IN THE COURT OF THE SUB JUDGE, NEDUMANGAD
PRESENT : SMT. ASH.K. BAL, B.Sc., L.L.B., SUB JUDGE

Wednesday, the 3rd June 2015/ the 13th Jyaishta 1937.

COMMON JUDGMENT IN O.S. 1/2009, 240/2010 & O.S. 241/10

O.S.No.1/2009

PLAINTIFFS:-

1. Basheer M. Picha @ Muhammed Basheer, aged 56, S/o Mytheen Picha, Bainds 128, Abhaya Nagar, Peroorkada P.O. Peroorkada Village, Thiruvaanthapruam having present address at Villa No. 981, Road No. 5024, Block No. 950, Askar, Manama Bahrain (Originally had address at MMP Building, Chettikonathu Chittuvittu Muri, Tholicode Village, Nedumangadu.)

2. Indira Basheer, W/o Basheer M. Picha, aged 55, Bainds 128, Abhaya Nagar, Oolanpara, Peroorkada P.O. Peroorkada Village, Thiruvaanthapruam having present address at Villa No. 981, Road No. 5024, Block No. 950, Askar, Manama Bahrain (Originally had address at MMP Building, Chettickonathu Chittuvittu Muri, Tholicode Village, Nedumangadu.)

(Both the plaintiffs are represented by their power of attorney holder Manojkumar, aged 42, S/o Rajasekharan Nair, Jaya Bhavan, Velloorkunnam, Moovattupuzha, Ernakulam (Dist.).

By Adv.Sri. Ajith Prabhav

DEFENDANTS:-

1. Shajideen, aged 54, S/o Mytheen Picha, No. 39, Pulickaparambil, Ambala Nagar, Kuzhanadu Muri, Vattappara, Vattappara Village, Nedumangad Taluk, Thiruvananthapuram (Dist.)

2. B.M. Rafi, aged 36, S/o Badarudeen, Rafi Manzil, Nadichira, Thengumkara Muri, Karippooru Village, Nedumangad Taluk, Thiruvananthapuram (Dist.)

3. Sajeed, aged 35, S/o Shihabudeen, T.C. 5/1. Sree Nilayam, N.C.C. Road, Ambalammukku, Peroorkada Village, Thiruvananthapuram.

4. Japamani, aged 65, S/o Joseph, J.S.R. House, Malayadi, Charuvittu Muri, Tholicode Village, Nedumangad Taluk.

Advocate – Sri. M. Shajudeen for D1
Sri. P. Sreekumar for D2
Sri. A. Muhammed Iqbal for D3
Sri.Dinesh Kumar for D4.

O.S.No.240/2010

PLAINTIFF:-

Sajeed, aged 35, Agriculture, Muslim,
S/o Shihabudeen, M.M.P. Building,
Iruthalamoola, Chittuveettu Muri, Tholicode Village.

By Adv.Sri. A. Muhammed Iqbal.

DEFENDANT:-

Indira Basheer, W/o Basheer, aged about 55,
Abhaya Nagar 128, Oolanpara,
Peroorkada Village, from MMP Building, Chittickonam
Chittuveettu Muri, Tholicode Village, Nedumangadu.

(Defendant is represented by her Power of Attorney Holder Manojkumar, aged 42, S/o Rajasekharan Nair, Jaya Bhavan, Velloorkunnam, Moovattupuzha, Ernakulam (Dist.)

Advocate – Sri. V.A. Baburaj (For Power of Attorney Holder

O.S.No.241/2010

PLAINTIFF:-

B.M. Rafi, aged 36, S/o Badarudeen, Rafi Manzil,
Nettirachira, Thekkumkara Muri,
Karippoor Village, Neduangad Taluk.

By Adv.Sri. P. Sreekumar.

DEFENDANTS:-

1. Basheer M. Picha @ Muhammed Basheer, aged 56, S/o Mytheen Picha, residing at Abhaya Nagar 128, Oolampara Peroorkada Village, from MMP Building, Eruthalamoola Chittuveettu Muri, Tholicode Village,

2. Indira Basheer, W/o Basheer M. Picha, aged 54, Abhaya Nagar 128, Oolanpara, Peroorkada Village, from MMP Building, Eruthalamoola Chittuveettu Muri, Tholicode Village,

Advocate – Sri. V.A. Baburaj

These suits have been jointly heard on the 21st day of May, 2015 and having stood over for consideration to 3-6-2015 the court delivered the following

C O M M O N   O R D E R

O.S.No. 1/2009:- Suit for declaration, recovery of possession, cancellation of documents etc.

2. Averments in the original plaint in brief are as follows: 2nd plaintiff is the wife of the 1st plaintiff, 1st defendant is the brother of 1st plaintiff, 3rd defendant is the son of elder brother of the 1st defendant. 4th defendant was an employee of the plaintiff. The plaint schedule property having an extent of 7 Acres 25 cents comprised in Re.Sy.No.1555, 1556, 1557 and 1559 of Tholicode

village absolutely owned by the plaintiff by virtue of sale deed No. 551/83, 552/83 of SRO Varkkala and sale deed No. 189/83 of Vithura, Sub Registrar Office. Out of the said property an extent of 182 cents separately owned by the 1st plaintiff is the plaint A schedule property. The remaining extent owned by the 2nd plaintiff is B-schedule. The original of the title deeds are with the 1st defendant. The plaintiffs are settled in kingdom of Baharin. On 13.5.2006 1st defendant came to Baharin and made the plaintiff believe that plaint A and B schedule properties could be sold for Rs. 1.5 crores and expressed his readiness and willingness to support the plaintiff personally and to manage the assets in the event the plaintiffs issue a general Power of Attorney to him. Believing the words of the 1st defendant , 1st plaintiff issued general Power of Attorney to the 1st defendant to deal with their court matters, land property matters etc. Subsequently he informed the plaintiff that the property could be sold for Rs. 1.25 crores and as required by him plaintiffs executed Power of Attorneys on 24.10.2007 before the Embassy Bahrain and sent the same to him. 1st defendant informed the plaintiffs that he has entered into an agreement on

5.11.2007 with an employee of V.S.S.C Thiruvananthapuram and for receiving the advance sale consideration of Rs. 30,00,000/- he wanted the plaintiffs at Bahrain to issue receipts in advance. Accordingly the plaintiff has drawn 6 receipts bearing 6 different dates as instructed by the 1st defendant. The 1st defendant informed the plaintiff that he has paid Rs. 5,00,000/- in the loan account of the 1st plaintiff in Federal Bank, kilimanoor branch remitted 4,00,000 in SBI, Nedumangad towards decree amount due from the 2nd plaintiff and also has deposited Rs. 6,00,000/- in connection with the liability of plaintiff in DRT company law board, RDO Land Acquisition of Indian Bank and that since he has already spend the above sum he has adjusted the same from the advance sale consideration of Rs. 30,00,000/- and that from the balance of Rs. 15,00,000/- Rs. 10,00,000/- was informed to be utilized by the 1st defendant for effecting one time settlement of the 1st plaintiff's loan account in Federal Bank, Kilimanoor branch and the balance 5,00,000/- will be retained by him. He assured the plaintiffs that sale deed could be executed on or before 31.1.2008 after receiving the balance sale consideration. For the purpose of the registration of sale deed with respect to plaint schedule property for 1.25 crores 1st defendant send black stamp paper to the plaintiffs and also procured the thump impression of the plaintiffs in 5 stamp papers of Rs. 10 each on 5.11.2007. 1st defendant has not sent the copy of the agreement for sale to the plaintiffs. On 14.1.2008 2nd defendant has executed another Power of Attorney in favour of the 1st defendant to collect the title deed of the plaint B-schedule property from SBI, Nedumangad. As the balance sale consideration was not provided and the sale deed was not executed even after the expiry of 2 months from 31.1.2008 1st plaintiff demanded the 1st defendant to rescind the agreement for sale. Later on enquiry by the plaintiff it was revealed that the payments allegedly made by the defendant in the banks, DRT etc were false. Where as he has remitted Rs. 10,00,000/- only in Federal Bank , Kilimanoor Branch as claimed towards the one time settlement of loan. 1st defendant has confess of his mistake and considering the relationship with him, 1st plaintiff has agreed to settle the transaction with him. As per the final settlement arrived between the parties 2nd plaintiff issued a cheque for Rs.

15,00,000/- dated 29.4.2008 to be drawn in Kodak Mahindra Bank to the 1st defendant who made the plaintiff believed that the agreement for sale is cancelled and he is ready to return the stamp papers, title deeds etc as and when directed. 2nd plaintiff who returned to her house at Thiruvananthapuram made several demands to the 1st defendant to return the documents. But he has evaded the demands. In the said circumstances the plaintiffs have cancelled the Power of Attorney by executing revocation deed dated 22.7.2008 and 29.07.2008 respectively and the revocation was communicated also. Even before the said cancellation Power of Attorneys were canceled by the express conduct of the plaintiffs. But the 1st defendant who has encashed the cheque for Rs. 15,00,000/- towards the final settlement, fraudulently created 3 documents in respect of the plaint schedule properties without the consent and knowledge of the plaintiff. The 1st defendant has created sale deed Nos. 1126/08 and 1127/08 dated 10.7.2008 in favour of 2nd defendant and another sale deed No. 1201/08 in favour of the 3rd defendant with respect to plaint A and B schedule properties on the strength of the Power of Attorneys executed by the plaintiffs. All the 3 sale deeds created by the 1st defendant are fraudulent and void abinito. The said documents lack consideration and created with ulterior motive to grab the property of the plaintiff. The defendants 2 and 3 have not obtained possession over the property covered by the documents but the 1st defendant assumed possession over the properties on 1.7.2008 taking advantage of the situation that the plaintiffs are settled abroad. The defendants have grabbed the property of the plaintiff even without paying any sale consideration and Vithura police has already registered a crime in this regard. On 20.10.2008 1st defendant sent a notice to 1st plaintiff in his Trivandrum address alleging that an amount of Rs. 53,77,257 was due from the plaintiff to him and that Rs. 15,00,000 was given to him by the plaintiff on 29.4.2008 and further Rs. 16,95,000/- obtained by the sale of properties of Plaintiff and that the balance of Rs. 22,17,257 is due from the plaintiffs to him. The allegation in the notice is false plaintiffs have send a reply dated 11.11.2008 demanding creation of necessary document to clear the title of plaintiff over the plaint schedule property. The defendants 2 and 3 have given reply through their counsel stating that full sale consideration as per the prevailing rate was given to the 1st defendant who was competent to execute the document. Documents 1126, 1127 , 1201 etc of 2008 are void abinitio as the same are not supported by consideration and not executed in good faith. The same are the result of fraud and criminal conspiracy committed by the defendants on the plaintiff. The defendants 2 and 3 have no means to purchase the property which would fetch about 1.5 crores and are only name lenders to the fraudulent transaction. The consideration shown in the document never reflect the prevailing market value of the property. The first page of the document 1126/08, 1127/08 were written in the stamp papers purchased in the name of 2nd plaintiff on 25.10.2007 the 1st page of document No.1201/08 is written on the paper purchases in the name of the 2nd plaintiff on 25.10.2007. Thump impression of the plaintiff on the said pages were obtained on 5.11.2007, When the stamp papers were blank. The document 1126/8, 1127/8 , 1201/08 are liable to be cancelled plaintiffs apprehend that the documents will cause serious injury to the plaintiff. So they applied to adjudge the document as void and to cancel the same. In the circumstances the plaintiffs prayed for declaration of title over the plaint A and B schedule properties, recovery of possession of the same and to adjudge the sale deed No.1126/08, 1127/08 etc dated 10.07.2008 and document No.1201/2008 dated 28.7.2008 of Sub Registrar Office, Vithura as void and to cancel the same.

