CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2020 / 19TH SRAVANA, 1942

RFA.No.554 OF 2015

JUDGMENT IN OS 1/2009 DATED 03-06-2015 OF SUB COURT, NEDUMANGAD

APPELLANTS/DEFENDANTS 2 & 3:

1 B.M.RAFI, AGED 42, S/O.BADARUDEEN, RAFI MANZIL, NADICHIRA, THENGUMKARA, KARIPPOORU VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM.

2 SAJEED, AGED 41, S/O.SHIHABUDEEN, T.C. 5/1, SREE NILAYAM, N.C.C.ROAD, AMBALAMUKKU, PEROORKADA VILLAGE, THIRUVANANTHAPURAM.

BY ADVS.SRI.R.S.KALKURA
SMT.R.BINDU
SRI.HARISH GOPINATH
SRI.M.S.KALESH

RESPONDENTS/PLINTIFFS 1 & 2 AND DEFENDANTS 1 & 4:

1 BASHEER M.PICHA @ MUHAMMED BASHEER, AGED 61, S/O.MYTHEEN PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM, PRESENT ADDRESS AT VILLA NO.981, ROAD NO.5024, BLOCK NO.950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGADU), REPRESENTED BY POWER OF ATTORNEY HOLDER MANOJKUMAR, AGED 48, S/O.RAJASEKHARAN NAIR, JAYA BHAVAN, VELLOORKUNNAM, MOOVATTUPUZHA, ERNAKULAM-686673.

2 INDIRA BASHEER, W/O.BASHEER M.PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM,PRESENT ADDRESS AT VILLA NO.981, ROAD NO.5024, BLOCK NO.950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGADU), REPRESENTED BY POWER OF ATTORNEY HOLDER

MANOJKUMAR, AGED 48, S/O.RAJASEKHARAN NAIR, JAYA BHAVAN, VELLOORKUNNAM, MOOVATTUPUZHA, ERNAKULAM-686673.

3 SHAJIDEEN, AGED 59, S/O.MYTHEEN PICHA, NO.39, PULICKAPARAMBIL, AMBALA NAGAR, KUZHANADU MURI, VATTAPPARA, VATTAPPARA VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM DISTRICT-695028.

4 JAPAMANI, AGED 71, S/O.JOSEPH, J.S.R.HOUSE, MALAYADI, CHARUVITTU MURI, THALLICODE VILLAGE, NEDUMANGAD TALUK-695541.

R1 BY ADV. SRI.SAJJU.S
R1-2 BY ADV. SRI.S.AJITH PRABHAV
R1 BY ADV. SRI.K.SHAJ
R4 BY ADV. SRI.P.C.HARIDAS
R3 BY SRI.S.SREEKUMAR (SR.)
R3 BY SRI.PIRAPPANCODE V.S.SUDHEER

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06.08.2020 ALONG WITH CO.6/2016, RFA.706/2015, RFA.835/2015, RFA.890/2015, THE COURT ON 10.08.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2020 / 19TH SRAVANA, 1942

CO.No.6 OF 2016 IN RFA. 554/2015

CROSS-OBJECTOR/RESPONDENT 1/PLAINTIFF 1:

BASHEER M.PICHA @ MUHAMMED BASHEER, AGED 61, S/O.MYTHEEN PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM, PRESENT ADDRESS AT VILLA NO.981, ROAD NO.5024, BLOCK NO.950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGADU), REPRESENTED BY POWER OF ATTORNEY HOLDER MANOJKUMAR, AGED 48, S/O.RAJASEKHARAN NAIR, JAYA BHAVAN, VELLOORKUNNAM, MOOVATTUPUZHA, ERNAKULAM-686673.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENTS/APPELLANTS&RESPONDENT 1/DEFENDANDANTS&2nd PLAINTIFF:

1 **B.M.RAFI, AGED 42, S/O.BADARUDEEN, RAFI MANZIL, NADICHIRA, THENGUMKARA, KARIPPOORU VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM.**

2 **SAJEED, AGED 41, S/O.SHIHABUDEEN, T.C. 5/1, SREE NILAYAM, N.C.C.ROAD, AMBALAMUKKU, PEROORKADA VILLAGE, THIRUVANANTHAPURAM.**

3 **SHAJIDEEN, AGED 59, S/O.MYTHEEN PICHA, NO.39, PULICKAPARAMBIL, AMBALA NAGAR, KUZHANADU MURI, VATTAPPARA, VATTAPPARA VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM DISTRICT-695028.**

4 JAPAMANI, AGED 71, S/O.JOSEPH, J.S.R.HOUSE, MALAYADI, CHARUVITTU MURI, THALLICODE VILLAGE, NEDUMANGAD TALUK-695541.

5 INDIRA BASHEER, W/O.BASHEER M.PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM,PRESENT ADDRESS AT VILLA NO.981, ROAD NO.5024, BLOCK NO.950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGADU), REPRESENTED BY POWER OF ATTORNEY HOLDER MANOJKUMAR, AGED 48, S/O.RAJASEKHARAN NAIR, JAYA BHAVAN, VELLOORKUNNAM, MOOVATTUPUZHA, ERNAKULAM-686673.

R1 & R2 BY ADV. SRI.R.S.KALKURA
R3 BY SRI.S.SREEKUMAR (SR.)
R3 BY ADV.SRI.PIRAPPANCODE V.S.SUDHEER
R5 BY ADV. SRI.S.AJITH PRABHAV

THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY HEARD ON 06.08.2020 ALONG WITH RFA.554/2015, RFA.706/2015, RFA.835/2015, RFA.890/2015, THE COURT ON 10.08.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2020 / 19TH SRAVANA, 1942

RFA.No.706 OF 2015

JUDGMENT IN OS 1/2009 DATED 03-06-2015 OF SUB COURT, NEDUMANGAD

APPELLANT/1st DEFENDANT:

**SHAJIDEEN, AGED 59, S/O. MYTHEEN PICHA,
NO.39, PULICKAPARAMBIL, AMBALA NAGAR,
KUZHANADU MURI, VATTAPPARA, VATTAPPARA VILLAGE,
NEDUMANGAD TALUK, THIRUVNANTHAPURAM DISTRICT.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM**

RESPONDENTS/PLAINTIFFS 1 & 2 AND DEFENDANTS 2, 3 & 4:

1 **BASHEER M.PICHA @ MUHAMMED BASHEER, AGED 61, S/O.MYTHEEN PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM HAVING PRESENT ADDRESS AT VILLA NO. 981, ROAD NO. 5024, BLOCK NO. 950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGAD - 695 541)**

2 **INDIRA BASHEER,W/O. BASHEER M. PICHA, BAINDS 128, ABHAYA NAGAR, PEROORKADA P.O., PEROORKADA VILLAGE, THIRUVANANTHAPURAM HAVING PRESENT ADDRESS AT VILLA NO. 981, ROAD NO. 5024, BLOCK NO. 950, ASKAR, MANAMA BAHRAIN (ORIGINALLY HAD ADDRESS AT MMP BUILDING, CHETTIKONATHU CHITTUVITTU MURI, THOLICODE VILLAGE, NEDUMANGAD - 695 541)**

**3 B.M. RAFI, AGED 42, S/O. BADARUDEEN,
RAFI MANZIL, NADICHIRA, THENGUMKARA,
KARIPPOORU VILLAGE, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM - 695 541.**

**4 SAJEED, AGED 41, S/O. SHIHABUDEEN, T.C 5/1,
SREE NILAYAM, N.C.C ROAD, AMBALAMUKKU, PEROORKADA
VILLAGE, THIRUVANANTHAPURAM - 695 005.**

**5 JAPAMANI, AGED 71, S/O. JOSEPH, J.S.R HOUSE,
MALAYADI, CHARUVITTU MURI, THALLICODE VILLAGE,
NEDUMANGAD TALUK - 695 541.**

**R1 BY ADV. SRI.K.SHAJ
R2 BY ADV. SRI.AJITH PRABHAV
R3 & R4 BY ADV. SRI.R.S.KALKURA**

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06.08.2020 ALONG WITH CO.6/2016, RFA.554/2015, RFA.835/2015, RFA.890/2015, THE COURT ON 10.08.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2020 / 19TH SRAVANA, 1942

RFA.No.835 OF 2015

JUDGMENT IN OS 241/2010 DATED 03-06-2015 OF SUB COURT,NEDUMANGAD

APPELLANT/PLAINTIFF:

B.M.RAFI, AGED 36, S/O BADARUDEEN, RAFI MANZIL, NETTARACHIRA, THEKKUMKARA MURI, KARIPOOR VILLAGE, NEDUMANGAD TALUK.

SRI.R.S.KALKURA

RESPONDENTS/DEFENDANTS:

1. **BASHEER.M.PICHA @ MOHAMMED BASHEER, AGED 56, S/O.MYTHEENPICHA, RESIDING AT ABAYA NAGAR, 128, OOLAMPARA, PEROORKADA VILLAGE, THIRUVANANTHAPURAM, FROM M.M.P BUILDING, IRUTHALAMOOLA, CHITTUVEETTU MURI, THOLICODE VILLAGE.**

2. **INDIRA BASHEER, AGED 55, W/O.BASHEER. M.PICHA, ABHAYA NAGAR, 128, OOLAMPARA, PEROORKADA VILLAGE, THIRUVANANTHAPURAM , FROM M.M.P BUILDING, CHITTIKONAM, CHITTUVEETTU MURI, THOLICODE VILLAGE, THIRUVANAMTHAPURAM.**

R1 BY ADV. SRI.K.SHAJ
R2 BY ADV. SRI.S.AJITH PRABHAV

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06.08.2020 ALONG WITH CO.6/2016, RFA.554/2015, RFA.706/2015, RFA.890/2015, THE COURT ON 10.08.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 10TH DAY OF AUGUST 2020 / 19TH SRAVANA, 1942

RFA.No.890 OF 2015

JUDGMENT IN OS 240/2010 DATED 03-06-2015 OF SUB COURT,NEDUMANGAD

APPELLANT/PLAINTIFF:

SAJEED, AGED 35, S/O SHIHABUDEEN, M.M.P. BUILDING, IRUTHALAMOOLA, CHITTUVEETTU MURI, THALICODE VILLAGE, NEDUMANGAD TALUK.

SRI.R.S.KALKURA

RESPONDENT/DEFENDANT:

INDIRA BASHEER, AGED 55, W/O BASHEER.M.PICHA, ABHAYA NAGAR, 128, OOLAMPARA, PEROORKADA VILLAGE, THIRUVANANTHAPURAM FROM M.M.P. BUILDING, CHITTIKONAM, CHITTUVEETTU MURI, THOLIKODE VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.S.AJITH PRABHAV

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06.08.2020 ALONG WITH CO.6/2016, RFA.554/2015, RFA.706/2015, RFA.835/2015, THE COURT ON 10.08.2020 DELIVERED THE FOLLOWING:

JUDGMENT

[RFA.554/2015, CO.6/2016, RFA.706/2015, RFA.835/2015, RFA.890/2015]

Dated this the 10th day of August 2020

The Sales Deeds, executed by the Power of Attorney Holder of the Owners of the properties involved, in favour of two Buyers, have been set aside by the Sub Court, Nedumangad, in a suit filed by the Owners.

