

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt.Sreeja Janardanan Nair, Sub Judge

Tuesday, the 31st day of March, 2026
10th day of Chaithra, 1948

ORIGINAL SUIT Nos.30/2012 and 23/2015

OS 30/2012

1. Kariyattil K.K.Pradeep, Aged 40 years,
S/o.Kunhinarayan, Moodakolly,
Irulam amsom desom, Sulthanbathery Taluk,
P.O.Moodakolly, Wayanad District.
2. Kariyattil K.K.Prasad, Aged 38 years,
S/o.Kunhinarayan, Moodakolly,
Irulam amsom desom, Sulthanbathery Taluk,
P.O.Moodakolly, Wayanad District.

Plaintiffs

Vs.

1. Kannaparambil K.M.Varghese (died),
Aged 51 years, S/o.Mathai,
Karthika Consortium Housing Colony,
Kuppadi amsom desom,
Sulthanbathery Taluk, Wayanad District.
2. Chayaplakkal Sukumaran, Aged 56 years,
S/o.Narayanan, Vakery, Irulam amsom
desom, Sulthanbathery Taluk,
Wayanad District.
3. Chayaplakkal Prakasan,
Aged 42 years, S/o.Narayanan,
Vakery, Irulam amsom desom,
Sulthanbathery Taluk, Wayanad District.
4. C.R.Chandran, Aged 50 years,
S/o.Raman, Chirakkarakuzhiyil Veedu,
Kattayad, Sulthanbathery amsom desom,
Sulthanbathery Taluk.
5. Chilambukadan Shafy, S/o.Hydrose, 2/229,
Sulthanbathery amsom desom,
Sulthanbathery Taluk, Wayanad District.

Defendants

Supplemental defendants:

6. Omana Varghese, Age not known,
W/o.Late K.M.Varghese,
Karthika Consortium Housing Colony,
Kuppadi amsom desom,
Sulthanbathery Taluk.
7. Teena Bobby, Age not known,
D/o.Late K.M.Varghese,
Karthika Consortium Housing Colony,
Kuppadi amsom desom,
Sulthanbathery Taluk.
8. Tinto Varghese, Age not known
S/o.Late K.M.Varghese,
Karthika Consortium Housing Colony,
Kuppadi amsom desom,
Sulthanbathery Taluk.
9. Tojo Varghese, Age not known.
S/o.Late K.M.Varghese,
Karthika Consortium Housing Colony,
Kuppadi amsom desom,
Sulthanbathery Taluk.
(Supplemental defendants impleaded and
amended as per order in IA 1461/13 and
IA 1462/13 dated 18.02.2014)

Defendants

OS 23/2015

1. K.M.Varghese, S/o.Mathai (died),
Aged 55 years, Residing at Kannaparambil
House at Karthika Consortium Housing
Colony, Kuppadi Village,
Sulthanbathery Taluk, Wayanad District.

Supplemental plaintiffs:

2. Omana Varghese, W/o.Late K.M.Varghese,
Aged 52 years, Residing at Kannaparambil
House at Karthika Consortium Housing
Colony, Kuppadi Village,
Sulthanbathery Taluk, Wayanad District.
3. Teena Varghese, D/o.Late K.M.Varghese,
Aged 29 years, Residing at Kannaparambil
House at Karthika Consortium Housing
Colony, Kuppadi Village,
Sulthanbathery Taluk, Wayanad District.

Plaintiffs

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| <p>4. Tinto Varghese, S/o.Late K.M.Varghese,
Aged 26 years, Residing at Kannaparambil
House at Karthika Consortium Housing
Colony, Kuppadi Village,
Sulthanbathery Taluk, Wayanad District.</p> <p>5. Tojo Varghese, S/o.Late K.M.Varghese,
Residing at Kannaparambil House at
Karthika Consortium Housing Colony,
Kuppadi Village, Sulthanbathery Taluk,
Wayanad District.
(Supplemental plaintiffs impleaded and
amended as per order in IA 1105/13 and
IA 1106/13 dated 08.01.2014).</p> | } | Plaintiffs |
| Vs. | | |
| <p>Pradeep K.K., S/o.Kunju Narayanan,
Aged 38 years, Residing at Kariattel House,
Moodakolly, Irulam Village,
Sulthanbathery Taluk, Wayand District.</p> | } | Defendant |

These Original Suits are coming on 26th day of March, 2026 for final hearing before me in the presence of Sri.K.P.Praveen, Advocate for plaintiffs in OS 30/2012 and defendant in OS 23/2015, Sri.T.P.Ealias, Advocate for supplemental plaintiffs No.2 to 5 in OS 23/2015 and supplemental defendants No.6 to 9 in OS 30/12, Sri.M.K.Sudhish, Advocate for defendants No.2 and 3 in OS 30/12, Sri.P.N.Surendran and Sri.P.Rajmohan, Advocates for defendants No.4 and 5 in OS 30/12, defendant No.1 in OS 30/12 and plaintiff No.1 in OS 23/15 is no more and having stood over for consideration to this day the Court delivered the following:-

COMMON JUDGMENT

OS 30/12

The suit is for specific performance.

2. **Plaint averments in brief are as follows:-** Plaintiff A schedule property belonged to 2nd and 3rd defendants. Room No.4/928 and its surroundings in

Plaint B schedule property belong to 3rd defendant and the remaining properties in plaint A schedule property including room No.4/927 and its surroundings belong to the 2nd defendant. Defendant No.1 agreed to purchase plaint A schedule property including two shop rooms from defendants No.2 and 3 and defendants No.2 and 3 are agreed to sell the same to defendant No.1 and thereby they executed an agreement on 03.08.2004. Room No.4/928 already leased out to 1st plaintiff before the execution of the agreement. Room No.4/927 was leased out to 4th defendant before the execution of the agreement. Defendant No.1 with the knowledge and consent of defendants No.2 and 3 agreed to sell the plaint A schedule property including two shop rooms to the 1st plaintiff and the 1st plaintiff is agreed to purchase the same and thereby executed an agreement on 07.08.2004 by fixing sale consideration. The entire sale consideration as per the said agreement had given to defendant No.1 by 1st plaintiff with the knowledge and consent of defendants No.2 and 3. The plaintiff No.1 was always ready and willing to perform his part of agreement.

3. While so, 4th defendant filed OS 116/2005 before this court against defendant No.2, with respect to a property including room No.4/927 for the relief of specific performance, on the basis of an agreement executed in between them. In that case, defendant No.2 contended that there was no sale agreement in between himself and defendant No.4 and he had not received any advance consideration. As OS 116/2005 was pending, plaintiff No.1 and defendant No.1 waited for the performance of the agreement dated 07.08.2004 till the disposal of the said case. On the assurance given by defendant No.1 with the knowledge and consent of defendants No.2 and 3 that, they will register shop room No.4/927 in favour of plaintiff No.1 after the disposal of OS 116/2005 and they registered B schedule property in favour of plaintiffs by virtue of document No.1863/2005 dated 12.05.2005. The adjacent shop room No.4/929 is in the possession of plaintiff No.1 as a tenant and he is conducting business there and

he had surrendered the same after the execution of the agreement dated 07.08.2004. Later, that room was registered in the name of defendant No.1.

4. While so, plaintiff No.1 had received a notice on 05.04.2011 and on subsequent enquiry, he understood that defendants No.2 and 4 had compromised the dispute in OS 116/2005 and filed a compromise, petition dated 28.07.2010 before the court. As per the compromise, the C schedule property including room No. 4/927 was registered in the name of defendants No.4 and 5 on 24.07.2010 as per document No.4909/2010 of Sub Registrar's Office, Bathery. On further enquiry, he understood that the defendants No.1, 2, 4 and 5 colluded with each other, and thereby registered C schedule property in favour of defendants No.4 and 5 by cheating him. That document was created by them fraudulently and a sham document. The said document is illegal document and that was not binding upon plaintiff and C schedule property. Defendants No.4 and 5 have no right over plaintiff C schedule property. So, the plaintiff is entitled to get the document registered in his favour by virtue of agreement dated 07.08.2004. They further contented that, if the court finds that, that plaintiff is not entitled to get plaintiff C schedule property by virtue of agreement dated 07.08.2004, their prayer is to direct the defendant No.1 to register D schedule property in favour of plaintiff No.1.

