and at the time of execution of Ext.A1 the defendant has no financial capacity to arise the consideration covered by Ext.A1

document. Due to love and affection of deceased Rajan towards the defendant his name was included in the sale consideration as a co-purchaser and that will not give absolute right to defendant over the property. Thus the trial court properly appreciated the materials on record and found that the suit is liable to be decreed. Hence there is absolutely nothing to interfere with the impugned judgment and decree passed by the trial court.

9. The trial court records were called for and the same was received.

10. Heard both sides.

11. The points that arise for consideration in this appeal are as follows:

- 1) Whether the plaintiffs are entitled to get a declaration as sought for?
- 2) Whether the plaintiffs are entitled to get a permanent prohibitory injunction?
- 3) Whether there is any ground to interfere with the impugned judgment and decree by the trial court?
- 4) Reliefs and costs?

12. Point Nos.1 to 3: I have gone through the records of the trial court and re-appreciated the evidence on record. There is no dispute with regard to the fact that,

the plaint schedule property purchased in the joint name of husband of 1<sup>st</sup> plaintiff Rajan and the defendant herein. Ext.A1 is the said sale deed No.4031/2012 of Cherpu SRO. It is admitted by both parties that Rajan and defendant and the family wherein good relationship with each other. It is also not dispute that Rajan died on 03.11.2012. Ext.A6 is the death certificate of Rajan and Ext.A5 is the family membership certificate of Rajan. It shows that the plaintiffs are the legal heirs of deceased Rajan. The mother of Rajan died and plaintiffs 4 to 7 are her legal heirs. The definite case of the plaintiff that the entire sale consideration covered by Ext.A1 document was paid by Rajan. But due to the love and affection, Rajan towards defendant his name also was included in the sale deed as a co-purchaser and there was no an oral agreement with Rajan and the defendant that he will pay the installments of kuri auctioned by Rajan from Monetary Kuries which was secured that purchasing the flat covered by Ext.A1 and on payment of the said installments the defendant will get half right over the property. To substantiate the case of the plaintiffs that, the entire sale consideration paid by Rajan they have produced Ext.A2 statement issued from Monetary Kuries dated 17.10.2012 regarding the payment of kuri amount of Rs.7,90,320/- to Rajan. Ext.A8 is the counter foil of pay-in-slip dated 17.10.2012 issued from the State Bank of India, Vallachira Branch shows that the amount in the account of Rajan. Ext.A9 shows

the said amount was credited on the account of Rajan on 19.10.2012 and it was withdrawn an amount of Rs.7,90,000/- by Rajan on 20.12.2012 ie., on the date of Ext.A1 was executed. As per Ext.A1 consideration show as Rs.7,60,000/-. According to plaintiffs, apart from the consideration of an amount of Rs.68,500/- was paid as stamp duty and Rs.15,312/- was paid as the registration fees. Thus the documents shows that, Rajan was having sufficient funds in his account to pay the entire consideration covered by Ext.A1 document.

13. DW1 failed to produce any document to show that he was having the consideration shown in Ext.A1 with him and apart from Rs.2,75,000/- contributed by Rajan, the remaining amounts were paid by him. Ext.B3 statement of Savings Bank Account of defendant shows that during the relevant period there was no sufficient amount in his account Though DW1 deposed that his sister sent money from United Kingdom and that was the income for his family during the alleged period of execution of Ext.A1. Ext.B3 shows that some transaction of huge amount is shown in the said document. But there is nothing to show that on the date of execution of Ext.A1 that is on 20.10.2012 there was any withdrawal of huge amount from his account. The defendant failed to adduce any evidence to prove that apart from Rs.2,75,000/- paid by Rajan, the remaining amount of the sale consideration was paid by him and he was having such huge amount with him at

the time of execution of Ext.A1. The defendant had produced Ext.B1 agreement for sale alleged to be executed between him and Smt.Sonia Tom Kanady with respect to the plaint schedule property and plaintiffs have disputed the same. There was no attempt from the side of the defendant to prove Ext.B1. Moreover Ext.B1 shows that, consideration shown in the same is Rs.18,50,000/- and advance paid is Rs.2,00,000/-. At the same time Ext.A1 shows that the consideration shown in the sale deed is Rs.7,60,000/-. That itself shows that Ext.B1 agreement is not the agreement which is based on Ext.A1 document. On appreciating the evidence adduced by both sides it can be seen that plaintiffs have established that Rajan was having sufficient income to pay the entire sale consideration covered by Ext.A1 and there was no source of income for the defendant to pay any amount towards sale consideration.

14. As per Section 45 of the Transfer of Property Act where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract

to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

15. In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

16. The materials on record shows that there is no evidence adduced by the defendant to prove the contribution made by him towards the sale consideration covered by Ext.A1. On the other hand, the plaintiffs have proved that the husband of the 1<sup>st</sup> plaintiff is Rajan has paid the entire sale consideration covered by Ext.A1 document. Thus the plaintiffs are entitled to get a declaration that they are the exclusive owners of the plaint schedule property. The mere inclusion of name of defendant in the sale deed will not disentitled the plaintiffs such a declaration. Thus the trial court has rightly found that, the plaintiffs are entitled to get a declaration as sought for.

17. The plaintiffs have pleaded that, the defendant is trying to alienate the plaint schedule property which is an exclusive property of the plaintiffs. The very nature of the contention put forwarded by the defendant that he has paid the majority of the consideration of the plaint schedule property and Rajan had helped him by giving an amount of Rs.2,75,000/- and he has paid an amount of

Rs.1,36,000/- towards the kuri installments subscribed by Rajan and the remaining Rs.1,39,000/- is the amount due to the plaintiffs. Apart from the contention there is absolutely no evidence adduced by the defendant show that he has paid the payment towards the chitty subscribed by Rajan and an amount of Rs.1,39,000/- is the remaining amount due to Rajan. That itself shows that the apprehension of the plaintiffs that the defendant is trying to alienate, encumbrance or transfer the plaint schedule property to third parties to defeat the right title and interests of plaintiffs over the plaint schedule property. Thus the plaintiffs are entitled to get a permanent prohibitory injunction restraining the defendant from alienating, encumbering or transferring the plaint schedule property on the basis of Ext.A1.

18. Admittedly the defendant and his family are residing in the flat covered by Ext.A1 document. It is admitted by both sides and even prior to the purchase of the plaint schedule property to till date the defendant and his family are residing in the said flat. It is found that the defendant has no manner of title over the plaint schedule property and it is also found that, the plaintiffs are the absolute owners of the plaint schedule property. Thus the defendant has no manner of right to continue to reside in the said flat. Thus the trial court has rightly granted mandatory injunction as sought for. In view of the above discussions, I find that the trial court has properly appreciated the evidence on record and rightly decreed the suit and

there is absolutely no ground to interfere with the judgment and decree passed by the trial court. Hence the points are answered accordingly.

19. Point No.4: In view of my findings on point Nos.1 to 3, there is no ground to interfere with the judgment and decree passed by the trial court and it is only liable to be confirmed.

In the result, the appeal is dismissed with costs to respondent.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 8<sup>th</sup> day of April, 2026).

**Sd/-**

**JAYA PRABHU  
ADDITIONAL DISTRICT JUDGE II  
THRISSUR**

Appendix -Nil

**Sd/-**

**JAYA PRABHU  
ADDITIONAL DISTRICT JUDGE II  
THRISSUR**

/ True Copy /

Copied by: NEM  
Compared by : SMS

By Order

Sheristadar

Judgment in  
AS 36/2016  
Dated: 08.04.2026