



2026:KER:65430

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2026 / 30TH SRAVANA, 1948

RFA NO. 397 OF 2016

AGAINST THE DECREE AND JUDGMENT DATED 23.01.2016 IN OS NO.398

OF 2011 OF II ADDL. SUB COURT, KOZHIKODE

APPELLANT/PLAINTIFF:

JENSON MATHEW,
S/O. LATE C.V. MATHEWKUTTY, AGED 62 YEARS,
'CHEERANS', CHEVAYUR AMSOM DESOM, KOZHIKODE TALUK.

BY ADVS.
SMT. ANUSREE. C
SRI. P. A. HARISH
SHRI. V. V. SURENDRAN

RESPONDENT/DEFENDANT:

1 SARASWATHI (DIED)
D/O. MADAMBATH SAMIKUTTY, AGED 73 YEARS, KINARAMKANDI
VEEDU, EDAPPAYIL, CHOYIKUTTY ROAD, MAKKADA, CERUKULAM,
KOZHIKODE 673 611.

* ADDL. RESPONDENTS 2 TO 6 IMPEADED

ADDL. R2 JAYALEKHA,
W/O. GOPALAN, RESIDING AT SOUPARNIKA, KUZHIYIL
THOIKAYIL, PO. KARANTHUR, KOZHIKODE-673571.



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ADDL. R3 CHITHRA,
W/O. SASIDHARAN, RESIDING AT AMBALIPARAMBA, PO.
KADALUNDI, KOZHIKODE-673312.

ADDL. R4 SUNILKUMAR,
RESIDING AT KINARAMKANDI HOUSE, PO MEENCHANDRA,
KOZHIKODE-673018.

ADDL. R5 RAJ RATNAM,
RESIDING AT KINARAMKANDI HOUSE, CHOYIKUTTY ROAD, CHOYI
BAZAR, CHERUKULAM, KOZHIKODE-673611.

ADDL. R6 RINI RANI,
W/O. P.T. RANJITH, RESIDING AT MITHILA, PUTHIYARA,
KOZHIKODE-673004.

*[THE LEGAL HEIRS OF THE DECESED SOLE RESPONDENT ARE
IMPLEADED AS R2 TO R9, VIDE ORDER DATED 13.10.2025 IN
I.A. 1/2025 IN RFA 397/2016]

BY ADVS.
SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.M.NEELAKANDAN
SRI.K.B.SIVARAMAKRISHNAN
SRI.P.B.SUBRAMANYAN

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
21.08.2026, ALONG WITH CO.144/2016, 153/2016 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2026 / 30TH SRAVANA, 1948

CO NO. 144 OF 2016

AGAINST THE DECREE AND JUDGMENT DATED 23.01.2016 IN OS NO.398

OF 2011 OF II ADDL. SUB COURT, KOZHIKODE

CROSS OBJECTOR/RESPONDENT IN RFA:

1 SARASWATHI (DIED)
D/O. MADAMBATH SAMIKUTTY, AGED 73 YEARS, KINARAMKANDI
VEEDU, EDAPPAYIL, CHOYIKUTTY ROAD, MAKKADA,
'CERUKULAM', KOZHIKODE TALUK AND DISTRICT-673017.

* ADDITIONAL CROSS OBJECTORS/RESPONDENT NOS.2 TO 6

ADDL.CO2 JAYALEKHA,
W/O. GOPALAN, RESIDING AT SOUPARNIKA, KUZHIYIL
THOIKAYIL, PO. KARANTHUR, KOZHIKODE-673571.

ADDL.CO3 CHITHRA,
W/O. SASIDHARAN, RESIDING AT AMBALIPARAMBA, PO.
KADALUNDI, KOZHIKODE-673312.

ADDL.CO4 SUNILKUMAR,
RESIDING AT KINARAMKANDI HOUSE, PO MEENCHANDRA,
KOZHIKODE-673018.