5. Defendant No.1 had given plaintiff D schedule property to plaintiff No.1 instead of plaintiff C schedule property, by virtue of an agreement dated 12.05.2005 and plaintiff is conducting business in that property. Plaintiff is not liable to pay sale consideration for plaintiff D schedule property as the sale consideration has already been paid by him for plaintiff C schedule property as per document dated 07.08.2004.

6. Defendant No.1 had filed OS 209/2011 before the Munsiff Court, Bathery for evicting plaintiff No.1 from plaint D schedule property by saying that it was given to him as a temporary arrangement. Plaintiff in that suit is not entitled to get such relief. He came to know about the registration of document with respect to plaint C schedule property by defendant No.2 in favour of defendant No.4 only on 24.07.2010. On receipt of the notice on 05.04.2011, he came to know that, the defendants No.1 and 2 are not ready to register plaint C schedule property in his favour. So, the suit is not barred by law of Limitation. Hence, the suit.

7. Defendant No.1 filed written statement with following contentions:-

The suit is barred by Law of Limitation as it is based on an agreement dated 07.08.2004. He is not aware about the averments in the plaint that he has agreed to purchase plaint A schedule property from defendants No.2 and 3 and thereby executed an agreement on 03.08.2004. He has denied the execution of agreement dated 07.08.2004 as contented in the plaint. No agreement was executed in between himself and plaintiff on 07.08.2004. He has admitted that an agreement was executed in between himself and plaintiff on 12.05.2005. He has not received any sale consideration from the plaintiff as contented in the plaint. The room No.4/928 was registered in favour of plaintiff No.1 by defendants No.2 and 3. It is incorrect to say that the plaintiff is possessing room No.4/929 as a tenant. As per agreement dated 12.05.2005, he had given the said room to the plaintiff as a temporary arrangement as there was dispute in between 2nd and 4th defendants. Building No.4/929 belongs to this defendant. As the plaintiff is not ready to surrender the room, he has filed OS 209/2011 before Munsiff Court. Plaintiff is not entitled to get the plaint schedule rooms 4/927 and 4/929 registered in his favour. If any document produced by plaintiff as an agreement dated 07.08.2004, it is a fabricated document and not binding upon this defendant. Though plaint D schedule property was given to plaintiff as per

agreement dated 12.05.2005, the plaintiff failed to comply the conditions in the agreement. Hence, he has filed OS 209/2011 before the court. The plaintiff is not entitled to any relief as sought for in the plaint. There is no cause of action for the suit. Hence, prays to dismiss the same.

8. **Defendants No.2 and 3 have entered appearance and filed written statement with the following contentions:-** They have denied all the averments in the plaint. The suit is barred by Law of Limitation. These defendants are not necessary parties to the suit. It is true that plaint A schedule property was in the ownership of these defendants. Plaint B schedule property sold to the plaintiff as per document No.1863/2005 and that property is in the possession of plaintiff. The specific contention of these defendants is that, plaint C schedule property belongs to defendant No.2 and it was leased out to defendant No.4 for business purpose as per a rent agreement on 13.06.2003. Thereafter, defendant No.4 filed OS 116/2005 before Sub Court Sulthan Bathery for specific performance by alleging that 2nd defendant had agreed to sell the said property to him. Subsequent to that 2nd defendant filed a case against 4th defendant before the Rent Control Court. As the cases were pending, the 2nd defendant was compelled to compromise the cases and thereby he had registered plaint C schedule property in favour of defendants No.4 and 5 by virtue of document No.4909/2010. Now the plaint C schedule property absolutely belongs to defendants No.4 and 5. These defendants are not aware about the transactions in between plaintiff and defendant No.1. Plaint B schedule property already sold by these defendants to the plaintiff by virtue of document No.1863/2005. These defendants had given signed blank papers and stamp papers to plaintiffs and defendant No.4 for business purpose and for giving to the panchayath. If anybody had created any forged documents by misusing those papers, those were not binding upon these defendants. There is no cause of action for the suit.

The plaintiffs are not entitled to get any relief sought for in the plaint. As there is no merit in the suit, it is liable to be dismissed.

9. **Defendants No.4 and 5 have filed written statements with following contentions:-** They have denied all the averments in the plaint. Their specific contention is that a sale agreement was executed in between defendant No.4 and defendant No.2 with respect to the sale of plaint C schedule property and for the performance of the agreement, 4th defendant had filed OS 116/2005 against 2nd defendant before this court and in the course of proceedings, matter was settled and thereby the defendant No.2 registered plaint C schedule property in favour of defendants No.4 and 5 as per document No.4909/2010. Thereafter, plaint C schedule property is in the absolute possession and ownership of these defendants. Nobody has any right over plaint C schedule property except these defendants. The plaintiff is not entitled to get any relief against these defendants. All the facts were known to the plaintiff at that time. After knowing all these facts, they filed this suit only with an intention to cause trouble to these defendants. The plaintiffs recently demanded the plaint C schedule property from these defendants. But these defendants are not ready to sell the same. Due to that, the plaintiffs have filed false case against these defendants. Therefore, these defendants are entitled to get compensatory costs from the plaintiffs. As there is no merit in the suit, it is liable to be dismissed.

10. **On the basis of rival contentions of the parties, the following issues are framed for consideration:-**

1. Whether the defendant No.1 had executed a sale agreement dated 07.08.2004 as alleged?

2. Whether the plaintiff was ever ready and willing to perform his part of the agreement?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff is entitled to get a decree of specific performance?
5. Relief and costs?

OS 23/15

The suit is one for recovery of possession.

11. This suit was originally filed in the Munsiff-Magistrate Court, Sulthan bathery as OS 209/2011 and transferred to this court as per the Order No.T (OP) 20/14 dated 25.07.2015 of the Honourable District Judge, Kalpetta and renumbered as OS 23/2015.

12. **Plaint averments in brief are as follows:-** The plaintiff schedule room along with landed properties belongs to the plaintiff (K M Varghese) as per the assignment deed No.1862/2005 of Sub Registrar's Office Sulthan Bathery. The plaintiff schedule properties consist of shop rooms bearing No.SBP 4/929 and SBP 4/930. Plaintiff A schedule consists of two rooms and plaintiff B schedule consists of the room now in the possession of the defendant. The above suit is filed to recover plaintiff B schedule room from the defendant. While registering the above assignment deed on 12.05.2005, the plaintiff and the defendant had entered into an agreement and thereby plaintiff B schedule room is temporarily handed over to the defendant. The room No.4/929 was handed over to the plaintiff by the defendant, till room No.SBP 4/927 is registered in the name of defendant by its owner Sukumaran. It was also recited in the agreement that the room No.4/927 was in possession of one C R Chandran. It was also agreed that on registering the deed in favour of the defendant by Sukumaran, the room No.SBP 4/929 assigned by the plaintiff to the defendant on 12.05.2005 will be

reassigned to the plaintiff. The plaintiff was made to believe that there was an agreement between the defendant and the above said Sukumaran regarding the room.