2. The Owners of the properties - Sri.Basheer M.Picha and his wife Smt.Indira Basheer - allege that their Power of Attorney Holder - Sri.Shajideen, who is the brother of Sri.Basheer M.Picha, has illegally executed three Sale Deeds in favour of Sri.Rafi and Sri.Sajeed (the latter being his and Sri.Basheer M.Picha's nephew), without any consideration and to maliciously reduce them into his own control and possession - the Buyers allegedly being his hand-picked persons - misusing certain Stamp Papers, that they had entrusted with him much earlier, having their signatures and photographs affixed on them.

3. On the afore broad allegation, Sri.Basheer M.Picha and his wife Smt.Indira Basheer (who will hereinafter be referred to

collectively as 'the Owners') filed O.S.No.1/2009 before the Sub Court, Nedumangad, arraying their Power of Attorney Holder - Sri.Shajideen and the Buyers, Sri.Rafi and Sri.Sajeed, as defendants 1 to 3, along with a certain Sri.Japamani as the fourth defendant, since he had attested the Sale Deeds, with the following prayers:

> “(a) To declare the title of the first plaintiff over the plaint A schedule properties and allowing the first plaintiff to recover the possession of the plaint A schedule properties through the process of law from the first defendant or from any other defendant if found in possession of the same.
>
> (b) To declare the title of the second plaintiff over the plaint B schedule properties and allowing the second plaintiff to recover the possession of the plaint B schedule properties through the process of law from the first defendant or from any other defendant if found in possession of the same.
>
> (c) To adjudge the sale deed Nos.1127/08 and 1126/08 dated 10.07.2008 and 1201/2008 dated 28.07.2008 of the Vithura Sub Register Officer to be void and order it to be delivered up and cancelled and also to send a copy of its decree to the Sub Registrar, Vithura in whose office the said documents has been registered to note on the copy of the instruments contained in his books the fact of its cancellation.
>
> (d) Allow the plaintiffs to realize the cost of the suit to be realized from the defendants and their assets.
>
> (e) Allow such other reliefs as may be prayed by the plaintiffs during the pendency of the suit.”

4. While so, the Buyers of the properties - Sri.Sajeed and Sri.Rafi (who will hereinafter be collectively referred to as 'the Buyers'), filed two suits, namely O.S.Nos.240/2010 and 241/2010 respectively, seeking a decree of permanent prohibitory injunction against the Owners from trespassing into the properties covered by

the Sale Deeds, asserting that the said Deeds are valid and themselves to be in its possession.

5. The afore three suits were taken to trial jointly, and the Trial Court marked Exhibits A1 to A30 on the side of the Owners and Exhibits B1 to B39 on the side of the Buyers and Sri.Shajideen; while PW1 to PW5 and DW1 to DW4 were examined on the side of the rival parties.

6. After evaluating the evidence and materials on record, the Trial Court allowed O.S.No.1/2009 filed by the Owners; while O.S.Nos.240/2010 and 241/2010, filed by the Buyers, were dismissed, through the impugned judgment and decree.

7. It is the above judgment and decree which have been assailed by the parties through separate appeals as under:

(a) R.F.A.No.706/2015 is filed by Sri.Shajideen - the Power of Attorney Holder of the Owners against the judgment in O.S. No.1/2009.

(b) R.F.A.No.554/2015 is filed by Sri.Rafi and Sri.Sajeed against the judgment in O.S.No.1/2009.

(c) R.F.A.No.835/2015 is filed by Sri.Rafi against the judgment in O.S.No.241/2010.

(d) R.F.A.No.890/2015 is filed by Sri.Sajeed against the dismissal of O.S.No.240/2010.

In addition to the above, Sri.Basheer M.Picha has also filed a Memorandum of Cross Objection in R.F.A.No.554/2015, numbered as Cross Objection No.6/2016.

8. As is evident from the afore apercus of the facts involved, O.S.No.1/2009 is the lead case - the fate of O.S. Nos.240/2010 and 241/2010 being dependant on it - and I, therefore, will refer to the parties in this judgment as they are arrayed in it, or by their names, for convenience; thus treating R.F.A.No.706/2015 as the lead case.

9. The plaint filed by the Owners in O.S.No.1/2009 contained the following specific allegations, in paragraphs 3 to 8 and 11, which are extracted below:

> “3. The plaintiffs are non resident Indians settled in the Kingdom of Bahrain. The first defendant who came to Bahrain on 13.05.2006 made plaintiffs to believe that the plaint A and B schedule properties could be sold for one crore to 1.5 crore Indian rupees. The first defendant also shown his willingness and readiness to support both the plaintiffs in all their personal and property and asset management matters including banking civil and govt. related issues in the event if both plaintiffs issue a general power of attorney to the first defendant. The first and second plaintiff believed the first defendant's words and issued a general power of attorney to the first defendant. The first defendant was the general power of attorney holder of the plaintiffs, to deal with their banking, court matters, landed property matters, etc.
>
> 4. Subsequently the first defendant informed plaintiffs that the said property could be sold for 1.25 crores of Indian rupees and for which he wanted the plaintiffs to execute special power of attorneys in his favour. Accordingly the first defendant send the draft of the power of

attorneys to be executed by the plaintiffs, through mail and they in turn executed the power of attorneys before the Embassy of Bahrain, on 24.10.2007 as desired by the first defendant and also sent the same to him.

5. Later on 02.11.2007 the first defendant made the plaintiff to believe that an agreement of sale in respect of the property, was entered, and for the purpose of procuring an advance sale consideration of Rs.30,00,000/- (Rupees Thirty Lakhs only) he wanted the plaintiffs at Bahrain to issue receipts for the same in advance. Accordingly the plaintiffs have drawn six receipts bearing different dates in the manner as instructed by the first defendant even though they haven't received any money. The first defendant made the plaintiffs believe that he had already spend the following sums in the following accounts of the plaintiffs.

(a) Federal Bank Kilimanoor Branch Loan Account of Basheer (1^{st} plaintiff)	-	Rs.5,00,000.00
(b) Amount remitted in the SBI Nedumangadu in excess of Rs.9,20,000/- as the decree amount due from India Basheer (2^{nd} plaintiff)	-	Rs.4,00,000.00
(c) Amount spend in connection with DRT Company law board, RDO Land Acquisition Office Indian Bank	-	<u>Rs.6,00,000.00</u>
Total	-	Rs.15,00,000.00

(Rupees Fifteen Lakhs only)

6. Later the first defendant further made the plaintiffs to believe that the agreement for sale of the plaint schedule property was executed on 05.11.2007 with an employee of VSSC, Thiruvananthapuram who is also engaged in real estate business. The first defendant also made the plaintiff to believe that since he had already spend the above sums he had adjusted the said sum of Rs.15,00,000/- from the advance sale consideration of Rs.30,00,000/-. The first defendant also made the plaintiffs to believe that out of the balance advance sale consideration of Rs.15,00,000/- (Rupees Fifteen Lakhs only) a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) will be utilized for effecting the one time settlement of the first plaintiffs loan account with Federal Bank Kilimanoor branch and the remaining Rs.5,00,000/- (Rupees Five Lakhs) will be kept by him. He assured the plaintiffs that sale deed could be executed after receiving the balance sale consideration, before 31.01.2008. The first defendant who send the blank stamp papers to the plaintiffs at Bahrain also procured the

thumb impression of each of the plaintiffs separately on five blank stamp papers of Rs.10/- each, on 05.11.2007, for the purpose of registering the Sale Deeds of the plaint schedule properties for 1.25 crores of rupees; before 31.01.2008. The first defendant has also cunningly evaded from not sending the copy of the agreement for sale said to have been entered into by him for and on behalf of the plaintiffs. For the purpose of facilitating the execution of the Sale Deeds the second plaintiff has executed another power of attorney dated 14.01.2008 in favour of the first defendant, authorizing him to collect the title deeds of the plaint B schedule property from SBI Nedumangadu branch and he collected the documents from the bank in the month of January 2008 itself.

7. But since the balance consideration was not provided and the sale deed was not executed inspite of expiry of 2 months from 31.01.2008, the first plaintiff wanted the first defendant to rescind the agreement for sale said to have been entered. Later in the enquiry conducted by the plaintiffs it was revealed that the payment claimed to have been affected by the first defendant as stated in Para No.5 was false. Whereas he had remitted only Rs.10,00,000/- (Rupees ten lakhs) with the Federal Bank, Kilimanoor Branch as stated in para 6 above and had not made the earlier payment of Rs.5,00,000/- in the loan account as stated in para 5 of the plaint. Any how the first defendant confessed his guilt. Considering the close blood relationship the first plaintiff agreed to settle the transaction and as per the final settlement arrived between the plaintiffs and the first defendant, the second plaintiff issued Cheque No. 000019 dated 29.04.2008 for Rs.15,00,000/- (Rupees Fifteen Lakhs only) drawn on Kodak Mahindra Thiruvananthapuram Branch, to the first defendant and he has duly encashed the said cheque. The first defendant also made the plaintiffs to believe that the agreement for sale is cancelled the power of attorneys and the documents pertaining to the properties and stamp papers could be returned as and when any of the plaintiffs reach their house in Kerala. The second plaintiff who returned to her residence at Thiruvananthapuram many times demanded the first defendant to return the documents. But he was evading the return of the same by saying lame excuses. In that circumstances the plaintiffs respectively cancelled their power-of-attorney by executing revocation deeds on 22.07.2008 and 29.07.2008 and the matter of revocation was also communicated to him. Even before the said cancellation the power of attorneys were cancelled by the express conduct of the plaintiffs and the first defendant on 22.04.2008, the date on which the cheque for Rs.15,00,000/- was issued to the first defendant and also subsequently on 29.04.2008 the date on which the first defendant duly encashed the cheque.

