

Kamaliyal vs Paulraj on 29 October, 2018

Author: S.Baskaran

Bench: S.Baskaran

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BEFORE THE MADRUAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 21.11.2017

Judgment Pronounced on : 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.(md)Nos.399 and 400 of 2017

Kamaliyal

... Appellant/Appellant/Defendant
(in Both Appeals)

Vs.

1.Paulraj
2.Murugeswari

... Respondents/Respondents
Plaintiffs
(in Both Appeals)

PRAYER IN S.A.(md)No.399 of 2017

This second appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 17.02.2017 made in A.S.No. 37 of 2012 passed by the learned II Additional Subordinate Judge, Nagercoil, Kanniyakumari District (Camp Judge, Kuzhithurai) confirming the Judgment and Decree dated 16.04.2012 in O.S.No.569 of 2001 passed by the learned II Additional District Judge, Kuzhithurai, Kanniyakumari District.

PRAYER IN S.A.(md)No.400 of 2017

This second appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 17.02.2017 made in A.S.No. 37 and 38 of 2012 passed by the learned II Additional Subordinate Judge, Nagercoil, Kanniyakumari District (Camp Judge), confirming the Judgment and Decree dated 16.04.2012 in O.S.No.445 of 2001 passed by the learned II Additional District Judge, Kuzhithurai, Kanniyakumari District.

For Appellant	:	Mr.G.Ramanathan (in Both Appeals)
For Respondents	:	Mr.K.N.Thambi (in Both Appeals)

JUDGMENT

These second appeals arises out of the Judgment and Decree dated 17.02.2017 made in A.S.Nos.37 and 38 of 2012 passed by the learned II Additional Subordinate Judge, Nagercoil, Kanniyakumari District (Camp Judge, Kuzhithurai), confirming the Judgment and Decree dated 16.04.2012 in O.S.Nos.569 and 445 of 2001 passed by the learned II Additional District Munsif, Kuzhithurai, Kanniyakumari District.

<http://www.judis.nic.in>

2. Brief facts of the case is as follows:-

The plaintiffs in O.S.No.569 of 2001 are the owners of the suit property, which is measuring to an extent of 12 cents with new terrace building bearing Old Survey No.482 and R.S.No.433/5. The plaintiffs have purchased the suit property on 05.06.1995 and 21.09.1995 through two sale deeds. In the sale deed dated 05.06.1995 a mistake crept with regard to the survey number and the said mistake was rectified by execution of a rectification deed dated 28.04.1997. The plaintiffs got absolute right, title and possession in respect of the entire suit property and by paying the tax. The defendant is a resident of Kerala State which is about 10 kms away from the plaintiff's house. The defendant is known to the first plaintiff from 1996, the year in which the marriage between the first plaintiff and the second plaintiff was

solemnised. The first plaintiff went to Singapore for his livelihood in 1998. The defendant approached the first plaintiff and wanted him to procure a Visa for his son Shaji to go to Singapore. The first plaintiff agreed to procure a Visa to him provided the defendant is prepared to pay the entire expenses. The defendant agreed and paid a sum of Rs.10,000/- to the first plaintiff towards the initial expenses and agreed to pay the balance amount <http://www.judis.nic.in> after procuring the Visa and at the time of Shaji's departure to Singapore from India. The first plaintiff made all arrangements and by spending more than Rs.1,00,000/- and obtained Visa to the defendant's son and as per the Visa, the defendant's son Shaji has to reach Singapore within 3 months from the date of the issuance of the Visa. The Visa was given to the defendant by the second plaintiff along with her collateral uncle by name Thankappan and the balance amount was demanded, for which the defendant promised to pay at the time of departure of his son at Singapore. But the defendant's son did not go to Singapore immediately after he got Visa and the defendant stated that he will sent his son to Singapore only after the marriage of his daughter. In the mean time, the date fixed in the Visa expired. The defendant's son went to Singapore with that lapsed Visa and so he sent back to India. Hence, the agreement between the first plaintiff and the defendant was broken at the instance of the defendant and the first plaintiff suffered mental agony as well as monetary loss. The defendant was demanding the first plaintiff to repay the initial amount of Rs.10,000/- since he had broken the terms of the contract. But, the first plaintiff was demanding Rs.1,00,000/- towards damages. While so, on 27.01.1999, the defendant and his men caught hold of the plaintiffs 1 and 2 from their house in a car and took them to the Sub <http://www.judis.nic.in> Registrar's Office at Kollemcode and threatened them to take all the documents which they got in connection with their building site. Out of fear, the plaintiffs took all the documents which were available with them at that time. The defendant has not even allowed the plaintiffs to have a consultation with his relations. When the plaintiffs, defendant and their men reached the document writer's office, the document was already prepared and ready for registration.