ADDL.CO5 RAJ RATNAM,
RESIDING AT KINARAMKANDI HOUSE, CHOYIKUTTY ROAD, CHOYI
BAZAR, CHERUKULAM, KOZHIKODE-673611.



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ADDL.CO6 RINI RANI,
W/O. P.T. RANJITH, RESIDING AT MITHILA, PUTHIYARA,
KOZHIKODE-673004.

*[THE LEGAL HEIRS OF THE DECESED SOLE CROSS OBJECTOR
/RESPONDENT ARE IMPEADED AS ADDITIONAL CROSS
OBJECTORS/RESPONDENTS 2 TO 6, VIDE ORDER DATED
13.10.2025 IN I.A. 1/2025 IN RFA 397/2016]

BY ADVS.
SHRI.P.B.KRISHNAN (SR.)
SRI.P.M.NEELAKANDAN
SHRI.S.NITHIN (ANCHAL)
SRI.SABU GEORGE
SRI.P.B.SUBRAMANYAN

RESPONDENT/APPELLANT IN RFA:

JESON MATHEW
S/O.LATE C.V. MATHEWKUTTY, AGED 62 YEARS, 'CHEERANS',
CHEVAYUR AMSOM, DESOM,
KOZHIKODE TALUK AND DISTRICT-673017

THIS CROSS OBJECTION HAVING COME UP FOR HEARING ON
21.08.2026, ALONG WITH RFA.397/2016 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2026 / 30TH SRAVANA, 1948

CO NO. 153 OF 2016

AGAINST THE JUDGMENT DATED 23.01.2016 IN OS NO.64 OF 2012 OF
II ADDITIONAL SUB COURT, KOZHIKODE

CROSS OBJECTORS/RESPONDENT NO.1 TO 3 IN RFA:

- 1 KUTTAN @ SREEJESH
S/O. LATE THATTAMKANDI SURENDRAN, AGED 41 YEARS,
THATTAMKANDI HOUSE, KALUR ROAD, NOORYAD POST, MANKAVU,
KOZHIKODE 673007.
- 2 SREEKALA,
D/O. LATE THATTAMKANDI SURENDRAN, AGED 39 YEARS,
THATTAMKANDI HOUSE, KALUR ROAD, NOORYAD POST, MANKAVU,
KOZHIKODE 673007.
- 3 SREEKRISHA,
D/O. LATE THATTAMKANDI SURENDRAN, AGED 43 YEARS,
THATTAMKANDI HOUSE, KALUR ROAD, NOORYAD POST, MANKAVU,
KOZHIKODE 673007.

BY ADV SRI.SABU GEORGE

RESPONDENT/APPELLANT IN RFA:

JENSON MATHEW,
S/O.LATE C.V.MATHEWKUTTY, AGED 62 YEARS, 'CHEERANS',
CHEVAYUR AMSOM, DESOM,
KOZHIKODE TALUK AND DISTRICT - 673017.

THIS CROSS OBJECTION HAVING COME UP FOR HEARING ON
21.08.2026, ALONG WITH RFA.397/2016 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2026 / 30TH SRAVANA, 1948

RFA NO. 395 OF 2016

AGAINST THE JUDGMENT DATED 23.01.2016 IN OS NO.64 OF 2012 OF

II ADDITIONAL SUB COURT, KOZHIKODE

APPELLANT/PLAINTIFF:

JENSON MATHEW,
S/O LATE C.V. MATHEWKUTTY, AGED 62 YEARS, 'CHEERANS',
CHEVAYUR AMSOM DESOM, KOZHIKODE TALUK.

BY ADVS.
SHRI.V.V.SURENDRAN
SRI.P.A.HARISH
SMT.ANUSREE.C

RESPONDENTS/DEFENDANTS:

MADAMBATH KANAKAM (DIED)

SUPPL

1 KUTTAN @ SREEJESH
S/O LATE THATTAMKANDI SURENDRAN, AGED 41 YEARS,
THATTAMKANDI HOUSE, KALUR ROAD, MOORYAD POST, MANKAVU,
KOZHIKODE-673007.



