

be dismissed, affirming the judgment and decree dated 30th October, 2015, rendered by the Sub-Judge, Chavakkad³ in Original Suit No.862 of 2013, by which the suit instituted by the plaintiff-appellant seeking specific performance of agreement to sell was dismissed.

Factual Background

3. Briefly stated, the facts relevant and essential for the disposal of the appeal are noted hereinbelow.

4. The plaint schedule property admeasuring approximately three acres thirty-five cents fell to the share of Shri Buquarayil Valappilakkayil Seethi Thangal (hereinafter 'Seethi Thangal'), father of the respondent-Sakeena Beevi⁴, by virtue of a registered partition deed bearing No. 1274 of 1985, registered in the office of the Sub-Registrar, Mullassery.

5. Pursuant to the death of Seethi Thangal on 22nd August, 2002, the plaint schedule property, comprised in Survey No. 116/7 of Kundazhiyoor Desom, together with the school building standing thereon and all appurtenant improvements, including ownership and management of the school,

³ Hereinafter, referred to as the "trial Court".

⁴ Hereinafter, referred to as the "defendant-respondent".

devolved upon his nine children, including the defendant-respondent.

6. All the nine legal heirs of Seethi Thangal executed an unregistered power of attorney (Exh. A4) in favour of the eldest son, Shri Muhammed Rafi Thangal, on 3rd September, 2002. Subsequently, on 4th September, 2002, the respondent Sakeena Beevi executed a separate registered power of attorney (Exh. B1) in favour of her son Shri Rasheeque Ahmed (DW-1).

7. The eldest brother, namely, Shri Muhammed Rafi Thangal, executed an agreement for sale (Exh. A1) dated 14th May, 2007 in favour of the plaintiff-appellant for a total consideration of Rs.2,70,00,000/-. A sum of Rs.25,00,000/- was paid as an advance at the time of execution of the agreement. The date of execution under the agreement (Exh. A1) was extended on three occasions, i.e., on 14th April, 2008 [Exh. A1(a)], 7th August, 2010 [Exh. A1(b)], and 7th July, 2011 [Exh. A1(c)]. On 14th November, 2012, the defendant-respondent caused publication of a newspaper notice revoking the unregistered power of attorney (Exh. A4) issued in favour of Shri Muhammed Rafi Thangal.

8. On 30th April, 2013, the defendant-respondent executed an affidavit (Exh. A5) ratifying the power of attorney (Exh. A4) and the acts carried out thereunder, and further expressing her consent to transfer her share in the plaint schedule property. Thereafter, on 8th May, 2013, the remaining eight siblings executed a sale deed conveying their collective 10/11th share in the entire chunk of land on which the school building exists in favour of the plaintiff-appellant.

9. As the defendant-respondent refused to execute the sale deed in respect of her share, the plaintiff-appellant instituted a suit for specific performance in the year 2013, which came to be registered as O.S. No. 862 of 2013 before the trial Court.

10. The trial Court dismissed the suit *vide* judgment and decree dated 30th October, 2015, primarily on the ground of limitation, and consequently denied the relief of specific performance as well as the alternate relief of refund of the advance amount to the plaintiff-appellant.

11. Aggrieved thereby, the plaintiff-appellant preferred an appeal before the High Court, which, while reversing certain findings recorded by the trial

Court, ultimately dismissed the suit on the grounds of lack of readiness and willingness on the part of the plaintiff-appellant to get the sale deed executed, as required under the Specific Relief Act, 1963, as well as on the ground of limitation.

12. The High Court held that the plaintiff-appellant failed to establish his continued readiness and willingness to perform the contract. It was observed that the payments made and the endorsements extending the agreement were obtained only from Shri Muhammed Rafi Thangal, the brother of the defendant–respondent, who lacked valid authority to execute and extend the contract after the defendant–respondent had executed a registered power of attorney (Exh.B1) in favour of her son Shri Rafeeq Ahmed (DW-1) thereby, by a deeming fiction, revoking the earlier unregistered power of attorney. Consequently, the payments made to Shri Muhammed Rafi Thangal were held not to be binding on the defendant–respondent.