Thereafter, the signature of the plaintiffs were obtained by threat and intimidation. The defendant has also represented to the plaintiffs that he will execute a re-conveyance to the plaintiffs when they repaid Rs. 10,000/-. The sale deed in respect of the suit property was registered on 27.01.1999 by fraudulent means by using threat, intimidation and misrepresentation. The said document is a fraudulent one and has not taken effect and no consideration passed in it and the same is void. The plaintiffs are in possession of the suit property as absolute owners. The building in the suit property was put up by taking a loan from K.S.S.S through R.C. Church, Fathimapuram in 1995, but the building is not mentioned in the sale deed. Even after the execution of the said deed, the plaintiffs are in peaceful possession of the property inclusive of the building and the trees. On 07.06.2001, the defendant issued notice to the plaintiffs stating that the plaintiffs are occupying <http://www.judis.nic.in> the building on the basis of rental agreement with him from 15.02.1999 onwards. There is no rental agreement between the plaintiffs and defendant. The second plaintiff sent a reply to the defendant on 16.07.2001. The defendant had filed the suit in O.S.No. 445 of 2001 for recovery of the building with arrears of rent on the basis of the fraudulent sale deed. The

defendant has absolutely no title or possession in the suit property. The document dated 25.01.1999 is a sham and nominal documents. Hence, the plaintiff came forward with the suit for declaration of title and possession and consequential injunction in respect of the suit property and for setting aside the sale deed dated 25.01.1999.

3. According to the defendant, the defendant denied the allegations of the plaintiffs and stated that after execution of the sale deed, the defendant completed the house construction in the suit property with his own funds. As per the request of the plaintiffs, the defendant rented out the building to the first plaintiff on 15.02.1999 through a rental agreement by receiving an advance amount of Rs. 250/- and Rs.75/- per month as rent. The house building has been numbered as 8/78 of Kollemcode Town Panchayat. Since the plaintiffs raised false contention without surrendering the building, the <http://www.judis.nic.in> defendant filed the suit in O.S.No.445/2001 and the present suit is a counter blast to the suit in O.S.No.445/2001. The story of procuring Visa to Singapore by the plaintiffs for the defendant's son is false facts. The suit property has already been conveyed through a valid registered document by the competent persons to the defendant for consideration and the entire right of the plaintiffs has been transferred to the defendant as per law. There is no fraud played in execution of the sale deed dated 25.01.1999. Because of the non completion of the building that was not necessary to state in the sale deed and the construction has been done completed only by the defendant. So, the non mentioning of the unassessed building in the sale deed will not take away the effect and validity of the sale deed executed by the plaintiffs to the defendant. The building alone has been rented out to the first plaintiff as per the request of the first plaintiff. Now, the building is necessitated to the defendant, the suit in O.S.No.445 of 2001 has been filed. The plaintiffs are not entitled any relief in the suit.

4. After contest, the trial Court decreed the suit in O.S.No.569 of 2001 as prayed for and dismissed the suit in O.S.No.445 of 2001. Aggrieved upon that the defendant preferred the two appeals in <http://www.judis.nic.in> A.S.Nos.37 and 38 of 2012 before the lower appellate Court and after contest, the lower appellate Court dismissed both the appeals and confirmed the judgment and decree of the trial Court. Now, aggrieved upon that the defendant preferred both the second appeals.

5. The following substantial question of law were framed by the appellants in both the appeals for consideration.

1) Whether the Courts below is correct in shifting the burden of proof on the appellant/defendant is correct, especially, the respondent/plaintiff not proved the plea of fraud and undue influence?

2) Whether the Court below decreed the suit on the basis of Ex.A17 xerox copy is correct.

Especially the appellant/defendant denied the Ex.A17 documents and questioned its admissibility?

3) Whether, non mentioning of building available in land in Ex.B2 Sale deed is invalidated the sale deed?