3. Subsequently as per the order in I.A.No. 1204/13 dated 5.11.2013 the following averments were incorporated by way of amendment: As demanded by the 1st defendant, 2nd plaintiff has executed a Power of Attorney in favour of 1st defendant for sale of plaint B schedule properties on 17.10.2007 in which 1st defendant was mentioned as brother of the 2nd plaintiff When 1st defendant informed that said Power of Attorney was not acceptable to the purposed purchasers and demanded the plaintiffs to issue fresh Power of Attorney urgently 2nd plaintiff again executed Power of Attorney dated 24.10.2007 in respect of plaint B schedule property along with power of Attorney dated 24.10.2007 executed by 1st plaintiff with respect to A schedule property and sent to 1st defendant. So the Power of Attorney dated 17.10.2007 executed

by 2nd plaintiff was superseded by Power of Attorney dated 24.10.2007 . But the 1st defendant has created the sale deeds in favour of the defendants 2 and 3 relying on the Power of Attorney dated 17.10.2008. Said sale deeds are void abinitio as executed on the strength of Power of Attorney dated 17.10.2007.

4. The defendants have filed the written statement and also addl. Written statement after the amendment. The main contentions in the written statement filed by the 1st defendant are as follows:

Suit is not maintainable. 4th defendant was never be an employee of 1st defendant but had been working for the plaintiff for the last more than 25 years. Original sale deeds of the property is not with 1st defendant as alleged. The original title deed of the 2nd plaintiff obtained from the bank was handed over to the defendants 2 and 3 at the time of executing the sale deeds. 1st defendant has not gone to Bahrain on 13.5.2006 as alleged in the plaint. It was on the request of the 1st plaintiff 1st defendant went to Bahrain on 11.4.2006 and that on the visiting visa sent by the 1st plaintiff himself and stayed for two days. The 1st plaintiff invited him for discussing about the out standing financial liabilities of himself and his wife 2nd plaintiff to be discharged in India and to sort out means of liquidating the same. The 1st defendant was informed that there are pressing liability to SBI, Federal Bank, Indian Bank, Income tax department and other individual creators and requested his help to clear some liabilities by advancing money and under took that the same would be repaid within 6 months. Considering the relationship and on humanitarian consideration 1st defendant has agreed the same. The plaintiff entrusted the copies of some decrees and other papers with the defendant regarding his liabilities to enable the 1st defendant to contact the concerned creditors and to negotiate the matters. Accordingly after returning India 1st defendant has contacted the creditors and has discussion with them. On the demand by the creditors for a Power of Attorney in favour 1st defendant by the debtors 1st defendant contacted the plaintiff over telephone and accordingly plaintiff 1 and 2 have executed two Power of Attorneys at Bahrain on 25.6.2006. On the strength of the Power of Attorney 1st defendant has contacted the creditors including the banks ie. SBI. As Federal Bank have already initiated steps for recovery of decree amount 1st defendant moved Sub Court, Nedumangad. Matter was referred to the Lok Adalath and it was settled for an amount of Rs. 9,12,257 which was decided to be paid at by installment at the rate of 1,00,000/- per month. 1st defendant has discharged the entire liability and released the plaint B schedule property belong to the 2nd plaintiff from the liability. The last installment was paid on 5.12.2007 . Before leaving India to Baharin 1st defendant on the request of the 1st plaintiff has taken with him 500 US Dollar for sending it to his daughter who was studying at England. Accordingly the 1st defendant has given 500 US dollar to the 1st defendant on 12.4.2006 at Bahrain. 1st plaintiff used to receive money from the 1st defendant through his local representatives Babu Raj, Chandran Nair, Anil Kumar and his son in law Faisal. Whenever the 2nd plaintiff came and stay at Thiruvananthapuram she also used to borrow money from the 1st defendant for her expenses on the understanding that all the accounts will be settled together. On 5.11.2007 1st defendant has paid Rs. 10,00,000/- towards the liability of 1st plaintiff Federal Bank. 1st defendant has advanced a total amount of Rs. 35,00,000/- to the plaintiff on various dates through their representatives and son in law during the period of 12.4.2006 to 10.5.2008. The gross amount advanced by the 1st defendant to the plaintiff comes to Rs. 54,12,257/- when the 1st defendant has pressed for repayment and as creditors also started pressing for the dues plaintiffs thought of disposing some of their properties and clearing the liabilities. For that purpose they requested the 1st defendant to find out some suitable purchasers for the A and B schedule properties. They sent separate Power of Attorneys executed at Bahrain on 17.10.2007 and 24.10.2007 authorising the 1st defendant to negotiate and sell the properties. As the original title deed of A schedule was missing and the title deed of B schedule was in bank no purchases came forward for the properties. So the 1st defendant was constrained to sell A and B schedule properties for total consideration of Rs. 16,95,000 with knowledge of the plaintiff as per 3 documents in favour of defendants 2 and 3. The price fetched was fair and reasonable. 1st defendant obtained previous approval from the 1st plaintiff by contacting him over phone and that of the 2nd plaintiff in person who was in Thiruvananthapuram at that time. 1st plaintiff instructed the 1st defendant to appropriate and adjust the sale proceeds towards the dues to him and agreed to pay the balance due to the 1st defendant without delay. The sale deeds were executed by the 1st defendant on the basis of the Power of Attorney executed by the plaintiffs. They are legal and valid document by which title and possession of the A and B schedule properties conveyed to defendants 2 and 3 as bonafidy purchasers. Out of the amounts due to the 1st defendant, plaintiff 1 and 2 have paid Rs. 15,00,000/- by cheque on 29.4.2008 and the sale consideration of Rs. 16,95,000 was also adjusted by the 1st defendant as instructed by the plaintiff. Thus the plaintiff have repaid Rs. 31,95,000/- leaving a balance of Rs. 22,17,257/-. For realisation of the said amount 1st defendant has filed O.S.No. 103/09 before Sub Court, Thiruvananthapuram. 1st defendant never made the plaintiff believe that an agreement for sale was executed and not requested the plaintiffs to sent separate receipts with different dates for receiving the advance 30,00,000/- as alleged 1st defendant has not represented that the properties would fetch 1.25 crores as alleged in the plaint. The 1st defendant has informed the plaintiff that he has paid Rs. 15,00,000/- as mentioned in para No.5 . 1st defendant has not sent any blank stamp paper to the plaintiff to Bahrain on the other hand the plaintiffs having good stock of black stamp papers, with them sent the blank papers bearing their thump impression for enabling 1st defendant to get the sale deed prepared by the document writer. They also sent a special Power of Attorney on 14.1.2008 for collecting the title deeds of 2nd plaintiff from the bank. Plaintiff never demanded the 1st defendant to rescind the agreement as there was no such agreement. Likewise there was no under standing that the sale would be complete before 31.01.2008. It is true that the plaintiffs have canceled the power of attornies on 22.07.2008 and 25.08.2008 respectively. The Power of Attornies being irrecoverable cannot be canceled unilaterally. Hence the cancellation are void and of no legal consequences. Sale deed No. 1126/08, 1127/08 and 1201/08 were executed by the 1st defendant and that defendants 2 and 3 as venders are in possession of the properties in pursuant to the document. The allegation of criminal conspiracy etc are cruel acts of ingratitude for the job done by the 1st defendant for the benefit of the plaintiff. The 1st defendant has sent letter to the 1st plaintiff on 20.10.2008 demanding the repayment in the Trivandrum address as well as in the Bahrain address and the same letters were communicated through Email also. The sale deed executed by the 1st defendant in favour of defendants 2 and 3 are valid and perfectly legal. Consideration received under the said document is fair and reasonable when compared to the prevailing market value of the property. Defendants 2 and 3 are the bonafidy purchasers and not name lenders are alleged. Plaintiff has no cause of action and prayed for dismissal of the suit.

5. After amendment 1st defendant has filed additional written statement contenting that the power of attorney amounts to an equitable assignment of plaint schedule property in consideration of the expenses incurred by the 1st defendant for the plaintiff. Plaintiffs have sent the Power of Attorney on 17.10.2007 and 24.10.2007 acknowledging their indebtedness to the 1st defendant, to sell the plaint A and B schedule properties to intending purchases. Power of Attorney dated 24.10.2007 was not executed

to revoke or supersede the earlier Power of Attorney dated 17.10.2007 but only for correcting the inadvertent mistake crept in the document. There is no addition alteration or modification or deletion of terms of the power of attorney of 17.10.2007 . The documents executed by the 1st defendant on the strength of power of attorney dated 17.10.2007 is not void or incompetent in eye of law and prayed for dismissal of the suit with costs.