13. The plaintiff came to know that the room No.4/927, which was in possession of one C R Chandran owned by Sukumaran is sold to him by Sukumaran as per document No.4909/2010 of Sub Registrar's Office, Sulthan Bathery. It is also known that C R Chandran had filed a suit OS 116/2005 against Sukumaran for specific performance of a sale agreement executed between him and Sukumaran on 19.06.2001. On knowing these, the plaintiff had approached the defendant and requested to reassign the room to him as per the terms of the agreement. But, the defendant was not ready and willing to reassign the room to the plaintiff. So, the plaintiff issued a lawyer notice to the defendant through his counsel on 05.04.2011. But the defendant did not comply the same. Instead of that, the defendant has sent a reply making baseless allegations against the plaintiff. The defendant has no legal right to possess the room No.SBP 4/929 after the room No.SBP 4/927 was registered in favour of C R Chandran collusively. So, the defendant is liable to hand over the vacant possession of the room to the plaintiff. The plaintiff is entitled for recovery of the room from the defendant as per the terms and conditions of the agreement dated 12.05.2005. Hence, the suit.

14. **Defendant has filed written statement with following contentions:-**

The plaint A and B schedule properties are not identifiable from the plaint descriptions. The rooms No.4/927 and 4/928 belong to Sukumaran and his brother Prakashan were agreed to purchase by the plaintiff as per an agreement dated 03.08.2004. Room No.4/927 was leased out to one Mr.Chandran and room No.4/928 was leased out to this defendant and he is conducting business there. This defendant and plaintiff were executed an agreement on 07.08.2004, with

the knowledge and consent of Sukumaran and Prakashan, who are the owners of the said rooms with respect to the sale of the said rooms to this defendant. One Mr.Chandran to whom room No.4/927 was leased out had filed OS 116/2005 before this court for getting the relief of specific performance by alleging that a sale agreement was executed in between himself and Sukumaran. The defendant in the said case namely Sukumaran contested the said suit. The owners of Room No.4/927 and the plaintiff herein promise the defendant that they will register Room No.4/927 in favour of this defendant after disposing the suit and before that they decided to register Room No.4/928 and its surroundings to the defendant. The plaintiff has received the entire consideration for room No.4/927, 4/928 and its surroundings and other property, before the registration of the document, with the consent and knowledge of Sukumaran and Prakashan. They have registered room No.4/928 in favour of the defendant herein and he is in possession of the same. As the plaintiff is not able to register room No.4/927 to the defendant due to the pendency of OS 116/2005, the plaintiff has handed over room No.4/929 to the possession of this defendant and executed an agreement on 12.05.2005.

15. While so, the defendant had received a notice on 05.04.2011 which was sent by plaintiff, in which it is stated that OS 116/05 was settled in between the parties and therefore, the case was disposed of. On enquiry, this defendant has come to know that Sukumaran had registered room No.4/927 in the name of Chandran on 24-07-2010, without receiving consideration and not in good faith. Mr.Chandran has no right over the said room and the document executed is void document. Plaintiff is entitled to get the same as per the agreement dated 07.08.2004 and 12.05.2005. The plaintiff is not entitled to get room No.4/929 till the defendant has to get room No.4/927. Plaintiff, Chandran and Shafi colluded with each other and created false document and thereby filed this suit.

There is no cause of action for the suit. As there is no merit in the suit and prays to dismiss the same.

16. *On the basis of the rival pleadings of the parties, the following issues are framed for consideration:-*

1. Whether the defendant is entitled to retain possession of plaintiff B schedule room until room No.4/927 assigns in his favour?
2. Whether plaintiff is entitled to recover possession of plaintiff B schedule room from the defendant?
3. What is the order as to costs?

17. Heard both sides. Plaintiff and defendants except defendants No.2 and 3 have filed argument notes.

18. During the course of proceedings, defendant No.1 in OS 30/12 and plaintiff in OS 23/15 died. Hence his legal heirs were impleaded as supplemental defendants No.6 to 9 in OS 30/12 and supplemental plaintiffs No.2 to 5 in OS 23/15.

19. Joint trial is allowed as per the order in IA 3/26 in OS 30/12 to try the case along with OS 23/15. OS 30/12 is the leading case and the plaintiff in OS 30/12 has adduced evidence first as PW1 and Exts.A1 to A12 were marked. PW2 was also examined to support the case of the plaintiff. On the side of defendants, DW1 and DW2 were examined and Exts.B1 to B32 were marked. Defendant No.5 and defendant No.8 in OS 30/2012 were examined as DW1 and DW2.

20. Ext.A1 is the original sale agreement executed in between plaintiff No.1 and defendant No.1 on 07.08.2004. Ext.A2 is the original agreement executed in between plaintiff No.1 and defendant No.1 on 12.05.2005. Ext.A3

is the original document No.1863/2005 executed by defendants No.2 and 3 in OS 30/12 in favour of plaintiffs with respect to room No.4/928 and 1 ½ cents of property. Ext.A4 is the certified copy of document No.4909/2010 executed by defendant No.2 in OS 30/12 in favour of defendants No.4 & 5. Exts.A5 to A9 are the certified copies of plaint, written statements, affidavit of defendant and judgment and decree in OS 116/2005. Ext.A10 is the lawyer notice sent to defendant No.4 by defendant No.2, Ext.A11 is the reply notice sent to defendant No.2 by defendant No.4 and Ext.A12 is the certified copy of agreement executed in between defendants No.2 and 4. Ext.B1 is the relevant portion in Ext.A1 agreement, Ext.B2 is the original document No.4909/2010 executed by defendant No.2 in favour of defendants No.4 and 5. Ext.B3 is the original release deed executed by defendant No.4 in favour of defendant No.5, Exts.B4 and B5 are the possession certificates in the name of defendant No.5. Ext.B6 is the ownership certificate in the name of defendant No.5. Exts.B7 to B13 are the land tax receipts in the name of defendants No.4 and 5 with respect to the property covered in Ext.B2 document. Exts.B14 to B16 are the building tax receipts in the name of defendant No.5. Ext.B17 is the arrear demand notice issued by Secretary, Sulthan Bathery Municipality with respect to the arrears of tax. Exts.B18 to B21 are the receipts issued by Municipality, Sulthan Bathery for the collection of license fee. Ext.B22 is the certified copy of judgment in CMA 1/18, Ext.B23 is the certified copy of order in CMA 2/18. Ext.B24 is the certified copy of the order in OP(C) 2973/2018. Ext.B25 is the certified copy of the order in OP(C) 2977/2018 of the Honourable High Court of Kerala, Ext.B26 is the certified copy of document No.1862/2005, Ext.B27 and 28 are the building tax receipts, Ext.B29 is the receipt issued by Sulthan Bathery Municipality with respect to the receipt of property taxes and other charges, Ext.B30 and B31 are the lawyer notice and reply notice dated 02.04.2011 and 25.04.2011 and Ext.B32 is the certified copy of the commission report and plan in OS 121/2011.

21. **Issue No.1 in OS 30/12:-** The specific case of plaintiff is that, defendant No.1 had entered into an agreement with defendants No.2 and 3 in OS 30/12 with respect to the sale of plaintiff A schedule property on 03.08.2004. Thereafter on 07.08.2004, defendant No.1 had entered into a sale agreement with the plaintiff No.1 with the consent and knowledge of defendants No. 2 and 3 with respect to the sale of plaintiff A schedule property and entire consideration was paid to defendant No.1. On the other hand, the defendant No.1 had disputed the said agreement in the written statement and contented that he had not entered into a sale agreement with plaintiff as alleged in the plaint and if any agreement is there, it is a fabricated and forged agreement. Defendants No. 2 and 3 are also disputed the said averments of the plaintiff.