13. The High Court further held that the agreement had become time-barred, observing that the breach on the part of the plaintiff-appellant occurred on 14th July, 2008, whereas the suit came to be instituted in

the year 2013, well beyond the period of three years prescribed under Article 54 of the Schedule to the Limitation Act, 1963.

14. The above judgment of the High Court is the subject matter of challenge in the present appeal by way of special leave.

15. It needs to be noted that during the pendency of the appeal, the parties were referred to mediation; however, the mediation efforts did not fructify in a settlement. Further, during the course of the hearing, Shri Gaurav Agrawal, learned senior counsel appearing for the plaintiff-appellant, on instructions, offered a sum of Rs.75,00,000/- to the defendant-respondent, as fair value for her 1/11th share which offer was declined outright.

Submissions on behalf of the plaintiff-appellant

16. Shri Gaurav Agrawal, learned senior counsel appearing for the plaintiff-appellant urged that although the plaintiff-appellant could have relinquished the said 1/11th share of the defendant-respondent in plaint schedule property, such a course would render the functioning of the school unviable and in breach of the requirements under the Kerala Education Rules, 1959, which mandates a

minimum extent of three acres of land for running a higher secondary school.

17. Shri Agrawal drew the Court's attention to the affidavit (Exh. A5) dated 30th April, 2013 sworn by the defendant-respondent, whereby the agreement in favour of the plaintiff-appellant was affirmed and ratified. The said affidavit (Exh. A5) is an admitted document and reads as under: -

"I, Mrs. B.V. Sakeena Beevi, aged 59 years, presently residing at Bukharyil Valapil House, W/o Fakrudheen Thangal, Bukharayil Ayittandiyil, Mathilakam Post - 680 685 do hereby solemnly affirm and state as follows:

That myself one the legal heirs of deceased Mr. B.V. seethe Thangal, Ex. M.L.A., along with other legal heirs, had executed a valid power of attorney in favour of Mr. B.V. Muhammed Raphy Thangal, residing at Bukharayil Valappil house, Venkitangu, P.O. Padoor, on 3rd September 2002 regarding the property in Re-Survey No. 116/7 in Padoor Desam, Situated within the Mullassery Sub registrar Office. While the Power of Attorney to various officials including the Assistant Educational Officer, Mullassery. **Now we have amicably settled all disputes and I hereby ratify the acts of the said Power of Attorney Holder Mr. B.V. Muhammed Raphy Thangal. I have no objection to perform all acts, deeds and things as assigned in the said Power of Attorney Holder Mr. B.V. Muhammed Raphy Thangal. I have no objection to perform all acts, deeds and things as assigned in the said Power of Attorney by me.** I do hereby undertake to carry out the terms and conditions set out in the said Power of Attorney by me. I do hereby

undertake to carry out the terms and conditions set out in the said Power of Attorney and I will be personally bound by the terms and also I will be personally present whenever necessary. **I have no objections in changing management involving ownership of Aleemul Islam Higher Secondary School, and ownership of properties of the above said school, in favour of Mr. Ahammed Haji, S/o Moidunni, Muslim Veettil Chalakkal House, Kundaliyoor desom, Engandiyoor amsom, as already submitted through my power of attorney holder.**

What is stated above is true to the best of my knowledge and belief.

Dated this the 30th day of April, 2013.”

[Emphasis supplied]

18. Shri Agrawal contended that once the defendant–respondent had agreed to the terms of the transaction and expressly conveyed her no-objection for transfer of ownership of the plaint schedule property through her power of attorney holder Shri Muhammed Rafi Thangal, the power of attorney executed (Exh. A4) in his favour, by necessary implication, stood ratified and reaffirmed, and the acts performed by the said power of attorney holder could not thereafter be questioned or doubted in a Court of law. He further urged that the findings recorded by the trial Court as well as the High Court, holding that the unregistered power of attorney (Exh. A4) executed by the defendant-respondent in favour

of her brother, Shri Muhammed Rafi Thangal, stood revoked with effect from 4th September, 2002, are contrary to the material available on record and suffer from manifest error.

