IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

RSA NO. 731 OF 2012

AGAINST THE JUDGMENT&DECREE DATED 31.01.2012 IN AS NO.91 OF 2001 OF SUB COURT,KOTTARAKKARA ARISING OUT OF THE JUDGMENT & DECREE DATED 31.07.2001 IN OS NO.398 OF 1996 OF MUNSIFF COURT, KOTTARAKKARA

PLAINTIFF/APPELLANT/APPELLANT:

OMANA AMMA
S/O. SIVARAMAN PILLAI, VALLAVANKARA KIZHAKKETHIL HOUSE, THEKKUMPURAM MURI, POTHOOR VILLAGE & P.O.691 507, KOTTARAKKARA TALUK, KOLLAM DISTRICT.

BY ADVS.
SRI.P.T.GIRIJAN
SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.ABRAHAM GEORGE JACOB
SHRI.AKSHAY R

DEFENDANTS/RESPONDENTS/RESPONDENTS:

1 **RATNAKARAN PILLAI, (DIED) LHS IMPLEADED**
S/O. NEELAKANTHAN UNNITHAN, JAYA BHAVAN, CHERUMANGADU SHYAM SADANAM, CHERUMANGADU, PUTHOOR VILLAGE & P.O.-691 507, KOTTARAKKARA TALUK, KOLLAM DISTRICT.

2 **LATHAKUMARI**
D/O. OMANA AMMA, JAYA BHAVAN, CHERUMANGADU SHYAM SADANAM, CHERUMANGADU, PUTHOOR VILLAGE & P.O.-691 507, KOTTARAKKARA TALUK, KOLLAM DISTRICT.

3 **B.SANKARA PILLAI (DELETED)**
S/O. KUNJU RAMAN PILLAI, RAVEENDRA SADANAM, CHERUMANGADU, PUTHOOR VILLAGE & P.O.-691 507, KOTTARAKKARA TALUK, KOLLAM

DISTRICT. (R3 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT AS PER ORDER DATED 14.06.2022 IN IA NO.1/2022.)

ADDL. R4 SHARANYA
AGED 32 YEARS,DAUGHTER OF RATNAKARAN PILLAI,JAYA BHAVAN,CHERUMANGADU SHYAM,SADANAM,CHERUMANGDU,PUTHOOR VILLAGE & P.O.691507,KOTTARAKARA,KOLLAM DISTRICT

ADDL. R5 SHYAMKUMAR
AGED 35 YEARS,SON OF RATNAKARAN PILLAI,JAYA BHAVAN,CHERUMANGADU SHYAM,SADANAM,CHERUMANGDU,PUTHOOR VILLAGE & P.O.691507,KOTTARAKARA,KOLLAM DISTRICT. (THE LEGAL REPRESENTATIVES OF DECEASED FIRST RESPONDENT ARE IMPLEADED AS ADDL.RESPONDENT 4 AND 5 AS PER ORDER DATED 24.06.2022 IN IA.NO.2/2022)

BY ADVS.
R1 TO R5 BY SENIOR ADV.P.B.KRISHNAN
R1, R4. R5 BY P.B.SUBRAMANYAN
R1 BY SMT. GEETHA P MENON
R1 BY N.AJITH
R4 AND R5 MANU VYASAN PETER
R4 AND R5 BY SABU GEORGE

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, ALONG WITH RSA.666/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

RSA NO. 666 OF 2012

AGAINST THE JUDGMENT &DECREE DATED 31.01.2012 IN AS NO.90 OF 2001 OF SUB COURT ,KOTTARAKKARA ARISING OUT OF THE JUDGMENT&DECREE DATED 31.07.2001 IN OS NO.604 OF 1996 OF MUNSIFF COURT, KOTTARAKKARA

APPELLANT/APPELLANT/PLAINTIFF:

OMANA AMMA
S/O.SIVARAMAN PILLAI, VALLAVANKARA KIZHAKKETHIL HOUSE, THEKKUMPURAM MURI, POTHOOR VILLAGE, KOTTARAKARA TALUK, KOLLAM DISTRICT.691507

BY ADVS.
SRI.P.T.GIRIJAN
SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.ABRAHAM GEORGE JACOB
SHRI.AKSHAY R

RESPONDENT/RESPONDENTS/DEFENDANTS:

1 **RATNAKARAN PILLAI(DIED)**
S/O.NEELAKANTHAN UNNITHAN, JAYA BHAVAN, CHERUMANGADU SHYAM SADANAM, CHERUMANGADU, PUTHOOR VILLAGE, KOTTARAKARA TALUK, KOLLAM DISTRICT.

