

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

Present:

Sri. ANIL T.P, IV ADDITIONAL DISTRICT JUDGE.
Tuesday, the 17th day of March, 2026/26th Phalgunam 1947 SE.

A.S. 313/2013

(OS 51/2009 of Principal Sub Court, Thrissur)

- Appellants:**
1. Thankam, aged 65, W/o Perumbillissery Veettil Appukuttan, Chewur Village, Thrissur Taluk.
 2. Latha, aged 42, D/o Perumbillissery Veettil Appukuttan, Chewur Village, Thrissur Taluk.
 3. Sheela, aged 40, D/o Perumbillissery Veettil Appukuttan, Chewur Village, Thrissur Taluk.
 4. Bindhu, aged 38, D/o Perumbillissery Veettil Appukuttan, Chewur Village, Thrissur Taluk.
 5. Sreedevi, aged 38, D/o Perumbillissery Veettil Appukuttan, Chewur Village, Thrissur Taluk.

By Adv. Sreekumar Puthezhath and Laila
Parengattil

- Respondents:**
1. Laila, aged 45, D/o Karuppu Veettil Abdul Khader, Kannamkulangara Desom, Chiyaram Village, Thrissur Taluk
 2. Shafeeque, aged 21, S/o Karuppu veettil Laila, -do-
 3. Shibu, aged 19, S/o Karuppu veettil Laila, -do-
 4. Unnikrishnan, aged 50, S/o Aloor Perumbillissery Veettil Appukuttan, Mundur Village, Thrissur Taluk.
 5. Suresh Babu, aged 47, Cherur Veettil, Thekkeumkara PO , Wadakkanchery Village, Thalapilly Taluk.

R1 to R3 By Adv. P R Jayakumar.
R4 & R5 Ex-parte.

This appeal having been finally heard on 16.03.2026 having stood over for consideration to this day, the court passed the following:

JUDGMENT

Appeal filed under Order XLI Rule 1 CPC.

2. Appellants are the Plaintiffs in OS.51/2009 on the file of Principal Sub Court, Thrissur. Appeal is filed against the judgment and decree of the trial court dated 28.09.2013 by which suit was dismissed without costs.

3. The plaint averments in brief, is as follows:- The husband of the 1st plaintiff, Late Appukuttan had entered into an agreement for sale with a person named Rafeeq on 02.05.2006 with respect to the plaint schedule property fixing a total consideration of Rs.1,10,000/-. An amount of Rs.35,000/- was paid as advance and the time fixed for registration of document was 11 months. On 02.04.2007, Rafeeq met Appukuttan and stated that he has certain dispute with his wife and document can be executed only after settling that dispute. In order to settle the dispute, he want an amount of Rs.25,000/-. Accordingly, Appukuttan gave Rs.25,000/- to Rafeeq and the time of contract was extended up to 02.10.2007. An another agreement was executed on 02.04.2007 in continuation to the earlier agreement. As per that agreement, permission was given to renovate the house situated in the property. In terms of that agreement, Appukuttan spent Rs. 75,000/- on the house and made it feasible for residence. In the house Appukuttan and plaintiffs were resided. Meanwhile, Appukuttan died on 13.11.2008 and Rafeeq died on 31.11.2008. During the lifetime, Appukuttan made several demands for executing

the document, but Rafeeq was not ready and prolonged the execution. Defendants 4 and 5 are the children of Appukuttan and they are made as defendants as they are not in station. Defendants 1 to 3 are the legal representatives of Rafeeq.

4. Appukuttan and these plaintiffs were and is always ready and willing to get the property assigned in their name by paying balance consideration of Rs.50,000/-. Eventhough plaintiffs asked defendants to get permission for assigning the share of minor children through court, 1st defendant was not ready to do so. The defendants are not entitled to get possession of the property in view of Sec.53A of Transfer of Properties Act. On 24.12.2008, plaintiffs met the defendants and asked D1 to assign the property. The defendant was not ready and even threatened to forcefully evict the plaintiffs from the property. Hence the suit for specific performance with alternate prayer for refund of Rs.60,000/-.

5. The D1 to D3 filed written statement contending as follows:- The plaint schedule property was in the ownership and possession of Rafeeq, who is the husband of D1 and father of D2 and D3. There was no agreement for sale executed between Rafeeq and Appukuttan on 02.05.2006 fixing a consideration of Rs. 1,10,000/- and receiving advance amount of Rs.35,000/-. The further contention regarding receiving of Rs.25,000/- and execution of another agreement dated 02.04.2007 extending the time of agreement are false. Appukuttan was staying in the plaint schedule property as a tenant. These defendants filed OP.481/2005 before the Family court, Thrissur in which plaint schedule property was attached on 10.05.2005 as per order in IA.1382/2005. OP was decreed in favour of these

defendants on 07.06.2006. Rafeeq has no authority to create documents relating to the property in favour of Appukuttan when the attachment was in force. The documents stated in the plaint are fraudulent documents without any legal validity. The contention that as per the terms of agreement dated 02.04.2007 house was renovated by Appukuttan spending Rs. 75,000/- are false. After the death of Rafeeq, plaintiffs are illegally residing in the property. Appukuttan never made any changes to the house. Plaintiffs are not entitled for getting a decree for specific performance or for return of the amount. Defendants 1 to 3 are not bound to alienate the property to plaintiffs. Hence the suit may be dismissed.