8. But the first defendant who had encashed the cheque for Rs.15,00,000/- issued by the second plaintiff towards the final

settlement of the transaction fraudulently created three Sale Deeds in respect of the said property without the consent and knowledge of the plaintiffs. The first defendant created sale deed number 1126/2008 dated 10.07.2008 in respect of 1.82 acres of property forming part of the plaint A schedule properties on the strength of the power-of-attorney executed by the first plaintiff which was not liable to be acted upon. The first defendant also created another sale deed No.1127/2008 dated 10.07.2008 with respect to 2 acres 30.5 cents forming part of the plaint B schedule properties on the strength of the power of attorney executed by the second plaintiff which was not liable to be acted upon. Both the aforesaid sale deed are purportedly created in favour of the second defendant. The fourth defendant who was the caretaker of the property appointed by the plaintiffs also fraudulently subscribed his signature as a witness to the documents. The third fraudulent sale deed created by the first defendant is in favour of the third defendant and the same was registered as Sale Deed No.1201/2008 dated 28.07.2008 purportedly transferring 3.13 acres forming part of plaint B schedule properties by way of sale to the third defendant. The said sale deed was also executed on the strength of the power of attorney executed by the second plaintiff, which was not liable to be acted upon. All the aforesaid three Sale Deeds created by the first defendant are fraudulent and ab initio void. The said documents lack consideration. The said documents were created with ulterior motive of grabbing the precious property of the plaintiffs. The second and third defendants have not assumed possession of the property covered by the said Deeds whereas the first defendant assumed possession over the said properties on 01.07.2008 taking advantage of the situation that the plaintiffs are settled abroad. The act of execution of the said documents are fitted to deceive the plaintiffs. The defendants conspired and grabbed the property of the plaintiffs also without paying any sale consideration. The acts of the defendants constitutes the offences u/s 409, 420, 463, 467, 468 r/w 120-B of the I.P.C.; and the Vithura Police has also registered a crime as crime No.284/2008 in this regard.

11. The document Nos.1126/2008, 1127/2008 and 1201/2008 are ab initio void; for the reason that the same are not supported by consideration and good faith. The said documents are nothing but the outcome of the fraud and criminal conspiracy committed by the defendants on the plaintiffs. The plaintiffs have never received the sale consideration from the defendants. Likewise, the first defendant has also not received any sale consideration from the defendants 2 and 3. The defendants 2 and 3 have no means to purchase the plaint schedule properties which fetches a value of about 1.5 crores as per the present market rate. The defendants 2 and 3 are merely name lenders to the fraudulent transaction. The sale consideration as shown in the said Sale Deeds never signifies the prevailing market

> value of the property. The first page of the document No.1126/2008 is written on stamp paper seen purchased in the name of the first plaintiff on 25.10.2007. The first page of document No.1127/2008 is seen written on the stamp paper purchased in the name of the second plaintiff on 25.10.2007. The first page of the document No.1201/2008 is written on a stamp paper seen purchased in the name of the second plaintiff on 25.10.2007. So the impugned Sale Deeds are drawn on the stamp papers purchased on 25.10.2007, and the period of validity of such stamp papers had expired on 24.10.2007. The thumb impression of the plaintiffs on the said stamp papers were obtained on 05.11.2007, when the stamp papers were blank. Apart from that, without entering into another property purchased by the first plaintiff by virtue of Sale deed No.1492/2006 of Vithura SRO one cannot have access into plaint A & B schedule properties. There is no mention in the Sale deed Nos.1126/08, 1127/08 and 1201/08 regarding the access to the plaint A & B schedule properties."

10. In response to these allegations, Sri.Shajideen - the first defendant - filed a written statement with the following averments, among others:

> "11. For facilitating the negotiation for sale, they sent two separate Powers of Attorney executed at Bahrain on 17.10.2007 and 24.10.2007 authorising the 1st defendant to negotiate and sell the said properties. Accordingly the 1st defendant made earnest efforts to find out suitable purchasers who would offer good prices. But in view of the fact that the original title deeds of the A Schedule properties were missing and that the title deeds of the B Schedule properties were in the Bank, no willing purchaser came forward to purchase these properties. Over and above this, rumours were afloat that almost all the properties of the plaintiffs are heavily encumbered. So the 1st defendant was constrained to sell the A & B Schedule properties for a total consideration of Rs.16,95,000/- (Rupees Sixteen Lakhs Ninety Five Thousand Only) as per the three impugned sale deeds in favour of the defendants 2 & 3. The price fetched is fair and reasonable. This was done by the 1st defendant after getting the previous approval of the 1st plaintiff over the phone and that of the 2nd plaintiff in person who was in Trivandrum at that time. The 1st plaintiff also instructed the 1st defendant to appropriate and adjust the sale proceeds towards the amounts due to him. He also consoled the 1st defendant by undertaking to pay the balance due to the 1st defendant without delay.

12. The Sale Deeds were executed by the 1st defendant with full authority on the basis of the Powers of Attorney executed by the plaintiffs 1 & 2. They are legal and valid documents by which title and possession of the A&B Schedule properties were conveyed to defendants 2 & 3 as bonafide purchasers. Those documents are unassailable and the plaintiffs are bound by the recitals and terms therein as they are principals of the 1st defendant.

13. Out of the amounts due to the 1st defendant, plaintiffs 1 & 2 have paid an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) by cheque on 29.04.2008. The sale consideration of Rs.16,95,000/- (Rupees Sixteen Lakhs Ninety five thousand only) in respect of the A&B Schedule properties was also adjusted by the 1st defendant as instructed by the plaintiffs. Thus the plaintiffs have repaid an amount of Rs.31,95,000/- (Rupees Thirty One Lakhs Ninety Five Thousand Only) leaving a balance of Rs.22,17,257/- (Rupees Twenty Two Lakhs Seventeen Thousand Two Hundred and Fifty Seven Only). For realization of this balance of amount, the 1st defendant has already instituted a suit as O.S.No. 103/2009 before the Sub Court of Thiruvananthapuram, against the plaintiffs, wherein all the details of the transaction are being given.

14. Paras 4 & 5 are denied. The 1st defendant never made the plaintiffs believe that an agreement of sale was executed and did not request the plaintiffs to send six separate receipts bearing different dates for receiving an advance of Rs.30 lakhs as alleged. It is baseless and false. The first defendant did not also represent to the plaintiffs that the properties would fetch 1.25 crores. The 1st defendant did not also made the plaintiffs believe that he had paid Rs.15 lakhs as mentioned in (a)(b) and (c) of Para 5 of the plaint.

15. Para 6 of the plaint is denied. The allegations therein are fanciful and imaginary. The 1st defendant did not send any blank stamp paper to the plaintiffs to Bahrain. On the other hand, the plaintiffs who seem to have a good stock of blank stamp papers, sent the stamp papers with their thumb impressions for enabling the 1st defendant to get the Sale Deeds prepared by the document writer. They also sent a special Power of Attorney on 14.01.2008 for collecting the title deeds of the 2nd plaintiff from the bank.

16. Para 7 of the plaint is denied. There was no request by the plaintiffs to rescind the agreement as there was no such agreement. There was also no stipulation or even understanding that sale should be done before 31.01.2008. The rest of the allegations in para 7 of the plaint are also false. The real facts and as to what all actually transpired in this matter have already been made mention of in paragraphs 6 to 13 (Supra). It is true that the plaintiffs cancelled the Powers of Attorney executed on 17.10.2007 and 24.10.2007 on

22.07.2008 and 29.07.2008 which were communicated to the 1st defendant only on 22.08.2008 and 25.08.2008 respectively. The said Powers of Attorney being irrevocable, the same cannot be cancelled unilaterally. Hence the cancellation are void and of no legal effect.

17. Para 8 of the plaint is denied. The sale deed Nos. 1126/2008, 1127/2008 and 1201/2008 were executed by the 1st defendant on the strength of the Powers of Attorney under the circumstances stated in para 5 to 12 (Supra). Defendants 2 & 3 who are the vendees, are in possession of properties pursuant to the Sale Deeds. There was no conspiracy on the part of the defendants. The defendants have not committed any of the criminal offences mentioned in para 8 of the plaint. The allegations are nothing but cruel acts of ingratitude for the thankless jobs done by the 1st defendant for the benefit of the plaintiffs out of humanitarian considerations with the good intention of lending a helping hand to his brother and sister-in-law who were about to fall in the lurch."

11. As far as Sri.Rafi, the second defendant, is concerned, his written statement contained the following assertions:

"8. Para 11 of the plaint is not fully correct. The Sale Deeds 1126/2008 and 1127/2008 are perfectly valid and not void. The deeds are executed for valid consideration. There was no criminal conspiracy or fraud played by this defendant in executing the documents. This suit is the outcome of conspiracy and fraud by the plaintiffs and first defendant. This defendant enquired about the Powers of Attorney executed by the plaintiffs in favour of the first defendant and convinced that powers of attorneys are valid and in force when got the deeds executed and registered. This defendant paid sale consideration to the first defendant.

11. The sale deeds in favour of the second defendant is not a fraudulent transaction. The second defendant is not a name lender. After the amendment in the Registration rules, photos of vendors, vendees and Powers of Attorney are necessary for the purpose of registration. The plaintiffs purchased the stamp papers affixed their photos, with thumb impression and sent it for the purpose of registration. The facing sheets of the documents bears a different date is of no consequence. The remaining stamp papers used for the purpose of execution of the Sale Deeds in favour of this defendant is purchased by the second defendant on 10.07.2008. The pleading that the validity of stamp papers purchased on 25.10.2007 expires on 24.10.2007 is on a misconception of law. The pleading that the thumb impression in the stamp papers obtained on 5.11.2007 is false hence denied. There is access to the property purchased by this defendant

from the northern bund and western lane. There is no need to use others property for the access to the property purchased by this defendant. The Powers of attorney are irrevocable. The alleged revocation is not having any legal force at all. The right of pathway is not depending on the recitals in the sale deed No.1126/08 and 1127/08. That is a statutory right.

12. This defendant is a bonafide purchaser with valuable consideration. This defendant believed the first defendant, the Power of Attorney holder of the plaintiff that he has the authority to execute deeds as Power of Attorney holder to got the Sale Deeds executed. This defendant enquired about the Powers of Attorney and convinced that the Powers of Attorney were in force and purchased the property for valuable consideration. The first defendant has the authority to act upon the Powers of Attorney.

13. Para 12 of the plaint is denied. The documents are not liable to be cancelled. No injury will be caused to the plaintiffs. The documents are valid. The plaintiffs are not entitled to get a declaration of title of plaint A and B schedules and recovery of possession. The plaintiffs already alienated their right over the schedule properties and the plaintiffs are not entitled to recover possession from this defendant. The plaintiffs are not entitled cost of the suit. This defendant is entitled to realise cost from the plaintiffs."

12. The third defendant - Sri.Sajeed refuted the plaint allegations through paragraphs 6 to 13 of his written statement, which are as below:

"6. It is true that, originally the plaint A and B schedule properties belonged to 1^{st} and 2^{nd} plaintiffs.

7. Para 3 of the plaint is not correct and hence denied. 1^{st} defendant has explained the truth against all allegations of the above said paragraph in his written statement, and this defendant adopts it.

8. Paragraph 4 of the plaint is denied. First defendant has explained the truth of such allegations made by the plaintiffs and the same statement is adopted by this defendant.

9. The allegations and accounts shown in paragraph 5 of the plaint are denied. First defendant has given proper explanation for these allegations and accounts in his written statement, which may be adopted by this defendant also.