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- 2 SREEKALA
 D/O LATE THATTAMKANDI SURENDRAN, AGED 39 YEARS,
 THATTAMKANDI HOUSE, KALUR ROAD, MOORYAD POST, MANKAVU,
 KOZHIKODE-673007.
- 3 SREEKRISHA
 D/O LATE THATTAMKANDI SURENDRAN, AGED 43 YEARS,
 THATTAMKANDI HOUSE, KALUR ROAD, MOORYAD POST, MANKAVU,
 KOZHIKODE-673007.

BY ADVS.
SHRI.P.B.KRISHNAN (SR.)
SRI.SABU GEORGE

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
21.08.2026, ALONG WITH RFA.397/2016 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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SATHISH NINAN &
P. KRISHNA KUMAR, JJ.

= = = = =
R.F.A. No.397 of 2016 & C.O. No.144 of 2016 and
R.F.A. No.395 of 2016 & C.O. No.153 of 2016

= = = = =
Dated this the 21st day of August, 2026

J U D G M E N T

Sathish Ninan, J.

The suits for specific performance of agreements for sale with alternate prayer for return of advance, were decreed for the alternate relief. The plaintiff and the respective defendants are in appeal and cross objection, challenging the decree in so far as it is against them.

2. Two sisters, Kanakam and Saraswathi, executed Exts.A6 and A1 agreements respectively in favour of the common plaintiff for sale of immovable property. Alleging breach of the respective agreements, the suits have been filed. RFA 395/2016 arises from OS 64/2012 filed against Kanakam for specific performance of Ext.A6 agreement dated 03.12.2010. RFA 397/2016 arises from OS 398/2011 filed against Saraswathi, seeking performance of Ext.A1 agreement dated 06.08.2009.

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3. Ext.A6 agreement with Kanakam relates to 63 cents of property. The agreed consideration was ₹ 2,02,500/- per cent. An amount of ₹ 25 lakhs was paid as advance. The period fixed for performance was three months. According to the plaintiff, he paid the entire balance sale consideration on 22.02.2011, upon which Kanakam executed Ext.A7 sale deed. On that day, since she did not make available her identity card before the Registrar, registration could not take place. Thereafter she evaded from registering the document. It is accordingly that the suit was filed.

4. Kanakam, through her son, filed written statement. It was contended that Kanakam suffers from mental illness and did not have sound disposing state of mind. It was contended that Exts.A6 and A7 might have been got executed with the connivance of her brother Narayanan, with whom she occasionally used to stay. The signatures in Exts.A6 and A7 were not disputed. Receipt of any amount under Ext.A6 and A7 was denied.

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5. The trial court found that Kanakam suffers from bipolar disorder, but that she had duly executed Exts.A6 and A7. Though the receipt of the advance amount of ₹ 25 lakhs was found, the payment of the balance sale consideration was held against the plaintiff. Accordingly, the suit was decreed for return of the advance amount of ₹ 25 lakhs with interest.

6. Ext.A1 agreement between the plaintiff and Saraswathi is with regard to 50 cents. The rate fixed was ₹ 1,10,000/- per cent. On the date of Ext.A1, an amount of ₹ 20 lakhs was paid towards advance sale consideration. The period fixed for performance was five months. On 30.03.2011, further amount of ₹ 20 lakhs was paid towards sale consideration. On 12.04.2011, the plaintiff got the sale deed prepared, and approached Saraswathi for execution. However, she refused to execute the same. The agreement is sought to be enforced.

7. Saraswathi filed written statement admitting Ext.A1 and the advance of ₹ 20 lakhs. However, the receipt of the further advance of ₹ 20 lakhs on 30.03.2011 was denied. It was contended

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that the plaintiff did not have sufficient funds within the stipulated period, to proceed with the agreement, and thus committed breach of the contract.

8. The trial court upheld the payment of ₹ 20 lakhs on 30.03.2011. However, it was held that the plaintiff failed to prove his readiness. Decree was passed for return of the advance sale consideration of ₹ 40 lakhs.