6. From the above pleadings, trial court framed following issues for trial.

1. Whether the agreement is genuine?
2. Whether the plaintiffs are in possession of plaint schedule property. ?
3. Whether plaintiffs are entitled to get specific performance?
4. Reliefs and costs?

7. On the side of plaintiff, PW1 to PW3 were examined and Exts. A1 to A10 were marked. For the defendants, DW1 and DW2 were examined and Exts. B1 to B8 were marked.

8. After hearing both sides, the trial court dismissed the suit without costs. Aggrieved by the judgment and decree of the trial court, this Appeal is filed contending that the trial court went wrong in believing the evidence of

respondents and not properly appreciated oral and documentary evidence of the appellants. The finding of the trial court that Ext.A1 and A2 are executed to defeat the claim of defendants are not correct. The further finding that appellants were not ready and willing is also not correct. Hence this Appeal.

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

10. Both sides were heard.

11. Now the points that arise for consideration are:

1. Whether the trial court went wrong in not granting decree for specific performance?
2. Whether the trial court went wrong in not granting decree for the alternate relief. ?
3. Whether the judgment and decree of the trial court is liable to be set aside?
4. Reliefs and Costs?

12. **Point No.1 :** Ext.A1 was stated to be an agreement for sale executed between Appukuttan, predecessor in interest of plaintiffs, D4 and D5 with Rafeeq, predecessor in interest of D1 to D3. This agreement is dated 02.05.2006. The case of the appellants before the trial court was that Rafeeq informed Appukuttan about the dispute with his wife and asked for Rs.,25,000/- to settle that dispute and extend the period of Ext.A1 agreement. Accordingly, Ext.A2 agreement was executed on 02.04.2007. Unfortunately, Appukuttan died on 30.11.2008 and

Rafeeq died on 12.11.2008 as shown in Ext.A6 and Ext.B6 death certificates. There is no case for both sides that Rafeeq or Appukuttan took any legal steps in accordance with Ext.A1 and A2 agreements. That means till the death of Appukuttan and Rafeeq there was no legal remedies sought by original executants or the predecessor in interest till the filing of this suit on 12.01.2009. The defendants 1 to 3 have specific contention in the written statement itself that they have filed OP 481/2005 against Rafeeq before the Family court, Thrissur and the very plaint schedule property herein was attached as per order in IA.1382/2005 as per order dated 10.05.2005. That OP was already decreed in favour of D1 to D3 even before Ext.A2 document. Ext.B1 is the certified copy of OP.481/2005 which was filed for the maintenance of defendants 1 to 3 and for return of gold ornaments or its value. There was also prayer for return of other money from Rafeeq. Ext.B2 shows that property was attached by the Family court, Thrissur on 10.05.2005. Ext.B3 which is the encumbrance certificate from 1995 to 2007 showing attachment made by Family court as per Ext.B2 attachment order. Ext.B4 is the certified copy of decree in favour of defendants herein from Family court, Thrissur. Ext.B5 was the execution petition filed on 28.04.2007 for the sale of this property. These documents clearly shows that even before Ext.A1 agreement, there was attachment subsisting with respect to the claims of defendants 1 to 3 including the maintenance claim. The contention of the plaintiffs that Rafeeq informed Appukuttan about the dispute with his wife shows that Appukuttan and plaintiffs were knowing about the dispute between the parties and even the attachment order from the Family court, Thrissur. The attachment order was

available in the encumbrance certificate. So by applying the principle “ Let the buyer beware” shows that Appukuttan while executing he document will certainly aware about the attachment. Moreover, Appukuttan was residing in the house in the property and the attachment order was received by Rafeeq on 10.05.2005 as per Ext.B2 document. So even when Ext.A1 was prepared on 02.05.2006. Rafeeq and Appukuttan were knowing about the attachment made by Family court. It is true that the evidence of PW2 proves the execution of these documents. At the same time, it is also clear that these documents marked as Exts. A1 and A2 are made in order to defeat the claim of respondents 1 to 3 in the Family court case.