6. The contentions in the written statement filed by the 2nd defendant are as follows: It is true that the plaintiff has field a suit against the 1st defendant but it is the result of collusion between the plaintiff and the 1st defendant to defeat the right of the bonafide purchases. The 2nd defendant who was in search of property negotiated with the 1st defendant and purchased the property. 1st defendant has verified the Power of Attorney and satisfied that he has authority to execute the sale deed on behalf of the plaintiff and accordingly executed the sale deed. The sale deed No. 1126/08 and 1127/08 dated 10.07.2008 are executed for valid sale consideration and perfectly valid document. There was no criminal conspiracy or fraud behind the documents. In fact the suit

is the result of conspiracy and fraud by the plaintiff and the 1st defendant. 2nd defendant has sufficient means to purchase the property and is an income tax payee. He has purchased 4.12 half acres of property for a total consideration of Rs.9,75,000/- property is in a remote area and defendant purchased it to plant rubber trees. The sale deed in favour of the 2nd defendant is not a fraudulent one and 2nd defendant is not a name lender as alleged. The plaintiffs have purchased the stamp papers, affixed their photos thump impression etc and sent it for the purpose of registration. The facing sheet of the document bears a different date is of no consequences. Remaining stamp papers were purchased by the 2nd defendant on 10.07.2008. The allegation that the thump impression in the stamp papers were obtained on 5.11.2007 is false. There is direct access to the property from the northern and western side. The alleged revocation has no legal force 2nd defendant is a bonafidy purchase of valid consideration and he believed the 1st defendant the power of attorney holder of the plaintiff and his authority to execute the sale deed. The 2nd defendant has entered into the transaction after enquiry and convincing that the power of attorney was in force. The documents are not liable to be canceled plaintiffs are not entitle to get a declaration of title of plaint A and B schedule properties and recovery of possession. The defendants have measured the property and laid the survey stone before execution of the sale deed. 2nd defendant is in possession of the property in pursuance of the sale deed in his favour. The cause of action pleaded in the plaintiff is not correct and prayed for dismissing the suit with cost of Rs. 10,000/- to 2nd defendant.

7. The contention raised in the written statement filed 3rd defendant are as follows:

Suit is not maintainable. None of the prayer in the plaint are allowable on the basis of alleged revocation of the Power of Attorney which is irrevocable. Date of revocation and the intimation of revocation are after the execution of the document of transfer. An irrecoverable Power of Attorney constitute equitable assignment. The 3rd defendant is a bonafidy purchaser for consideration. The 4th defendant is not an employee of 1st defendant but he was an employee of the plaintiff. In the written statement filed by the 1st defendant he has explained the entire truth regarding the transaction and the 3rd defendant adopts the same. Plaintiff have no right or title over the property transferred to the 3rd defendant they have no right to challenge or to set aside the sale deed in favour of 3rd defendant and also to raise a claim for recovery of possession There is no valid cause of action for the plaintiff and prayed for dismissal of the suit with costs.

8. 4th defendant has filed the written statement raising the contention similar to those taken by defendants 1 to 3. He has denied the plaintiffs case that he was the employee of the 1st defendant. It is contented that the 4th defendant was the employee of the plaintiff even before 1983 the period during which plaint schedule items were purchased by the plaintiff. 4th defendant was employed for looking after the plaint schedule property and for conducting the Agricultural operations and allied work. He was working as caretaker of the plaint schedule property for and on behalf of the plaintiffs. He had no conspiracy with any of the defendant. 4th defendant is an attester a document No.1126/08 and 1127/08 and the documents were executed after getting the

approval of 1st plaintiff on phone. 4th defendant is unnecessarily impleaded in the suit with false and baseless allegations in order to wriggle out the commitment of the plaintiff to give 10 cents of land and Rs. 2,00,000/- to the 4th defendant to put up a homestead as promised. However the power of attorney of the plaintiff has given 2,00,000/- to 4th defendant as directed by the 1st plaintiff for which 4th defendant has given a receipt to the Power of Attorney Holder.

9. On the basis of the rival contention raised by the parties following issues were framed for consideration by my predecessor in office:

1. Whether the plaint schedule properties were assigned without proper and lawful authority?
2. Whether the Power of Attorney allegedly executed by the plaintiff is irrecoverable?
3. Whether the plaintiff revoked the Power of Attorney and if so what is the effect thereof over the documents executed under the power of attorney?
4. Whether the 1st plaintiff has got title of plaint schedule property?

5. Whether the 2nd defendant got the title of plaint B schedule property?

6 .Whether the sale deed 1126/08, 1127/08 and 1201/08 are not legally valid?

7. Whether the plaintiff is entitle to have the said document adjudicated on void and ordered it to be delivered up and canceled?

8. Whether the suit is not maintainable due to the irrevocable nature of Power of Attorney or other reason?

O.S.No.240/10:

10. Suit for injunction.

11. Plaint averments in brief are as follows: The plaintiff is the owner of the plaint schedule property and is in possession of the same. Plaintiff has purchased the property as per document No.1201/08 executed by Shajudheen brother of the defendant's husband in his capacity as Power of Attorney Holder of the defendant. The defendant who returned from gulf recently started raising some untenable claim over the plaint schedule property and on 18.8.2008 at 11AM came to the plaint schedule property and

attempted to commit waste therein. The plaintiff could obstruct the attempt by the timely intervention. Defendant has given Power of Attorney dated 17.10.2007 authorising her husband's brother to execute the sale deed with respect to the plaint schedule property. Power of attorney executed in Indian Embassy Bahrain was submitted for adjudicated before RDO, Thiruvananthapuram on 23.07.2007 and after completing the proceedings power of attorney holder has executed the document in favour of the plaintiff. The defendant has no right or possession over the plaint schedule property and prayed for a decree of prohibitory injunction restraining the defendants or her men from trespassing into the plaint schedule property and from committing any act of waste by cutting and removing tree in the property etc.

12. The defendant has appeared before court and filed the written statement raising the following contentions:-

Suit is not maintainable as filed under the instigation of Shajudheen brother of the defendant's husband. Plaintiff has no right or title over the plaint schedule property. Averments that the plaintiff got title over the plaint schedule property by way of sale deed No. 1201/08 is false. The said sale deed was executed by the aforesaid Shajudheen styling himself as the Power of attorney holder of the defendant. Plaintiff has no possession over the plaint schedule property but the property is in possession of Shajudheen. It is true that the defendant had given a Power of Attorney to Shajudheen's brother and defendant's husband. He has obtained the Power of Attorney by making the false representatives that he could sell the plaint schedule property for Rs. 1.25 crores. The defendant and her husband are settled in Bahrain for the last so many years. On 2.11.2007 Shajudheen made the defendant's husband believe that he has entered into the agreement for sale of the plaint schedule property and to procure the advance sale amount of Rs. 30,00,000/- he wanted the defendant and her husband at Bahrain to issue the receipt of the same. Accordingly the defendant and her husband have drawn six receipts bearing six different date as instructed by Shajudheen though they have not received any money. Shajudheen forced the defendant's husband to believe that he had already spent a total amount of Rs. 15,00,000/- to discharge the liability of the defendant and her husband in Federal Bank, Kilimanoor branch, SBI Nedumangad and DRT Company law board, RDO, Land Acquisition, Indian Bank etc. Later said Shajudheen informed the defendant and her husband that the agreement for sale of the plaint schedule property was executed on 5.11.2007 with an employee of V.S.S.C, Thiruvananthapuram who is also engaged in real Estate Business and that since Shajudheen has made the payments referred above he has adjusted Rs. 15,00,000/- from the advance sale consideration of Rs. 30,00,000/- and also from the balance amount of Rs. 15,00,000/- 10,00,000/- to be utilised for the one time settlement of loan account and defendant's husband with Federal Bank, Kilimanoor branch and the remaining 5,00,000/- will be retained by him. He has given an assurance that the sale deed could be executed before 31.1.2008 after receiving the balance sale consideration. He had given an assurance that the sale deed could be executed before 31.1.2008 after receiving the balance sale consideration. By sending blank stamp papers to the defendant and her husband at Bahrain, Shajudheen procured thump impression of defendant and her husband separate black stamp papers of 10 rupees each on 5.11.2007 for registering the sale deed of the property for Rs. 1.25 crores. Shajudheen evaded the sending of copy of the agreement for sale to the defendant and her husband. Since e balance sale consideration was not paid and the sale deed was not executed inspite of expiry of 2 months from 31.1.2008. Husband of the defendant demanded Shajudheen to rescent the sale agreement stated to have been entered. On a subsequent enquiry by the defendant and her husband it was revealed that the payment of Rs. 15,00,000/- claimed to have made by Shajudheen towards the debt of defendant and her husband in the bank etc were false and he had remitted only 10,00,00/- in the Federal Bank, Kilimanoor branch. Subsequently the entire transaction between the plaintiff and her husband with Shajudheen was finally settled by the issuance of a cheque dated 29.4.2008 for Rs. 15,00,000/- by the plaintiff which was duly encashed by him. Though the defendant when return to her residence at Thiruvananthapuram demanded the plaintiff to return document he has evaded the demand by giving some lame excuses. In the said circumstances defendant and her husband have cancelled the power of attorney by executing the cancellation deed dated 22.07.2008 and 29.09.2008 and the matter of revocation was communicated to him. Even before the said cancellation the Power of Attorneys were cancelled by express conduct of the defendant and her husband and Shajudheen, on 22.4.2008 the date on which the cheque for Rs.15,00,000/- was issued to Shajudheen and subsequently on 29.4.2008 the date of which Shajudheen has encashed the cheque. But after encashing the cheque issues towards the final settlement Shajudheen has fraudulently created 3 sale deeds with respect to the properties without the consent or knowledge of the defendant and her husband. The documents 1126/08, 1127/08 and 1201/08 were executed on the strength of the Power of Attorney which were canceled by the express conduct by the parties. Plaintiff is relying on the sale deed No.1201/08 fraudulently created as mentioned above. The cause of action alleged is only an imagination on 18.8.2008 defendant has not gone to the property for any purpose. As the defendant and her husband are settled in Bahrain 1st defendant Shajudheen took possession of the plaint schedule property on 1.7.2008 and plaintiff doesn't have any possession over the property. The plaintiff is not residing in the address mentioned in the plaint and the address shown is not correct. The plaintiff got executed the document on the strength of Power of Attorney dated 17.10.2007 executed by the defendant but the said Power of Attorney was superseded by another power of attorney dated 24.10.2007. It was Shajudheen who sent Power of Attorney engrossed on the stamp papers to the defendant to be executed in Bahrain and signed by the defendant at Embassy of India Bahrain on 17.10.2007. The defendant has executed Power of Attorney on 17.10.2007 in favour of Shajudheen in which Shajudheen was mentioned as the brother but when Shajudheen informed the defendant that the proposed purchasers are not accepting the Power of Attorney in which relationship is wrongly mentioned as the brother the defendant. Another power of Attorney was executed by defendant on 24.10.2007. On the execution of the Power of Attorney dated 24.10.2007 the earlier Power of Attorney dated 17.10.2007 was annulled. But Shajudheen fraudulently got the Power of Attorney dated 17.10.2007 adjudicated by paying a megre sum towards stamp duty. The suit filed by the defendant and her husband O.S.No.1/2008 is pending for declaration on their title over the property including the plaint schedule property etc.