2 **LATHAKUMARI**
D/O.OMMAN AMMA, JAYA BHAVAN, CHERUMANGADU SHYAM SADANAM, CHERUMANGADU, PUTHOOR VILLAGE, KOTTARAKARA TALUK, KOLLAM DISTRICT.

ADDL. R3 SHARANYA

AGED 32 YEARS,DAUGHTER OF RATNAKARAN PILLAI,JAYA BHAVAN,CHERUMANGADU SHYAM,SADANAM,CHERUMANGDU,PUTHOOR VILLAGE & P.O.691507,KOTTARAKARA,KOLLAM DISTRICT

ADDL.R4 SHYAMKUMAR
AGED 35 YEARS,SON OF RATNAKARAN PILLAI,JAYA BHAVAN,CHERUMANGADU SHYAM,SADANAM,CHERUMANGDU,PUTHOOR VILLAGE & P.O.691507,KOTTARAKARA,KOLLAM DISTRICT.(THE LEGAL HEIRS OF THE DECEASED R1 ARE IMPLEADED AS ADDL.R3 & R4 AS PER ORDER DATED 16.12.2022 IN IA.NO.1/2022)

BY ADVS.
R1 BY SRI.N.AJITH
R1 TO R4 BY P.B.KRISHNAN
R2 BY SMT.GEETHA P.MENON
R1 TO R4 BY SRI.P.B.SUBRAMANYAN
R2 TO R4 BY SABU GEORGE
R2 TO R4 BY MANU VYASAN PETER

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04.04.2025, ALONG WITH RSA.731/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[RSA Nos.731/2012, 666/2012]

1. Since both these appeals arise from two suits—O.S No.398/1996 and O.S No.604/1996—which were jointly tried and disposed of by the Trial Court by a common judgment, I dispose of these appeals by a common judgment.
2. The appellant is the plaintiff in both appeals. In O.S No.398/1996 there are five defendants. In O.S No.604/1996, the defendants 1 and 2 in O.S No.398/1996 are the defendants. The defendants No.3 to 5 in O.S No.398/1996 are the relatives of defendants 1 and 2 who support the defendants 1 and 2. The dispute is essentially between the plaintiff and the defendants 1 and 2 in the suits. The defendants 1 and 2 are husband and wife.
3. The plaint schedule property in O.S No. 398/1996 is 7.5 cents in Sy. No. 107/9 of Pavithreswaram village in Kottarakkara Taluk. The plaint Schedule property in O.S No. 604/1996 is

Residential Building No.III/859 and attached shed in the aforesaid 7.5 cents of land.

4. The case of the plaintiff in substance is that the aforesaid 7.5 cents and the building therein belonged to the plaintiff as per Ext.A1 Sale Deed dated 16.08.1994 executed by the 1st defendant in favour of the plaintiff. On execution of Ext.A1 the defendants 1 and 2 vacated the plaint schedule property. Thereafter, the defendants 1 and 2 requested the plaintiffs to lease out the residential building in the plaint schedule property for a monthly rent of Rs.500/-. Thus the plaintiff leased out the residential building and attached shed to the defendants 1 and 2 as per Ext. A8 Rent Deed dt. 30.01.1996. The defendants failed to pay the rent regularly. The plaintiff issued Ext.A9 Notice dated 24.08.1996 to the defendants 1 and 2. On account of this enmity, the defendants 1 and 2 with the defendants 3 to 5 in O.S No. 398/1996 forcibly took the yield from the property and destroyed cultivation. They obstructed the plaintiff from enjoying

the plaint schedule property peacefully. Hence, O.S. No.398/1996 was filed seeking a permanent prohibitory injunction restraining the defendants from committing any act of waste and mischief in the plaint schedule property and from interfering with the possession and enjoyment of usufructs by the plaintiff and except residing in the building.

5. Plaintiff filed O.S No.604/1996 with the very same allegations and further pleading that the plaintiff requires the residential building leased to the defendants 1 and 2 for her own use seeking recovery of possession with arrears of rent amounting to Rs.4,500/- with interest and the future rent @ Rs.500/- per month.

