IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 12TH DAY OF JUNE 2025 / 22ND JYAISHTA, 1947

RFA NO. 20 OF 2016

AGAINST THE JUDGMENT DATED 26.05.2015 IN OS NO.131 OF 2008 OF I ADDITIONAL SUB COURT,THIRUVANANTHAPURAM

APPELLANT/PLAINTIFF:

ABDUL AZEEZ,
AGED 50 YEARS,
S/O.PEERUKANNU, RESIDING AT T.C.49/879 (6),
KONCHIRAVILA, MANACAUD PO, THIRUVANANTHAPURAM-695009.

BY ADVS.
SRI.SREELAL N.WARRIER
SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH
SHRI.N.KRISHNA PRASAD

RESPONDENTS/DEFENDANT:

***1 HAKKIM SHAW, AGED 62 YEARS, [DIED; LRs IMPLEADED]**
SON OF AHMED KANNU, UDAYA BUILDINGS, PULLOORKONAM,
VIZHINJAM, THIRUVANANTHAPURAM 695 521.

*** ADDL. RESPONDENTS 2 TO 4**

ADDL. R2 BAHADOORSHAH,
S/O AHAMMED KANNU, RESIDING AT UDAYA BUILDINGS,
PULLOORKONAM, VIZHINJAM P.O, THIRUVANANTHAPURAM
DISTRICT, PIN-695521.

ADDL. R3 A.U.MUMTHAZ
W/O SULTHAN KHAN, RESIDING AT T.C. 49/879(6), KONCHIRAVILA, MANACAUD P.O, THIRUVANANTHAPURAM, PIN-695009.

ADDL. R4 A.U.ASOORA
W/O SHAHNAVAZ KHAN, RESIDING AT ANNIKKAVILAKOM (ARA-65), T.C.93/103/4, MANACAUD P.O, THIRUVANANTHAPURAM, PIN-695009.

*[LEGAL HEIRS OF DECEASED SOLE RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS R2 TO R4 AS PER ORDER DATED 29/07/2024 IN IA NO.1/2024]

BY ADVS.
SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.T.I.UNNIRAJA
SRI.S.G.SREEKANTH
SRI.S.BADUSHA
SHRI.FAHEEM AHSAN.S
SHRI.VAIDERSH H.S.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 12.06.2025, ALONG WITH RFA.332/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 12TH DAY OF JUNE 2025 / 22ND JYAISHTA, 1947

RFA NO. 332 OF 2017

AGAINST THE JUDGMENT DATED 21.12.2016 IN AS NO.376 OF 2015 OF III ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM ARISING OUT OF THE JUDGMENT DATED 26.05.2015 IN OS NO.131 OF 2008 OF I ADDITIONAL SUB COURT,THIRUVANANTHAPURAM

APPELLANT/DEFENDANT:

1 HAKKIM SHAW [DIED LRs IMPLEADED]*[1] & *[2]
S/O.AHAMMED KANNU, AGED 59 YEARS, RESIDING AT UDAYA BUILDINGS, PULLOORONAM, VIZHINJAM, THIRUVANANTHAPURAM DISTRICT.

***[1] ADDL. APPELLANTS 2 & 3**

ADDL. A2 UMAIBA BEEVI
W/O.L.ATE AHAMMED KANNU, AGED 83 YEARS, RESIDING AT UDAYA BUILDINGS, PULLOORKONAM, VIZHINJAM P.O, THIRUVANANTHAPURAM DISTRICT.

ADDL. A3 BAHADOORSHAH
S/O.L.ATE AHAMMED KANNU, AGED 59 YEARS, RESIDING AT UDAYA BUILDINGS, PULLOORKONAM, VIZHINJAM P.O, THIRUVANANTHAPURAM DISTRICT.

***[1][THE LEGAL HEIRS OF THE DECEASED SOLE APPELLANT ARE IMPLEADED AS ADDITIONAL APPELLANTS 2 & 3 VIDE ORDER DATED 29/07/2024 IN IA NO.2/2020]**

BY ADVS.
SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD

RESPONDENT/PLAINTIFF:

1 ABDUL AZEEZ
S/O.PEERUKANNU, RESIDING AT TC 49/879 (6),
KONCHIRAVILA, MANACAUD P.O., THIRUVANANTHAPURAM-695009.

*[2] ADDL. RESPONDENTS 2 & 3 IMPLEADED

ADDL. R2 A.U.MUMTHAZ,
W/O.SULTHAN KHAN, 'KOHINOOR', THEATER JUNCTION,
VIZHINJAM P.O., THIRUVANANTHAPURAM, PIN 695521.

ADDL. R3 A.U.ASSOORA,
W/O.SHANAVAZ, RESIDING AT ANNIKKAVILAKOM(ARA-65)
TC/93/103/4, MANACAUD P.O., THIRUVANANTHAPURAM,
PIN 695009.