13. Issues raised for consideration are:

1. The plaintiff has got possession over the plaint schedule as per le deed No.1201/08 relied on by them?
2. Whether the prayer for permanent prohibitory injunction is allowable?
3. Reliefs and Costs?

O.S.NO. 241/10:

14. Suit for permanent prohibitory injunction.

15. Plaint averments in brief are as follows: Plaint schedule property belong to plaintiff and he is in possession of the same. The property was belonged to the defendants. As per the document No.1126/08 and 1127/08 executed by Shajudheen as power of attorney holder of the defendants the property devolved upon the plaintiff. The defendants have no right or interest over the plaint schedule property. The defendants had difference of opinion with the Power of Attorney Holder who is none other that

the brother of the 1st defendant and there after defendant started raising untenable claim over the plaint schedule property. On 18.08.2008 at 11AM defendants made an attempt to trespass into the plaint schedule property and to commit waste therein and the attempt could be obstructed by the intervention of the plaintiff. Plaintiff apprehends that the defendant's shall repeat their attempt to trespass in their plaint schedule property. 1st defendant was in gulf. He has given a Power of Attorney executed through Embassy Bahrain dated 24.10.2007 for producing before RDO, Thiruvananthapuram and 2nd defendant who executed Power of Attorney on 17.10.2007 also were produced before the RDO for adjudicate on 23.10.2007. The sale deed with respect to the property were executed based on the adjudicate Power of Attorney. The defendants have no manner of title over the plaint schedule property. In the circumstances prayer for a decree of permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule property and from committing any act of waste, by cutting and removing the trees standing in the plaint schedule property etc.

16. Defendants through the power of attorney holder filed the written statement contenting that the plaintiff has no title or possession over the plaint schedule property and is absolutely belong to the defendants. The document was executed by the brother of the 1st defendant who was not authorised for the same. The Power of Attorney executed in his favour by the defendant was already revoked and the matter was communicated also. Even before the said communication the power of attorney was revoked by the express conduct of the defendants. On 22.4.2008 itself the defendants have issued a cheque for Rs. 15,00,000/- to his power of attorney holder towards settlement who has encashed it on 29.04.2008. Without the knowledge and consent of the defendant alleged the power of attorney holder has executed 3 fraudulent document without any consideration and the same are void. The defendants have already field O.S.No.1/9 for declaration that the documents executed by the brother of 1st defendant as his Power of Attorney holder including in document in favour of the plaintiff is void and prayed for dismissal of the suit.

17. The issues framed are:

1. Whether the plaintiff is in possession of the plaint schedule property?

2. Whether the plaintiff is entitle to get injunction as prayed for?

3. Reliefs and Cost?

8. Here in this case O.S.No. 240/10 and 241/10 were originally filed before Munsiff Court, Nedumangad as O.S.No. 827/08 and 828/8 dated on 17.11.2008. As per the order in OPTR No. 42/10 dated 19.06.2010 Hon'ble District court, Thiruvananthapuram has trespassed the cases to this court for being tried along with O.S.No.1/2009. Accordingly all 3 cases were tried jointly.

19. PW1 to PW5 were examined on the side of plaintiff and Ext.A1 to A19, A23 to A30, X1,X2,C1 and C2 were marked on the side of the plaintiff. DW1 to DW4 were examined and Ext.B1 toB 31 and B33 to Ext.B39 were marked on the side of the defendant.

20. In the additional written statement filed by the defendant they have raised a consideration regarding maintainability of suit for want of proper valuation and court fee. On the basis of the

earlier finding that suit is not properly valued and court fee paid is not correct, Plaintiff has rectified the mistake and the necessary court fee was paid.

21. Issues 1 to 3: Parties herein after will be referred by their respective ranks in the leading case O.S.No.1/2009. Admittedly the plaint schedule property belonged to plaintiff 1 and 2 by virtue of Ext.A2 to A5 documents. 1st defendant is the brother of the 1st plaintiff and defendants 2 and 3 are the alleged purchasers of the property through the power of attorney executed by the plaintiffs in favour of 1st defendant. Plaintiff in O.S.No.240/10 is the defendant No.3 in O.S.No.1/2009. 2nd defendant in O.S.No.1/2009 is the plaintiff in O.S.No.241/10. Plaintiffs filed the suit through the Power of Attorney holder Manoj Kumar and the Power of Attorney in favour of Manoj Kumar is marked as Ext.A1. Here in this case plaintiff have attacked the sale deed executed by 1st defendant with respect to plaint schedule property in favour of 2nd and 3rd defendant on several counts. Case of the plaintiff is that 1st defendant has managed to get executed Power of Attorney dated 17.10.2007 and 24.10.2007 from the plaintiffs herein by made

them believe that he can arrange purchasers for the plaint schedule property for consideration of Rs. 1,50,00,000/- and there after informed the plaintiff that he has entered into a sale agreement with an employee of V.S.S.C on 5.11.2007 for sale of plaint schedule property for Rs. 1.25 crores and that he has received Rs. 30,00,000/- as advance and further that the sale deed would be executed before 31.1.2008 a payment of balance sale consideration. When the 1st defendant has failed to complete the sale transaction before 31.01.2008 as under took by him the plaintiffs have revoked the Power of Attorney in favour of the 1st defendant by executing cancellation deeds marked as Ext.B3 and B23 on 29.7.2008 and 22.07.2008 and communicated on 22.08.2008, 25.08.2008 respectively. The copy of the Power of Attornies dated 17.10.2007 and 24.10.2007 produced by the plaintiffs were marked as Ext.A6 to A8 and that the originals produced by the defendants were marked as Ext.B11 and B39.

22. Accordingly to the plaintiff even prior to Ext.B3 , Ext.23 plaintiffs have revoked the power of Attorney by express conduct after the issuance of Ext.A10 cheque so the sale deeds

executed in favour of defendants 2 and 3 by 1st defendant are void abinitio. Certified copies of the disputed sale deeds were marked as Ext.A11 to A13 original of which produced by the defendants are marked as Ext.B26 , B27 and B34. Ext.B26 and Ext.27 are dated 10.7.2008 and Ext.B.34 in favour of 3rd defendant is dated 28.7.2008.

23. 3rd defendant has raised a contention that none of the prayers in the plaint not allowable as based on alleged revocation of Power of Attorney which admittedly is irrevocable. He has further contented that the date of revocation and intimation of revocation are after execution of the alleged document of transfer and that an irrevocable Power of Attorney is an equitable assignment.

24. Common contention raised by defendants 1 to 3 is that Power of Attorneys were for consideration and constitute an equitable assignment and that as such Power of Attorneys are irrevocable. No doubt the word irrevocable is mentioned in Ext.A6 to A8 Power of Attorneys (Ext.B11,12 and B39). As pointed out by the learned counsel for the plaintiff there is no mentioning about

the irrecoverability of Power of Attorneys in the power of Attorney Act. He would argue that mere mentioning of word irrevocable doesn't make the Power of Attorney irrevocable and relying on the decision reported in ***"2004 (12) SCC 368, pointed out the settled position of law that the noman culture of the instrument is immaterial and what is the relevant is the intention of the parties"*** But it is to be noted that plaintiffs who executed the documents are not illiterate person. So the relevant point to be considered is whether the Power of Attorneys executed by the plaintiff are equitable assignments and irrevocable as contented by the defendants. It is to be noted that there is nothing in Ext.A6 to A8 to show that by executing the same any interest is created in favour of the 1st defendant and is an equitable assignment.

25. As per Sec.202 of the Indian Contract Act when an interest is created in favour of the agent in the subject matter the contract cannot be terminated to the prejudice of the such interest. Creation of any interest in favour of the 1st defendant is not mentioned in Ext.A6 to A8 documents. "***The Apex court in the decision reported AIR 1969 SC page No. 73 has considered the***

question of irrevocable nature of Power of Attorney. In that a person indebted to a bank executed a Power of Attorney to the Bank authorising the bank to execute a decree obtained by the debtor against a 3rd person and release and credit the amount in the debtors account, Hon'ble Apex court held that the same would constitute an irrevocable power of attorney and an equitable assignment. But in that are recitals in the Power of Attorney show the intention to create an interest in favour of the bank" . Same proposition is followed in AIR 1969 SC 313 and 1991(2) KLT 447. Learned counsel for the plaintiff has pointed out the dictum laid down by Hon'ble High Court Andra Pradesh reported in AIR 1985 AP (30) that assignment of interest must be simultaneous with the creation of Power. Mere description of Power of attorney as irrecoverable is immaterial. The Hon'ble High Court of Kerala has relied on that decision in 1991 (2) KLT 447 also. In 1991(2) KLT 447 Hon'ble High Court held that the authorisation given to an agent to do all acts in connection with the execution of contract and to receive money amounts to an equitable assignment. In that case also Power of Attorney was mentioned as irrevocable. But here the last clause in the power of attorney reveals the authorisation given to receive consideration for the plaintiffs.