6. The defendants opposed the suit prayers in both the suits by filing Written Statements contending that Ext.A1 document was executed as a security for borrowing an amount of Rs.10,000/- by the defendants 1 and 2 from the plaintiff. Ext.A1 Sale Deed is to be treated as a mortgage deed. The defendant did not

execute any Rent deed in favour of the plaintiff. The defendants did not hand over possession of the plaint schedule property to the plaintiff after the execution of Ext.A1. Ext.A1 was not intended to take effect. It did not come into force. The plaint schedule property remained in the possession of the defendants 1 and 2. The Agreement between the plaintiff and defendants 1 and 2 was that the plaintiff would execute a re-conveyance deed on repayment of the amount borrowed from the plaintiff. The plaintiff has no title or possession over the plaint schedule property.

7. Both the suits were jointly tried treating O.S NO.398/1996 as the leading case. On the side of the plaintiff, the plaintiff was examined as PW1, and one witness was examined as PW2, and Exts.A1 to A15 documents were marked. On the side of the defendants, the 1st defendant was examined as DW1, and one witness was examined as DW2 and Exts. B1 to B7 documents were marked. Mahazar, Report, and Rough Sketch prepared by

the Advocate Commissioner were marked as Exts.C1 to C3.

8. The Trial Court dismissed both the suits holding that the plaintiff did not obtain possession of the plaint schedule property as per Ext.A1 Sale Deed; that Ext.A1 is to be ignored as Ext.A1 did not fulfill the requirements of S.54 of the Transfer of Property Act as delivery of the plaint schedule property was not given to the plaintiff; that there is no landlord-tenant relationship; that Ext.A8 Rent deed is not executed by the defendants 1 and 2; that Ext.A9 is not valid Notice as required under S. 106 of the Transfer of Property Act.

9. Though the plaintiffs filed A.S.Nos.90/2001 and 91/2001 challenging the judgments and decrees in both the suits, the same were dismissed, confirming the judgments and decrees passed by the Trial Court. This Court admitted these two Regular Second Appeals on the following substantial questions of law.

1. Will not handing over the basic title deeds of the vendor to the

vendee along with the sale deed executed by the vendor in favour of the vendee satisfy the legal requirement of handing over the properties sold?

2. In case of tenancy by holding over which is governed by S.116 of the Transfer of property Act, whether notice to quit should be in strict conformity with S.106 of the TP Act? Should a notice to quit be construed with a view to find fault with rather than to find its validity?

3. When application for granting ration cards has to be made months earlier and when enumeration and preparation of voters list for an election to be conducted one year or later, can these ration cards and voters list form the basis to a situation in which by subsequent events the position of parties has changed?

10. After hearing the appeals in part, I formulated the following additional Substantial questions of law in these appeals and heard both counsel further.

Addl. 4. Whether the Trial Court and the First Appellate Court are

justified to hold that Ext.A1 was not intended to be sale deed and that it is only a security for loan?

Addl.5. Whether the Trial Court and the First Appellate Court are justified in refusing the relief of permanent prohibitory injunction sought for in O.S.No.398/1996?

11. I heard the learned counsel for the appellant in both the appeals Sri. C. Murali Krishnan and the learned Senior Counsel for the respondents 1 and 2 in both the appeals Sri.S.V.Balakrishna Iyer instructed by Adv. Sri.P B Subramaniam.

12. The learned counsel for the appellant/plaintiff contended that the plaintiff derived title and possession of the plaint schedule property as per Ext.A1 registered sale deed dated 16.08.1994. It fully satisfies the requirements of S.54 of the Transfer of Property Act. S.54 does not provide that sale is complete only when delivery is given to the purchaser. The Trial Court acted illegally holding that Ext.A1 does not fulfill the requirements of

S.54 of the Transfer of Property Act, finding that delivery was not given. The recitals in Ext.A1 itself would prove that the property was delivered to the plaintiff by the 1st defendant. Counsel for the appellant cited the decision of the Hon'ble Supreme Court in **Damodhar Narayan Sawale (D) through LRs. v. Tejrao Bajirao Mhaske** [AIR 2023 SC 3319] to substantiate that where a deed of sale has been duly executed and registered, its delivery and payment of consideration have been endorsed thereon, it would amount to full transfer of ownership so as to entitle its purchaser to maintain a suit for possession of the property sold. The plaintiff effected mutation of the property, transfer of municipal assessment of the building, transfer of electric connection on the basis of Ext.A1 Sale Deed. The Village Officer concerned issued Ext.A15 Possession Certificate in favour of the plaintiff. The plaintiff produced Exts.A2 & A14 series Land Tax Receipts, Exts.A3, A4 and A13 series Building Tax Receipts to prove possession of the plaintiff