9. We have heard the learned counsel on either side.

10. The points that arise for determination are :-

i) *Was the defendant Kanakam competent to execute Ext.A6 agreement and Ext.A7 sale deed?*

ii) *Has the plaintiff succeeded in proving Exts.A6 agreement and A7 sale deed?*

iii) *Has the plaintiff proved the payment of the entire sale consideration for Ext.A7 sale deed?*

iv) *Has the plaintiff proved the payment of ₹ 20 lakhs on 30.03.2011 under Ext.A1 agreement with Saraswathi?*

v) *Has the plaintiff established his readiness to perform Ext.A1 agreement?*

vi) *Is the plaintiff entitled for a decree for specific performance?*

vii) *Is the discretion under Section 20 of the Specific Relief Act liable to be exercised in his favour?*

viii) *Does the decree and judgment of the trial court warrant any*

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interference?

11. While the signatures of Kanakam in Ext.A6 agreement and A7 Sale Deed are not in dispute, its due execution is denied. It is the defence case that, Kanakam suffers from bipolar disorder and that Exts.A6 and A7 might have been got executed when she was residing with her brother Narayanan. The receipt of any amounts under Exts.A6 and A7 are denied.

12. To prove that Kanakam was suffering from mental illness, the defendant relied upon Ext.B8 series medical prescription and the evidence of DW3, the Doctor who issued the same. The evidence is to the effect that Kanakam was suffering from bipolar disorder. DW3 when cross-examined, admitted that the case records of the patient are available at the hospital. But for the prescriptions, the medical records/case sheet of the patient have not been produced. Only such record could have proved the medical condition of the patient. Though according to him, the patient was admitted in the hospital on one occasion, according to DW2, the son of Kanakam, his mother was not hospitalised for mental illness. At any rate, even according to DW3 there would be

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intervals when the patient would become normal for days months or years. His deposition reads thus:-

“Bipolar mood disorder ഉള്ള രോഗി normal stage ൽ വരികയും പിന്നീട് രോഗാവസ്ഥയിലേക്ക് പോവുകയും ചെയ്താ. അങ്ങനെ normal stage ൽ ഉള്ള അവസ്ഥ ദിവസങ്ങളോ മാസങ്ങളോ ആകാം.”

He also deposed :-

“അസുഖാവസ്ഥയിൽ അവർക്ക് decision making capacity ഉണ്ടാവില്ല.”

To establish that Kanakam was, during the relevant period in a normal stage, was competent to execute Exts.A6 and A7, and had executed the same, the plaintiff relied on various circumstances, being narrated hereinafter.

13. Ext.A6 is dated 03.12.2010 and Ext.A7 is dated 22.02.2011. Ext.A10 is the receipt issued by Kanakam on 18.01.2011 acknowledging receipt of money towards the value of two trees sold by her. Ext.A12 is the copy of the plaint in OS 531/2008 of the Sub Court, Kozhikode, along with the affidavit in support thereof. The suit was filed by Kanakam as plaintiff against her siblings for partition in respect of properties including the property which is the subject matter of the

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agreement. It would be relevant to note here that, Ext.A9 is a Partition Deed executed between the siblings, partitioning the joint properties. Though Kanakam was allotted the suit property therein, she had not signed the same. Under Ext.A9 partition, the property which is the subject matter of the connected suit OS 398/2011 was allotted to Saraswathi. It needs to be mentioned that, OS 531/2008 was dismissed on 08.08.2011 and thereafter, O.S. 887/2011 was filed by Kanakam through his son as guardian for partition alleging that Kanakam suffers from mental illness. Noticeably, Ext.A12 suit was got dismissed on 08.08.2011 ie. after Ext.A7 sale deed dated 22.02.2011 and 12.04.2011, the date on which the plaintiff alleges that he had prepared sale deed in respect of the property of Saraswathi. Till then, for a period of two years Ext.A12 suit was being prosecuted. Ext.A13 is the certified copy of the Vakalath of Kanakam in OS 531/2008, executed by her before the advocate. Ext.A14 is a complaint dated 22.05.2008 in ST 452/2008 filed by Kanakam under Section 138 of the Negotiable Instruments Act. Ext.A17 is the copy of the bail