26. More over as pointed out by the learned counsel for the plaintiff the deposition of DW1 and the recitals in Ext.A14 ie. Ext.B22 notice dated 20.10.2008 send by 1st defendant to 1st plaintiff, also probablise the case of the plaintiff that parties never intended to consider A6 to A8 as an irrevocable Power of Attorneys. The relevant portion in the deposition of 1st defendant in page No.13 read as follows: "Ext. B4 ൽ എഴുതിയിരിക്കുന്ന കാര്യങ്ങൾ പൂർണ്ണമായും സത്യമാണ്." You could have directly told me not to act upon the Power of Attorney if you have lost faith in me എന്നു പറഞ്ഞിട്ടുണ്ട്. Power of Attorney Act upon "ചെയ്യാൻ വാക്കാൽ പറഞ്ഞാൽ മതിയായിരുന്നല്ലോ? അങ്ങനെയല്ല act ചെയ്യുന്നതിന് മുൻപ് പറയാമായിരുന്നില്ലേ എന്നാണതിനർത്ഥം" The recitals in Ext.B26, 27 and B35 clearly reveals that 1st defendant received the sale consideration to entrust the same with plaintiff. The words used in the documents are

" വിലയായി ഒഴിഞ്ഞു എഴുതിതന്നു വാങ്ങിയ രൂപ .... ടിയാൾക്ക് പ്രകാരം ബോദ്ധ്യപ്പെടുത്തുന്നതിനു വേണ്ടി നിങ്ങളോട് അന്നേ ദിവസം ഞാൻ രൊക്കം പറ്റിക്കൊണ്ട്"

27. According to 1st defendant an amount of more Rs. 54,12,257 was due from the plaintiffs to him and when he pressed for the return of at least a portion of the same plaintiffs have executed A6 to A8 authorising him to dispose of the plaint schedule property and to adjust the sale proceeds towards his debt. As mentioned above there is nothing in the Ext.A6 to A8 which enables 1st defendant to appropriate the sale amount. The plaintiff has denied the averments in the written statement of 1st defendant regarding the liability to the tune of Rs. 54,12,257 especially at the time of executing the power of attorney in October 2007. It is evident from the documents produced by the 1st defendant and his testimony that a major portion of the amount were allegedly advanced by the 1st defendant subsequent to the Ext.A6 to A8 documents.

28. 1st defendant has filed O.S.No.103/09 before the Sub court, Trivandrum for realisation of the amount allegedly due to him from the plaintiffs. Ext.B25 is the copy of the plaint in O.S.No. 103/2009. Even as per the details of payment mentioned in Ext.B 25 the alleged payments made by 1st defendant like payment to Chandran Nair, Japamoney, Sajeed etc were subsequent to Ext.A6 to A8, Certified copies of receipts issued by them marked as Ext.B10 series reveals the payment by the 1st defendant as Power of Attorney Holder of plaintiff on 10.5.2008 ie. subsequent to Ext.A6 to A8. Plaintiff has produced several documents to disprove the case of defendant that amounts as due from plaintiff to defendant which is the subject matter in O.S.No. 103/09.

29. According to the plaintiff as per the assurance given by 1st defendant sale of the plaint schedule property for a price of 1.25 crores should have completed before 31.1.2008. As the sale deed was not executed even after 2 months from 31.1.2008 plaintiff have demanded 1st defendant to revoke the agreement for sale. When the plaintiff noticed that the defendant has made same misrepresentation regarding the alleged payments towards the

liability of plaintiff and as 1st defendant has confessed his guilt, plaintiff has settled the account with the 1st defendant by issuing Ext.A1. But the defendant denied the full and final settlement by the issue of Ext.A10 as alleged by the plaintiff and relied on the Ext.B2 letter to prove the further authorisation by the plaintiff. But as mentioned above Ext.B2 is seen dated 29.4.2008 and is an unsigned letter. Which is not sufficient to canvas the factual position in favour of defendant.

30. The contention raised by the plaintiff is that they have fully and settled the transaction with 1st defendant and issued Ext.A10 cheque dated 29.4.2008 towards final settlement and that there after they never relied on 1st defendant or entrusted any matter for managing their affairs. It is brought out in evidence by the cross examination of DW1 that after 31.1.2008 1st defendant has not represented the plaintiff in any of the department or statutory authorities for which he was authorised by the said Power of Attorneys. Evidently DW1 has not represented the plaintiff in the land acquisition department or represented the plaintiff in High Court in March 2008 against the DRT proceedings etc. To the

question put to DW1 as suggestions regarding his representation in the said proceedings DW1 has expressed his ignorance. But according to 1st defendant on 29.4.2008 ie. the 1st plaintiff has given Ext.B2 letter to him along with Ext.A10 cheque in which 1st defendant was authorised to sell the property for a price not less than 20,00,000/. Plaintiff has the case that Ext.A10 Cheque was issued on 22.4.2008 and the same was admittedly encashed by the 1st defendant on 29.4.2008. Date of issuance of cheque is not mentioned any where in the plaint. But it is seen that Ext.B2 is dated 29.4.2008 written by 1st plaintiff at Bahrain. So there is merit in the contention by the plaintiff regarding the remote possibility to reach Ext.B2 along with Ext.A10 at Trivandrum on 29.04.2008. So that 1st defendant could encash it on that date itself. More over signature of plaintiff is lacking in Ext.B2. The explanation offered by 1st defendant that 1st plaintiff has no practice of putting the signature in the letter sent by him is not seems to be acceptable.

31. Admittedly Ext.A6 to A8 Power of Attorneys were executed for several purposes including the sale of the immovable property. The documents were attested before the Embassy of

India as provided under Sec. 33 of Registration Act. Sec.33(1) © requires that if the principal at the time of executing the power of attorney doesn't resides in India power of attorney is to be executed before an authenticated Notary Public or any court, judge, Magistrate Indian counsel or vice counsel or the representative of Central Government. The Power of Attorney executed before the Embassy of India is equivalent to a registered Power of attorney. If that be so there is no doubts on the legal position that power of attorney executed before the Embassy ie before the representative of Central Government which is equal to a respective power of attorney can be cancellation only by a registered document.

30. Here in this case admittedly and evidently Ext.B3 and B23 cancellation deed were executed after the execution of the sale deed in favour of defendants 2 and 3. In the circumstances it is only to be held that the alleged revocation made by the plaintiff have no relevance and will not affect the authority of 1st defendant to execute the sale deed in favour of defendants 2 and 3 based on Ext.A6 to A8.

33. Another circumstance pointed out by the plaintiff is the adjudication of Ext.A6 to A8 as revocable power of attorney. If an equitable assignment is created it becomes a power of attorney for consideration and as per Sec. Article 44(c) of Kerala Stamp Act, for a Power of Attorney given for consideration authorising the Attorney to sell the immovable property same stamp duty is to be paid as if it is a conveyance for the amount of consideration. The learned counsel for the plaintiff would pointed out that the stamp duty for conveyance under article 22-22 during the relevant period was 10% including the surcharge but evidently Ext.B11, B12, B13 were adjudicated as normal power of attorneys without consideration. During trial plaintiffs have developed a case that 1st defendant has fraudulently adjudicated the power of attorneys without revealing its real nature, relationship between the parties etc. So as to avoid the payment of necessary stamp duty. It is true that in Ext.A6 dated on 17.10.2007 executed by 2nd plaintiff relationship between herself and 1st defendant was mistakenly shown. But in the original plaint plaintiff have no case about any fraudulent intention of 1st defendant while adjudicating the power of attorney. By amending

the plaint they have incorporated the pleading regarding the mistake in Ext.A6 and the subsequent execution of Ext.A7 in which 1st defendant was correctly mentioned as the brother in lase of 2nd plaintiff. Apart from that even in the amended plaint plaintiff has no specific case about in proper adjudication of power of attorney to avoid the payment of stamp duty etc. Admittedly Power of Attorneys were executed by the plaintiff themselves. Though there is an averment in the amended plaint that Ext.A6 was prepared by 1st defendant and sent to plaintiff at Bahrain for execution. On pointed out by the learned counsel for 3rd defendant, there is no satisfactory evidence regarding the person who has prepared the disputed Power of Attorney etc . As pointed out by him PW1 while examination has admitted that her husband used to purchase stamp papers through his agents. But it is a relevant fact that Power of Attorney were executed before the Indian Embassy. In the said circumstance there is much force in the argument by the learned counsel for the 3rd defendant that the plaintiff cannot be allowed to take advantage of his own wrong. He has relied on the decision reported 2014(1) KLT and 1995 supplementary (2) SCC 539 in support of his agreement.

34. But as mentioned above Ext. A6 to A8 being power of Attorneys executed before the Embassy is equivalent to a registered Power of Attorney and the same cannot be revoked unilaterally by express conduct as contented by the plaintiff. For the cancellation of the same registered cancellation deed is necessary .

"***Rule 64 of the Registration Act provides that a party who wishes a power of attorney granted by him for registration purpose being unable to obtained its surrender from grantee shall apply by a petition to a registering officer within whose jurisdiction such power was originally attested or was interested to operate to have the same revoke of etc"***. According to plaintiff after issuance of Ext.A10 they demanded the defendant to return original Power of Attorney and the documents entrusted by them, but the defendant has not returned it to the plaintiff. Even then the plaintiff has not done anything as required under rule 64 of Registration Rules or above executed any registered document to cancel the power of attorney with notice to defendant before the execution of sale deeds. In the light of the available evidence it is only to be held that the Power of Attorney executed by the plaintiff was not properly revoked before execution of the disputed sale deed in favour of defendants 2 and 3 and 1st defendant has assigned the plaint schedule property with proper and lawful authority. To that extent issues are answered in favour of plaitniff.

35. Another contention raised by the plaintiff is that Ext.A11 to A13 ie Ext. B26, 27 and Ext.34 are fraudulent document and are void. At the very out set the defendant attacked this contention on the ground that there is no specific pleading regarding fraud in the plaint. In the decision reported in 2010(2)ILR 216 Hon'ble High Court held that ***"Party alleging fraud undue influence etc has to give particulars in the plaint alleging such fraud etc and to set aside a transaction as vitiated by fraud heigh degree of evidence is required. It is the settled position of law that allegation of fraud mis representative breach of Trust etc must be fully stated and not vaguely and no amount of evidence can salvage positive" .***

36. Here in this case there is specific averment in the plaint that the documents executed by 1st defendant in favour of

defendants 2 and 3 are the result of fraud and collusion and that even after the execution of Ext.A11 to A13 (Ext.B26,B27 and B34) properties are in possession of 1st defendant and that defendants 2 and 3 are only name lender. There is clear averment in the plant regarding the use of the signed blank papers dated 25.10.2007 obtained from plaintiff 1 and 2 on 5.11.2007 as the 1st page of disputed document etc. The learned counsel for 3rd defendant has pointed out the averments in the plaint that 1st defendant has shown his readiness and willingness when he came to gulf and expressed his readiness to help the plaintiff by disposing his plaint schedule property etc and argument that plaintiff has suppressed the material fact that plaintiff himself has made the arrangement of the visit of 1st defendant for consulting with him about his liabilities and solutions. But averments in para 7 of the written statement filed by the plaintiff herein O.S.No. 103/2009 marked as Ext.B13 reveals that the visa was sent to 1st defendant herein by 1st plaintiff and accordingly 1st defendant has visited defendants 1 and 2 in gulf which resulted in executing Ext.37 and 38 general Power of Attorney by plaintiff on 25.06.2006 in favour of 1st defendant. These details are not revealed any where in the plaint in this case. According to the 1st defendant he has gone abroad on the request of the plaintiff and same is suppressed in the plaint . As per the averment in plaint plaintiff visited 1st defendant at Bahrain was on 13.5.2007. The 1st defendant has denied the alleged visit on defendant and produced the ticket etc to substantiate his case that he has gone to the place of the plaintiff as per the arrangement made by plaintiff by sending Ext.B21 series tickets.