> 10. All the allegations stated in paragraph six of the plaint are false, frivolous and vexatious and hence denied. The first defendant has explained the truth against, all such allegations in the written statement of 1st defendant, which may be adopted as the statement of this defendant also.
>
> 11. Paragraph 7 to 11 of the plaint are denied. All the allegations in paragraph 7 to 11 are false and untrue statements made without bonafides. First defendant has explained, against all such allegations in his written statement, and this defendant also adopts the same contentions against such allegations. This defendant has given proper consideration and has proper source for giving consideration.
>
> 12. Paragraph 12 to last are denied. This defendant is a bonafide purchaser with consideration and without notice of any encumbrances and hence this defendant is the owner in possession of the property as per the sale deed No.1201/2008 and ever since the date of sale this defendant is in possession and enjoyment of the plaint B(a) schedule property as full owner. Plaintiffs do not have any right, title or interest in the said immovable property and hence plaintiffs have no right to challenge or set aside the sale deed in favour of this defendant or to recover possession from this defendant.
>
> 13. First defendant got an equitable assignment of the whole plaint schedule property by way of the alleged power of attorney, which is irrevocable and the allegation that it is revoked before the sale deed is also a false and frivolous allegation. The sale deed in favour of the defendant took place on 28.07.2008 and the revocation is alleged on 30.07.2008 and that too was informed to first defendant only on 22.08.2008."

13. Subsequently, the plaintiffs amended the plaint to incorporate the avement that the Powers of Attorney dated 17.10.2007, issued to Sri.Shajideen, on the strength of which he had executed the Sale Deeds, stood superseded by two other Powers of Attorney issued by them on 24.10.2007 in his favour; and, therefore, that the Sale Deeds are void for such reason also.

14. These amendments to the plaint caused the defendants to file additional written statements asserting that the subsequent

Powers of Attorney would not invalidate or supersede the ones issued on 17.10.2007, since they are irrevocable, the Owners having assigned equitable interest in the properties to Sri.Shajideen through them.

15. The elaborate and lengthy findings of the Trial Court in the impugned judgment are broadly to the effect that (a) Sri.Shajideen has misused the Powers of Attorney dated 17.10.2007, as also the stamp papers entrusted to him by the Owners to illegally execute the Sale Deeds; (b) the Sale Deeds are void since they are supported by no consideration; (c) the Sale Deeds were executed to defraud the Owners; (d) that the Buyers are not bonafide purchasers and that they have acted in collaboration with Sri.Shajideen to illegally create the Sale Deeds; (e) that the Sale Deeds are bad in law because it is the result of fraud committed against the Owners, thus liable to be set aside; and (f) consequently, that no rights over the properties can be claimed by the Buyers.

16. Two among the three Sale Deeds in question, namely, Document Nos.1126/2008 and 1127/2008 of the Vithura Sub Registrar Office, were executed by Sri.Shajideen in favour of Sri.Rafi and they have been marked on record as Exhibits B26 and B27 (their copies also being marked as Exhibits A11 and A12). The third Sale

Deed, namely, Document No.1201/2008 of the Vithura Sub Registrar Office, executed by Sri.Shajideen in favour of Sri.Sajeed, was marked as Exhibit B34 (its copy also being marked as Exhibit A13). These deeds will hereinafter be referred to collectively as the 'Sale Deeds' for ease.

17. The Powers of Attorney involved in these cases, namely, those executed by the Owners on 17.10.2007, have been marked as Exhibit B39 (executed by Sri.Basheer) and Exhibit B11 (executed by Smt.Indira Basheer), the copy of which is also on record as Exhibit A6. Coming to the Powers of Attorney dated 24.10.2007, the one executed by Sri.Basheer is marked as Exhibit B12 (the copy of which is produced and marked by the Owners as Exhibit A8); while, the original of the one executed by Smt.Indira Basheer was not produced by the defendants, but its copy was marked as Exhibit A7 at the instance of the Owners.

18. The plaint schedule properties are two in number, namely:

(a) Plain A schedule property, comprising of 1 Acre 76 Cents owned by Sri.Basheer.

(b) Plain B schedule property, comprising of 5 Acres 43 Cents owned by Smt.Indira Basheer.

19. As per Exhibits B26 and B27 Sale Deeds, the entire plaint A schedule property and a portion of plaint B schedule property, comprising of 230 cents, were assigned to Sri.Rafi; while through Exhibit B34 Sale Deed, the balance of plaint B schedule property, namely 313 cents, was assigned to Sri.Sajeed.

20. As is ineluctable from the afore extracted plaint averments, the gravamen of the allegations of the Owners is that their Power of Attorney - Sri.Shajideen, illegally and maliciously used the Stamp Papers entrusted to him by them on 05.11.2007, to execute three Sale Deeds on 10.07.2008 and 28.07.2008 in collaboration with the Buyers and that, therefore, they are void. It is also their specific contention that the Powers of Attorney issued by them on 17.10.2007 stood superseded by the subsequent Powers of Attorney dated 24.10.2007 and, therefore, that the Sale Deeds, executed on the strength of such superseded Powers of Attorney, are void. They further allege that even though they had asked Sri.Shajideen, thereafter, not to sell the properties, he refused to return the Powers of Attorney and the Stamp Papers and, therefore, that they were constrained to cancel the Powers of Attorney through two Revocation Deeds on 22.07.2008 and 30.07.2008, the copies of which have been marked as Exhibits B23 and B3 respectively.

21. As said above, these allegations of the Owners found favour with the Trial Court and hence they obtain my closest attention. All other allegations and counter allegations are corollary to this, since, if this Court is to find otherwise, the fate of this litigation would be very different from the one concluded by the Trial Court.

22. I have heard Sri.S.Sreekumar, learned Senior Counsel, instructed by Sri.Pirappancode V.S.Sudheer, learned counsel for Sri.Shajideen; Sri.R.S.Kalkura, learned counsel for the Buyers and Sri.Ajith Prabhav, learned counsel for the Owners.

23. Sri.S.Sreekumar, learned Senior Counsel for Sri.Shajideen, started his submissions pointing out that the available evidence will indubitably show that his client had been requested and authorised by Sri.Basheer, who is residing with his wife at Bahrain, to pay off the latter's liabilities to various Financial Institutions and Banks, for which purpose, various Powers of Attorney - apart from the Powers of Attorney used to execute the Sale Deeds - had been issued by them even in the past. He showed me Exhibits B37 and B38 Powers of Attorney in substantiation and explained that his client has thus paid large amounts from his own pocket to settle the liabilities of the Owners - as is evident from Exhibits B5 to B5(g) letter and receipts.

He then submitted that since there were several other liabilities for the Owners and since his client had already expended substantial amounts, they requested him to help them to sell the plaint schedule properties, towards which, they invited him to Bahrain in November 2007, as is proved by Exhibits B21 to B21(b) Cash Memos and Traveller's Cheques. He says that his client thus travelled to Bahrain, when Sri.Basheer and Smt.Indira Basheer gave him two Powers of Attorney, both dated 17.10.2007, namely Exhibits B39 and B11 (copy of the latter is Exhibit A6), authorising him to sell the properties; admitting that two more Powers of Attorney, both dated 24.10.2007, were also issued by Sri.Basheer and Smt.Indira Basheer (the original of the former being marked as Exhibits B12; while the copy of the latter being marked as Exhibit A7). He submits that in addition, Smt.Indira Basheer also issued Exhibit B18 special Power of Attorney dated 14.01.2008 to his client, so as to enable him to obtain the title documents from State Bank of India, Kilimanoor Branch.

24. Sri.S.Sreekumar, learned Senior Counsel, thereafter, submitted that the available evidence demonstrates that his client was then trying to find out prospective Buyers for the properties and that, while so, the Owners sent him a letter dated 28.04.2008 - which is marked as Exhibit B2 through Smt.Indira Basheer, while she

testified as PW1, through confrontation - enclosing Exhibit A10 cheque for Rs.15,00,000/-, asking him to pay the said amount in the manner stated therein, to three persons, namely, Sri.Sajeed - the third defendant, Sri.Japamani - the fourth defendant and a certain Sri.Chandran Nair. He asserts that these amounts were so paid, as proved through the receipts issued by the said persons on 10.05.2008, copies of which are marked as Exhibit B10 series.

25. The learned Senior counsel thus argues that the allegation of the Owners in the plaint, that the afore amount of Rs.15 lakhs was paid to his client to terminate an alleged agreement for sale, entered into by him with an 'employee of the VSSC', has been wholly established to be untrue and that this money was, in fact, paid by his client as instructed by them in the above said manner.

26. Coming to the Sale Deeds, namely Exhibits B26, B27 and B34, Sri.S.Sreekumar argues that the oral evidence of his client, while he was examined as DW1, establishes that after he received Exhibit B2 letter from Sri.Basheer - in which it is also stated that the plaint schedule properties can be sold for Rs.20 lakhs or even lower and that the sale consideration may be adjusted against the amounts expended by him on their behalf - he identified the Buyers and entered into sale agreements with them in May 2008. He then asserts

that on informing the Owners of the said sale agreements, they sent three Stamp Papers, affixing their photos and signatures, to his client in June 2008, so as to fructify the deal; finally leading to execution of the Sale Deeds on 10.07.2008 and 28.07.2008, which were attested by DW4 - Sri.Japamani, the employee of the Owners as a witness and that he, thereupon, adjusted the total sale consideration of Rs.16.95 lakhs against the amounts owed to him from the Owners. He added to this by saying that an amount of Rs.22,17,257/- was still due from the Owners, for which his client filed O.S.No.103//2008 before the Sub Court, Thiruvananthapuram, but which was later withdrawn.

27. After saying as above, Sri.S.Sreekumar proceeded to vehemently submit that the afore chain of events thus show that his client had acted faithfully and sincerely on behalf of the Owners and was able to obtain the highest price for the properties, which is established through Exhibits B16 and B17 sale deeds of comparable properties in the same locality, which, in fact, records lower sale consideration. He then stringently accused the Owners in having, thereafter, issued Exhibits B3 and B23 - to purportedly cancel the Powers of Attorney dated 17.10.2008 and 24.10.2008 - after the sale of the properties had been completed, as grossly being malafide; but asserted that this would not affect the Sale Deeds. However, to a

pointed question, the learned Senior Counsel admitted that the factum of the sale agreements in May 2008 with the Buyers has not been stated in the written statement of his client; but still arguing that he is still entitled to lead evidence with respect to such; and adding to this by contending that since the Owners have alleged fraud in the sale transaction, even while admitting execution of the Sale Deeds, the burden is on them to prove it.