22. To prove the case, the plaintiff relies Exts. A1 and A2 documents. Ext.A1 is the original of the alleged agreement dated 07.08.2004 executed in between plaintiff No.1 and defendant No.1. Ext. A2 is the original agreement executed in between plaintiff No.1 and defendant No.1 on 12.05.2005. On perusal of Ext.A1 original agreement, it is seen that it is an agreement executed in between defendant No.1 and plaintiff No.1 on 07.08.2004. The recitals in Ext.A1 agreement would shows that defendant No.1 is agreed to purchase property and buildings therein from one Mr.Sukumaran, Mr.Gopinathan, Mr.Viswanathan and Mr.Prakashan as per an agreement dated 03.08.2004. Sukumaran and Prakashan are the defendants No. 2 and 3 in this case. There is no schedule in Ext.A1 agreement. Ext. A1 agreement further shows that, “2004 ആഗസ്റ്റ് 3-ആം തീയതിയിലെ വസ്തുവില്പനക്കരാർ പ്രകാരം 1-ആം നമ്പർകാരൻ തീർ വാങ്ങിയ വഴിക്കു 1-ആം നമ്പർകാരന് അവകാശപ്പെട്ടതും മേപ്പടിയാന്മാരിൽനിന്നും 2-ആം നമ്പർകാരനും ചന്ദ്രൻ എന്നവരും കൂടി ബിസിനസ്സ് ആവശ്യവുമായ ഏറ്റുവാങ്ങി കൈവശം വെച്ചുവരുന്ന ടി കെട്ടിടത്തിന്റെ തെക്കെ ഭാഗത്തുനിന്നും (മുസ മകൻ ആരിഫ് എന്നയാളുടെ

അതിരിനോട് ചേർന്ന്) കട്ടയാട് റോഡുതടങ്ങുന്ന ഭാഗത്തേയ്ക്കുള്ള കോഴിക്കോട് റോഡിനഭിമുഖമായിട്ടുള്ള 2 മുറികളും (കോൺക്രീറ്റ് കെട്ടിടത്തിലെ) ആയതിന്റെ പുറകുവശത്തേയ്ക്ക് വടക്ക് ഭാഗം മൂഴയിൽ പീറ്റർ എന്നയാളുടെ അതിരവരെയുള്ള സ്ഥലവും 1-ആം നമ്പർകാരൻ 2-ആം നമ്പർകാരൻ തീരായി കൊടുപ്പാൻ നിശ്ചയിച്ചു. ഒന്നും രണ്ടും നമ്പർകാർ ടി സ്ഥലത്തിനും മുറികൾക്കും കൂടി മൊത്തം കണക്കാക്കിയ പ്രതിഫലസംഖ്യ ₹25,50,000/- ഇരുപത്തിയഞ്ചുലക്ഷത്തി അൻപതിനായിരം ഉറുപികയിൽ ഇന്ന് 2-ആം നമ്പർകാരനിൽ നിന്നും 1-ആം നമ്പർകാരൻ രൊക്കം കിട്ടി ബോധ്യംവന്ന സംഖ്യ ₹5,00,000/- അഞ്ചുലക്ഷം ഉറുപ്പിക കഴിച്ച് ബാക്കി സംഖ്യയിൽ ₹5,00,000/- അഞ്ചുലക്ഷം ഉറുപ്പിക 2004 ആഗസ്റ്റ് മുപ്പതാം (30.08.2004) തീയതിക്കകമായും ബാക്കി സംഖ്യയിൽ ₹5,00,000/- അഞ്ചുലക്ഷം ഉറുപ്പിക 2004 ഡിസംബർ മുപ്പതാം (30.12.2004) തീയതിക്കകമായും ബാക്കി സംഖ്യ ₹10,50,000/- പത്തുലക്ഷത്തി അമ്പതിനായിരം ഉറുപ്പിക 2005 ഏപ്രിൽ മുപ്പതാം തീയതിക്കകമായും 2-ആം നമ്പർകാരൻ 1-ആം നമ്പർകാരൻ കൊടുത്തു ബോധ്യപ്പെടുത്തേണ്ടതും, ടി മുറികളുടെ പുറകുവശത്തുള്ള സ്ഥലത്തേക്ക് വഴി ആവശ്യർത്ഥം 1-ആം നമ്പർകാരൻ 2-ആം നമ്പർകാരൻ വിട്ടുകൊടുക്കുന്ന സ്ഥലത്തിന് സെന്റോന്നിന് ₹4,80,000/- നാലുലക്ഷത്തി എൺപതിനായിരം ഉറുപ്പിക കണക്കാക്കി മൊത്തം വഴി ആവശ്യർത്ഥം വാങ്ങുന്ന സ്ഥലത്തിന്റെ തീരുവിലയും കൂടി മേപ്പടി 2005 ഏപ്രിൽ മുപ്പതാം തീയതിക്കകമായി 2-ആം നമ്പർകാരൻ 1-ആം നമ്പർകാരൻ കൊടുത്തു ബോധ്യപ്പെടുത്തുമ്പോൾ പട്ടിക വകകൾ 1-ആം നമ്പർകാരൻ നേരിട്ടോ, 1-ആം നമ്പർകാരൻ തീരു കൊടുത്ത മേപ്പടിയാന്മാരെ കൊണ്ടോ 2-ആം നമ്പർകാരന്റെ പേരിലോ 2-ആം നമ്പർകാരൻ നിർദ്ദേശിക്കുന്നവരുടെ പേരിലോ തീറാധാരം ഒപ്പിട്ടു രജിസ്റ്റർ പൂർത്തീകരിച്ച് കൊടുക്കുന്നതുമാകുന്നു.

മേൽ വ്യവസ്ഥകൾക്കെതിരായി ഇതിൽ ഏതെങ്കിലും കക്ഷികൾ പ്രവർത്തിക്കാനിടവന്നാൽ തന്മൂലം നേരിടുന്ന കഷ്ടനഷ്ടങ്ങൾക്ക് വിപരീതമായി പ്രവർത്തിക്കുന്നവർ ഉത്തരവാദികളായിരിക്കുന്നതാണെന്ന് നിശ്ചയിച്ചും സമ്മതിച്ചും താഴെ പേരെഴുതി ഒപ്പിടുന്ന സാക്ഷികൾ മുമ്പാകെ ഒന്നും രണ്ടും നമ്പർകാർ ഒപ്പിട്ടു ഇതിന്റെ അസ്സൽ 2-ആം നമ്പർകാരൻ സൂക്ഷിപ്പാനും നിശ്ചയിച്ചിരിക്കുന്നു". All pages of Ext.A1 document would bear the signature of defendant No.1 and plaintiff No.1. Ext. A1 document further bears the signature of two witnesses, namely Anilash and Rajan.

23. Here it is to be noted that, the suit was filed before this Court on 21.01.2012. Ext. A1 document on which the plaintiff relies was produced before the court only on 21.08.2014. Defendant No.1 has filed written statement on 29.06.2012 contending that he has not executed any sale agreement on 07.08.2004 as alleged in the plaint and his contention is that if any document is there, it is a fabricated and forged document. It has come out in the evidence of PW1 that defendant No.1 died in the year 2013 and Ext. A1 document was produced before the court in the year 2014. As Ext.A1 agreement was not produced before the court before filing written statement by defendant No.1, he did not get an opportunity to verify the same and to raise his contentions with respect to the said agreement. After the death of defendant No.1, his legal heirs were impleaded in this case on 18.02.2014, as per the Order in IA No.1461/13 as supplemental defendants No.6 to 9. Ext.A1 agreement was produced before this court after the appearance of supplemental defendants No.6 to 9. They did not file any separate written statement disputing Ext.A1 agreement, the signature of defendant No.1 in the agreement and the case of plaintiff.