19. He further drew the Court's attention to the written statement filed by the defendant–respondent, wherein the validity of the agreement was expressly admitted, and the only objection raised pertained to limitation. It was pointed out that in the written statement, the defendant–respondent admitted that the agreement dated 14th May, 2007 (Exh.A1), was negotiated on her behalf by her son, Shri Rasheeq Ahmed, acting as her power of attorney holder. It was reiterated by learned senior counsel that the subsequent acts performed by Shri Muhammed Rafi Thangal were duly and expressly ratified by the defendant–respondent.

20. He further submitted that in the entire written statement, the defendant–respondent did not deny or dispute the affidavit (Exh. A5) dated 30th April, 2013, affirming her ratification of all the acts done by Shri Muhammed Rafi Thangal in furtherance of the unregistered power of attorney (Exh. A4).

21. Shri Agrawal also pointed out that the stand taken by the defendant–respondent that the unregistered power of attorney (Exh. A4) executed in favour of Shri Muhammed Rafi stood revoked on 4th September, 2002 upon execution of the registered power of attorney (Exh. B1) in favour of her son Shri Rasheeque Ahmed (DW-1), is belied by the fact that she herself affirmed validity of the agreement (Exh. A1) dated 14th May, 2007 which was executed by Shri Muhammed Rafi Thangal on strength of the disputed unregistered power of attorney (Exh. A4). Furthermore, she issued a notice dated 10th November, 2012 to Shri Muhammed Rafi and the educational authorities, for the first time, expressing her intent to revoke the said unregistered power of attorney (Exh. A4).

22. He further submitted that the trial Court had affirmed the evidentiary value of the affidavit (Exh.A5) by treating it as an admission of the defendant–respondent, but thereafter proceeded to discard the said document on the basis of the testimony of Shri Rasheeque Ahmed (DW-1), the son of the defendant–respondent. It was urged that if the defendant–respondent had any intention to prove revocation of

the power of attorney executed in favour of Shri Muhammed Rafi Thangal (Exh. A4) or to disown the affidavit (Exh. A5), she ought to have stepped into the witness box herself. However, admittedly, the defendant–respondent did not enter the witness box during the trial.

23. He, therefore, urged that it is a fit case wherein this Court should exercise its jurisdiction under Article 136 of the Constitution of India for balancing the equities by setting aside the impugned judgment and directing the specific performance of the agreement to the extent of the 1/11th share of the respondent-defendant.

Submissions on behalf of the defendant-respondent

24. *Per contra*, Ms. Menaka Guruswamy, learned senior counsel appearing for the defendant–respondent, vehemently and fervently opposed the submissions advanced on behalf of the plaintiff–appellant. She submitted that the power of attorney (Exh. A4) executed in favour of Shri Muhammed Rafi Thangal was an unregistered document, whereas the power of attorney executed (Exh. B1) in favour of Shri Rasheeq Ahmed (DW-1), the son of the defendant–

respondent, was a registered instrument. It was contended that upon execution of the registered power of attorney (Exh. B1), the earlier unregistered power of attorney (Exh. A4) stood automatically revoked.

25. Without prejudice to the above, she further contended that the unregistered power of attorney (Exh. A4) executed by the defendant-respondent in favour of her brother, Shri Muhammed Rafi Thangal, did not authorise him to convey the plaint schedule property to any third party without the express consent of the executant, and, therefore, the defendant-respondent could not be bound by the acts undertaken by Shri Muhammed Rafi Thangal acting under the unregistered power of attorney (Exh. A4). It was further submitted that the original agreement (Exh. A1) *inter se* the parties, bearing the endorsement of Shri Rasheeq Ahmed (DW-1), the son of the defendant-respondent and her power of attorney, was executed on 14th May, 2007, and only a sum of Rs.25,00,000/- was paid as advance at the time of its execution. It was urged that the suit came to be instituted in the year 2013 and was thus clearly

barred by limitation in view of the Article 54 of Schedule to the Limitation Act, 1963.

26. She further submitted that the affidavit (Exh. A5) was executed solely with a view to facilitating the continued functioning of the school and not for the purpose of transferring the share of the defendant-respondent in the suit property. It was contended that the said document was, therefore, rightly not relied upon by the trial Court as well as the High Court in favour of the plaintiff-appellant. She further submitted that the defendant-respondent is willing to make a counter offer to purchase the entire property for a consideration of Rs.3 crores, being the amount originally stipulated under the agreement (Exh. A1).