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bond executed by Kanakam pursuant to the proceedings initiated on the complaint by the plaintiff. Ext.A32 is copy of the signed deposition given by Kanakam on 11.08.2010 in ST 452/2008. Ext.X3 series is the copy of the account opening form, the signature and ledger extract of accounts, of Kanakam with the Punjab National Bank. Her son, as DW2, admitted that Kanakam had such an account. Ext.X3 series reveal that the account was being operated by Kanakam since 12.03.2008. All the above materials indicate that during the relevant period Kanakam did have the mental capacity to execute Exts.A6 and A7.

14. It is also of relevance to note that, while the consideration fixed in Ext.A1 is only Rs.1,10,000/- per cent, the value fixed in Ext.A6 is Rs.2,02,500/- per cent. The plaintiff's case is that, he had to agree for double the value realising that Kanakam had not joined the family partition resulting in defective title for Saraswathi also. The contention appears to be very probable; otherwise, there is no reason why an agreement would have been entered into for the adjoining property for

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double the value unless, there is some special advantage for that property. There is no such case for any of the parties. The fact that double the value, compared to Ext.A1, is fixed in Ext.A6, also points to its genuineness.

15. The circumstances favouring due execution of Exts.A6 and A7 does not end there. Ext.A6 acknowledges the payment of an amount of ₹ 25 lakhs towards sale consideration. The receipt of any amount was denied by the defendant. PW4 is the Branch manager of the Civil Station branch of Catholic Syrian Bank, during the relevant period. Ext.X1 is the self cheque of the plaintiff for ₹ 25 lakhs dated 03.12.2010 ie. the very date of Ext.A6. On the reverse side of Ext.X1 the name and signature of Kanakam is present. PW4 deposed that Kanakam signed in his presence and received ₹ 25 lakhs. He affirmed that he had verified the identity of Kanakam and a copy of the ID proof was also appended to Ext.X1 cheque. The receipt of the amount is deposed to by PW7 who is a witness in Ext.A6. Ext.A18 communication from the Manager City Service Co-operative Bank, Calicut, reveals that on

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03.12.2010 Kanakam had made fixed deposit of ₹ 25 lakhs, split into deposits of ₹5 lakhs. The above strikes at the root of the defendant's case, not only with regard to the hollowness of the denial of receipt of any amounts, but also regarding the competency of Kanakam to execute Exts.A6 and A7.

16. It is the plaintiff's case that, on 22.02.2011 he paid the balance sale consideration of ₹ 1,02,57,500/- to Kanakam, when she executed Ext.A7 Sale Deed. At the Sub Registry Office, it was realised that Kanakam had not brought her original ID card. It was agreed that the document would be got registered on the next day. Thereafter on one guise or other, including misplacing of the identity card, hospitalisation for eye treatment etc., she evaded registration. To prove the payment of the balance consideration on 22.02.2011, there are only circumstantial evidence. But we find that the circumstances are so probative, impelling us to uphold the case of payment of the balance sale consideration.

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17. The payment of the balance sale consideration is endorsed on the reverse of Ext.A6. Stamp papers were purchased and Ext.A7 sale deed was written thereon. Kanakam signed Ext.A7. The photograph of Kanakam is affixed on Ext.A7. The identity card number of Kanakam is seen incorporated in Ext.A7. The property of Kanakam and that of her sister Saraswathi lie together as one block; Ext.A1 is the agreement entered into by the plaintiff with Saraswathi for purchase of her property. The said agreement was preceded by Ext.A24 agreement dated 15.06.2007. Since there is no proper road access to the entire property, a strip of land was purchased by the plaintiff under Ext.A4 Sale Deed dated 01.04.2009 from a stranger, for providing access. The extent of the said property is only 3 cents. The sketch attached to Ext.A4 reveals that it is a narrow strip of land lying east to west, intended to be a way for access from the adjoining road on the eastern side. Ext.A11 is an agreement dated 29.10.2010, entered by the plaintiff with PW3 for sale of a property belonging to the plaintiff. The total consideration payable was ₹ 1 crore 50 lakhs