28. Sri.R.S.Kalkura, learned counsel for the Buyers - defendants 2 and 3 - largely travelled along with Sri.S.Sreekumar in his submissions, however, adding that his clients are bonafide purchasers of the plaint schedule properties, without notice of any dispute between the Owners and Sri.Shajideen; and therefore, that the Trial Court has erred in setting aside Exhibits B26, B27 and B34 Sale Deeds. He then affirmed that it is the specific case of his clients that sale agreements had been entered into by them with Sri.Shajideen in May 2008; but conceding that neither are such averments contained in their respective written statements, nor have the said agreements been placed on record, explaining that they destroyed them after the Sale Deeds had been executed. He submitted that his clients have clearly spoken thus in their testimonies, while they were examined as DW2 and DW3 respectively.

He attempted to fortify his contentions by arguing that since the attesting witness in the Sale Deeds was Sri.Japamani - the fourth defendant, who is the employee of the Owners and since his testimony to such effect remains unimpeached, the Owners cannot now allege that the Sale Deeds are void or in any manner vitiated on account of fraud.

29. In response to the afore submissions of Sri.S.Sreekumar and Sri.R.S.Kalkura and in support of the impugned judgment and decree, Sri.Ajith Prabhav, learned counsel for the Owners, predicated that the Trial Court can never be found in error, since the concatenated instances of fraud involved in this case, leading to execution of the Sale Deeds, would only impel any court to find them to be vitiated and void. He then detailed the instances of fraud which, according to him, are evident and discernible from the pleadings, evidence and documents on record, as will be presently recorded; but first pointed out that the foundations of the case of Sri.Shajideen and the Buyers - built solely on Exhibits B2, B6 and B10 series - are rendered without any legal support, since these documents have been marked only subject to proof, but have not been, thereafter, proved in any manner by them. He contends that Exhibit B2 letter - produced through Smt.Indira Basheer by confronting her while she deposed as

PW1 - is a fabricated one, without Sri.Basheer's signature on it and, therefore, that the Trial Court has rightly refused to accept it. He adds to this saying that, as is manifest from the testimony of PW2, she did not admit the contents of Exhibit B2, but only said that the letterhead on which it is printed belongs to the company of her husband, thus asserting that the said document is inadmissible in the absence of any proof having been lead by Sri.Shajideen - the second defendant.

30. Then, turning to Exhibit B6 letter and Exhibit B10 series receipts, Sri.Ajith Prabhav submitted that these have been produced by Sri.Shajideen and marked through him, but that they obtain no probative value - having been marked subject to proof - being only copies. He further submitted that the originals of Exhibit B10 series receipts can only be with Sri.Shajideen, but that he has not explained in his testimony, while examined as DW1, as to why the same were not produced. To bolster this argument, Sri.Ajith Prabhav showed me that two among the receipts in Exhibit B10 series are seen to be issued by the third defendant - Sri.Sajeed and the fourth defendant - Sri.Japamani, but that even when they were examined as DW3 and DW4, Sri.Shajideen did not even call their attention to the said receipts nor was any question on them put to the witnesses. He,

consequently, contends that Exhibit B10 series receipts cannot be even looked into and that the Trial Court has acted correctly in discarding them.

31. That said, the instances of fraud, allegedly committed by the defendants, as enumerated by Sri.Ajith Prabhav, to contend that the Sale Deeds are void and to sustain the impugned judgment are as under:

(a) Even when the Owners specifically pleaded that the photographs and thumb impressions of theirs were pasted and affixed on the Stamp Papers issued to execute the Sale Deeds on 05.11.2007, none of the defendants denied this in their respective written statements.

(b) The case of Sri.Shajideen that he obtained the Stamp Papers only in June 2008 is unbelievable from his own pleadings and deposition.

(c) Exhibit B27 Sale Deed of the property belonging to Smt.Indira Basheer has been registered on the strength of the Power of Attorney of Sri.Basheer, as is clear from the declarations of the Sub Registrar on it and, therefore, that it is fraudulently created.

(d) The Identity Cards of the Owners were not given by them to Sri.Shajideen, which is also admitted by him, but still the Sale

Deeds were managed to be executed by him. Similarly, the details of the Identity Cards of the Buyers are also not given in the Sale Deeds; thus rendering them vitiated for violation of Section 32A of the Registration Act and Rule 72A of the Registration Rules.

(e) Sri.Rafi, in his deposition as DW2 also admits that he had not seen the Identity Cards of the Owners.

(f) Sri.Shajideen has not handed over to the Buyers the prior title deeds of the properties nor the Powers of Attorney, based on which the Sale Deeds had been registered.

(g) The Buyers have collaborated with Sri.Shajideen and Sri.Sajeed, as DW3, admits that he did what was told to him by Sri.Shajideen. Further, both Buyers have admitted in their respective testimony as DW2 and DW3, that they had not seen any of the due diligence documents like Possession Certificates, Encumbrance Certificates or the original of the title documents of Sri.Basheer; thus that they are mere name lenders to the fraudulent sale.

(h) Even after the Owners had issued new Powers of Attorney on 24.10.2007, namely Exhibits A7 and B12, the defendants used the old Power of Attorney dated 17.10.2007 of Sri.Basheer, namely Exhibit B39, to execute the Sale Deeds.

(i) The Buyers and Sri.Shajideen have no case in their written statements that sale agreements had been entered between them in May 2008; and further that they admit in their depositions that Stamp Papers for such purpose had not been purchased.

(j) The Buyers have not been able to speak about the lie and nature of the properties or about their location and other details, when they were testified.

(k) The Buyers have been unable to explain their source of funds to pay Sri.Shajideen under the Sale Deeds, when they deposed as DW2 and DW3.

(l) Sri.Sajeed, as DW3, admitted that he was not in good terms with the Owners and that he executed the Sale Deeds as per the instructions of Sri.Shajideen.

(m) No sale consideration was shown to have been paid by the Buyers and hence the Sale Deeds are void under Section 15 of the Indian Contract Act.

32. I have carefully examined the pleadings and evidence available and have evaluated them on the touchstone of the submissions of the learned counsel recorded *ut supra*.

33. The upshot of the facts involved and admitted by the parties make it limpid that the specific assertion of Sri.Shajideen is

that he had been asked by the Owners to sell the plaint schedule properties so as to pay off their liabilities, including the amounts owed by them to him; and that for such purpose, Exhibits B11 and B39 Powers of Attorney, both dated 17.10.2007, had been executed by them. It is also clear from his own admissions in evidence and his pleadings that he received Exhibit B2 letter from Sri.Basheer, along with Exhibit A10 cheque for Rs.15 lakhs enclosed with it, instructing him to encash it and use the proceeds to pay Rs.5 lakhs to Sajeed - the second defendant; Rs.2 lakhs to Sri.Japamani - the fourth defendant; Rs.3 lakhs to Sri.Chandran Nair; while the balance Rs.5 lakhs was allowed to be appropriated to his old dues. He then says that these amounts were thus paid and produced Exhibit B10 series receipts in substantiation, along with Exhibit B6 letter, purportedly issued by Sri.Basheer, which is also unsigned but bearing the alphabets 'AMB', which he says is short for 'A.M.Basheer'. This letter has been produced and attempted to be put in evidence by Sri.Shajideen in an effort to show that Sri.Basheer never signs his letters but only inscribes the alphabets 'AMB', thus to establish that Exhibit B2 letter is genuine, though not signed by Sri.Basheer, since it has the same alphabets 'AMB' printed in it.

34. The above being said, Exhibit B2 letter is absolutely vital to the case of Sri.Shajideen because, even according to him, he had executed the Sale Deeds solely based on the instructions contained in it, that he can sell the plaint schedule properties for a price less than Rs.20 lakhs and appropriate the entire sale consideration to his old dues. It is on such foundational assertion that Sri.Shajideen says that he entered into sale agreements with the Buyers in May 2008, on the basis of which the Owners, when so informed, sent him three Stamp Papers, with their respective photos and thumb impressions, so as to enable him to use them for executing and registering the Sale Deeds.

35. Pertinently, as already seen above, the Buyers also affirm in their depositions that sale agreements had been entered into by them with Sri.Shajideen in May 2008, but asserting that they were destroyed after the Sale Deeds had been registered.

36. Incredulously, however, even when the plaint averments of the Owners were to the specific effect that the Stamp Papers, used as the first pages of the Sale Deeds, were given to Sri.Shajideen in November 2011 and that they had affixed their photographs and thumb impressions on them on 05.11.2007, resultant to which Sri.Shajideen informed them that he had identified and entered into a sale agreement with an 'employee of the VSSC' to buy the plaint

schedule properties for Rs.1.5 crores, he chose to file his written statement (as extracted in paragraph 10 above) evasively, without specifically answering these and without mentioning anything about Exhibits B2 and B6 letters or Exhibit B10 series receipts, but admitting in paragraph 13 thereof that Rs.15 lakhs had been paid to him by the Owners, thus rendering Exhibit B10 series receipts virtually without legs to stand on.

37. Ineffably, even though clearly alerted of the afore allegations through the plaint, neither Sri.Shajideen nor the Buyers disclosed in their written statements that sale agreements had been entered into by them in May 2008. Still, surprisingly, in answer to the specific allegation in the plaint that the Stamp Papers, used to prepare the front pages of the Sale Deeds, were given to Sri.Shajideen in November 2007, his response in his written statement was to evasively deny this, but without explaining when and how else he got these papers.

38. This crucial aspect is, of course, sought to be explained by Sri.S.Sreekumar, learned Senior counsel and Sri.R.S.Kalkura by asserting that even in the absence of any pleadings, their clients were entitled to lead oral evidence and that since they have so stated in their depositions, this Court must accept their version.

39. I am afraid that I am unable to accede to this argument, since it is now well established in law that mere letting in of oral evidence on a plea never raised or pleaded would obtain no jural support. This is more so because, the alleged execution of the sale agreements in May 2008 is the pivot on which the case of Sri.Shajideen and the Buyers turns; and their common, but conspicuous, omission to mention about them in their pleadings can only be taken to mean that their deposition to such extent are unbelievable and lacking in rectitude.

40. Thus, once the claim of execution of the sale agreements in May 2008 is found to be without truth, the burden of Sri.Shajideen and the Buyers to establish that the Sale Deeds are genuine becomes manifold, since it is the singular assertion of Sri.Shajideen in his testimony that he had received the Stamp Papers, used as the first pages of the Sale Deeds, from the Owners in June 2008, after they were informed of the sale agreements in May 2008. This is particularly because, as seen several times before, the indubitable allegation of the Owners is that these papers were given by them to Sri.Shajideen in November 2007, when they were informed by him that he had agreed with 'one employee of the VSSC' to purchase the properties, after accepting an advance of Rs.30 lakhs. The further

allegation of the Owners is also to be read along with this because, according to them, Sri.Shajideen only paid Rs.10 lakhs, out of the aforesaid advance amount, to a Bank on their behalf and retained the balance Rs.20 lakhs with him, *albeit*, incorrectly informing them that he had paid off their other liabilities also; and therefore, that when the sale did not fructify, they issued him Exhibit A10 cheque for Rs.15 lakhs to pay back the advance received and in full and final settlement of the amounts spent by him.

