

(2005) 02 KL CK 0082

High Court Of Kerala

Case No: A.S. No. 11 of 1993

Themma

APPELLANT

Vs

Infant Jesus Church

RESPONDENT

Date of Decision: Feb. 25, 2005**Citation:** (2005) 3 CivCC 799 : (2005) 4 KLT 296**Hon'ble Judges:** S. Sankarasubban, J; K.R. Udayabhanu, J**Bench:** Division Bench**Advocate:** R.D. Shenoy, K.G. Sarathkumar and Susheela R. Bhatt, for the Appellant; S.K. Brahmanandan, S.B. Premachandra Prabhu, P. Vijayabhanu, Simon Liuz, G.S. Prabhu and Siby Mathew, for the Respondent

Judgement

S. Sankarasubban, J.

This appeal is filed against the judgment and decree in O.S.No. 857 of 1987 of the Sub Court Ernakulam. The suit was filed for specific performance of an agreement to sell the plaint schedule property to the plaintiff. The facts of the case are as follows:

2. The appellant is the additional third plaintiff in the suit. The suit was filed by late Alexander Palathinkal and his son for specific performance of the agreement, Ext.A5, dated 5.3.1984 entered into by the said Alexander Palathinkal and his son with the first defendant - Church represented by its Vicar and Trustees. As per the agreement, respondents 1 to 8 herein had agreed to convey the plaint schedule property for a total consideration of Rs. 3,47,500/-. A sum of Rs. 10,000/- was paid as advance. As per the agreement, the sale was to be effected on or before 5.9.1984. The plaintiffs have always been ready and willing to perform their part of the contract. The suit was necessitated on the failure of the respondents to perform their part.

3. The plaintiffs issued Ext.A6 notice to the defendants, which was replied by Ext.A7. The execution of the agreement is admitted by the defendants. As regards the execution of the sale deed, it was disclosed in the reply notice that the sale deed can

be executed after getting the sanction from the venerable Curia of Verapoly Archdiocese and that there is difficulty to get the sanction in view of the objections raised by some Parishioners. It was further stated that the demand for measuring the property before getting the sanction is not justified.

4. The court below found that the agreement was validly executed and that the plaintiffs were ready and willing. But the court below dismissed the suit on the ground that sanction from Venerable Curia of Verapoly Archdiocese was not obtained. A decree was passed for Rs. 10,000/- with interest. It is against the above judgment and decree that the present appeal is filed.

5. We heard learned Counsel for the appellants and learned Counsel for the respondents.

6. Ext.A5 is the agreement executed between defendants 1 to 4 and the plaintiff. In Ext.A5, defendants 1 to 4 are referred to as first party and the plaintiff is the second party. Paragraph 2 of the agreement states that the first party decided to sell the schedule property and the building to the second party and the conditions of the sale are as follows: The property which is the subject matter is 13 cents and 100 sq. links. The price is fixed at Rs. 25,000/- per cent and the building is valued at Rs. 20,000/-. The first party has agreed to sell and the second party has agreed to purchase. An advance amount of Rs. 10,000/- was given on the date of the agreement. Paragraph 4 states that the first party, viz., defendants 1 to 4 therein are competent to execute the sale deed on behalf of the Church and there is no encumbrance over the property. The sale deed is to be executed within six months. The agreement stipulates other conditions regarding the liability to execute the sale deed, etc.

7. Since on the basis of Ext.A5, the deed was not executed, the plaintiff sent a lawyer notice to defendants 1 to 4, copy of which is produced as Ext.A6. Ext.A6 requests defendants 1 to 4 to arrange for the execution of the sale deed. Ext. A7 is the reply to Ext.A6 notice. The execution of the agreement is accepted. But it is stated in the notice that for executing the document permission of Venerable Curia of Verapoly Archdiocese is necessary. But due to unexpected objections raised by some Parishioners, there was difficulty in obtaining necessary sanction and this fact was intimated to the plaintiff in writing on 28.3.1984.

8. The court below considered this question and was of the view that since the sanction from the Venerable Curia of Verapoly Archdiocese was not obtained, the sale deed cannot be executed. It is further stated that under Canon law, sanction from Venerable Curia of Verapoly Archdiocese is necessary. The plaintiff is also a Parishioner of the same diocese. The plaintiff was aware of such condition. It also took into account the statement in the reply notice, Ext.A7 and the fact that sanction from the Venerable Curia of Verapoly Archdiocese is necessary was intimated to the plaintiff as early as on 28.3.1983 itself and the plaintiff was aware of this condition.

The suit was filed in 1987. The plaintiff was aware of the condition that sanction should be obtained from Venerable Curia of Verapoly Archdiocese.

9. Learned Counsel for the appellants submitted that there is no dispute that defendants 1 to 4 are competent to execute the sale deed on behalf of the Church. The sanction from the Venerable Curia of Verapoly Archdiocese was not necessary as a legal requirement. The import of Canon Law according to the counsel, is out of place. For the valid execution of the deed, it is not necessary to get sanction from the Venerable Curia of Verapoly Archdiocese. In so far as the suit has been filed within the limitation period, the court below was not correct in denying the reliefs to the plaintiff. On the other hand, learned Counsel for the respondents submitted that the judgment and decree of the court below is correct and should not be interfered.

10. After hearing both sides, we are not able to accept the argument of the respondents and we cannot uphold the judgment and decree of the court below. Ext.A5 is the contract entered into between the Church represented by competent persons and plaintiffs 1 and 2. It is not disputed that sanction from Venerable Curia of Verapoly Archdiocese is not necessary as a legal requirement. Though it may be a requirement of Canon Law, the Canon Law is not applicable. We are governed by the provisions of the Specific Relief Act. The plaintiffs are prepared to take the sale deed from defendants 1 to 4 even if it may be invalid in the eye of Canon Law.

11. In *Marattukulam v. Hemchand* 1988 (2) KLT 166, it is observed as follows:

"Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out the agreement there is no necessity to determine the question of the vendor's title and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground for refusing specific performance if the purchaser is willing to take such title as the vendor has. Whether the vendors had full title to the property agreed to be conveyed to the plaintiff is not a question properly arising for decision in the present suit for specific performance. If their title is defeasible at the instance of persons not parties to the suit, the purchaser will get only such title as the vendors themselves had in the property. It is not open to the vendors to set up title of third parties in defence to the suit for specific performance".

In another case, [Abdul Hakeem Khan Vs. Abdul Mannan Khadri](#), it was held that the vendor cannot refuse to give specific performance mainly on the ground that the title is defective. Thus, it can be seen that defendants 1 to 4 are bound to execute the sale deed in favour of the plaintiff and it cannot be defeated by mere sanction from Venerable Curia of Verapoly Archdiocese.

12. As already stated, the court below found that the document was properly executed and the plaintiff was ready and willing to execute the sale deed. Hence, we set aside the judgment and decree of the court below and decree the suit. There shall be a decree in favour of the plaintiff for specific performance of the agreement

dated 5.3.1984. There will be a direction to the plaintiff to deposit the balance sale consideration within three months. On such deposit, the defendants shall execute the sale deed in favour of the plaintiff and hand over possession of the property. If the defendants do not execute the sale deed, the same shall be executed through the intervention of the court and the costs to be recovered from them. There is no order as to costs.

Appeal is disposed of as above.