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and the period fixed for performance was one month. It is the plaintiff's case that by sale of the said property he was able to raise ₹ 1 crore 50 lakhs. PW3 has deposed that Ext.A11 culminated in sale. When PW1 was cross examined about the consideration shown in such assignment deed, it was replied that only the fair value was shown. True that though he deposed that the transactions would be revealed from his Bank accounts, Exts.A19, 25, 26 bank account statements of the plaintiff would not show it. PW1 deposed that the payment was made in cash. The plaintiff is a Government A class contractor. He is one of the Directors of a construction company. He own rubber plantation. PW6, the document writer and PW7, the witness has deposed about the payment of balance consideration.

18. In the light of the above, we find the plaintiff's case with regard to the payment of balance sale consideration on 22.02.2011, on the execution of Ext.A7 Sale Deed, to be more probable.

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19. Now coming to Ext.A1 agreement entered into by the plaintiff with Saraswathi, the agreement is admitted. The receipt of ₹ 20 lakhs on the date of Ext.A1 is also admitted. However she denied receipt of further amount of ₹ 20 lakhs on 30.03.2011.

20. The payment of ₹ 20 lakhs on 30.03.2011 is endorsed on the reverse of Ext.A1. Ext.A20 is the certificate issued from the Calicut City Service Co-operative Bank that, the plaintiff had withdrawn ₹ 19,80,000/- from the Bank on 30.03.2011. This probabilises the plaintiff's case. No circumstance is brought out to dislodge such claim. We concur with the trial court in having held so.

21. It is the contention of Saraswathi that the plaintiff was unable to perform the agreement within the stipulated period due to lack of funds with him. The period stipulated under Ext.A1 expired on January 2009. Noticeably the payment of further amount of ₹ 20 lakhs was only on 30.03.2011. It has come out that the plaintiff was aware of the defective Partition Deed Ext.A9, it having not been signed by Kanakam, and he had been pursuing

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Saraswathi to make Kanakam accept the partition. To ensure good title to the property, the plaintiff was required to pursue ways to obtain Ext.A7 Sale Deed from Kanakam, which would amount to acceptance of Ext.A9 partition. Ext.A7 Sale Deed having not been registered by Kanakam, the plaintiff cannot be faulted for not having paid the balance sale consideration to Saraswathi on 30.03.2011. While dealing with payment of consideration under Ext.A7 we have already upheld the availability of funds with the plaintiff. We are unable to accept the defendants' contention that the failure to perform Ext.A1 agreement was due to non-availability of the funds with the plaintiff.

22. The next question is, whether the plaintiff is entitled for specific performance of Exts.A6 and A1 agreements. In the original plaint it is claimed that the plaintiff got possession of the property; but how he got possession, is not stated. The plea is that, since the entire consideration was paid, he was given possession. The plea reads thus:

“മുഴുവൻ പ്രതിഫല സംഖ്യയും ലഭിച്ചതിനാൽ 1-ാം പ്രതി വസ്തുവിന്റെ കൈവശം അന്യായക്കാരന് നൽകിയിരുന്നു.”

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But it is to be noted that, the balance sale consideration of ₹ 1,02,57,500/- was paid only on 22.02.2011, that is, the date of execution of Ext.A7. After execution of Ext.A7, the parties had went straight to the Sub Registry Office. From there, they returned agreeing to have it registered the next day. Therefore, there was no occasion for handing over possession of the property to the plaintiff. The defendant denied of having handed over possession of property to the plaintiff. DW2, the son of Kanakam claimed that the property is in the possession of Kanakam's brothers. Exts.C1 and C2 are the Commissioner's reports with sketches. The reports mention that the entire property is enclosed and is gated with the house name of the plaintiff written thereon. The report also indicate that workers under the plaintiff are doing various cultivation and other activities in the property. The report reveals that the plaintiff is in possession of the property. Possession of the property was not handed over either under Ext.A6 or under Ext.A1 agreements. On

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the contrary, both the agreements recite of the liability to hand over physical possession on execution of sale deeds. There is no explanation for the plaintiff as to how he took over possession of property. Evidently, he has taken over possession by stealth.