over the plaint schedule property. The execution of Ext.A8 Rent Deed on 30.01.1996 by the defendants in favour of the plaintiff itself would indicate that the defendants had vacated the plaint schedule property and thereafter started residing in the plaint schedule property later on the strength of Ext.A8 Rent Deed. There is nothing on record to prove the residence of the plaintiff in the plaint schedule residential building for the period from 16.08.1994 to 30.01.1996. The Trial court as well as the First Appellate Court illegally relied on Ext.B1 Ration Card dt 22.11.1994 and Ext.B7 Voters List of the year 1995 dt. 01.01.1995 to hold that the defendants 1 and 2 continued their residence in the residential building in the plaint schedule property even after execution of Ext.A1 sale deed. Both the Courts failed to understand that the proceedings for issuance of those documents would have been initiated long before the issuance of those documents and on mere issuance of those documents, possession as on the date of issuance could not

be found in favour of the defendants 1 and 2. With respect to the claim that the Ext.A1 sale deed was executed as a security for the loan, there was no evidence for the same before the Trial Court from the part of defendants 1 and 2. On the other hand, defendants 1 and 2 did not have a consistent case with respect to the alleged borrowing. In the Written statement they contended that they borrowed an amount of Rs.10,000/- from the plaintiff whereas in evidence PW1 contended that the amount borrowed was 15,000/-. Ext.A1 sale deed would indicate that the consideration therein is Rs.15,000/-. If the borrowing was only Rs.10,000/- there was no need for executing Ext.A1 for Rs.15,000/-. Ext.A6 prior title deed was also given to the plaintiff when Ext.A1 document was executed. If Ext.A1 was executed only as a security, there was no need to hand over the prior title deed. Even though defendants 1 and 2 claimed that there were mediators for the dispute between the plaintiff and defendants 1 and 2, nobody was produced to prove

the same. The evidence of DW2 is insufficient as he is found to be an interested witness. Ext.A9 Lawyer Notice fully complies with S.106 of the Transfer of Property Act, and the finding to the contrary is unsustainable. The learned counsel concluded by submitting that the substantial questions of law are liable to be answered in favour of the appellant, and the appeals are to be allowed decreeing both the suits.

13. On the other hand, the learned Senior counsel for respondents 1 and 2 /defendants 1 and 2 contended that the Trial Court, as well as the First Appellate Court, considered the pleadings and evidence in the right perspective case and came to the correct conclusion. The questions involved in the suits were only questions of facts and no question of law is involved in the matter. The Trial Court, as well as the First Appellate Court, rightly found that Ext.A8 Rent Deed was not executed by defendants 1 and 2 on account of the glaring differences in the signatures. The evidence of PW2 and DW2 would indicate that

the transactions were only money transactions and that Ext.A1 was executed only for the purpose of securing the loan of Rs.10,000/- availed by defendants 1 and 2 from the plaintiff. The specific case of the plaintiff was that the defendants 1 and 2 vacated the plaint schedule property immediately on execution of Ext.A1 on 16.08.1994, and thereafter, they started residing in the plaint schedule property only from 30.01.1996 as per Ext.A8. Ext.B1 Ration Card and Ext.B7 Voters List, which are issued between the dates of Exts.A1 and A8, would prove that the defendants were continuing their residence in the plaint schedule property irrespective of execution of Ext.A1 sale deed. Ext.A9 Lawyer Notice does not satisfy the requirement under Section 106 of the Transfer of Property Act. Merely because the mutation, municipal assessment, and electric connection were changed in the name of the plaintiff, it could not be said that the plaintiffs obtained possession of the plaint schedule property on the basis of Ext.A1 Sale Deed. The plaintiff, being a money

lender, had been making calculated moves to create documents in her favour to raise a false claim. The Senior Counsel cited the decision of the Privy Council in **Tyagaraja Mudaliyar v. Vedathanni** [AIR 1936 PC 70] and the decision of the Hon'ble Supreme Court in **Gangabai v. Chhabubai** [1982(1) SCC 4] following the same, to substantiate the point that Sub-section (1) of S.92 of the Indian Evidence Act is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham; that such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever and that for that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties

14. I have considered the rival contentions.

15. The defendants 1 and 2 admit the execution of Ext.A1 Sale Deed. According to them, though it is styled as a Sale Deed it was executed only for the purpose of securing the loan availed by them from the plaintiffs. On the other hand, the plaintiff contended that it is a pucca Sale Deed which satisfies the requirement of Section of the Transfer of Propriety Act. The findings of the Trial Court is that since the delivery of the plaint schedule property is not given to the plaintiff by the defendants 1 and 2 on execution of Ext.A1, Ext.A1 does not satisfy the requirement of sale as provided under Section 54 of the Transfer of Property Act. I am quite unable to sustain the said finding. Section 54 of the Transfer of Property Act does not mandate transfer of possession to complete the sale. Sale under Section 54 of the Transfer of Property Act would be completed irrespective of the fact whether delivery of the property is given or not. So even if delivery of the property is not

given as claimed by defendants 1 and 2, that does not affect the legal validity of Ext.A1 in any way.