24. As Ext.A1 agreement is disputed by defendant No.1, plaintiffs have examined one of the attesting witnesses to the agreement before the court as PW2. PW2 is the first attesting witness to Ext.A1 agreement. He is none other than the

brother-in-law of plaintiffs. He has deposed that he is aware about the sale agreement executed in between plaintiff and defendant No.1 on 07.08.2004. Further, he has deposed that it was written by Jacob a vendor at Chungam. He has identified Ext. A1 agreement before the court and also identified his signature in the agreement, before the court. He has further deposed that apart from him, Varghese, Pradeep and Rajan were also signed in the agreement on that particular day. Further, he has deposed that the agreement is with respect to two rooms and all the parties were signed in the agreement voluntarily. It has come out in the cross-examination of PW2 that, he had signed in the agreement after read over the same. Though the learned counsel for the defendants has argued that PW2 is an interesting witness and therefore his evidence would not be believable, nothing has been brought out in the lengthy cross examination to challenge or to discredit or to disbelieve the evidence of PW2. There is nothing on record to disbelieve the evidence of PW2.

25. Here the importance of Ext.A2 agreement. With respect to Ext.A2 agreement, the case of the plaintiff is that, as there was dispute in between defendant No. 2 and defendant No. 4 with respect to plaint C schedule property and OS 116/2005 was pending before the court with respect to the same property, the defendant No.1 had handed over plaint D schedule property in favour of the plaintiff and thereby an agreement was executed. Here it is to be noted that, Ext. A2 agreement was not disputed by defendant No.1 in the written statement. The contention of defendant No.1 with respect to Ext. A2 agreement is that Room number 4/929 which belongs to this defendant was temporarily given to plaintiff as case is pending before the court in between defendant No.2 and defendant No.4. Ext.A2 is the original agreement executed between defendant No.1 and plaintiff No.1. All pages of Ext. A2 documents bear the signature of defendant No.1 and plaintiff No.1 and also bears the signature of witnesses. The recitals in Exhibit A2 document would show that, "ഇന്ന് ചായംപ്ലാക്കിൽ സുകുമാരൻ എന്നവരിൽനിന്നും 2-ആം നമ്പർകാരന്റെ പേരിൽ

രജിസ്റ്ററാക്കി കൈവശം ഏറ്റെടുത്ത ബത്തേരി വില്ലേജിൽ റീ സ 539/12-ൽ പെട്ട 1 ½ സെന്റ് സ്ഥലത്തിനോടനുബന്ധിച്ച് SBP 4/927 നമ്പർ മുറിയും മേൽ പറഞ്ഞ സുകുമാരൻ എന്നവരിൽ നിന്നും 1-ആം നമ്പർകാരൻ തീരായി വാങ്ങിയിരുന്നതിൽ 1-ആം നമ്പർകാരന്റെ നിർദ്ദേശാനുസരണം മേപ്പടി സ്ഥലം മാത്രം 2-ആം നമ്പർകാരന് തീരു സിദ്ധിച്ചിട്ടുള്ളതും ടി മുറിക്കു ഇപ്പോഴത്തെ കൈവശക്കാരനും ആയ ചന്ദ്രൻ എന്നവരുമായി തർക്കം നിലനിൽക്കുന്നതിനാൽ ആയത് 2-ആം നമ്പർകാരന് രജിസ്റ്ററാക്കി കൊടുത്തിട്ടില്ലാത്തതും ടി-മുറി രജിസ്റ്ററാക്കി കിട്ടുന്നതുവരെ 1-ആം നമ്പർകാരന് സിദ്ധിച്ച SBP 4/929 നമ്പർ മുറി താൽക്കാലികമായി 1-ആം നമ്പർകാരൻ 2-ആം നമ്പർകാരന് കൈവശം ഏൽപ്പിച്ചു കൊടുത്തിട്ടുള്ളതും മേപ്പടി SBP4/927 നമ്പർ മുറി 2-ആം നമ്പർകാരന്റെ പേരിൽ രജിസ്റ്ററാക്കി കൊടുക്കുന്ന അവസരത്തിൽ യാതൊരു തർക്കവും ഉന്നയിക്കാതെ 2-ആം നമ്പർകാരൻ 1-ആം നമ്പർകാരന് 4/929 നമ്പർ മുറി ഒഴിവാക്കി കൊടുക്കേണ്ടതുമാണ്.” The recitals in Exhibit A2 clearly show the sale transaction in between defendant No.1 and defendant No.2 with respect to Room No. 4/927 and the sale transaction in between plaintiff No.1 and defendant No.1. Here it is pertinent to note that, though the defendants disputed Ext.A1 agreement, defendant No.1 and defendants No. 6 to 9 have admitted Ext.A2 agreement. DW2 has deposed before the court that he has admitted Ext.A2 agreement and admitted the signature of his father shown in Ext.A2 agreement. They have no dispute regarding the contents of Ext.A2 document. Though the defendants admitted Ext.A2 agreement, there is no explanation with respect to the transactions of properties mentioned in Ext.A2 document. Further, there is no explanation on the part of defendants No.1 and 6 to 9 that what prompted defendant No.1 to handed over Room No. 4/929 to plaintiff No.1 on temporary basis. Admittedly, Room No.4/929 belongs to defendant No.1. It is further admitted that room No.4/927 belongs to defendant No.2 at that time. If defendant No.1 has no connection with Ext.A1 agreement as contented in the written statement, what

prompted him to handed over Room No.4/929 on temporary basis till the handing over of Room No.4/927 to the plaintiff. Why defendant No.1 had taken such a burden on his shoulder, if he has no connection with Room No.4/927 was not explained by either defendant No.1 or defendants No. 6 to 9.

26. Though defendant No.1 did not get an opportunity to deny the signature shown in Ext.A1 agreement, in the written statement, defendants No. 6 to 9 have no case that the signature shown in Ext.A1 document is not the signature of defendant No.1. There is no specific denial of the signature of defendant No.1 on the side of defendants No.6 to 9. Defendant No.8 was examined as DW2. When the learned counsel for the plaintiff cross-examined DW2 on this aspect, he has deposed before the court that the signature shown in Ext.A2 document is the signature of his father, and he has denied the signature of his father in Ext.A1 document. They have not filed additional written statement denying the signature of defendant No.1 in Ext. A1 agreement, after the production of Ext.A1 agreement before the court. They have not even denied the signature of defendant No.1 in Ext.A1 agreement, in their chief affidavit. Though defendants No.6 to 9 who are the legal heirs of defendant No.1 disputed Ext.A1 agreement, it has come out in evidence that DW2 was a minor at the time of execution of Ext.A1 agreement. They have no case in the chief affidavit that they have direct knowledge about Ext.A1 agreement. The learned counsel for the defendants No.6 to 9 not even put a suggestion or contention during the cross examination of PW1 that the signature shown in Ext.A1 document is not the signature of defendant No.1. In this context, the learned counsel for the plaintiff has submitted before the court that the court is the expert of expert and can very well compare the signature of defendant No.1 in Ext. A1 document with Ext.A2 document. On perusal and comparing of the signature of defendant No.1 in Ext.A1 agreement with Ext.A2 document, this Court finds that the signatures of defendant No.1 shown in Ext.A2 document are same and similar to the signatures of defendant No.1 in Ext.A1 document. There is absolutely nothing on record to disbelieve Ext.A1 document. The recitals in Exts.A1 and A2 documents together would prove the spirit of the documents, the intention of the parties and the transactions in between the plaintiff No.1 and defendant No.1. There is absolutely no contra evidence before the court to challenge the evidence of PW1 and

PW2 and Exts.A1 and A2 documents. None of the documents produced by the defendants would disprove Ext.A1 document. The evidence of PW2 corroborated with the evidence of PW1 supported by Exts.A1 and A2 document would probalilise the case of plaintiff than the contention of defendants. The evidence on record would probalilise the case of plaintiff that defendant No.1 had executed Ext.A1 agreement with plaintiff No.1. Hence, this issue is found in favour of plaintiff.