41. The above averments of the Owners in the plaint is refuted by Sri.Shajideen relying on Exhibits B2 and B6 letters as also Exhibit B10 series receipts. However, the fact remains that mere marking of these documents would be of no avail, but Sri.Shajideen must establish its probative value before this Court can accept them as credible evidence, since all of them have been marked subject to proof. This is much more so, since, as seen above, Sri.Shajideen, in paragraph 13 of his written statement, admits receipt of Rs.15 lakhs from the Owners through Exhibit A10 cheque and this thus makes both Exhibit B2 letter and Exhibit B10 series receipts incapable of being accepted as genuine.

42. It is here that the submissions of Sri.Ajith Prabhav, learned counsel for the Owners, also assumes great significance and force.

43. As Sri.Ajith Prabhav points out, the contents of Exhibit B2 have not been admitted by Smt.Indira Basheer, when it was marked through her. She, as PW1, specifically stated that she does not admit the contents of Exhibit B2, but conceded that the letterhead on which it was printed belongs to the company owned by her husband. Further, it is deposed by Sri. Shajideen, as DW1, that he received Exhibit B2 letter, along with Exhibit A10 cheque for Rs.15 lakhs, which are both dated 29.04.2008, from the daughter of the Owners, who were in Bahrain then. After agreeing so, he admits in his deposition that Exhibit A10 cheque was presented for encashment on 29.04.2008 itself and it is, therefore, more probable that the case of the Owners in their plaint - that they issued the said cheque on 22.04.2008, post-dating it to 28.04.2008 - is true, because it would certainly take a few days for it to reach Kerala from Bahrain.

44. Viewed from this angle, it becomes highly improbable that Exhibit B2 could have been issued on 29.04.2008, as shown therein, since Sri.Shajideen unequivocally agrees that Exhibit A10 cheque and Exhibit B2 letter were received by him in the same cover. Added to this, even though he stated in his deposition that the cover containing Exhibit B2 letter and Exhibit A10 cheque were delivered to him by one of the daughters of the Owners - who is his niece - he was unable

to name her or to even say if she was the elder or younger one. These certainly cast a cloud on the version of Sri.Shajideen, since he has no case that the date on Exhibit B2 had been put by the Owners deliberately as 29.04.2008 - though issued earlier - so as to defraud him, especially because, admittedly, the parties were in good terms then.

45. Further, the explanation of Sri.Shajideen offered as DW1, as to how the amount covered by Exhibit A10 cheque was used, is hinged solely on Exhibit B2 letter and Exhibit B10 series receipts. However, in the light of the express admission of Sri.Shajideen, in paragraph 13 of his written statement, that Rs.15 lakhs had been paid to him by the Owners through a cheque dated 29.04.2008, these fall flat. When he admits that he received the money towards his dues, his deposition that it was paid to defendants 2, 4 and Sri.Chandran Nair as per the instructions in Exhibit B2 letter becomes a blatant falsehood. For this reason alone, I will have to find both Exhibits B2 and B10 series to be fabricated or concocted and intended to misdirect the court. When I so hold, though no further assessment of the probative value of Exhibits B2 and B10 would become necessary, I still proceed to do so, *de hors* this vital factor, so as to dispel any doubt about this.

46. As I have noticed already, Exhibit B2 letter and Exhibit B10 series receipts have been marked only subject to proof. Two among Exhibit B10 series receipts are stated to be issued by defendants 2 and 4, but, as correctly submitted by Sri.Ajith Prabhav, their attention was not even called to these by Sri. Shajideen, while they were examined as DW2 and DW4 respectively; nor were their originals produced, even though they are stated to have been issued and received by Sri.Shajideen. The third receipt, also a copy, is stated to have been issued by a certain Sri.Chandran Nair, but no attempt was made to summon him or to mark its original through him. Clearly, therefore, Exhibit B10 receipts would, in any case, obtain no evidentiary value and were rightly discarded by the Trial Court.

47. Returning to Exhibit B2, it is admittedly an unsigned letter and Sri.Shajideen attempts to prove it having been issued by Sri.Basheer solely with the help of Exhibit B6 letter. Again, Exhibit B6 letter was marked subject to proof, but nothing was done by Sri.Shajideen to prove it, even by asking PW1 - Smt.Indira Basheer about it. Hence when Exhibit B6 letter and Exhibit B10 series receipts stand unproved, it is needless to say that Sri.Shajideen cannot seek to prove Exhibit B2 letter based on them, saying that the signature of Sri.Basheer is not available on Exhibit B6 either. Pertinently, apart

from this, Sri.Shajideen has not been able to lead any other evidence in support of Exhibit B2 letter and, consequently, it becomes, from all angles, incapable of being seen as a genuine document.

48. The necessary corollary is that the version of the Owners regarding Exhibit A10 cheque becomes wholly believable, since the explanation of Sri.Shajideen not merely fails to impress, but comes out as being deliberate falsity. Coupled with this, the fact that none of the defendants have pleaded about the agreements for sale in May 2008, firmly persuades this Court to believe the Owners that they had given the Stamp Papers, which are now the first pages of the Sale Deed, to Sri.Shajideen in November 2007 for the purpose of completing the sale of plaint schedule properties, as per the information given to them by him that he had executed an agreement with an 'employee of the VSSC'.

49. Moreover, once Exhibit B2 letter stands exposed as being not genuine, the conduct of Sri.Shajideen in having executed the Sale Deeds for a low figure of Rs.16.95 lakhs and in asserting to have appropriated the same to himself, against the amounts allegedly expended by him on behalf of the Owners, becomes stooped in suspicion, which then justifies its transmutation into a conclusive finding of fraud because it is admitted by him in his pleadings and

deposition that when the Sale Deeds were executed, Smt.Indira Basheer was available in Thiruvananthapuram. This is manifest from paragraph 11 of his written statement, wherein he clearly says Smt.Indira Basheer was in station on the dates of execution of the Sale Deeds, but in his deposition he said that he came to be aware that she was at Thiruvananthapuram two days later. The attempt to retract from the admission in the written statement during his deposition establishes the malice involved on the part of Sri.Shajideen and proves that the Owners were never informed of his intent to sell the plaint schedule properties to the Buyers at any time, since, otherwise, Smt.Indira Basheer ought to have been involved in the sale process when she was available in Thiruvananthapuram.

50. I must, however, before moving forward, meet the contention of Sri.S.Sreekumar that the Owners have not discharged their burden of proving fraud in the transaction and that it cannot be shifted to the shoulders of his client.

51. The afore contention loses steam when one understands that the relationship of Sri.Shajideen as the Power of Attorney Holder of the Owner is one of 'active confidence' as engrained in Section 111 of the Indian Evidence Act. In **Krishna Mohan Kul @ Nani Charan Kul & Anr. v. Pratima Maity & Ors** ((2004) 9 SCC 468) , Agents,

Trustees, Executors, an Administrator and Others have been held to fall within this section. The Hon'ble Court, thereupon, declared that: '*When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence*'.

52. The afore view has found approval in all subsequent judgments, a couple of them being **Anil Rishi v. Gurbaksh Singh** ((2006) 5 SCC 558) and **Pratima Chowdhury v. Kalpana Mukherjee and Ors.** ((2014) 4 SCC 196). In **Anil Rishi** (supra), the Hon'ble Court has ingeminatingly held that: '*Section 111 of the Evidence Act will apply when the bona fides of a transaction is in question but not when the real nature thereof is in question. The*

words `active confidence' indicate that the relationship between the parties must be such that one is bound to protect the interests of the other'.

53. I, consequently, affirm the findings of the Trial Court on these issues.

54. The sole surviving aspects in these matters are if the Sale Deeds are still valid; if any fraud or fault can be attributed to the Buyers; if they have collaborated with Sri.Shajideen in bringing forth the Sale Deeds illegally; and, if they can obtain the benefit of being bonafide purchasers for consideration.

55. When I embark upon the afore inquiry the words of the Hon'ble Supreme Court in **C.Abdul Shukoor Saheb v. Arji Papa Rao (deceased), heirs and LRs** (AIR 1963 SC 1150) must guide my path. The Hon'ble Court, though speaking in the context of Section 53 of the TP Act, has stated the law conclusively that when fraud on the part of the transferor is established, the transferee must establish that he was not a party to the fraudulent design of the transferor and that he took the sale honestly believing that the transfer was in the ordinary and normal course of business. As I said, even though these have been stated in cases of fraudulent transfer by the Owner to defeat or delay his creditors, it applies generally to all transferees

who claim to be bonafide. A learned Division Bench of this Court also followed this view in **Krishnamenon v. Pradeep Kumar** (2017 (1) KLT 429), holding again in the context of Section 53 of the TP Act, that once fraud was established from the side of the transferor, the burden to prove that he is not a party to the design of the transferor, shits to the transferee.

56. In this case, the first hurdle that the Buyers will have to clear is the factum of them having not stated in their pleadings regarding the alleged sale agreements of May, 2008. Even when they testified as DW2 and DW3, they offered no explanation why this was not pleaded by them, but still took the same stand as Sri.Shajideen that the said agreements had been destroyed. This certainly leads to the strong suspicion of their collaboration with Sri.Shajideen, since, not merely do all of them speak with the same voice, but the Sale Deeds do not contain any recital of such agreement or of any advance consideration having been paid in May 2008. On the contrary, the Sale Deeds expressly say that the entire consideration had been paid on the date on which they were executed, persuading me firmly to the impression that the story of prior sale agreements is without truth and that the Buyers have chosen to depose incorrectly in furtherance of their scheme, in complot with Sri.Shajideen.

57. The afore suspicion and impression of mine become fortified by the testimony of Sri.Rafi, as DW2, when he first stated, in page 20 thereof, that he had paid Rs.5 lakhs as advance sale consideration; but later resiled from this and said, in page 23, that he had withdrawn Rs.2 lakhs from his bank account on 23.05.2008, being the date of the alleged agreement, to pay the advance to Sri.Shajideen, relying on Exhibit B30 bank statement to show this. This inconsistency in the testimony cannot be taken lightly, since the Sale Deeds contain recitals to the effect that the total sale considerations under them were paid on the date on which they were executed, namely on 10.07.2008 and 28.07.2008 and Sri.Rafi, as DW2, also stated so affirmatively in his deposition.

58. To make it worse, both DW1 and DW2 concede in their depositions that no stamp paper for the purpose of the sale agreements in May 2008 had been purchased in their names (see page 49 of the deposition of DW1 and pages 19, 26 and 27 of DW2), thus rendering it more clear that such agreements had never been entered into. Once it thus becomes certain that no sale agreements had been entered into by the second and third defendants with Sri.Shajideen in May 2008, the suspicion regarding the circumstances with respect to the Sale Deeds also become strengthened on account

of the vitiating factors pleaded by Sri.Ajith Prabhav, recorded in paragraph 31 above. This is because, as rightly stated by him, Exhibits B27 and B34 Sale Deeds executed on behalf of Smt.Indira Basheer is certified by the Sub Registrar on the reverse side of its first pages, to have been registered based on Exhibit B39 Power of Attorney issued by Sri.Basheer on 17.10.2007. Sri.Ajith Prabhav argues that this was done to avoid stamp duty and that this itself vitiates the document.