*[2] [THE LEGAL HEIRS OF THE DECEASED SOLE APPELLANT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 2 & 3 VIDE ORDER DATED 29/7/2024 IN I.A.NO.2/2020.]

BY ADVS.
SRI.J.R.PREM NAVAZ
SRI.T.I.UNNIRAJA
SHRI.N.KRISHNA PRASAD
SRI.S.G.SREEKANTH
SRI.S.BADUSHA
SHRI.FAHEEM AHSAN.S
SHRI.VAIDERSH H.S.
SHRI.R.S.VISRUTH

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 12.06.2025, ALONG WITH RFA.20/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN &
P. KRISHNA KUMAR, JJ.
= =
R.F.A. Nos.20 of 2016 & 332 of 2017
= =
Dated this the 12th day of June, 2025

J U D G M E N T

Sathish Ninan, J.

The suit for specific performance of an agreement for sale, with an alternate relief for return of advance sale consideration, was decreed for the alternate relief. Seeking the main relief of specific performance, the plaintiff is in appeal in RFA 20/2016. Challenging the decree for return of advance, the defendant is in appeal in RFA 332/2017.

2. Ext.A1 is the agreement dated 26.09.2007 which is sought to be specifically enforced. It relates to 20 cents of property. The sale consideration mentioned in Ext.A1 is ₹ 3.5 lakhs per cent. The period fixed for performance is two months. An amount of ₹ 25 lakhs is stated to be paid as advance sale consideration. The period was subsequently extended till 31.12.2007 as

2025:KER:41205

endorsed on 26.11.2007(Ext.A1(a)), on the reverse side of Ext.A1. Alleging that the defendant is evading performance of the contract the suit was filed.

3. The defendant though admitted his signatures on Ext.A1 and A1(a), it was contended that signed blank stamp papers and papers obtained by the plaintiff from the defendant, aided by two others, by threat and coercion, were fabricated into Ext.A1 agreement. The receipt of amounts under Ext.A1 was denied. It was claimed that the property is situated in a prime location and is worth ₹ 3 crores.

4. Pending the appeal the defendant died and his legal heirs have been impleaded in the appeals.

5. The trial court upheld Ext.A1. However, the relief of specific performance was declined finding that the plaintiff failed to prove his readiness and willingness to perform the agreement within the period stipulated in Ext.A1.

2025:KER:41205

6. We have heard Sri.Sreelal N. Warrier, the learned counsel for the plaintiff, and Sri.T.I.Unniraja and Sri.Deepak Bhavadasan on behalf of the supplementary defendants.

7. The points that arise for determination in these appeals are: -

(i) Was Ext.A1 agreement executed by the defendant in favour of the plaintiff?

(ii) Is Ext.A1 agreement liable to be specifically enforced ?

(iii) On the facts and circumstances of the case, is the discretion under Section 20 of the Specific Relief Act liable to be exercised in favour of the plaintiff to grant a decree for specific performance?

(iv) Does the decree and judgment of the trial court warrant any interference?

8. With regard to the execution of Ext.A1 agreement, as was noticed supra it is the defence contention that blank signed stamp papers and papers obtained from him under threat and coercion, were fabricated into Ext.A1 agreement. Ext.A1(a) is the endorsement on the reverse side of Ext.A1 extending the

2025:KER:41205

period of the agreement till 31.12.2007. Admittedly the endorsement regarding extension is in the defendants handwriting and bears his signature. All the signatures of the defendant, as obtaining in Ext.A1 agreement, are admitted by him.

9. On going through the written statement and the evidence of DW1 it is seen that there is contradiction with regard to the place at which allegedly he was extorted to affix his signatures on blank papers. At paragraph 5 of the written statement it was pleaded that his signatures were obtained *"at the residence of Venugopal"*. But the defendant as DW1, at paragraph 8 of his proof affidavit, would swear that the signatures were obtained at his office. ("എന്റെ ഓഫീസിൽ അതിക്രമിച്ച് കയറി.").

10. As noticed earlier, Ext.A1(a) endorsement on the reverse side of Ext.A1 extending the period of the agreement, is admittedly in defendant's own handwriting. In the written statement he did not have a case that

2025:KER:41205

such endorsement was obtained subsequently. However, in his chief affidavit(DW1), he stated that such endorsement was caused to be made after 2 months of the earlier incident (“ഉദ്ദേശം 2 മാസം കഴിഞ്ഞ്"). Venugopal, is allegedly the former Assistant Commissioner of Police and was later Dy.SP in Railways.