13. PW1 was the 2nd plaintiff in the plaint and she has simply stated what is pleaded in the plaint. There is no case for her that she had found payment of advance amount of Rs.35,000/- by Appukuttan to Rafeeq. PW2 has only stated about the execution of documents and nothing was stated regarding payment of Rs. 35,000/- as advance amount. PW3 was a household worker, who has no case that he found Appukuttan paying advance amount of Rs.35,000/- to Rafeeq. There are no documents to prove that Appukuttan paid any amount as advance as per Ext.A1 document . The recitals in Ext.A1 by itself cannot be accepted regarding the payment of advance amount as it is a fact to be proved independently by appellants when they are claiming that amount with additional amount allegedly paid in the suit. With respect to Ext.A2 document also, there is no case regarding payment of Rs.25,000/- for PW1 or PW2. As already mentioned earlier PW1 only repeated the pleadings in the plaint. The payment of Rs.25,000/- was not towards the advance amount, but was

for allegedly settling the dispute with the wife of Rafeeq. These circumstances clearly indicates that these documents are made only to defeat the claim of respondents 1 to 3. So there is no question of any readiness and willingness on the part of appellants. Only when agreement for sale was found genuine the court has to consider the readiness and willingness and the discretion u/s. 20 of the Specific Relief Act.

14. While considering the readiness and willingness, irrespective of the genuineness of Exts.A1 and A2, it is necessary to note that in Ext.A2 there was nothing stated regarding the readiness and willingness of Appukuttan till 02.04.2007 and even thereafter till 02.10.2007 which is fixed as the date of registration as per Ext.A2. Ext.A6 shows that Appukuttan died on 30.11.2008, whereas as per Ext.B6 Rafeeq died on 12.11.2008. There was no pleadings or any evidence regarding the steps taken by Appukuttan for getting the document executed till the death of Rafeeq or even after the death of Rafeeq. In fact, Appukuttan was sure that it is not possible to execute the document in view of the attachment of the property by the Family court in the year 2005 itself. Instead of getting the document executed with all the liabilities of the decree of Family court, Rafeeq actually tried to handover the possession of the property to Appukuttan as per Ext. A2, in order to defeat the claim of respondents 1 to 3 against the statutory provision of Sec.64 CPC. In such a circumstances, it can only be held that there was no readiness and willingness on the part of Appukuttan or the appellants herein. There is no case for the appellants herein that they are ready to discharge the liabilities of Rafeeq as per the attachment of the Family court in favour of R1 to R3. So even the discretion u/s. 20 of Specific Relief

Act cannot be given in favour of appellants herein. The trial court was right in finding that the comparative hardship is against the appellants.

15. A claim is being made in the written statement filed by appellants u/s. 53A of Transfer of Property Act as per the terms of Ext.A2. Ext.A2 was dated 02.04.2007. It is an unregistered document. It is necessary to mention that there was amendment in Sec.53A T.P Act with effect from 24.09.2001 whereby in the notwithstanding clause the words “ the contract though required to be registered, has not been registered, or ” was omitted and there was simultaneous amendment made in the Registration Act incorporating Sec.17 (1A) with effect from 24.09.2001 which requires registration of document for the purpose of Sec.53A of T.P. Act. In Sec.49 of Registration Act also, there was amendment. So Ext.A2 cannot be considered for a claim u/s. 53A of Transfer of Property Act. The recitals in Ext.A2 itself shows that parties themselves are aware that there is no chance of getting the document registered. In these circumstances and on the evidence on record, I find that the trial court was right in not granting a decree for specific performance. Point No.1 answered against appellants.

16. **Point No.2:** The trial court had found that the alternate relief was not for return of advance amount , but only sought as a decree for money. In the court fee portion of the plaint, there is no mention at all regarding the provisions under which court fee was paid for the reliefs, or the alternate reliefs. It is necessary to mention the provisions of Court Fees Act under which court fees are paid and calculated by the appellants. The manner in which court fee was calculated is not

mentioned in the plaint. Even after the specific finding in the trial court, there was no improvement on the part of appellants even when the court fee was paid in the appeal. Apart from these circumstances, it is already found that Exts. A1 and A2 are not genuine documents, but created only to defeat the claims of R1 to R3 as per the decree of the Family court, Thrissur. In that circumstances, I find that appellants are not entitled to make claim regarding the amount stated in the plaint. Point No.2 answered against the appellants.

17. **Point No.3 & 4:** In view of my findings on points No.1 and 2, I find that the Appellants are not entitled for any reliefs. Appellants are liable to pay costs to the respondents 1 to 3.

In the result, Appeal is dismissed with Costs.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court this the 17th day of March, 2026).

sd/-
ANIL T.P
IV ADDL. DISTRICT JUDGE
THRISSUR.

APPENDIX

NIL

/True Copy/

sd/-
IV ADDL. DISTRICT JUDGE
THRISSUR.
 By Order

Copied by: at

Compared by: kr

Sheristadar

Judgment in
AS . 313/2013.
Dated: 17.03.2026.