27. Issues No.2 and 4 in OS 30/12 and issues No.1 and 2 in OS 23/15:-

The suit OS 30/2012 is one for specific performance. It is a settled position of law that, the plaintiff in a suit for specific performance must plead and prove his readiness and willingness throughout the existence of contract. It is also settled that readiness pertains to the financial capacity of the proposed purchaser to make payment of the balance consideration under the agreement to sell and willingness refers to the intention of the plaintiff to go ahead with the transaction. Readiness and willingness of the plaintiff to perform the essential part of the contract would require to be demonstrated by him from the date of agreement till it is culminated to the decree of the court. In **2024 KHC 6671, Shama Naik R Vs G.Srinivasiah**, the Honourable Apex Court held that, “there is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff”.

28. Plaintiff has pleaded in the plaint that he was always ready and willing to perform his part of agreement. The case of the plaintiff is that he has paid the entire sale consideration to the defendant No.1 as per Ext.A1 agreement. But the sale consideration amount was not stated in the plaint. As Ext. A1 agreement was not produced along with plaint and as the sale consideration amount was not stated in the

plaint, defendant No.1 did not get an opportunity to deny the receipt of the amount shown in Ext.A1 agreement. Defendant No.1 has contented in the written statement that he has not received any amount from the plaintiff. This Court already found in Issue No.1 that plaintiff has proved the execution of Ext.A1 agreement. As per Ext.A1 agreement, the consideration is fixed as ₹25,50,000/-. Out of which, ₹5,00,000/- was paid by plaintiff No.1 to the defendant No.1 on the date of agreement itself. As per Ext.A1 agreement, out of balance amount of ₹ 5,00,000/- has to be paid on or before 30.08.2004, ₹5,00,000/- has to be paid on or before 30.12.2004 and the remaining amount of ₹10,50,000/- has to be paid on or before 30.04.2005. The endorsement on the reverse side of the first page of Ext.A1 agreement would shows that defendant No.1 had received ₹5,00,000/- on 30.08.2004, ₹5,00,000/- on 11.01.2005 and ₹10,50,000/- on 30.04.2005. Each endorsement was duly signed by defendant No.1. There is absolutely no dispute with respect to the endorsement made on the reverse side of Ext. A1 agreement and with respect to the signature of defendant No.1 shown under each endorsement. Absolutely no question was asked to PW1 by the defendants during cross-examination with respect to the endorsements. There is absolutely no challenge with respect to the endorsements of the receipt of sale consideration by defendant No.1. As plaintiff has succeeded in proving Ext.A1 agreement and as there is no challenge on the endorsements on the reverse side of Ext.A1 agreement, this Court finds that the plaintiffs have succeeded in proving their contention that they have paid the entire sale consideration to defendant No.1.

29. In order to get the relief of specific performance, the plaintiff has to prove not only the readiness, but also his willingness to perform the agreement. The willingness refers to the intention of the party to go ahead with the agreement. The plaintiff has to plead and prove his willingness to perform the agreement.

30. Admittedly, defendant No.2 is the owner of plaintiff C schedule property at the time of Ext.A1 agreement. That fact was very well known to the plaintiffs at the time of Ext.A1 agreement. According to PW1, Ext.A1 agreement was executed with the consent and knowledge of defendant No.2. The said contention was totally denied by defendants No. 2 and 3. It is to be noted that, defendants No. 2 and 3 are the uncles of plaintiffs. According to PW1, they are in good terms and talk with each other. If Ext.A1 agreement was executed with the consent and knowledge of defendants No. 2 and 3, what prevented the parties to the agreement to incorporate the same in the agreement itself especially in the circumstance in which the defendants No.2 and 3 are uncles of PW1 and the owners of the property. They were not even cited as a witness to the agreement. PW1 has admitted before the court that defendants No.2 to 5 were not made either as parties or as witnesses to Exts.A1 and A2 agreements. There is absolutely no evidence before the court to prove the case of plaintiff that Ext.A1 agreement was executed with the consent and knowledge of defendants No.2 and 3.

31. Here the importance of evidence of PW1. PW1 has deposed before the court that Ext.A1 agreement is with respect to plaintiff A, B, C and D scheduled properties. PW1 has admitted before the court that out of which B schedule property was registered in his favour by virtue of Ext.A3 document. The total sale consideration of ₹25,50,000/- was fixed for the entire property. Admittedly, a case was instituted by defendant No. 4 against defendant No. 2 as OS 116/2005. It is also an admitted fact that defendant No. 4 was a tenant of defendant No.2 in Room No.4/927. PW1 has categorically deposed that a sale agreement was executed in between defendant No.4 and defendant No.2 with respect to room No.4/927. He knows the same on 07.08.2005. According to PW1, he regularly enquired about the case to his uncle defendant No.2 and defendant No.2 had given all information of the case to him. After fighting the litigants in OS 116/2005 for a period of 5 years, the case was disposed off and thereby defendant No.2 had registered plaintiff C schedule

property in the name of defendants No. 4 and 5. PW1 has admitted that Ext.A4 is the document executed by defendant No.2 in favour of defendants No.4 and 5 with respect to plaint C schedule property. Ext.B2 document is the original of Ext.A4 document. Ext.A4 was executed on 24.07.2010. It is also admitted by PW1 that defendant No.4 had released his right over plaint C schedule property to defendant No.5 as per Ext.B3 document on 27.07.17. PW1 has admitted that after the registration of Ext. A4 agreement, defendants No. 4 and 5 are paying land tax and building tax for the plaint C schedule property. Exts.B4 to B6 are the possession certificates and ownership certificate in the name of defendant No.5. Exts.B7 to B13 documents are the land tax receipts with respect to the property in the name of defendant No. 5. Exts.B14 to B16 and B18 are the building tax receipts in the name of defendant No.5. Ext.B17 is the arrear demand notice issued by Sulthan Bathery Municipality to defendant No.5 with respect to the building. Exts.B19 and B20 are the professional tax receipts. So, the admission of PW1 and Exts.B4 to B20 documents would prove that the plaint C schedule property is in the possession and enjoyment of defendant No.5 by virtue of Ext.B3 document. Apart from that DW1 has categorically deposed before the court that, he had purchased plaint C schedule property for an amount of ₹3,00,000/- in which ₹2,00,000/- was paid by him. He had purchased the property from defendant No.2 Sukumaran. Nothing has been brought out in evidence to prove the contention of plaintiff that, Ext.B2 is a sham document. Even after knowing the sale agreement between defendant No.2 and defendant No.4 in the year 2005 and Ext.A4 (B2) document dated 24.07.2010, the plaintiffs have approached before the court for specific performance of Ext.A1 agreement only on 21.01.2012. Why plaintiffs waited till 21.01.2012 was not explained either in the plaint or in the chief affidavit or before the court. Here it is very important to note that, plaintiff No.1 had received a notice from defendant No.1 demanding surrender of the room No.4/929 which was handed over on temporary basis. As the plaintiffs failed to surrender the room, defendant No.1 filed a suit before the Munsiff Court, Sulthan Bathery, as OS 209/2011 on 07.07.2011. Later, the said case was transferred to this court and re-numbered as OS 23/15. PW1 has admitted before the court that after receiving notice from defendant No.1 and after filing OS 209/11(23/15), he has filed the suit for specific performance before this court. The plaintiffs did not even send a

notice to defendant No.1, defendants No.6 to 9 and defendants No.2, 4 and 5 demanding the performance of the agreement, even after knowing all the matters with respect to the property.