11. Though the defendant alleges two incidents of threat and coercion followed by obtaining of his signatures in blank stamp papers and white papers, he did not, even within a reasonable time thereafter lodge complaints before the police or other authorities. His explanation for the same as obtaining in the written statement is that, *“.... the plaintiff is a Goonda and has very high influence among police and political leaders”*. Admittedly the defendant is a businessman owning various business establishments. At paragraph 3 of his proof affidavit he has sworn to thus: -

2025:KER:41205

> "3. ഞാൻ പല രാജ്യങ്ങളിലായി 21 വർഷം കഴിഞ്ഞു വന്നിരുന്ന ആളും Save Kerala Group എന്ന സംഘടനയുടെ സ്ഥാപക ചെയർമാനും ഉദയാ യൂസ്ഡ് കാർ, ഉദയാ ആട്ടോ ഗ്യാരേജ് A H Sha Associates എന്ന സ്ഥാപനങ്ങളുടെ ഉടമയും AHS Real Builders & Properties Private Limited എന്ന കമ്പനിയുടെ Managing Director -ഉം നിയമം അനുശാസിക്കുന്ന തരത്തിൽ നികുതികൾ അടച്ച് ജീവിച്ചു വരുന്ന ആളുമാണ്."

It is very difficult to believe that such a person who is into so many business concerns as above, would abstain from taking legal action after such incidents.

12. The factum of Ext.A1(a) endorsement obtaining on the reverse of Ext.A1 fortifies the execution of the agreement. The plea of threat and coercion could not be proved by the defendant. Weighing the rival contentions and probabilities we find that Ext.A1 agreement was executed by the defendant.

13. Now we proceed to the question whether Ext.A1 agreement is liable to be specifically enforced. Admittedly, both the plaintiff and the defendant are businessmen. The business concerns of the defendant has already been mentioned. With regard to the plaintiff, at

2025:KER:41205

paragraph 3 of his proof affidavit (PW1) it has been sworn to thus: -

> "3. ഞാൻ ബിസിനസ്സുകാരനാണ്. ശങ്കർ, രാംകോ എന്നീ സിമന്റ് കമ്പനികളുടെ തിരുവനന്തപുരത്തെ ഡീലറാണ്. കെട്ടിട നിർമ്മാണത്തിനുള്ള കമ്പിയും സിമന്റും ഹോൾസെയിലായും റീട്ടെയിലായും വില്പന നടത്തി വരുന്ന 'ബിസ്മി ഏജൻസീസ്' എന്ന സ്ഥാപനം ഞാൻ മണക്കാട് കുത്തുകല്ലിൻമൂട്ടിൽ നടത്തിവരുന്നു."

14. As was noticed, though under Ext.A1 the period fixed for performance was two months ie., up to 26.09.2007, the period was thereafter extended till 31.12.2007. The reason for such extension as stated in Ext.A1(a) is "എന്നാൽ എനിക്കുണ്ടായ ചില അസൗകര്യങ്ങൾ കാരണം". No specific reason is stated. Ext.A2 is the notice issued by the plaintiff preceding the suit. The notice is dated 22.01.2008. Therein it has been stated that the defendant had agreed to convey unencumbered land, with two vacant sheds, to the plaintiff, wherein a workshop is being conducted. In the notice it is alleged that the defendant has failed to comply with the stipulations in the agreement. As admitted by PW1, the occupant of the

2025:KER:41205

premises, who is conducting the workshop, is none other than PW3, who is one of the witnesses to Ext.A1 agreement. There is no case that the property is otherwise encumbered. PW3 has deposed in support of Ext.A1 and the plaintiff. Therefore, the alleged non-fulfillment of the conditions in Ext.A1 agreement by the defendant is the failure to evict PW3 from the property; at the same time, PW3 has come forward to support the case of the plaintiff. Suffice to notice that, all is not quite well.

15. The plaintiff as PW1, in his proof affidavit has admitted that the original title deeds relating to the property is with him. It is claimed that the original documents were handed over by the defendant to the plaintiff at the time of execution of Ext.A1 agreement. The relevant portion reads thus: -

> “..... അന്നേ ദിവസം തന്നെ ടി വസ്തുവിനെ സംബന്ധിച്ചിട്ടുള്ള വില കരാർ 2 മാസകാലാവധി വച്ച് പ്രതി എന്റെ പേരിൽ എഴുതി ഒപ്പിട്ട് നൽകുകയും ഒറിജിനൽ അധാരങ്ങൾ എനിക്ക് കൈമാറുകയും ചെയ്തു.”

2025:KER:41205

The total consideration for the 20 cents of property at the rate of 3.5 lakhs per cent would be ₹ 70 lakhs. The advance amount paid as on the date of Ext.A1 is only 25 lakhs. It is highly improbable that the original title deeds relating to the property would have been handed over to the plaintiff on execution of such agreement. No specific reason is even suggested as to why the original title deeds relating to the property were required to be given to the plaintiff at the time of execution of Ext.A1. In ***K.Bhaskaran Nair v. Habeeb Mohammed & Ors. [2002 (1) KLT 864] and Sarada v. Divakara Kurup [2012 (4) KHC 623],*** this Court has held that such a transaction is to be viewed with suspicion and may not reflect an intended agreement for sale. On the facts of the present case also, on appreciating the pleadings and evidence in its entirety, we are inclined to adopt such view.