59. Sri.Ajith Prabhav also has a contention, as recorded above, that the Sale Deeds are also void, since they have been registered based on the Power of Attorney of Sri.Basheer dated 17.10.2007, namely, Exhibits B11, though it was superseded by the second set of Powers of Attorney executed by the Owners on 24.10.2007, namely Exhibits A7 and B12. According to him, once the second set of Powers of Attorney had been executed, the first ones are automatically revoked on account of the operation of law.

60. I find considerable force in the afore two contentions impelled by Sri.Ajith Prabhav, since it is without any doubt that Exhibits B27 and B34 have been certified by the Sub Registrar to be executed on the strength of the Power of Attorney issued by Sri.Basheer. There is a justified cause for the Owners to plead that

this was done to avoid stamp duty, since otherwise, a much higher duty would have been attracted had Exhibit B11 or Exhibit A7 Powers of Attorney of Smt.Indira Basheer had been used, since Sri.Shajideen is only her brother-in-law, thus the Sale Deeds executed on its basis being not entitled to the lesser duty under the Kerala Stamp Act. This is ineluctable from the Full Bench judgment of this Court in **Abdul Muneer v. Sub Registrar** (2018 (1) KLT 238).

61. Further, once Exhibits A7 and B12 Powers of Attorney had been issued by the Owners on 24.10.2007, their earlier Powers of Attorney dated 17.10.2007 could not have normally been used by Sri.Shajideen, though I could have given some benefit of doubt to the Buyers on this issue, if it had been shown by them that they were not aware of the latter Powers of Attorney. However, as rightly argued by Sri.Ajith Prabhav, the Buyers have expressly admitted that they were aware of the Powers of Attorney dated 24.10.2007, but contended that these would not operate to revoke the earlier ones dated 17.10.2007. Relevantly, the Buyers speak in unreserved unison with Sri.Shajideen to assert that the Powers of Attorney dated 17.10.2007, namely Exhibits B39 and B11 are 'irrevocable' since they assign equitable interest in the plaint schedule properties to Sri.Shajideen and, therefore, that even when the subsequent Powers of Attorney,

namely Exhibits B12 and A7, had been issued by the Owners, the former ones remained in tact.

62. There is yet another aspect with respect to the Powers of Attorney dated 24.10.2007, which is absolutely relevant to be borne in mind at this time. The records reveal that the Owners had filed I.A.No.141/2015 asking Sri.Shajideen to produce the originals of both sets of Powers of Attorney dated 17.10.2007 and 24.10.2007. It is thus that the originals of the Powers of Attorney dated 17.10.2007 were marked as Exhibits B11 and B39; while the original of the Power of Attorney issued by Sri.Basheer on 24.10.2007 was marked as Exhibit B12. However, the original Power of Attorney of Smt.Indira Basheer dated 24.10.2007, was not produced, and, therefore, its copy was marked as Exhibit A7 from the side of the Owners. Even though Exhibit A7 is only a copy, it can be fully used in evidence because this document is unequivocally admitted by the defendants in their pleadings without any reservation, as is apodictic from the written statement of Sri.Shajideen and the additional written statements of Sri.Rafi and Sri.Sajeed (see paragraph 2 of the additional written statement of Sri.Rafi and paragraph 3 of the additional written statement of Sri.Sajeed, where execution of Exhibit A7 is fully admitted).

63. After thus admitting Exhibits A7 and A39 Powers of Attorney dated 24.10.2007, the Buyerss plead and assert that they do not operate to automatically revoke the earlier Powers of Attorney dated 17.10.2007, since the latter ones are 'irrevocable' because the Owners have granted equitable interest over the plaint schedule properties to Sri.Shajideen through them. I have, therefore, closely examined all the four Powers of Attorney. Even though each of them has headings 'Irrevocable Power of Attorney', its contents make it absolutely certain that no attribute or element of irrevocability is available therein. In fact, even Sri.S.Sreekumar, learned Senior Counsel, has been unable to show me how, in law, these Powers of Attorney can be stated to be irrevocable since its contents show no assignment of any interest, be that equitable or otherwise, over the plaint schedule properties to Sri.Shajideen. The Powers of Attorney only authorise Sri.Shajideen to sell the properties on behalf of the Owners, but without any other interest or benefit reserved to him. Crucially, they do even not permit him to retain or adjust the sale consideration; and as his own testimony shows, Sri.Shajideen claims such a right based only on the afore mentioned Exhibit B2 letter and not on the strength of Exhibit B11 or Exhibit B39 Powers of Attorney dated 17.10.2007.

64. Obviously, therefore, when Exhibits B11 and B39 Powers of Attorney are thus found to be not 'irrevocable', the subsequent Powers of Attorney dated 24.10.2007, namely Exhibits A7 and B12 - which, admittedly, were issued on account of a mistake in Exhibit B11 Power of Attorney dated 17.10.2007 of Smt.Indira Basheer, wherein Sri.Shajideen was described to be her brother and not her brother-in-law - would certainly operate to constructively revoke the former ones, if not expressly. This is more so because, none of the defendants explain why the first set of Powers of Attorney had been used to register the Sale Deeds when Sri.Shajideen was concededly in possession of the second sets. I can only, therefore, find in favour of the Owners that the Sale Deeds could not have been registered on the strength of the first set of Powers of Attorney.

65. Still further, the depositions of DW2 and DW3 - the Buyers - as also that of DW1 - Sri.Shajideen show that one of the Identity Cards of the Buyers, as required under Rule 72A of the Kerala Stamp Rules, had been presented before the SRO at the time when the Sale Deeds were registered. In fact, Sri.Shajideen, as DW1, admits in page 32 of his deposition that he had not, at any time, obtained any Identity Card from the Owners and Sri.Rafi, as DW2, conceded that he had not even seen the same. This, therefore, certainly probabilises the

allegation of the Owners, as available from the testimony of PW1, that the then SRO was also acting illegally so as to help the defendants, though I cannot hold so affirmatively since the said officer has not been summoned or examined.

66. However, this makes it no easier for the defendants because both the Buyers, when they testified as DW2 and DW3, admitted that the Sale Deeds in their favour, do not contain the particulars of their Identity Cards either; and, to make it worse, DW2 said that the Sub Registrar is a man, when the deeds show it to be a woman, even though he asserted that he was present when the same were registered.

67. Further, registration of the Sale Deeds in violation of Section 32A of the Registration Act and Rule 72A of the Rules, which make it incumbent on the Registering Officer to call for and examine one of the identity cards as enumerated in the said Rule, go a long way to demonstrate the fraud involved, as has been declared by this Court in **Joseph George v. State of Kerala and Others** (2017 (4) KHC 948) and **Latif Estate Line India Ltd. v. Hadeeja Ammal and Others** (2011 KHC 2273).

68. In addition, when Sri.Rafi, as DW2, was specifically asked about the details of the plaint schedule properties purchased by him

through the Sale Deeds, he was unable to offer proper answers, as are evident from pages 5, 6, 7, 27, 28 and 29 of his deposition; nor did he know about a shed bearing a valid building number situated therein, in which the fourth defendant was residing.

69. Curiously, the Buyers have also been unable to show how the sale price had been paid to Sri.Shajideen, except that it was paid in cash. On his part, Sri.Shajideen, as DW1, failed to show how he received the sale consideration and how he had adjusted it, save by saying that he got it and did so in cash. This indubitably establishes the scant regard for law by the defendants, since the various fiscal laws in force, including the Income Tax Act, prohibit transactions as large as the sale consideration shown in the Sale Deeds, in cash. There is, however, no explication on this offered by the defendants and this, juxtaposed by the fact that Sri.Shajideen claims to have adjusted the entire sale price against the alleged dues owed by the Owners, certainly justifies the conclusion of the Trial Court that the Sale Deeds are without valid consideration and hence null and void.

70. At this juncture, the source of funds of the Buyers become very important to consider, since it is now well recognised that the safest guide for the assessment of the validity of a sale deed - in the face of it being alleged not supported by no or inadequate

consideration - is to evaluate the financial capacity of the Buyer (see **Suresh v. Tobin** (2013 (1) KLT 293) and **Ayisha v. Abdul Nassar** (2015 (4) KLT SN 22). Sri.Rafi, as DW2, deposed that he was working as a Medical Representative with an annual income of Rs.1,55,569/-. He also produced Exhibit B29 Income Tax Statement and Exhibit B30 Bank Statement to prove his source. In Exhibit B30, there is an entry relating to withdrawal of Rs.2 lakhs on 23.05.2008, which, DW2 said, was the advance paid, but as I have already seen above, this has come out to be incorrect. Apart from this, no withdrawals for the sale consideration is seen when the Sale Deeds were executed and DW2 asserts that he obtained the money from other sources in cash, but without leading any proof on it. As far as DW3 - Sri.Sajeed is concerned, his deposition would, in fact, only prove that he had no source whatsoever. In Exhibit B34 Sale Deed, he is described as a farmer, though in his testimony as DW3, he claims to be a 'Freelance Model Maker' (*sic*). He claimed to be a graduate in Commerce and stated that he had no property or residential house; further admitting, in page 7, that his address in the Sale Deeds is that of the daughter of the Owners. No document to show his income was produced, except a statement of his account with Federal Bank, which had no substantial balance. He also admitted that he had filed no Income Tax Returns (see pages 7 and 8 of the deposition).

71. It is thus luculent that neither of the Buyers have been able to establish or to even show satisfactorily that they had adequate source or income to pay the sale consideration. This aspect is more relevant in the facts of this case, since both the Buyers, as DW2 and DW3, have stated in evidence that when they paid the sale price to Sri.Shajideen, a broker by name Sti.Ratnakaran was present. But, this individual was neither summoned nor examined by any of the defendants.

72. To cap it, neither of the Buyers have said about or explained the amounts spent for the purpose of Stamp Papers and registration of the Sale Deeds. This is relevant because the underlying allegation of the Owners is that Sri.Shajideen, using the name of the Buyers, grabbed the property. Hence, it was certainly upto the Buyers to show that they had spent for the Stamp Papers and registration of the Sale Deeds, since otherwise, an inference could have been drawn that this had been spent by Sri.Shajideen, which would then cement the allegations of the Owners. The importance of this is to be seen from the further allegation of the Owners that Sri.Shajideen had used Exhibit B39 Power of Attorney of Sri.Basheer to even register Exhibit B34 Sale Deed, with respect to the property of Smt.Indira Basheer,

thus compelling the conclusion that this was an attempt to save the stamp duty, which can then only lead to an adverse inference that this was because Sri.Shajideen was using his own funds to register the Sale Deeds; since, otherwise, the entire stamp duty ought to have been paid by the Buyers and he need not have embarked upon such a course. This is more so because, even after admitting that they knew about Exhibits B11 and A7 Powers of Attorney issued by Smt.Indira Basheer on 17.10.2007 and 24.10.2007 respectively, the Buyers were unable to offer any cogent explanation why they still allowed execution of Exhibit B34 Sale Deed on the strength of Exhibit B39 Power of Attorney of Sri.Basheer.