32. Admittedly, defendant No. 2 is the owner of plaint C schedule property at the time of Ext.A1 agreement. There is absolutely no evidence before the court to prove the contention of the plaintiff that Ext.A1 agreement was executed with the knowledge and consent of defendant No.2 who is the owner of Room No.4/927. Even after knowing the pendency of OS 116/2005, the sale agreement in between defendants No. 2 and 4, the progress of the case, disposal of the case and the registration of Exts.B2 and B3 documents, absolutely, no step or legal action was taken by plaintiff to get the agreement performed in his favour. He has no case that, even after knowing the sale agreement between defendant No.2 and defendant No.4, he has enquired the same to defendant No.2 who is none other than the uncle of him and about the future of Ext.A1 agreement. He had not even sent a notice to defendant No.1 demanding the performance of Ext.A1 agreement. PW1 has admitted in evidence that he demanded the performance of Exhibit A1 agreement dated 07.08.2004 only in the year 2012. Absolutely no document was produced by plaintiffs to prove his willingness to perform Ext.A1 agreement from 2004 to 2012. Here it is very pertinent to note that Ext.B2 document was executed on 24.07.2010. The plaintiffs have approached before this court only on 21.01.2012. Even after knowing the registration of Room No. 4/927, on which the plaintiffs sought relief in this case, in the year 2010, the plaintiffs did not take any steps to get Ext.A1 agreement performed. They did not even send a notice to defendant No.1 in the light of Ext. A4 document. According to PW1, Ext.A4 document is a sham and illegal document and he requires to declare it as null and void. But the plaintiff has no such case either in the plaint or in the chief affidavit. Moreover, no steps/legal action was taken by plaintiffs against Ext.A4 (B2) document. Exts.B2 and B3 are registered documents. The registered documents are having certain presumptions and legal sanctity. The registered documents are presumed to be valid documents. Without challenging

Exts.B2 and B3 documents, plaintiff sought relief on Room No.4/927, which is absolutely in the ownership and possession of defendant No.5. In the light of the above discussed evidence, the only probable conclusion is that the plaintiffs have not taken any steps to get Ext.A1 document performed in their favour from 2004 to 2012. So, the plaintiffs have not succeeded in proving their willingness to perform Ext.A1 agreement. The plaintiff will get the relief of specific performance only if he is able to prove his readiness and willingness to perform the agreement. So, the conduct and attitude of plaintiff itself proves that there was no positive attempt on the part of plaintiffs to perform the agreement. On appreciating the available evidence, this court finds that the plaintiffs have failed to prove their willingness to perform the Ext.A1 agreement. They have filed the present suit as a counterblast to OS 23/15 (209/11). As the plaintiffs failed to prove their willingness to perform Ext.A1 agreement, they are not entitled to get the relief of specific performance. Hence issues No.2 and 4 in OS 30/12 are found against the plaintiffs.

33. According to PW1, since OS 116/2005 was pending before the court, in between defendant No.2 and defendant No.4, the parties to Ext.A1 agreement could not perform the agreement and thereby Room No.4/929 was given to him by defendant No.1 as per Ext.A2 agreement. Though PW1 adduced evidence to the effect that Room No.4/929 was given to him instead of Room No.4/927, Ext.A2 documents clearly shows that Room No.4/929 was given to him as a temporary arrangement. Ext.A2 agreement is an admitted agreement. As per Ext.A2 agreement, defendant No.1 had handed over Room No.4/929 to plaintiff No.1 as a temporary arrangement till plaintiff will get Room No.4/927. It is further stated in Ext.A2 agreement that he will hand over the same to defendant No.1 on receiving Room No.4/927. Here it is pertinent to note that, defendants No.2 to 5 are neither parties nor witnesses to Ext.A1 and Ext.A2 agreement. There is absolutely no evidence before the court to prove the contention of the plaintiff that Ext.A1 and Ext.A2 agreements were executed with the consent and knowledge of defendant No.2 and defendant

No.3. It has come out in the evidence that defendant No.2 had registered Room No.4/927 in the name of defendant No.4 and defendant No.5 in pursuance of a compromise decree in OS 116/05. As Ext.B2 and Ext.B3 documents are registered documents and absolutely there is no effective challenge on the said documents, the defendant No.5 is the absolute owner of Room No.4/927. This court already found in issues No. 2 and 4 that, the plaintiffs have failed to prove their willingness to perform Ext.A1 agreement. Ext.A1 is the basis of Ext.A2 agreement. As the plaintiffs failed to prove their willingness to perform Ext.A1 agreement, they are not entitled to get any relief on Ext.A2 agreement. So, the plaintiff is not entitled to retain the possession of Room No.4/929, as he is not entitled to get Room No.4/927. Hence issue No.1 in OS 23/15 is found against the plaintiffs in OS 30/12.

34. The alternative prayer of the plaintiff is that, if the court finds that, he is not entitled to get room No.4/927, room number 4/929 is to be registered in favour of him. Ext.A2 document clearly shows that Room No.4/929 was handed over to the plaintiff only as a temporary basis. Admittedly, Room No.4/929 belongs to defendant No.1. There is no clause in Ext.A2 agreement that if room No.4/927 is not assigned to PW1, room No.4/929 will be given to him. At the time of execution of Ext.A2 agreement, Room No.4/927 is in the ownership and possession of defendant No.2. Defendant No. 2 is none other than the uncle of PW1. Even after knowing all the hurdles on the property, PW1 did not take any step to remove the hurdles and to get Ext.A1 agreement to be performed in his favour. It has come out in the evidence of PW1 that, Room No.4/929 was handed over to him as a temporary arrangement. He has further deposed that no rent was given by him till date. Here it is pertinent to note that, PW1 has been in possession of Room No.4/929 without paying any amount as a rent to the defendant No.1, from 2005 onwards. This court already found that plaintiffs are not entitled to get the relief of specific performance, as they failed to prove willingness to perform Ext.A1 agreement. As default is on the part of plaintiffs, Room No.4/929 was handed over to him as a temporary arrangement and there is no

specific clause in Ext.A2 document to register the said room to plaintiffs, they are not entitled to get the relief on Room No.4/929 as sought for in the plaint. As the defendant No.1 is the owner of the Room No.4/929 and it is in the possession of plaintiff without paying any amount as rent from 2005 onwards, the defendant No.1/ plaintiff in OS 23/15 is entitled to get the relief on the said room as sought for in the plaint in OS 23/15. Hence issue No.2 in OS 23/15 is found in favour of plaintiff in OS 23/15.

35. **Issue No.3 in OS 30/12:-** Admittedly the suit is based on Ext.A1 & A2 agreements. Ext.A1 is dated 07.08.2004 and Ext.A2 is dated 12.05.2005. The defendants have taken a contention in the written statements that, as the suit is for specific performance on the basis of Ext.A1 and A2, it is barred by law of Limitation. The learned counsel for the defendants has argued that as per Section 54 of the Limitation Act, 1963, a suit for specific performance must be filed within three years from the date fixed for performance, or if no such date is fixed, within three years from the date the plaintiff had notice that performance was refused. As per Ext.A1 document, the performance date is fixed as 30.04.2005. Admittedly, OS 116/2005 was filed by defendant No.4 against defendant No.2 with respect to the same subject matter, ie., Room No.4/927. As OS 116/2005 was pending, the parties to Ext.A1 agreement could not perform the agreement on time. Hence they Executed Ext.A2 agreement on 12.05.2005. The recitals in Ext.A2 agreement clearly shows the dispute in between defendant No.2 and defendant No.4 and as the case is pending they have arrived at a temporary arrangement that defendant No.1 handed over his Room No.4/929 to the plaintiff till he gets Room No.4/ 927. It is made clear in Ext.A2 agreement that the plaintiff has to surrender Room No.4/929 to defendant No.1 on getting Room No.4/927. According to the learned counsel for the defendants, as the plaintiffs were aware about the proceedings in OS 116/2005 and did not take any step at that time, they have no right to file the present suit 8 years after the execution of Ext.A1 and A2 agreements.

