

Gracy (Died) vs Sasi

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Court : Kerala

Decided On : Jun-01-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : AS/334/2002

Appellant : GRACY (died)

Respondent : SASI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945 AS
NO. 334 OF 2002 AGAINST THE JUDGMENT AND DECREE IN OS
103/1997 OF PRINCIPAL SUB COURT,KOCHI
APPELLANTS/ADDITIONAL DEFENDANTS 5 TO 8 - LEGAL
REPRESENTATIVES OF DECEASED 4TH DEFENDANT:

1 GRACY (DIED) W/O LATE FRANCIS,PEEDIAKKAL HOUSE,
KANDAKKADAVU, KUMBALANGI P.O. KOCHI TALUK. IT IS
RECORDED THAT 1ST APPELLANT EXPIRED AND LEGAL HEIRS OF
THE DECEASED 1ST APPELLANT ARE ALREADY IN THE PARTY

ARRAY AS APPELLANTS 2 TO 4 VIDE ORDER DATED 14/03/2019
VIDE MEMO DATED 2 SEEMA, D/O.LATE FRANCIS,PEEDIAKKAL
HOUSE, KANDAKKADAVU, KUMBALANGI P.O., KOCHI TALUK. 3
SEMMI, D/O.LATE FRANCIS,PEEDIAKKAL HOUSE,
KANDAKKADAVU, KUMBALANGI P.O., KOCHI TALUK. 4 SIMU,
S/O.LATE FRANCIS,PEEDIAKKAL HOUSE, KANDAKKADAVU,
KUMBALANGI P.O., KOCHI TALUK. BY ADVS. SRI.R.D.SHENOY (SR.)
SRI.S.VINOD BHAT

RESPONDENTS/PLAINTIFFS AND DEFENDANTS 1 TO 3:

1 SASI (DIED), AGED 50, BUSINESS, S/O GANGADHARAN,
MAKIPADATH HOUSE, NARAKKAL VILLAGE, KOCHI TALUK,
NARAKKAL P.O., ERNAKULAM DISTRICT. 2 ANNIE ITTOOP, AGED
ABOUT 56 YEARS,W/O.ITTOOP, SANKOORIKAL HOUSE, NARAKKAL
VILLAGE, KOCHI TALUK, ERNAKULAM DISTRICT. 3 ANTONY, AGED
ABOUT 45 YEARS,S/O.AVARACHAN, PUNNAKKAPARAMBIL HOUSE,
NAYARAMABALAM VILLAGE, KOCHI TALUK, NARAYARAMBALAM
P.O. 4 THOMAS, AGED 43, BUSINESS, S/O.JOSEPH, RESIDING AT
PARAKKAL HOUSE, NARAKKAL VILLAGE, KOCHI TALUK,
NARAKKAL P.O. ADDITIONAL R5 TO 8 SOUGHT TO BE IMPLEADED
5 ARUNDATHY,W/O.LATE SASI, MAKKIPADATH HOUSE,

AS NO. 334 OF 2002

-2- 6 SALLU,S/O.LATE SASI, MAKKIPADATH HOUSE, 7
DINESAN,S/O.LATE SASI, MAKKIPADATH HOUSE, 8
SANDHYA,W/O.LATE SASI, MAKKIPADATH HOUSE, 9 MARTIN
SANKOORIKKAL,(SOUGHT TO BE IMPLEADED) (AGE NOT KNOWN
TO THE APPELLANTS), S/O ITTOOP,
AKKARA,AYYANTHOLE,THRISSUR-680 003 10 HELEN
SANKOORIKKAL(SOUGHT TO BE IMPLEADED) (AGE NOT KNOWN
TO THE APPELLANTS) D/O ITTOOP, AKKARA,AYYANTHOLE, -680
003.THRISSUR LEGAL REPRESENTATIVES OF DECEASED 2ND
RESPONDENT

ARE IMPEADED AS ADDITIONAL R9 AND R10 VIDE ORDER

DATED 13.12.2019 IN I.A 2/2019. BY ADVS. SRI.SABU GEORGE SRI.DENIZEN KOMATH SRI.NIDHI BALACHANDRAN SRI.PAUL PARAKAL THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 01.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Sathish Ninan, J.

===== Dated
this the 1st day of June, 2023

JUDGMENT

The suit for return of advance sale consideration charged on the property was decreed by the trial court. Defendants 5 to 8, who are the assignees of the property, are in appeal.