6.The learned counsel appearing for the appellant/ defendant in both the appeals would submit that the plea of fraud undue influence were not proved by the plaintiffs. In such circumstances, <http://www.judis.nic.in> both the Courts below shifted the burden of proof to the defendant is against law. Both the Courts below decreed the suit on the basis of Ex.A17 which is Xerox copy of Visa. When the defendant himself denied Ex.A17 with regard to its inadmissibility, both the Courts below failed to consider this question of law. The non mentioning of the building in Ex.B2 is not fatal and it will not invalidated the sale deed. Since it was duly registered by the competent authority. Therefore, mere non mentioning of the building alone not sufficient to invalidate the sale deed. But, the Courts below without considering these aspects negated the claim of the defendant. Hence, the interference of this Court is warranted.

7.The learned counsel appearing for the respondents/plaintiffs in both the appeals would submit that both the Courts below have elaborately discussed about the oral and documentary evidences and came to a correct conclusion on the basis of the available document on record. There is no infirmity in the findings of the Courts below. Ex.A17 Xerox copy alone produced by the plaintiffs, since the original Visa is available with the defendant and he purposely avoided to produce the same before the Court. In such situation, the defendant cannot questioned Ex.A17. Further, the non <http://www.judis.nic.in> mentioning of the building in the sale deed itself clearly reveals that intention of the defendant about procuring the sale deed by threat. Therefore, there is no infirmity on the findings of the Courts below. The question of law raised by the appellant is not sufficient to interfere with the findings of the Courts below. Therefore, the second appeals have to be dismissed.

8.I have heard the rival contention and perused the materials available on record.

9.On perusal, the plaintiff in O.S.No.569 of 2001 are the owners of the suit property originally by right of purchase on 05.06.1995 and 21.09.1995. In the sale deed dated 05.06.1995 mistake found and the said mistake was rectified and rectification deed dated 28.04.1997. So, the plaintiff got absolute right, title, interest and possession over the entire suit property. It is an undisputed fact. According to the plaintiffs, the first plaintiff in O.S.No.569 of 2001 is the husband of the second plaintiff went to Singapore for his livelihood. The second plaintiff known to the defendant. It is also not disputed. The defendant approached the first plaintiff for getting Visa for his son and the defendant agreed to pay the expenses for procuring Visa. As <http://www.judis.nic.in> agreed, the first plaintiff give Visa to the defendant and the defendant to repay the amount after departure. But, within the stipulated time, the son of the defendant failed to go to Singapore and he went to Singapore after lapse of Visa period. So, he sent back to India. At this juncture, the dispute arose between the plaintiffs and the defendant. The plaintiffs demanded expenses for Visa. But, the defendant demanded expenses paid by him to the first plaintiff to the tune of Rs. 10,000/-. The plaintiffs stated that as agreed between them, Visa obtained and handed over to the defendant. It is the part on the part of the defendant to send his son within the stipulated time. For getting the expenses amount paid by the defendant, the defendant obtained sale deed of the suit property from the plaintiffs by threat and compulsion. This is the story projected by the plaintiff.

10.According to the defendant, he denied the story projected by the plaintiffs and projected a new story that he obtained a sale deed from the plaintiff for consideration and inducted the plaintiffs as a

tenant of the suit property and also entered into a lease agreement with the plaintiffs and the rate of rent was fixed at Rs.75/- and Rs. 250/- was received as advance for the rented building. So, the defendant demanded the plaintiffs to vacate the premises and the <http://www.judis.nic.in> plaintiffs refused to vacate and denied the title of the defendant for the suit property. Hence, the defendant filed the suit in O.S.No.445 of 2001 for the relief of declaration, injunction and recovery of possession of “B” schedule property and also recovery of rent. But, the plaintiffs filed the suit in O.S.No.569 of 2001 as counter blast for his suit. It is the story projected by the defendant.

11.In both the suits, the suit properties are one and the same. The parties to the suits are one and the same. The designation of the parties are changed depends upon the case. Hence, both the suits were tried commonly and common judgment was delivered. The trial Court after contest, decreed the suit in O.S.No.569 of 2019 and the dismissed the suit in O.S.No.445 of 2001. The lower appellate Court has also confirmed the trial Court finding. Both the Courts below accepted the version of the plaintiffs in O.S.No.569 of 2001. Now, the defendant came forward with the second appeal.