23. Specific performance has its roots in equity. Inequitable and improper conduct disentitles the relief of specific performance. The plaintiff has overreached the contractual obligations and has taken over possession dehors the agreement for sale. 'Foul and equity' cannot sail together. It is too well settled that the person who seeks the equitable relief for specific performance must demonstrate a blemishless conduct. The conduct of the plaintiff in having taken over possession by overreaching Exts.A1 and A6 agreements, disentitles the plaintiff for the equitable relief of specific performance. In *A.C.Arulappan v. Ahalya Naik (AIR 2001 SC 2783)*, while considering a suit for specific performance, the Apex Court frowned upon the plaintiff who, by colluding with the tenant in possession, had attempted to take possession of the property even before the execution of the sale

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deed.

24. Coupled with the above, we are of the opinion that though we have upheld Ext.A6 agreement of Kanakam the fact that she is suffering from bipolar disorder could also go into the zone of consideration while exercising the discretion as to whether specific performance is to be granted or not.

25. With regard to Ext.A1, the sequence of events reveal that the willingness of the plaintiff to perform Ext.A1 was dependent on the performance of Ext.A6 by Kanakam. This is for the reason of Kanakam not having accepted the Partition Deed which is the title of the sisters. Even according to the plaintiff, he was aware of such defect in the title. So, his willingness to perform Ext.A1 was essentially dependent on performance of Ext.A6. This suggests non-satisfaction of continued willingness on the part of the plaintiff to perform the agreement, which is a pre-requisite under Section 16 (c) of the Specific Relief Act to seek for specific performance.

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26. The above apart, it is to be noted that the agreements sought to be enforced are of the year 2009-2010. The trial court had declined the relief for specific performance. It is of common knowledge that the value of properties have skyrocketed. In fact, it is the contention of Saraswathi that, consequent on the non-performance of the agreement by the plaintiff within the period stipulated, the price of the properties had gone up. While cross examining PW1, that is the suggestion made. Though not founded on that, we feel that granting a decree for specific performance at this distance of time, would be inequitable. A decree for return of the advance consideration paid, with interest, would meet the ends of justice.

27. Considering the prevailing rate of interest in Banking transactions, interest could be awarded at the rate of 9% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum, which would meet the ends of justice. Interest granted by the trial court is liable to be modified accordingly.

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28. As noted earlier, the plaintiff has overreached the agreement and taken over possession of the properties involved. It would be highly inequitable to retain possession of the property once the amount paid is returned. The plaintiff is bound to return possession to the defendants.

In the result, RFA 397 of 2016 will stand dismissed, and RFA 395 of 2016 and the cross objections in the appeals will stand allowed in part. OS 64/2012 will stand decreed as under:

(i) The defendants are directed to deposit in Court, an amount of ₹ 1,27,57,500/-, with interest at the rate of 9% per annum from 22.02.2011 within a period of three (3) months from today.

(ii) On such deposit, the plaintiff shall surrender possession of the property to the defendants.

(iii) On such surrender of possession, the amount shall be disbursed to the defendants.

(iv) On default of deposit within the period of three months, the rate of interest ordered, will stand re-fixed at 12%

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The decree in OS 398/2011 will stand modified, re-fixing the interest at 9% per annum, and the plaintiff shall deposit the amount within three (3) months from today. Clauses (ii), (iii), and (iv) will stand incorporated as the terms of the decree in OS 398/2011 also.

The plaintiff shall also be entitled for proportionate costs throughout, in both the suits. Either side shall be entitled to execute the decree.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

kns/-

//True Copy//

P.S. To Judge