37. Learned counsel for the plaintiff would argue that the fraud with respect to registration evaluation of stamp duty, improper adjudication etc are apparent in this case. According to him the Power of Attorney holder stands in a fiduciary relationship and were there is allegation of fraud the burden to prove bonafides lies on the beneficiary. He has pointed out the legal possession postulated in the decision of the Apex court reported in AIR 2014 SC 1304 to substantiate his contention "***Where fraud misrepresentation or undue influence is alleged by a party in a suit normally the burden is on him to prove such fraud undue***

influence or misrepresentation. But when a person is in a fiduciary relationship with another and later is in a position of active confidence the burden of proving the absence of fraud misrepresentation or undue influence is upon the person in dominating position". Learned counsel for the 3rd defendant would argue that due to irrevocable nature of Power of Attorney the fiduciary relationship came to an end. But by the decision made above I have already found that the power of attorney executed in favour of 1st defendant was not irrevocable or equitable assignment.

38. As an instance of fraud the plaintiff has pointed out that the 1st page of Ext.B26,27 and 34 are written in the stamp paper purchased in the name of the plaintiff on 25.10.2007 ie. immediately after the date of power of Attorney and about 1 year prior to execution of documents. According to the plaintiff 1st defendant has obtained the stamp paper bearing the thump impression of the plaintiff on 5.11.2007 alleging the necessity of the same for entering into the agreement for sale with employee of V.S.S.C . But according to DW1 the stamp papers with the thump impression of the plaintiffs were handed over to him in June 2008.

As pointed out by the plaintiff through there is specific pleading regarding the issuance of the stamp paper with thump impression on 5.11.2007 there is no specific denial in the written statement and the case of the defendant that the plaintiffs have handed over the stamp papers in June 2008 is not seen to be trust worthy. DW1 has failed to state the circumstance and the details of the person who has handed over the stamp paper in June 2008 to him.

39. More over when the plaintiff has a definite case that entire transaction with 1st defendant was settled by issuing Ext.A10 dated 29.4.2008 the alleged issuance and the handing over of stamp paper in June 2008 for execution of documents etc has much relevance. In the circumstances the evidence adduced by DW1 on that plaint which has no foundation on pleading is only to be discarded. More over PW1 was not seen seriously cross examined on the point that thump impression on the stamp papers were procured on 5.11.2007.

40. It is pleaded in the plaint that the disputed sale deed executed on 10.7.2008 on the stamp paper dated 25.10.2007 are not valid. According to the plaintiff there is no validity for a stamp

paper after 6 months from the date of its purchases. Hon'ble Apex court has clarified the position in the decision reported in 2008 (3) SRJ 548 and held that " "***No were in the Indian Stamp Act the expiry date of use of stamp paper is prescribed Sec.34 merely provide that a person possessing a stamp paper for which he has no immediate use may applying for refund by surrendering such stamp within a period of 6 months***". So preparation or execution of sale deed in the stamp papers purchased on 25.10.2007 has no relevance. But plaintiffs have pointed out the same as an insistence of fraud. But Admittedly 2nd plaintiff was available at Trivandrum at the time of executing the documents. DW3 has admitted the same while his cross examination. So there was no difficulty in getting the sale deed in his favour executed directly by 2nd plaintiff etc. When DW3 was cross examined on that point he answered that he was not in good term with plaintiff for last several years.

41. According to the plaintiff 1st defendant has fraudulently presented the Ext.A6 Power of Attorney for adjudication without revealing the actual relationship between himself and the 2nd

plaintiff. According to him as per Sec.31 of the Kerala Stamp Act it is the duty of Power of Attorney to reveal the facts and circumstances affecting the changeability of the instrument. No doubt the disputed Power of Attorneys were presented by the 1st defendant before RDO for adjudicated and the same are revealed to be adjudicated as the simple power of attorneys. As mentioned above though by amendment plaintiff has incorporated a pleading to the effect that the first power of attorney dated 17.10.2007 in which 1st defendant was mentioned as the brother in law of the 2nd plaintiff was prepared by the 1st defendant and send to the plaintiff at Bahrain to put the signature etc. Plaintiff has not adduced any satisfactory evidence to substantiate the same. Even according to the plaintiffs Ext.A7 and Ext. A8 Power of attorneys were prepared and executed by plaintiff themselves. As mentioned above plaintiff are not illiterate persons and the documents (Ext.B37, B.38 etc) reveals that even prior to the disputed Power of Attorneys they have executed and given Power of Attorneys in favour of the 1st defendant. Now the plaintiff alleges fraud on the part of the defendant in producing the Power of

Attorney for adjudicated suppressing the mistake in noting the relationship etc to avoid stamp duty. At this point the counsel for the defendant has relied on the decision reported in " ***AIR 2006 SC 2281 and 1995 Supplementary (2) SCC 539 were it is held that were a person pursued another to act in a manner to his prejudice and derive any advantage from that then he cannot turned around and claim that he was not liable to perform his part as it was void"***. The plaintiff cannot be permitted to take advantage of his own mistake.

42. It is to be noted that there is absolutely no pleading in the plaint regarding the validity of Power of Attorney or that the Power of Attorneys are insufficiently stamped. Admittedly Ext.B27 and B34 are executed on the strength of Power of Attorney dated 17.10.2007 marked as Ext.A6. In the said Power of Attorney 1st defendant is shown as the brother of the 2nd plaintiff. Stamp duty paid was only Rs.200 and it was adjudicated as if executed among member of family. But admittedly the 2nd plaintiff has executed Ext.A7 dated 24.10.2014 by stating the correct relationship. The sale documents were executed while the power

of attorneys were in force. Ext.A7 Power of Attorney in which the relationship was correctly mentioned also was with 1st defendant at the time of executing Ext.A27 and A34. The mistake in mentioning the relationship in Ext.A6 is seen rectified by the execution and issuance of Ext.A8 Power of Attorney.

43. One of the argument by the learned counsel for the plaintiff is that the Ext.B11, B12 and B39 are not properly stamped and are to be impounded. It is to be noted that the plaintiff himself has produced the photo copies of the power of attorneys and were marked as Ext.A6 to A8. The objection regarding the insufficiently stamp duty etc were raised only at the time of cross examination of the plaintiff. No such objection regarding the insufficiency of stamp duty were specifically raise when the original Power of attorneys were marked as Ext.B11, B12 and B39. No doubt civil court has the duty to impound insufficiently stamped document tendered in evidence. It is the settled law that in no case insufficiently stamped instrument can be admitted in evidence without impounding. But after admission in evidence nothing can be done in the matter of impounding by the court. ***In the decision***

reported in 1978 Volume 3 SCC 236 Hon'ble Apex Court has held that when a document is tendered in evidence by the plaintiff and objection is raised by the defendant about its admissibility it is obligatory upon the trial court to apply its mind to the objection and decide it according to law. If the document is admitted without the application of mind by the court the instrument couldn't be said to have admitted in evidence so as to attract 36 of the Stamp Act. In such a situation at a later stage before the suit is finally disposed it would still be obliged on the court to decide the objection. Even after applying its mind to the rival contentions trial court admits the documents in evidence Sec.36 would come to play and the admission in evidence cannot be hold in question at any stage of the same suit or proceedings on the ground that it was not duly stamped. ***In 2011 (3) KLT 406 Hon'ble High court has considered the scope of challenge against admissibility after marking the documents in evidence Hon'ble High Court observes that once documents admits in evidence said admission cannot be questioned at any stage of the suit or proceedings on the ground that the instrument was not properly stamped***. But as mentioned above no specific objection regarding the admissibility and insufficiency of stamp etc on power of attorney were not raised at the time of marking Ext. B11,B12, B39 and no such contention in plaint also.

44. At this juncture it is to be noted that as per Sec.33 of the Stamp Act when an insufficiently stamped document tendered evidence court is obliged to impound. Here in this case the Power of Attorney were seen produced before the competent authority and got adjudicated. The disputed Power of Attorney were executed abroad before the Embassy Bahrain and is seen produced before RDO who is appointed by the Government to exercised all the powers of Collector under sec.18,31, and 32 of the Stamp Act 1959. So the validity of the stamp duty etc are seen considered by the competent authority and the sale deeds were executed based on the Power of Attorney. Hon'ble High Court in 2014(4) KLT 740 has considered the validity of an administrative order and held that even a void order continuous until it is set aside. In the decision reported in 2009 (3) KLT 274 Hon'ble High Court held that "*an administrative order even if void will remain in force until it is*

set aside". Admittedly the plaintiff has not yet challenged the adjudication made before the RDO. More over it is the settled position of law registration of insufficiently stamped document will not affect its validity.

45. Here in this case Power of Attorney were properly adjudicated by a competent authority and hence I think it is not necessary for this court has no jurisdiction to consider that question again. Argument by the learned counsel for the plaintiff that such a conclusion will make article 44 of the Kerala Stamp Act redundant has no merit.

46. Based on Sec.(3) of the Power of Attorney Act the learned counsel for the 2nd defendant would argue that the act of the agent is protected. No doubt a bonafidy act done in pursuance of a Power of Attorney is protected. In this case plaintiff specifically alleged fraud and collusion believes the defendants behind the execution of Ext.B26, B27 and B34. As mentioned above Ext.B27 is executed on the basis of Ext.A6 Power of Attorney executed by the 2nd plaintiff. The plaintiff case is that registration based on Ext.A6 was to avoid the payment of 10% stamp duty. DW1 in page No.