12.On the side of the appellant, the learned counsel has vehemently put forth his contention and relied number of citations.

12.1.The ruling reported in 2009 (3) CTC 59 in M.B.SUBRAMANIAM Vs.A.RAMASAMY GOUNDER AND OTHERS, it <http://www.judis.nic.in> dealt with unilaterally cancellation of the sale deed by the vendor. The facts of that case is different from this case. Hence, the said citation is not applicable to the facts of this case.

12.2.The ruling reported in 2017 (1) CTC 497 in CAMBRIDGE SOLUTIONS LIMITED, BANGALORE – 560 095 Vs. GLOBAL SOFTWARE LIMITED, CHENNAI-18 AND OTHERS, wherein it is held that mere statements containing allegations of fraud are not enough to sustain plea of fraud. In the above said case, Order 7, Rule 11 dealt with. So, it is not applicable to the facts of this case.

12.3.Another ruling reported in 1991 -1 L.W. 14 in BISHUNDEO NARAIN RAI(DEAD) BY LRS. AND OTHERS Vs. ANMOL DEVI AND OTHERS, it dealt with execution and registration of sale deed and its effect. The said citation is also not applicable to the facts of this case.

12.4.The yet another ruling reported in AIR 1991 SUPREME COURT 1040 in RAGHUNATHI AND ANOTHER Vs. RAJU RAMAPPA SHETTY, it dealt with eviction of tenant on the ground of sub-letting. It is also not applicable to the facts of this case.

12.5.Another ruling reported in AIR 2001 ALLAHABAD 231 in HAKIM SINGH Vs. RAM SANEHI AND OTHERS, in which it has held that it is true that it has not been mentioned in the agreement to <http://www.judis.nic.in> sale that the Well, room, tube well and the trees are standing in the land and they are also being transferred. However, they are affixed with the land and it was not necessary to mention regarding them. No adverse inference can be drawn from this fact. The room has been constructed during the pendency of the case. The tube well was fixed on a trolley, which was movable and could be removed at any time and therefore there was no question of mentioning these

facts in agreement to sale. The facts of the case in hand is entirely different. So, the said citation is not applicable to the facts of this case.

12.6.The another ruling reported in AIR 1978 ANDHRA PRADESH 257 in M/S.BODA NARAYANA MURTHY AND SONS Vs. VALLURI VENKATA SUGUNA AND OTHERS, in which it has held that even though the title deed deposited relates to land only, if at the time the deposit was made there were any structures on it, equitable mortgage would be created both with regard to the land as well as the structures thereon. In the case on hand, the facts of this case is entirely different and ownership of the building is disputed. So, this citation is not applicable to the facts of this case.

12.7.Another ruling reported in 2011 (3) MLJ 864 in S.M.SIVASWAMI Vs. NAGAMMAL AND OTHERS, wherein it has <http://www.judis.nic.in> held that the burden of proving that a certain acquisition was made from out of sale proceeds is upon the person who alleges. This fact is not applicable to the facts of the case on hand.

12.8.The yet another ruling reported in 2001 (10) SCC 221 in SURESH CHAND Vs. KUNDAN(DEAD) BY LRS. AND OTHERS, in which it has held that where the land owner agrees to sell his right, title and interest in the land, such sale would include the trees standing thereon in the absence of any express or implied agreement to the contrary. This fact is differ from the facts of the case in hand. Hence, the said citation is not applicable to the facts of this case.

12.9.Another ruling reported in 1995 SUPP (2) SCC 86 ISHWARIDEVI(SMT) Vs. SARLA DEVI (SMT) AND OTHERS, wherein it has held that where the property has been specifically identified in a deed any ambiguity or inconsistency arising out it has to be dis-regarded. This fact is entirely different from the case in hand. So, this citation is not applicable to the facts of this case.

12.10.Another ruling reported in AIR 2006 SC 1971 in ANIL RISHI Vs. GURBAKSH SINGH, wherein it has held that suit for declaration that sale deed was forged, fabricated. The said citation, the question of law decided in the citation is relevant to this case and let us discuss later.