16. The contention of the plaintiffs is that the defendants 1 and 2 vacated the plaint schedule property on the execution of Ext.A1 Sale Deed on 16.08.1994. Thereafter, they again started residing in the plaint schedule property as per Ext.A8 Rent Deed dated 30.01.1996. So according to the plaintiffs the defendants 1 and 2 were not residing in the plaint schedule property during the period from 16.08.94 to 30.01.96. Ext.A1 specifically states that possession is given to the plaintiff. As rightly pointed out by the learned Senior Counsel for the contesting respondents when the defendants assert that there was a different transaction altogether and that the document was never intended to be acted upon, evidence in that regard is admissible, and Section 92 of the Evidence Act corresponding to Section 95 of Bharatiya Sakshya Adhiniyam is not a bar for the same. In order to prove the residence of defendants 1 and

2 in the plaint schedule property, the defendants produced Ext.B1 Ration Card dated 22.11.1994 and Ext.B7 Voters List dated 01.01.1995. As rightly pointed out by the learned counsel for the appellant, merely because these documents were issued during the disputed period, it could not be assumed that defendants 1 and 2 had been residing in the plaint schedule property during the disputed period. Both these documents are issued after conducting a long procedure including inspections. Ext.A1 dated 16.08.1994. Admittedly, the defendants 1 and 2 had been residing in the plaint schedule property till the said date. It is not clear whether the inspections which were made for issuance of Ext.B1 and B7 documents were made prior to 16.08.1994 or not. Exts.B1 & B7 documents are issued after a couple of months from Ext.A1 Sale deed. Hence, I am of the view that the Trial Court, as well as the First Appellate Court, acted illegally in relying on Exts.B1 and B7 documents to find possession in favour of the defendants 1 and 2. True, if

defendants 1 and 2 had been residing in the plaint schedule property during the disputed period, they could have produced the utility bills paid by them during the said period. No such document is produced.

17. On the other hand, the plaintiffs produced Land Tax Receipts, Building Tax Receipts, and Electricity Invoice in her name with respect to the plaint schedule property and the building therein. These documents could not be relied on to find possession in favour of the plaintiff as the plaintiff will be able to obtain these documents on the strength of Ext.A1 even without possession. Ext.A15 Possession Certificate issued by the Village Officer is produced by the plaintiff. It could not be relied on without the examination of the person who issued the same.

18. The case of the plaintiffs is that the defendants 1 and 2 have been continuing possession of the residential building on the strength of Ext.A8 Rent Deed. The Trial Court, as well as the First Appellate Court, disbelieved Ext.A8. The plaintiff did

not take any steps to prove the signatures of defendants 1 and 2 through expert evidence, even though the execution of Ext.B8 by defendants 1 and 2. Ext.A8 would show that there is no witness to it. Ext.A8 is executed on two stamp papers purchased on different dates. The plaintiff did not adduce any independent evidence to prove Ext.A8. Both the Courts concurrently found glaring differences in the signatures in Ext.B8 with the admitted signatures. I do not find any ground or reason to take a different view. Hence, possession of the plaintiff before Ext.A8 could not be found in favour of the plaintiff on the basis of Ext.A8. Since there is no lease arrangement between the plaintiff and defendants 1 and 2, the question of termination of lease as required under Section 106 of the Transfer of Property Act does not arise.