40 and 41 has admitted that Ext.A7 was not used for execution of document. Explanation offered by him that the Ext.A6 Power of Attorney shown to 2nd defendant at the time of negotiation itself was used for registration also is not acceptable. More over the details of Ext.A8 of Power of Attorney 1st plaintiff is seen noted on the reverse side of 1st page of Ext.A27 and 34. According to DW1 and DW2 the two Power of Attorneys were produced before the Sub Registrar within a time span of 10 minutes and it was only a mistake on the part of the Sub Registrar in mentioning the details of Ext. A8 Power of Attorney in the Ext.27 and B34 documents. This explanation is not at all satisfactory. The said mistakes are admitted by PW2 examined on the side of the plaintiff. He is not the Sub registrar who executed B27 and 34 but only holiday his charge. Till now said mistake in the document referred above are not correction .

47. Another aspect pointed out by the learned counsel for the plaintiff is that identification details of the plaintiffs are not mentioned in Ext.B26, B27and B34. According to him as the documents were executed without the knowledge and consent of

plaintiff, defendants were not in a position to collect the ID details from plaintiff.As per the Sec.32 of the registration Act identification details of the vendor, vendee and the Power of Attorney are to be necessarily furnished before the registering authority. DW1 has admitted that the plaintiffs have not handed over the documents to prove them identify for production before sub registrar. According to the plaintiff the non mentioning of said details points towards the fraud by 1st defendant and that Ext.26,Ext.B27 and 39 also without notice of the plaintiff . Admittedly the documents were executed on the basis of adjudicated Power of Attorney in which the identification details of the executant were clearly mentioned. The same is clearly deposed by DW1 also. DW1 has categorically deposed that as he was holding the adjudicated power of attorney in his favour, he has produced his ID details for registration of the document. The explanation offered by the DW1 is satisfactory. As the document were executed based on adjudicated Power of Attorney the requirements of the ID details of the vendor which are available in the adjudicated Power of Attorney is not necessary and it will not any way amount to violation of the Sec.32 of the

Registration Act. So the non mentioning of ID details of the plaintiff in Ext.26, 27 and B34 cannot be considered as circumstance with points towards fraud.

48. The next contention raised by the plaintiff is that alleged sale was not actually taken place. Defendants 2 and 3 are only name lender and have no means to purchase the property etc. According to the plaintiff even now the plaint schedule property is in possession of the 1st defendant. Defendants 2 and 3 were examined as DW2 and DW3. According to the plaintiff no consideration was passed as alleged from defendants 2 and 3. While examination of 2nd defendant and 3rd defendant have failed to give the details of their means to purchase the property. Though DW2 has stated that he has paid Rs. 4,30,000 /- to 1st defendant on the date of execution of Ext.B27 and 34 and that broker Ratnakaran has seen it, said Ratnakaran is not seen examined as a witness. Evidence tendered by DW3 reveals that he was not having any means to pay the consideration.

49. It is brought out in evidence by the cross examination of DW2 that original of Ext.A7 was not handed over to him even after

the execution of the sale deed in his favour. DW1 also admitted it. Explanation given is that as another item of the property mentioned in the Ext.A7 power of attorney of 2nd defendant was yet to be sold original was not handed over to D2. But DW1 in Page No.48 has admitted that original power of attorney executed by 1st plaintiff also was not given to 2nd defendant. As per power of attorney which was marked as Ext.A39 the entire property mentioned in it was given to 2nd defendant. Testimony of DW3 reveals that he was not even aware of Ext.A7 Power of attorney executed by 2nd plaintiff while cross examination in Page No.15 DW3 has stated that an another issue mentioned in the Ext.A7 was not yet to be sold original was not handed over to him. But entire property covered by Ext.A6 is seen transferred to DW3 vide Ext.26,27 and 34. In the circumstances I find merit in the case of plaintiff that original power of attorney were not given to defendants 2 and 3 but returned by 1st defendant as the sale deed are not genuine.

50. The defendant have a case that before execution of the document there was an agreement for sale. No such agreement

for sale were produced before court and there is no pleading regarding the execution of such agreement for sale anywhere in the written statement. As pointed out by the learned counsel for the plaintiff the execution of the agreement for sale based on which Ext.26,27 and 34 were executed is not pleaded in Ext.B25 plaint also.

51. Defendants have the case that before executing the sale deeds they have entered into sale agreement with 1st defendant. According to the defendants 2 and 3 properties purchased by them are lying within well defined boundaries and as compact plots. Admittedly and as evident from the commission report the properties purchased by 2nd defendant are in Re.Sy.No. 1557,1559 and 1555. As per the title deed in his favour 45 ½ cents in Re.Sy.No. 1557, 1.3 Acres in Re.Sy.No. 1559. According to the plaintiff about 2 Acres of property is lying in between these 2 items. Ext.C2(a) reveals the existence of a property owned by 3rd party between these 2 items. More over it is clear that the property in Re.Sy.No. 1555 is not lying adjacent to other items and according to the plaintiff the property in Re.Sy.No. 1555 is about 70

metres away from the other items. When questions were put to DW2 he has failed to explain all these aspects and admitted his ignorant about all these facts. The testimony in page No.26 reveals that he is not aware of the exact lie and location of plaint schedule property.

52. As mentioned above shed possessed by 4th defendant was available in the property allegedly sold to 2nd defendant and noted in Ext.C1. But DW2 has no case of existence of shed in his property. More over DW2 while examination has even failed to state the detail of the case filed by him and that ignorant about an exparte decree passed on an earlier occasions (O.S.No. 241/10). Though they have deposed that before purchasing the property they have enquired about the encumbrance over the property possession etc there is nothing to substantiate the case of any enquiry made by them. It is to be noted that along with O.S.No. 240/10 and O.S.No 241/10 the defendants 2 and 3 herein have not produced their original title deeds or the original Power of Attorney based on which the documents were executed in their favour. The documents were produced only after the commencement of trial.

Admittedly they have purchased the property for a consideration of Rs. 2300/- per cent . According to them there was no road access to the property. But direct road access from public road is clear from Ext.C1(a) and Ext.C2(a). DW2 and DW3 have stated that the road was formed after the documents in their favour. But plaintiff has definite case that he was purchased an item of property in 2006 get road access and produced the certified copy of that documents. It was marked as Ext.A17.

53. As mentioned above it is evident from testimony of DW2 that he was not even aware of the Ext.A7 Power of Attorney executed by the 2nd plaintiff on 24.10.2007 by rectifying the mistake in noting the relationship with the 1st defendant Power of attorney holder. DW2 in page No.14 has deposed that the original power of attorney (Ext. A7) was not handed over to him as it covers another item of property. But it is seen from Ext.B34 that the entire property covered by Ext.A6 the first power of attorney executed by 2nd plaintiff was transferred and no other property was remained after Ext.B27 and B24.

54. As mentioned above to most of the questions put to DW2

in page No.6 and 8 regarding the lie and location of his property and the details of O.S.No. 241/2010 filed by him he was admitted his ignorance. Admittedly 3rd defendant herein is son of elder brother of the 1st plaintiff and the 1st defendant. He has admitted Ext.A30 letter sent by him to the plaintiffs. It is brought out in evidence that he is not in good terms with plaintiffs and that after 2004 he has not even had any conversation with the plaintiff. While examination before court DW3 has developed a case that his father has directly contacted the plaintiffs and talked with them about the purchase of property. There is nothing in the written statement regarding the aforesaid communication between the plaintiffs and father of DW3.

55. It is the admitted case that 4th defendant was working as the care taker of property of plaintiff and was residing in the shed in the plaint schedule property. In the written statement DW1 has denied the allegation that 4th defendant is his worker. But DW4 himself has admitted that now he is a worker of 1st defendant. In the Ext.C1 report commissioner has clearly noted the shed in the plaint schedule property possessed by 4th defendant. But

DW4 has denied that aspect during his examination. He has stated that his son Babu Raj was an employee of plaintiff at abroad. As they failed to pay remuneration DW4 he has summoned him back. According to him plaintiff have not given him any property but the power of attorney holder 1st defendant has given him Rs. 2,00,000/-. The interest towards 1st defendant and enimity towards plaintiff in evident in his testimony, So I find it difficult to accept his evidence without any document. Admittedly and evidently 4th defendant is shown as witness in Ext.26 and 27 in favour of 2nd defendant. 4th defendant while examination has deposed that he has affixed signature in the document as a witness as instructed by the 1st plaintiff.

Testimony of DW2 and DW3 coupled with the documentary evidence to probablise the case of the plaintiff that defendants 2 and 3 are not actual purchasers in possession of plaint schedule property but only name lenders. Actual transaction of property was not occurred by virtue of Ext.26,27 and 34 documents. On a combined reading of the testimony of DW1 to DW3 and the documentary evidence I am of the view that the case put forward by the plaintiff regarding the fraudulent execution of the document by the 1st defendant and the collusion between the defendants is evident. As mentioned above defendants 2 and 3 are not even aware of the property covered by the document and allegedly purchased by them. So there is nothing to show that defendants 2 and 3 as bonafidy purchasers for value. Hence 53 of Transfer of Property Act has no application.

56. On going through the available evidence and the circumstance of the same I am of the view that the plaintiff has proved the fraud and collusion behind the execution of Ext.26,27 and 34. In AIR 2012(1) SCC 656 Hon'ble Apex Court held that "***Fraud and the collusion vitiate even the most solemn procedure in any civilized system of jurisprudence. A collusion or conspiracy with a view to deprive the right of other in relation to a property would render the transaction void abinitio.***" In the circumstances it is held that the execution of the document No.1126/08 , 1127/08 and 1201/08 are vitiated by fraud and are liable to be set aside and canceled.

First prayer of the plaintiff is to declare the title and possession of the 1st plaintiff over the plaint schedule property and the 2nd prayer is to declare the title and possession of the 2nd plaintiff over plaint B schedule property. By the discussion made above it is already found that the documents executed by the 1st defendant in favour of defendants 2 and 3 are void and the same shall not effect the title of the plaintiff based on the original title deed marked as Ext.A2 to A5.