73. That said, Sri.Sajeed - the third defendant, has an added problem. He is admittedly the nephew of Sri.Basheer and Sri.Shajideen and he conceded in his testimony to be not in best terms with the former, as is evident from Exhibit A30 letter dated 27.10.2004. His explanation, as DW3, was that his father negotiated with the Owners on his behalf, but chose not to summon him or to examine him as a witness in substantiation. Strangely, neither did Sri.Shajideen, as DW1, say why and how his own nephew, without any discernible source of income, had been identified as a buyer.

74. To exacerbate all the above, the Buyers, as DW2 and DW3, expressly admitted that they had purchased the plaint schedule properties without even verifying the basic due diligence documents like the Encumbrance Certificates, Possession Certificates, etc. (see pages 9 and 10 of deposition of DW2 and pages 8, 9 and 24 of PW3). Strangely, in the written statement of Sri.Shajideen, in page 4 thereof, he says that only the copies of the prior title deeds of plaint A schedule property had been shown to the Buyers. These factors certainly make it impossible for any reasonable person to believe that the Buyers were bonafide purchasers, which is further pushed into a thick cloud of suspicion because both the Buyers, particularly Sri.Sajeed, in their pleadings have unreservedly adopted the version put forth by Sri.Shajideen, taking it beyond doubt that they are in it together with a common intent and purpose. The specific assertion of Sri.Sajeed, as DW3, in pages 26 and 27 of his deposition, that he fully trusts Sri.Shajideen and followed what he told and informed him, fortifies this.

75. The last nail in their coffin, in a manner of speaking, is the glaring fact that the Buyers have chosen to file an appeal jointly against the judgment and decree in O.S. No.1/2009, even though, in their written statements, they had taken diametrically conflicting

stands. While Sri.Rafi, in paragraph 8 of his written statement, has specifically alleged that Sri.Shajideen and the Owners were colluding with each other to defraud him; Sri.Sajeed unequivocally averred that he confirms everything which Sri.Shajideen has done and stated in his pleadings. Thus, if Sri.Rafi meant what he stated in his written statement, he certainly would not have joined with Sri.Sajeed to file a common appeal, in which both of them, interestingly, position themselves along with Sri.Shajideen. This singular factor is sufficient to hold against the Buyers.

76. The holding of the Trial Court that the Buyers cannot be seen to be innocent and bonafide purchasers of the properties for value, therefore, finds my full approval.

77. The role of Sri.Japamani, the fourth defendant, as an attesting witness in the Sale Deeds, is also severely suspicious. He admitted, when examined as DW4, that he is employed by Sri.Shajideen; but in the deposition of Sri.Shajideen, as DW1, he denied this and said Sri.Japamani is the employee of the Owners. Further, it is also clear from the evidence on record that Sri.Japamani is residing in a shed in the plaint schedule property as its Caretaker, but he still chose to deny this in his testimony, adding that his son - Balu Raj is employed with the Owners at Bahrain. However, the

factum of his residence in the shed is indubitable from Exhibit C1 report of the Advocate Commissioner. He then unequivocally conceded that Sri.Shajideen has paid him Rs.2 lakhs and that he attested the Sale Deeds as instructed by Sri.Shajideen. In fact, the Trial Court has recorded in the judgment that interest of Sri.Japamani towards Sri.Shajideen is writ large in his deposition; and when I read it close, this opinion of the Trial Court becomes apodictic.

78. To conclude, I see from the impugned judgment that the Trial Court has set aside the Sale Deeds, namely document Nos. 1126/2008, 1127/2008 and 1201/2008, all of the Vithura SRO, finding them to have been executed through fraud played on the Owners and further that they are not supported by any consideration, thus being liable to be declared void under the provisions of Section 15 of the Indian Contract Act; and has consequentially, allowed the Owners to recover possession of the plaint schedule properties from the Buyers.

79. I am without even a shred of doubt that the Trial Court has concluded as afore correctly and without any error - either in appreciation of the evidence or in jurisdiction. Since it is now too well entrenched in law, for little need for restatement, that even a sale deed, not supported by adequate consideration, is vitiated by the vice of Section 25 of the Indian Contract Act. The Hon'ble Supreme Court

also has declared that in such cases not even a relief in equity can be granted to the vendees (see **Prasad and Others v. V.Govindaswami Mudaliar and Others** ((1982) 1 SCC 185).

80. In the case at hand, the facts not merely prove inadequacy of the sale consideration, but that no such consideration passed from the Buyers to Sri.Shajideen and that the whole transaction between them, leading to the Sale Deeds, was a mere complot for the latter to grab the plaint schedule properties. When the facts are established, mere production and marking of the Sale Deeds, in which the sale consideration of Rs.16.95 lakhs is shown, would be of no avail, as has been affirmed by this Court in **C.V.Suresh** (supra).

81. I, consequently, dismiss the afore appeals as being without any merit, thus confirming the impugned judgments and decrees, with costs to Sri.Basheer M.Picha and Smt.Indira Basheer.

Cross Objection No.6 of 2016

82. That leaves me with the consideration of the Cross Objection filed by Sri.Basheer in R.F.A.No.554/2015.

83. It is the first contention of the Cross Objector that the Trial Court has erred in finding Exhibit A6 (same as Exhibit B11) and A7 Powers of Attorney to be valid and irrevocable. I have already found above that these Powers of Attorney cannot be construed to be

irrevocable and that, without a cogent explanation being offered, the Sale Deeds could not have been executed on the strength of Exhibit A6/ B11 Powers of Attorney, after the subsequent Powers of Attorney, namely Exhibits A7 and B12, had been executed. Hence, this contention is justified.

84. The second contention in the Cross Objection is that Exhibits B11, B12 and B39 Powers of Attorney are insufficiently stamped and hence, ought to have been impounded by the Trial Court. The judgment of the said Court shows that this was disallowed recording that no objections had been raised by the Cross Objector, while marking the said documents. However, the deposition of DW1, through whom these documents were produced and marked, clearly shows otherwise. Hence, it is perspicuous that this finding of the Trial Court was factually incorrect.

85. The third contention of the Cross Objector is regarding the finding in the judgment that non-mentioning of the Identity Card details in Exhibits B26, B27 and B34 Sale Deeds cannot be construed as an instance of fraud. I have already dealt with this in the preceding paragraphs herein; and suffice to say that this Court feels otherwise and in favour of the Cross Objectors as recorded afore.

86. The final contention is as regards denial of costs to the Owners in the three suits. I find from the judgments that the Trial Court has given no reasons to deny costs except stating: '*Considering the circumstances of the case, there is no order as to costs*'. It is now very well established that costs should normally follow the fate of a litigation and that when denying costs to the victorious party, the court should record the reasons for doing so, at least compendiously.

87. Thus, the Cross Objection relating to denial of costs and refusal of the Trial Court to impound Exhibits B11, B12 and B39 documents becomes worthy of this Court's consideration.

88. Sri.Ajith Prabhav, learned counsel for the Cross Objector, asserts that Exhibits B11, B12 and B39 are liable to be impounded, since they have been insufficiently stamped. He then conceded that the Revenue Divisional Officer appears to have adjudicated them on the application of Sri.Shajideen, but contends that this was done on the basis of incorrect declaration regarding the value of the property sold. He cited **Raymond Ltd. and Another v. State of Chhattisgarh and Others** (AIR 2007 SC 2854) and **Poorna Convention Centre (P) Ltd. (M/s.) v. District Registrar (General), Thrissur** (2015 (2) KHC 340) in support to establish that the endorsement of the Revenue Authority by way of a certificate is

not final or binding on the parties or courts. He then submitted that the power to impound is also available to this Court under Section 59 of the Stamp Act, relying on **M.K.Abudu v. M.Gopalakrishnan** (AIR 2006 Kerala 217), **Phiroskhan v. Jabbar** (2006 (1) KLT 38) and **Gangappa & Anr. v. Fakkirappa** ((2019) 3 SCC 788).

89. Sri.S.Sreekumar, learned Senior Counsel and Sri.R.S.Kalkura, learned counsel for Sri.Rafi and Sri.Sajeed, opposed the afore submissions of Sri.Ajith Prabhav very vehemently, arguing that the documents already accepted in evidence cannot be impounded. They further submitted that since it is admitted that Exhibits B11, B12 and B39 Powers of Attorney had already been properly adjudicated by the competent authority, a further plea for its impounding for reason of insufficiency of stamp duty can never be impelled, particularly when their marking in evidence was not objected on the ground of insufficiency of stamp duty. As regards costs are concerned, the learned Senior Counsel submitted that this is the discretion of the courts and prayed that this Court may not order otherwise.

90. Even when I hear Sri.S.Sreekumar and Sri.R.S.Kalkura as afore, it is indubitable, going by the precedents cited by Sri.Ajith Prabhav, that even this Court would obtain jurisdiction at the

appellate stage to impound documents on the ground of insufficiency of stamp duty. Further, even though there may be some amount of discretion available to a court to deny costs, it cannot be done without recording the reasons for such denial.

91. Going by the impugned judgments, the Trial Court did not even consider the plea for impounding Exhibits B11, B12 and B39 documents because it thought that these had been marked without objection. However, the cross-examination of DW1 begins with the endorsement made by the court that marking of these documents is objected and done only subject to proof. Hence, the court has certainly erred in refusing to consider the plea of the Cross Objector. I do not, however, deem it appropriate for this Court to say any further on the merits of this issue, since I deem it apposite to remand the suit to the Trial Court for its consideration, after evaluating all aspects, including the contentions of Sri.S.Sreekumar and Sri.R.S.Kalkura recorded above.

92. As regards award of costs also, I am of the view that the Trial Court must reconsider this based on all relevant factors.

93. In the result, this Cross Objection is allowed and the suit is remanded to the Trial Court solely for the consideration whether Exhibits B11, B12 and B39 documents are liable to be impounded and

if the Owners are entitled to costs; which shall be done without being trammeled by my observations above.

94. Needless to say, the impugned judgments and decrees in all other respects will remain in tact.

The parties shall appear before the Sub Court, Nedumangad on **07.09.2020** to enable the said Court to comply with the directions herein expeditiously.

Sd/-
Devan Ramachandran, Judge

tkv