27. She, therefore, urged that this Court ought not to interfere with the concurrent findings of facts recorded by the trial Court and the High Court, whereby the suit instituted by the plaintiff-appellant was dismissed.

Discussion and Analysis

28. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record.

29. At the outset, it may be noted that the plaintiff schedule 1/11th share of the defendant-respondent forms part of a larger tract of land admeasuring three acres thirty-five cents originally owned by her late father Shri Seethi Thangal. A school was built on the entire three acres area and is presently being run by the plaintiff-appellant.

30. The plaintiff-appellant has consistently asserted that, having regard to the requirements of the Kerala Education Rules, 1959, the campus of a higher secondary school cannot be reduced below three acres and, but for such statutory constraint, he would have conveniently given up the claim for the 1/11th share of the defendant-respondent in the plaintiff schedule property.

31. It is further a matter of record that during the course of hearing of the appeal, this Court made efforts to facilitate a settlement through mediation, and the plaintiff-appellant offered a handsome amount of Rs.75 lakhs to the defendant-respondent. However, the said offer was point-blank refused by the defendant-respondent, who seems to have been overcome by greed owing to the difficulty faced by the plaintiff-appellant who would risk losing the right to

operate the school in case the land area is reduced to less than three acres.

32. It is in this background that we shall now proceed to examine the material available on record to determine whether the view taken by the High Court in affirming the rejection of the suit by the trial Court is justified.

33. The High Court dismissed the suit primarily on two grounds, namely: -

- (i) The failure of the plaintiff-appellant to establish readiness and willingness to perform his obligations under the contract (Exh.A-1);
- (ii) limitation.

34. On the first aspect, it may be noted that the factum of three extensions dated 14th April, 2008 (executed by all nine co-sharers); 7th August, 2010 and 7th July, 2011 (executed by the power of attorney holder, Shri Muhammed Rafi Thangal), stands duly proved by the plaintiff-appellant through unimpeachable and credible evidence. It was only on 14th November, 2012, that the defendant-respondent, for the first time, caused publication of a newspaper notice purporting to revoke the power of attorney

executed in favour of Shri Muhammed Rafi Thangal. Furthermore, the defendant-respondent does not even dispute the validity of the agreement (Exh. A1) dated 14th May, 2007 which was executed by Shri Muhammed Rafi Thangal acting on the unregistered power of attorney (Exh. A4). In this backdrop, the theory projected by the respondent that the power of attorney executed by her in favour of Shri Muhammed Rafi Thangal stood revoked as far back as the year 2002 is *ex facie* untenable and contrary to the record.

35. The most crucial and vital document, which, in our considered view, tilts the balance in favour of the plaintiff-appellant, is the affidavit (Exh. A5) executed by the defendant on 30th April, 2013. The execution of the said affidavit (Exh. A5) was neither disputed nor denied by the defendant-respondent, who admittedly did not enter the witness box in the suit proceedings. Instead, her son Shri Rasheeq Ahmed alone was examined as DW-1. A plain reading of the affidavit, particularly the highlighted portions (*supra*) thereof, clearly establish that the defendant-respondent not only ratified the acts performed by the power of attorney holder, her brother Shri

Muhammed Rafi Thangal, but also expressly conveyed her no-objection to the change in management and so also the ownership of the school and the properties appurtenant thereto in favour of the plaintiff-appellant. Once the two facts, i.e., the publication of notice in the year 2012 for revocation of the unregistered power of attorney (Exh. A4) and the affidavit dated 30th April, 2013 are cumulatively taken into account, manifestly, limitation would start running from the later date because it is, at that stage, that the respondent-defendant finally refused execution of sale deed to the extent of her share in the suit property.

36. In this backdrop, we are of the firm view that the issue of limitation was erroneously decided by the trial Court as well as the High Court, leading to an unjustified rejection of the suit instituted by the appellant.

37. As the execution of the affidavit (Exh. A5) is not in dispute, the period of limitation would commence from the said date, i.e., 30th April, 2013. We have no hesitation in holding that the suit was instituted within the prescribed period of limitation, reckoned from the date of the affidavit. The said affidavit (Exh.