57. According to the plaintiff property is now possessed by the 1st defendant and accordingly incorporated a prayer for recovery of possession. The commissioner appointed at the initial stage of the suit has inspected the property and filed Ext.C1 report and rough plan. Subsequently as per the order of the Hon'ble High Court the commissioner was deputed to identify the plaint A and B schedule properties separately. The report and plan were marked as Ext.C2 and C2(a). But commissioner has failed to note the item of properties covered by Ext.B 26, 27 and 34 separately as dubed in the plaint. Commissioner was examined as PW5. In the foot note in Ext.C2(a) commissioner has noted that properties are not identifiable on the spot and is not possible

to identify it based on the description given in the plaint and the title deeds. But in the Ext.C2 the total extent of properties covering A and B schedule are clearly shown. Here in this case defendant have no dispute regarding the identity of plaint schedule property. They are claiming title and possession over the A and B schedule properties which are the plaint schedule property in O.S.No. 240/08 and O.S.No. 241/10. In the circumstances I am of the view of the failure on the part of the commissioner to identify the properties separately as stated by him has no relevance. In the circumstances issues are answered accordingly.

59. Issue No. 4 and 5: 2nd defendant in the leading case has filed O.S.No. 241/10 and 3rd defendant has filed O.S.No. 240/10 for injunction alleging the attempt made by plaintiffs to trespass into the plaint schedule property. In O.S.No. 240/10 the allegation is against the 2nd plaintiff in the leading case but in O.S.No. 241/10, both plaintiff in the leading case are defendants. Alleged attempt to trespass into the property is leveled against them. Admittedly the 1st plaintiff in the leading case who is the 1st defendant in O.S.No.241/10 was in Bahrain during the relevant period and

admittedly he has not came to India for the last more than 20 years. More over as mentioned above plaintiffs in O.S.No.240/10 and O.S.No.241/10 have no clear picture of the lie and nature of plaint schedule property. They are claiming possession based on title. By the discussion made above it is already held that they have not obtained any title or possession in the respective plaint schedule properties. So the issues are answered against the plaintiffs.

In the result O.S.No.240/10 and O.S.No.241/10 are dismissed. O.S.No.1/2009 decreed as follows:

It is declared that sale deed No.1126/2008, 1127/2008 and 1201/2008 of Sub Registrar Office Vithura are vitiated by fraud collusion etc and are hereby canceled and title of the plaintiff 1 and 2 over the plaint A and B schedule property are remained unaffected even after the execution of said document. Plaintiff is allowed to recover possession of plaint A and B schedule properties from the defendant. Considering the circumstances of the case there is no order as to costs.

Dictated to the confidential assistant transcribed by her and corrected by me and pronounced in open court this the 3rd day of June 2015.

ASH K.BAL
SUBORDINATE JUDGE.

APPENDIX

EXTS. FOR THE PLAINTIFFS:-

A1	dated	11-11-2008	Power of Attorney
A2	dated	10-02-1983	Sale Deed No. 189/1983
A3	dated	02-02-1983	Sale Deed No. 551/1983
A4	dated	10-02-1983	Sale Deed No. 188/1983
A5	dated	02-02-1983	Sale Deed No. 552/1983
A6	dated	17-10-2007	Photocopy of Power of Attorney
A7	dated	24-10-2007	Photocopy of Power of Attorney
A8	dated	20-10-2007	Photocopy of Power of Attorney (Subject to objection)
A9	dated	07-11-2007	Photocopy of Receipt Voucher
A9(a)	dated	06-11-2007	Copy of Receipt Voucher
A9(b)	dated	05-11-2007	Copy of Receipt Voucher
A9(c)	dated	05-11-2007	Copy of Receipt Voucher
A9(d)	dated	25-11-2007	Copy of Receipt Voucher
A9(e)	dated	10-11-2007	Copy of Receipt Voucher
A10	dated	29-04-2008	Copy of Cheque No. 000019
A11	dated	10-07-2008	Sale Deed 1/1126/2008
A12	dated	10-07-2008	Sale Deed 1127/2008
A13	dated	28-07-2008	Sale Deed 1201/2008
A14	dated	20-10-2008	Notice
A15	dated	11-11-2008	Office copy of notice
A16	dated	12-11-2008	Postal Receipt

A16(a)	dated	12-11-2008	Postal Receipt
A16(b)	dated	12-11-2008	Postal Receipt
A16(c)	dated	12-11-2008	Postal Receipt
A17			Postal A/D Card
A17(a)			Postal A/D Card
A17(b)			Postal A/D Card
A17(c)			Postal A/D Card
A18	dated	06-12-2008	Reply Notice
A19	dated	09-02-2007	Ez Cash Transfer Receipt
A19(a)	dated	04-06-2007	Ez Cash Transfer Receipt
A19(b)	dated	08-08-2007	Ez Cash Transfer Receipt
A19(c)	dated	04-06-2007	Ez Cash Transfer Receipt
A19(d)	dated	06-07-2007	Ez Cash Transfer Receipt
A19(e)			Ez Cash Transfer Receipt
A19(f)	dated	09-02-2007	Ez Cash Transfer Receipt
A19(g)	dated	01-12-2007	Ez Cash Transfer Receipt
A19(h)	dated	19-07-2007	Ez Cash Transfer Receipt
A20			Not marked
A21			Not marked
A22			Not marked
A23	dated	29-11-2006	Speedy service receipt
A23(a)	dated	29-03-2007	Speedy service receipt
A23(b)	dated	02-05-2007	Speedy service receipt
A23(c)	dated	21-05-2007	Speedy service receipt
A23(d)	dated	12-03-2007	Speedy service receipt
A23(e)	dated	22-03-2007	Speedy service receipt
A23(f)	dated	15-04-2007	Speedy service receipt
A24	dated	09-08-2011	Copy of Tax Receipt
A25	dated	01-04-2006	Confirmation of financial availability
A26	dated	25-01-2006	Copy of Power of Attorney
A27	dated	25-01-2006	Copy of Power of Attorney
A28	dated	10-04-2013	Copy of Judgment in O.P (DRT) No. 3160/2011
A29	dated	28-10-2013	Judgment in O.S. 103/2009
A30	dated	27-10-2004	Letter

EXTS. FOR THE DEFENDANTS:-

B1			Copy of OP(TP) No. 42/10
B2	dated	29-04-2008	Covering letter from castle Rock Industries
B3	dated	30-07-2008	Revocation of Power of Attorney
B4	dated	10-03-2007	Lok Adalth Award in E.P. 20/2005
B5	dated	29-12-2007	Settlement of dues under Lok Adalath
B5(a)	dated	01-03-2007	Memo
B5(b)	dated	09-10-2007& 04-09-07	Pay-in-slip (2)
B5(c)	dated	07-05-2007& 5-12-07	Pay-in-slip (2)
B5(d)	dated	09-11-2007	Pay-in-Slip
B5(e)	dated	05-04-2007& 5-6-07	Pay-in-slip (2)
B5(f)	dated	24-12-2007	Letter
B5(g)	dated	12-11-2007	Letter
B6	dated	05-11-2007	Liability settlement Letter and confidential cover.
B7	dated	04-12-2007	Letter from Tamilnadu Mercantile Bank Ltd.
B8	DRC No. 709/1B/EKM proclamation of sale of debts Recovery Tribunal		
B9	dated	27-02-2011	Paper publication of Debts Recovery Tribunal
B10	dated	10-05-2008	Receipt (Photocopy)
B10(a)	dated	10-05-2008	Receipt (Photocopy)
B10(b)	dated	10-05-2008	Receipt (Photocopy)
B11	dated	17-10-2007	Power of Attorney
B12	dated	24-10-2007	Power of Attorney
B13	dated	09-09-2009	Copy of written statement in O.S. No. 103/09 of Sub Court, Thiruvananthapuram
B14	dated	28-11-2008	Copy of FIR No. 284/08 of Vithura Police Station
B15	Copy of Refer Charge Cr. 284/08 of Vithura P.S.		
B16	dated	28-08-2006	Copy of Sale Deed No. 1482/06
B17	dated	16-02-2009	Copy of Sale Deed No. 294/09
B18	dated	14-01-2008	Copy of Power of Attorney
B19			Letters

B20			Hand delivery cover
B21	dated	06-06-2006	Cash Receipt
B21(a)			Travelers Cheques
B21(b)	dated	10-04-2006	Cash memo
B22	dated	20-10-2008	Letter
B23	dated	22-07-2008	Letter & cover
B24	dated	11-04-1996	Notice & statement from Income Tax Office Ernakulam.
B25	Copy of Plaint in O.S. No. 103/09 of Sub Court, Thiruvananthapuram		
B26	dated	10-07-2008	Sale Deed No. 1126/08
B27	dated	10-07-2008	Sale Deed No. 1127/08
B28	dated	30-03-2010	Tax Receipt
B29			Copy of Income Tax Receipt
B30	dated	13--01-2009	Statement of A/c from S.B.T., Nedumangad
B31	Saving Pass Book of Mr. B.M. Rafi		
B32			Not marked
B33	Order in OP(TP) No. 42/2010		
B34	dated	28-07-2008	Sale Deed No. 1201/08
B34(a)	dated	28-07-2008	Copy of Sale Deed No. 1201/08
B35	dated	25-08-2008	Tax Receipt
B36			Identity Card
B37	dated	25-06-2006	Power of Attorney
B38	dated	25-06-2006	Power of Attorney
B39	dated	17-10-2007	Power of Attorney

<u>Court Exts:-</u>

C1	dated	25-07-2009	Commission report by Adv. Sri. S.D. Ajith
C1(a)			Rough Plan
C2	dated	10-01-2015	Commission report by Adv. Sri. A.K. Santhosh Kumar
C2(a)			Rough Plan

<u>WITNESS EXTS</u>:-

X1	dated 13-02-2015	Certificate with statement of account from S.B.T

X2	dated 06-09-2007 to 4-12-09	Statement of accounts

WITNESS FOR THE PLAINTIFF :-

PW1	dated	02-02-2015	Indira Basheer
PW2	dated	06-02-2015	K. Pankajakshan Nair
PW3	dated	06-02-2015	Biju Samuel
PW4	dated	06-02-2015	Adv. Sri. S.D. Ajith
PW5	dated	12-02-2015	Adv. Sri. A.K. Santhosh Kumar

WITNESS FOR THE DEFENDANT :-

DW1	dated	20-02-2015	M. Shajideen
DW2	dated	23-02-2015	B.M. Rafi
DW3	dated	03-03-2015	Sajeed
DW4	dated	03-03-2015	Japamani

SUB JUDGE

Typed by/- K.B.
Comp. By/-Ya

Common Judgment in O.S. 1/2009,
240/2010, 241/10
Dated: 03-06-2015.