19. The plaintiff admits possession of the residential building by the defendants 1 and 2. There is no evidence as to when defendants 1 and 2 obtained possession of the residential

building after Ext.A1. In such a case, going by the pleadings and evidence in the case, the only inference possible is that defendants 1 and 2 continued their possession of the plaint schedule property even after execution of Ext.A1 Sale Deed. But, that by itself is not sufficient to hold that Ext.A1 is executed for securing loan. First of all, the defendants 1 and 2 do not have a consistent case with respect to the alleged borrowing. They contended in their Written Statements that the amount borrowed is Rs.10,000/- whereas in evidence PW1 stated that the amount borrowed is Rs.15,000/-. If the amount borrowed is Rs.10,000/- , there was no need to execute Ext.A1 for Rs.15,000/-. The details of the alleged borrowing are not disclosed by the defendants 1 and 2. The rate of interest, the understanding regarding the payment of interest, and the principal amount, Etc are not stated by defendants 1 and 2. Their specific contention is that at the time of execution of the Ext.A1 Sale deed, there was an oral agreement to re-convey the property when they

repay the loan amount. There is nothing to prove the alleged agreement to re-convey the property between the plaintiff and the defendants 1 and 2. The defendants have no case that they repaid the alleged loan amount. The alleged Agreement to re-convey the property between the plaintiff and the defendants 1 and 2 is in the year 1994. The defendants have not taken any steps to enforce the alleged Agreement. The claim on the basis of the alleged Agreement is hopelessly time barred. If Ext.A1 was intended for security, the defendants 1 and 2 do not have any explanation as to why Ext.A6 prior Deed was handed over to the plaintiffs. It is true that PW2 and DW2 has deposed that the transaction between the plaintiffs and the defendants 1 and 2 is a money transaction and no sale of property is involved. But when defendants 1 and 2 do not have a consistent case with respect to the alleged borrowing, and there is evidence to believe that Ext.A1 is a pucca Sale Deed, it is difficult to believe the oral evidence of PW2 and DW2 in this regard. No mediation

agreement was recorded in writing, even though DW2 has spoken about mediation agreement. There is perversity in the matter of appreciation of evidence by the Trial Court and the First Appellate Court in this regard.

20. The findings of the Trial Court and the First Appellate Court that Ext.A1 was not intended to be a sale deed, but a security and that case set up by the defendants that Ext.A1 is not a sale deed, but only a security is true are unsustainable, they are liable to be vacated. Hence, I hold that Ext.A1 is perfectly legal and valid as a sale deed.

21. The pleadings and evidence in the case would indicate that the plaintiff derived title over the plaint schedule property as per Ext.A1 and that defendants 1 and 2 continued possession of the plaint schedule property after execution of Ext.A1. The parties are relatives as per the evidence of PW1. In such case, the possession by defendants 1 and 2 can only be on the basis of permission given by the plaintiff. In such a case, the plaintiff is

entitled to recover possession of the plaint schedule property on the strength of her title over the plaint schedule property.

22. O.S.No.604/1996 was filed for recovery of the residential building in the 7.5 cents of land covered by Ext.A1 on the allegation that the defendants 1 and 2 are tenants of the plaintiff. The property scheduled is only the residential building No.III/859 situated in the 7.5 cents of land covered by Ext.A1. It is not a suit for recovery of the 7.5 cents of land and the building therein covered by Ext.A1 on the strength of the title of the plaintiff. The suit as framed is not sufficient to grant decree of recovery of possession in favour of the plaintiff allowing recovery of the property covered by Ext.A1. Hence, the plaintiff is not entitled to get any relief in O.S.No.604/1996.

23. Since the plaintiff is the owner of the plaint schedule property and the possession of the plaint schedule property remains with defendants 1 and 2, the plaintiff is perfectly entitled to get the permanent prohibitory injunction sought for in

O.S.No.398/1996 to restrain the defendants from committing any act of waste or mischief in the plaint schedule property. R.S.A.No.731/2012 is liable to be allowed to that extent.

24. In view of the aforesaid discussions, I find that the substantial question of law No.2 does not arise for consideration in this appeal. The substantial question of law No.1 is answered in the negative and against the appellant. The substantial question of law No.3 is answered in the affirmative and in favour of the appellant. The additional substantial question of law No.4 and 5 are answered in the negative and in favour of the appellant.

25. In view of the aforesaid answer to the additional substantial question of law No.4, R.S.A.No.666/2012 is allowed in part without costs setting aside the findings of the Trial Court and the First Appellate Court to the effect that Ext.A1 was not intended to be sale deed and that it is only a security for loan, and confirming the judgments and decrees of the Trial Court and the

First Appellate Court in all other respects.

26. In view of the aforesaid answer to the additional substantial question of law No.5, R.S.A.No.731/2012 is allowed in part without costs setting aside the impugned judgments passed by the Trial Court as well as the First Appellate Court and decreeing O.S.No.398/1996 in part granting a permanent prohibitory injunction restraining the defendants from committing any act of waste or mischief in the plaint schedule property.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

Jma/shg