36. Admittedly, OS 116/2005 was disposed of in the year 2010. Ext.A4 was registered on 24.07.2010. Though the plaintiffs were aware about the case, it was disposed of only in the year 2010. As the said case was pending, Ext.A2 was executed. As per Ext.A2 agreement, the plaintiffs have to surrender Room No.4/929 only when he gets Room No.4/927. According to the plaintiffs, they had received a lawyer notice from defendant No.1 on 05.04.2011 on which date they came to know the disposal of OS 116/2005 and the execution of Ext.A4 document. Further, they had received notice in OS 209/11 (OS 23/15). PW1 has categorically deposed before the court that in the year 2011, he understood that the defendant No.1 will not register C schedule property in favour of him. As OS 116/2005 was disposed of on 29.07.2010 and thereafter notice received on 05.04.2011, this court is of the view that the suit is filed well within the period of limitation, in the light of Ext.A2 document. Hence there is no merit in the contention of defendants that the suit is barred by law of Limitation. This issue is found in favour of plaintiff in OS 30/12.

37. The defendants have raised a contention that the suit property is not identifiable from Ext.A1 agreement and asked many questions to PW1 on that aspect. It is true that, there is no schedule in Ext.A1 agreement. The room numbers are also not stated in the agreement. But it has come out in the whole evidence that plaint C schedule property (Room No.4/927) is the disputed property and the parties are very well aware about the same. On appreciating the entire evidence on record, this court finds that, there is no merit in the said contention of defendants as they are very well aware about the disputed property and the properties nearby the disputed property.

38. **Issue No.5 in OS 30/12 and Issue No.3 in OS 23/15:-** On analysing the entire evidence on record, this Court finds that, the plaintiffs in OS 30/12 have not succeeded in proving the case. The evidence on record would proves the case of plaintiff in OS 23/15. Therefore, OS 30/2012 is liable to be dismissed and OS 23/2015 is liable to be decreed.

In the result,

1. OS 30/2012 is hereby dismissed.
2. OS 23/2015 is decreed as follows:
 - (i) The defendant is directed to deliver vacant possession of the plaint B schedule room to the plaintiffs within two months from the date of judgment.
 - (ii) Considering the facts and circumstances of the case, all parties are directed to bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 31st day of March, 2026.)

SUB JUDGE

Appendix:-

Plaintiff's Witnesses:

PW1	-	14.01.2026	-	Pradeep K K
PW2	-	21.01.2026	-	Anilash T K

Plaintiff's Exhibits:-

A1	-	07.08.2004	-	Sale agreement between plaintiff No.1 (K.K.Pradeep) and defendant No.1 (K.M.Varghese) in OS 30/2012.
A2	-	12.05.2005	-	Agreement between plaintiff No.1 (K.K.Pradeep) and defendant No.1 (K.M.Varghese) in OS 30/2012.
A3	-	12.05.2005	-	Document No.1863/2005 executed by defendant No.2 (Sukumaran) and defendant No.3 (Prakasan) in favour of Plaintiffs (Pradeep and Prasad) in OS 30/2012.

A4	-	24.07.2010	-	Certified copy of document No.4909/2010 executed by defendant No.2 (Sukumaran) in favour of defendant No.4 (Chandran) and defendant No.5 (Shafi) in OS 30/2012.
A5	-	-	-	Certified copy of plaint.
A6	-	-	-	Certified Copy of Written statement.
A7	-	-	-	Certified copy of affidavit of defendant No.2 (Sukumaran)
A8	-	29.07.2010	-	Certified copy of Judgment in OS 116/2005 of Sub Judge Sulthan Bathery.
A9	-	29.07.2010	-	Certified copy of Decree in OS 116/2005 of Sub Judge Sulthan Bathery.
A10	-	10.06.2005	-	Certified copy of Lawyer Notice sent to C.R.Chandran (Defendant No.4) by defendant No.2 (Sukumaran)
A11	-	21.07.2005	-	Reply Notice Sent by defendant No.4 (C.R.Chandran) to defendant No.2 (Sukumaran)
A12	-	19.06.2003	-	Certified copy of agreement executed between defendant No.2 (Sukumaran) and defendant No.4 (Chandran) in OS 30/2012.

Defendants' Witnesses:

DW1	02.02.2026	Shafi
DW2	10.02.2026	Tinto Varghese

Defendants' Exhibits:-

B1	-	07.08.2004	-	Relevant portion in Sale agreement between Plaintiff No.1 (K.K.Pradeep) and defendant No.1 (K.M.Varghese) in OS 30/2012.
B2	-	24.07.2010	-	Original document No.4909/2010 executed by defendant No.2 (Sukumaran) in favour of defendant No.4 (Chandran) and defendant No.5 (Shafi) in OS 30/2012.
B3	-	27.07.2017	-	Release deed No.2647/2017 executed by defendant No.4 (Chandran) in favour of defendant No.5 (Shafi) in OS 30/2012.

B4	-	29.04.2022	-	Possession certificate in the name of defendant No.5 (Shafi) in OS 30/2012.
B5	-	30.11.2017	-	Possession certificate in the name of defendant No.5 (Shafi) in OS 30/2012.
B6	-	29.05.2014	-	Ownership certificate in the name of defendant No.5 (Shafi) in OS 30/2012.
B7	-	02.08.2010	-	Land Tax Receipt in the name of defendant No.5 (Shafi) and defendant No.4 (Chandran) in OS 30/2012.
B8	-	03.05.2014	-	Land Tax Receipt in the name of defendant No.5 (Shafi) and defendant No.4 (Chandran) in OS 30/2012.
B9	-	20.02.2017	-	Land Tax Receipt in the name of defendant No.5 (Shafi) and Defendant No.4 (Chandran) in OS 30/2012.
B10	-	21.07.2017	-	Land Tax Receipt in the name of defendant No.5 (Shafi) and defendant No.4 (Chandran) in OS 30/2012.
B11	-	27.11.2017	-	Land Tax Receipt in the name of defendant No.5 (Shafi) in OS 30/2012.
B12	-	06.07.2020	-	Land Tax Receipt in the name of defendant No.5 (Shafi) in OS 30/2012.
B13	-	27.04.2022	-	Land Tax Receipt in the name of defendant No.5 (Shafi) in OS 30/2012.
B14	-	05.05.2014	-	Building Tax Receipt.
B15	-	25.07.2017	-	Building Tax Receipt.
B16	-	13.06.2022	-	Building Tax Receipt.
B17	-	17.08.2023	-	Arrear demand notice issued by Sulthan Bathery Municipality.
B18	-	28.02.2024	-	Receipt issued by Sulthan Bathery Municipality.
B19	-	12.03.2018	-	Receipt issued by Sulthan Bathery Municipality.
B20	-	27.02.2019	-	Receipt issued by Sulthan Bathery Municipality.
B21	-	07.03.2019	-	Receipt issued by Sulthan Bathery Municipality.

B22	-	28.07.2018	-	Certified copy of Judgment in CMA 1/2018 of District Judge, Kalpetta.
B23	-	28.07.2018	-	Certified copy of Judgment in CMA 2/2018 of District Judge, Kalpetta.
B24	-	28.10.2025	-	Certified copy of Order in OP(C) No.2973/2018 of the Honourable High Court of Kerala.
B25	-	28.10.2025	-	Certified copy of Order in OP(C) No.2977/2018 of the Honourable High Court of Kerala.
B26	-	12.05.2005	-	Certified copy of Document No.1862/2005.
B27	-	10.02.2010	-	Building Tax Receipt.
B28	-	22.06.2011	-	Building Tax Receipt.
B29	-	09.02.2026	-	Property tax receipt issued by Sulthan Bathery Municipality
B30	-	02.04.2011	-	Lawyer notice.
B31	-	25.04.2011	-	Reply Notice.
B32	-	18.06.2015	-	Commission Report and Plan

SUB JUDGE

Typed by : Preethi P.B.

Compared by : Mini S.

Fair Common Judgment in OS 30/12 and
OS 23/15 dated 31.03.2026