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13.On the side of the respondents, the learned counsel relied on rulings reported in (1) AIR 1999 SUPREME COURT 2216 in ARUMUGHAM (DEAD) BY L.Rs. AND OTHERS Vs. SUNDARAMBAL AND ANOTHER, (2) AIR 1998 SUPREME COURT 310 in SMT.REBTI DEVI Vs. RAM DUTT AND ANOTHER ETC and AIR 1973 SUPREME COURT 626 in SMT.PREM LATA Vs. ARHAND KUMAR JAIN and (3) 1988 (1) SCC 626 in NATIONAL INSURANCE CO. LTD., NEW DELHI Vs. JUGAL KISHORE AND OTHERS, wherein it has held that both parties adduced oral as well as documentary evidence and question of burden of proof becomes insignificant. The document which may be helpful in doing justice must be produced before court by party in possession of the same. The law laid down by the Apex Court is applicable to the facts of this case. Let us discuss the citations applicable to the question of law raised by the appellant alone have to be considered.

14.The learned counsel appearing for the appellant vehemently contended that Ex.A17 is the Xerox copy. It is inadmissible in evidence. But, both the Courts below gave much importance and relied Ex.A17 and decreed the suit and it is against law. This is the <http://www.judis.nic.in> specific contention on the side of the appellant. Ex.A17 is the Xerox copy of Visa issued in the name of Shaji and the original Visa was handed over to the defendant and on that basis, the defendant's son went to Singapore and returned to India. So, the original Visa available with the defendant. In such situation, the legal position is as follows. In 1988 (1) SCC 626 (cited supra) cited by the learned counsel for the respondents is as follows:-

“This Court has consistently emphasised that it is the duty of the party which is possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof.”

15.As per the Apex Court verdict, it is the duty of the party which is possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. So, Ex.A17 original Visa available with the defendant, he must produce the same before the Court to do justice. But, he has not prepared to produce the same. The cause of action arose of the suit only because of Ex.A17. Ex.A17 is not obtained for the son of the <http://www.judis.nic.in> defendant, there is no need or necessity for the defendant for obtaining the sale deed Ex.B2 from the plaintiffs and there is no need to approach the Court. Ex.A17 is the vital document in this case is concerned. The defendant failed to produce the original before the Court and attempted to take shelter and Ex.A17 principles of burden of proof. So, it is not applicable and the defendant cannot questioned the same as per the above Apex Court verdict. So, the question of law raised by the appellant with regard to Ex.A17 is not sustainable and it is answered against the appellant.

16.The second question of law raised by the appellant with regard to burden of proof. In this aspect, the learned counsel appearing for the appellant relied on a ruling reported in AIR 2006 SC 1971(cited supra), wherein it has held as follows:-

“19. There is another aspect of matter which should be borne in mind.

distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the <http://www.judis.nic.in> beginning of later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharge that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would dis entitle the plaintiff to the same.

In the above said Apex Court verdict, the law laid down by the Apex Court with regard to the difference between the onus of proof and burden of proof. The elementary rule is Section 101 is inflexible. In terms of Section 102, the initial onus is always on the plaintiff and if he discharge that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would dis-entitle the plaintiff to the same. This is the guidance to decide the case on hand.

17. On the side of the respondents/plaintiffs, the learned counsel relied on a ruling reported in AIR 1973 SC 626 (cited Supra), AIR 1998 SC 310(cited supra) and AIR 1999 SC 2216(cited supra). All the three Apex Court verdict with regard to <http://www.judis.nic.in> in the same point as follows:-

“On the question of burden of proof we are of the view that even assuming burden of proof is relevant in the context of the amended provision of Sec. 100 C.P.C., the same would not be relevant when both sides had adduced evidence.”

18. Now let us discuss on the basis of the guidance of the Apex Court. On the side of the respondents/plaintiffs, the plaintiffs have produced Ex.A1 to Ex.A42 and examined P.W.1 to P.W.6 to prove their case. The plaintiffs have produced the parent sale deeds, Rectification deed, Blue Print obtained for construction and for the loan obtained by them with regard to that loan certificate produced. House Tax Assessment Register copy, Assessment Register and house tax receipts and electricity service connection for the building and land tax receipts. All these documents clearly proved the case of the plaintiffs. From the above said documents, it can be easily inferred that after purchase of the suit property, the plaintiffs obtained building plan approval and by obtaining loan for construction and constructed the building and tax assessed in their name and prove the possession of the house by paying house tax receipt, electricity and telephone bill etc., All are clearly proved the title as well as possession to the suit <http://www.judis.nic.in> property.