16. Admittedly the property is situated in a very prime locality of Thiruvananthapuram. PW3 in his cross-examination deposed: -

> “മണക്കാട് city യിലെ Prime Area യാണ്. നിമിഷം പ്രതി വില മാറുന്ന സ്ഥലമാണല്ലോ (Q). വില വ്യത്യാസം വരും (A).”

The defendant in his written statement asserted the importance of the locality in which the property is situated and claimed that it is worth ₹ 3 crores. As DW1, the defendant in his proof affidavit claimed that the property is worth more than Rupees 10 lakhs per cent. At paragraph 6 it is sworn to thus: -

> “6. അന്യായ പട്ടിക വസ്തു തിരുവനന്തപുരം ജില്ലയിലെ കണ്ണായ സ്ഥലത്ത് സ്ഥിതി ചെയ്യുന്നതും പ്രതിക്ക് ഉപജീവനമാർഗ്ഗത്തിനുള്ള സ്ഥാപനങ്ങളുടെ സ്ഥാപിത ശ്രോതസ്സുമാകുന്നു. ടി വസ്തു നിമിഷം പ്രതി വില മാറുന്ന വ്യാവസായിക പ്രാധാന്യമുള്ള സ്ഥലമാണ്. പട്ടിക വസ്തു സ്ഥിതി ചെയ്യുന്ന പ്രദേശത്തെ നിവാസികളിൽ ഭൂരിപക്ഷം സമ്പന്നമായ ബിസിനസ്സുകാരനാണ്. അവരിൽ പലരും പലപ്പോഴായി സെന്റൊന്നുക്ക് ഞാൻ വിൽക്കുകയാണെങ്കിൽ പത്ത് ലക്ഷത്തിലധികം വില നൽകാമെന്ന് പറഞ്ഞ് 2006-ലും 2007-ലും എന്നെ സമീപിച്ചിട്ടുള്ളതും ഞാൻ വിൽക്കുന്നില്ല എന്ന് അവരെ അറിയിച്ചിട്ടുള്ളതുമാകുന്നു. ഈ പറഞ്ഞ കാലയളവിൽ ടി പട്ടിക വസ്തുവിന് സെന്റ് ഒന്നിന് പത്ത് ലക്ഷം രൂപയ്ക്ക് മേൽ വിലയുള്ളതാകുന്നു എന്ന് വരികയും പട്ടിക വസ്തുവെ ഞാൻ ഒരിയ്ക്കലും വിൽക്കാൻ ആഗ്രഹിച്ചിട്ടില്ല.”

Pertinently, while DW1 is cross-examined, but for the suggestion that he had assigned portions of the larger extent in the year 2003 for ₹ 1,55,000/- (for which the reply was that the sale was for ₹ 5 lakhs per cent), the

2025:KER:41205

claim of the defendant that the property is worth ₹ 10 lakhs per cent is not specifically challenged.

17. The trial court has declined the relief of specific performance for the reason that the plaintiff was not able to show the availability of funds with him during the currency of the agreement. The plaintiff produced Ext.A6 certificate issued from the Bank to substantiate that he had sufficient amounts in his account as on 31.01.2008. Ext.A6 certificate issued from the Bank is to the effect that, as on 31.01.2008 an amount of ₹ 39,93,718/- is available in the bank account of the plaintiff. The said amount may not cover the entire balance sale consideration of ₹ 45 lakhs. Except for producing Ext.A6 certificate, the plaintiff was careful enough not to produce his statement of bank account, may be because during the period stipulated in the agreement (26.09.2007 to 31.12.2007) the account did

not reflect sufficient amounts.

18. Any how, the fact remains that he is involved in a lot of businesses and it might be possible for him to raise amounts to pay the balance sale consideration. Therefore, we do not propose to decline the relief for specific performance solely on the failure of the plaintiff to prove the availability of funds.

19. However, the pleadings and evidence in the case considered in its entirety suggests that, the transaction between the parties was not one intended as an agreement for sale. At any rate, we do not think that this is a fit case where the discretion under Section 20 of the Specific Relief Act is to be exercised in favour of the plaintiff to grant a decree for specific performance.

20. The trial court has granted a decree for return of the advance sale consideration, with interest at the

2025:KER:41205

rate of 9% per annum, which we find to be reasonable.

21. We do not find any merit in these appeals. Appeals fail and are dismissed. No costs.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

kns/-

//True Copy//

P.S. To Judge