2. Ext A1 is the sale agreement dated 13.02.1997 upon which the suit has been laid. As per Ext A1, the

1st defendant agreed to convey the plaint schedule property to the plaintiff for a total sale consideration of Rs.2,50,000/-. An amount of Rs.2,00,000/- is stated to be paid as advance sale consideration. As per the agreement, the defendant was bound to discharge the liabilities over the property. However, the 1st defendant caused a nominal and purported conveyance to be made in respect of the plaint schedule property in the name of the 3rd defendant through the 2nd defendant as power of attorney holder. The 3rd defendant executed another document in favour of the 4th defendant purporting to - 2 :- sell the property. The genuineness of the transactions are disputed by the plaintiff. The 4th defendant expired during the pendency of the suit. His legal heirs are defendants 5 to 8 - the appellants in the appeal. The suit is filed for return of the advance sale consideration with interest, charged on the plaint schedule property.

3. The defendants disputed the genuineness of Ext

A1 agreement. The contention was that, the 1 st defendant and her husband had borrowed amounts from the plaintiff, in the course of which signed blank stamp papers and cheques were obtained as security. They were fabricated into the agreement in question. The receipt of advance sale consideration as alleged by the plaintiff was also denied.

4. The trial court upheld the genuineness of Ext

A1. It was found that the purported assignment by the 1 st defendant was subsequent to Ext A1 agreement and granted a decree for recovery of the advance sale consideration paid, with interest. -: 3 :-

5. Heard Sri.S.Vinod Bhat, learned counsel for the appellants and Sri. Sabu George, learned counsel on behalf of the contesting respondents.

6. PW2 is one of the attestors to Ext A1 agreement. The other attestor is none other than the husband of the 1st defendant. The scribe who prepared Ext A1 was examined as PW3. PW2 and PW3 have proved the execution of Ext A1. Nothing was brought out in their cross

examination to discredit them. Their evidence corroborates the evidence of plaintiff who was examined as PW1. The 1st defendant did not enter the witness box. On her behalf, the 2nd defendant was examined as her power of attorney holder. As noticed supra, the husband of the 1st defendant was a attestor to Ext A1. In spite of the same, even he was not examined. The evidence on

record sufficiently prove the due execution and genuineness of Ext A1.

7. The defendants adduced evidence to show that the 1st defendant was a debtor to various persons and that it is to discharge such debt that the property was sold to -: 4 :- the 3rd defendant. The above does not in any way militate against the genuineness of Ext A1 agreement. The genuineness of the agreement stands proved by the evidence. The finding of the trial court in the said regard is correct and proper, and based on evidence.

8. The learned counsel for the appellants would contend that, they are bonafide purchasers for value and hence charge could not be declared over the property for the advance amount. The learned counsel for the contesting respondents challenged the contention that the appellants and their vendor are bonafide purchasers from the 1st defendant.

9. I do not think it necessary to delve into the

contention whether they are bonafide purchasers or not. Section 55(6)(b) of the Transfer of Property Act creates a statutory charge on the property, for the purchase price paid. As noticed by the trial court, though prior to the year 1929, a bonafide purchaser was protected against the statutory charge under Section 55(6)(b),

such protection is no more available to bonafide -:- 5 :- purchasers or transferees without notice as per the Amending Act No. 20 of 1929. The buyer is entitled to statutory charge for the purchase price paid. The

judgment of this Court in Ibrayi v Pokken (1989(1) KLT 581) is

squarely on the point. Therefore, the plaintiff is entitled to the statutory charge over the property for the advance sale consideration. The trial court was right in having declared the charge.

10. The trial court has granted interest from the date of Ext A1 agreement, and also awarded costs. Ext A1 agreement is dated 13.02.1997 and the suit is filed on

16.07.1997. Under Ext.A1, the period stipulated for performance of the contract was one year. The appellants are assignees from transferees of the 1 st defendant. Considering the facts as above, it would be sufficient if interest is awarded only from the date of suit till realisation. The decree for costs could also be interfered with.

11. Resultantly, this appeal is allowed in part. The decree of the trial court will stand modified as -:- 6 :- under: The plaintiff is granted a decree for realisation of

Rs.2,00,000/- with interest at the rate of 6% per annum from the date of suit (16.07.1997) till date of decree, and thereafter also at the same rate till realisation in full, charged on the plaint schedule property. No costs. Sd/- Sathish Ninan, Judge vdv

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