19. It is the plea of the appellant/defendant is that he has completed the construction. So, the initial burden of proof proved by the plaintiff. As per the Apex Court ruling reported in AIR 2006 SC 1971(cited supra) cited by the appellant side in Para 19 of the said judgment that in terms of Section 102 the initial onus is always on the plaintiff and if he discharge that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would dis entitle the plaintiff to get the relief. So, the Courts below shifted the burden to the defendant to disprove the case of the plaintiffs. Further more, the defendant has also filed the suit for declaration, automatically the burden shifted to the defendant. As the plaintiff filed a suit in O.S.No.445 of 2001 for the relief of declaration is concerned, both the Courts below rightly shifted the burden to the defendant. There is no infirmity or any wrong in shifting of burden of the onus. Hence, the findings put forth by the appellant is that the plea of fraud undo influence was not proved by the plaintiffs. Regarding the plea of fraud is concerned, it cannot be proved by the direct evidence. It can be proved only by circumstantial evidence. The lower appellate Court elaborately discussed about the fraud and appreciated the oral evidence of both <http://www.judis.nic.in> parties and came to a conclusion that Ex.B2 sale deed was obtained by fraud. The trial Court has elaborately analysed the entire materials available on record with regard to Door number and came to a conclusion and found that regarding existence of house in the suit property from 1996 and found

that Ex.B2 executed under compulsion. Therefore, there is no infirmity in the findings of the trial Court as well as the lower appellate Court. Contra to the evidence of plaintiffs, there is no acceptable evidence on the side of the defendant. In such circumstances, regarding burden of proof both the Courts below rightly decided the matter. So, as per the citation referred on the side of the appellant himself, the question of law raised by the appellant is not sustainable.

20.The third question of law raised by the appellant with regard to non mentioning of building. In this aspect, on the side of the appellant relied number of other state judgments. The citation referred on the side of the appellant in AIR 2001 ALLAHABAD 231(cited supra), in which, in agreement to sale that the Well, room, tube well and the tress are standing in the land and the land are affixed with the land and it need not be mentioning the same. They are movables and it need not be stated in the agreement. In this <http://www.judis.nic.in> case, no such dispute regarding the facts mentioned in the Allahabad Judgment. In the case on hand, already building in existence and it was also proved by the plaintiffs as their own and it was also assessed tax in the name of the plaintiffs. It is the materials defect in Ex.B2 when it was suppressed, it leads to fraud. Hence, the Courts below gave much importance to the non mentioning of the building is vital to the case of the defendant. So, the above said citation is not supporting the case of the appellant. Ex.B2 sale deed invalid not only on the ground of mentioning of building, but also it was obtained by fraud for which it was in valid. So, the substantial question of law is also answered against the appellant.

21.From the above discussion, in any angle, the substantial question of law raised by the appellant are not sustainable. Hence, this Court comes to a conclusion that both the second appeals are devoid of merits. Hence, there is no chance for interference on the findings of the Courts below. Therefore, both the appeals are not deserves to be allowed.

In the result, the second appeal is dismissed. No costs. The <http://www.judis.nic.in> Judgment and Decree dated 17.02.2017 made in A.S.No.37 of 2012 passed by the learned II Additional Sub Judge, Nagercoil at Kanniyakumari District (Camp Judge, Kuzhithurai) is hereby confirmed.

In the result, the second appeal is dismissed. No costs. The Judgment and Decree dated 17.02.2017 made in A.S.No.38 of 2012 passed by the learned II Additional Sub Judge, Nagercoil at Kanniyakumari (Camp Judge, Kuzhithurai) is hereby confirmed. 29.10.2018 rrg To

1.The II Additional Sub Judge, Nagercoil,(Camp Judge, Kuzhithurai) Kanniyakumari District.

2.The II Additional District Munsif Court, Kuzhithurai, Kanniyakumari District.

<http://www.judis.nic.in> S.BASKARAN,J., rrg/vs Pre-Delivery Judgment in S.A.Nos.399 and 400 of 2017 <http://www.judis.nic.in> .10.2018 <http://www.judis.nic.in>