A5) not only ratifies the acts performed by the power of attorney holder Shri Muhammed Rafi Thangal but also records the unequivocal no-objection of the executant-defendant to transfer the ownership of the property in favour of the plaintiff-appellant.

38. There is no dispute that pursuant to the last extension, the plaintiff-appellant paid the remaining sale consideration which was accepted by eight co-sharers of the defendant-respondent and the partial sale deed to that extent, stood executed in his favour on 8th May, 2013. Thus, the issue of readiness and willingness was also wrongly decided against the plaintiff-appellant and in favour of the defendant-respondent.

39. In this background, we are of the firm opinion that the High Court committed grave error in the facts as well as in law in dismissing the appeal suit filed by the plaintiff-appellant and affirming the judgment of the trial Court.

40. The impugned judgments do not stand to scrutiny and are hereby set aside.

41. The plaintiff-appellant is held entitled to conveyance of the 1/11th share of the defendant-respondent in the plaint schedule property. The trial

Court shall determine the balance sale consideration payable to the defendant-respondent, having regard to the original consideration stipulated in the principal agreement for sale (Exh. A1), and shall apply simple interest at the rate of 9% thereon. The appellant shall deposit the said amount before the trial Court within a period of two months from the date of such determination, whereupon a registered sale deed in respect of the suit schedule property shall be executed in favour of the appellant.

42. The appeal is allowed in these terms. No costs.

43. Decree be prepared accordingly.

44. Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO(S). 3895 OF 2022

45. This appeal is preferred against the interim order dated 19th November, 2021 passed by the High Court in Writ Appeal No.1425 of 2021.

46. The writ appeal was preferred by defendant-respondent Sakeena Beevi through her power of attorney holder Shri Rasheeq Ahmed (DW-1), assailing the order dated 11th October, 2021 passed by the learned Single Judge. By the said order, learned Single Judge upheld the decision of the

Director of Public Instruction (DPI) rejecting the representation preferred by the writ petitioner against the proposed assignment of the ownership and management of Aleemul Islam Higher Secondary School, Padoor to the plaintiff-appellant (respondent No. 3 before the High Court). Accordingly, the writ petition was dismissed and the order of the DPI was affirmed.

47. The writ petitioner alleged that since she had not agreed to sell her share from the joint family land on which the school existed, the total land area of the school fell below 3 acres mandatorily required to operate a higher secondary school as per Rule 5A Chapter 3 of the Kerala Education Rules, 2005. The DPI, however, rejected the representation of the writ petitioner. As stated above, the writ petition also came to be rejected.

48. During the pendency of the writ appeal, the District Education Officer (DEO), Chavakkad, by order dated 15th November, 2021 recognised the plaintiff-appellant as the Manager of the school w.e.f. 3rd September, 2019.

49. The Division Bench stayed the effective operation of the order of learned Single Judge dated

11th October, 2021 and also the order dated 15th November, 2021 passed by the DEO during pendency of the writ appeal. Consequently, the management of the school was directed to be vested with the DEO, Chavakkad. While providing for this interim arrangement, the Division Bench directed the DEO to discharge the functions of the Manager on the joint instructions of the writ petitioner and the plaintiff-appellant.

50. Learned counsel representing the State of Kerala vehemently and fervently contended that looking to the disputes pending between the parties pertaining to 1/11th share of the defendant (writ appellant) in the suit schedule property, the High Court, rightly passed the impugned order making an interim arrangement for management of the school so that the functioning thereof would not suffer. He urged that as the DEO has been ordered to act under the instructions of the writ petitioner as well as the plaintiff-appellant herein, no prejudice would be caused to any of the parties in continuing such arrangement.

51. By way of judgment passed in Civil Appeal No. 3894 of 2022, we have granted the decree of specific

performance in favour of the plaintiff-appellant. In view of the above decision, manifestly, the plaintiff-appellant would have available to him the full tract of 3 acres land for running the school as required under the Kerala Education Rules, 2005.

52. Hence, there is no further requirement of continuing the interim arrangement as directed by the High Court by the impugned order.

53. Consequently, the impugned order dated 19th November, 2021 passed by the High Court is set aside.

54. The appeal is allowed in these terms. No costs.

55. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
JANUARY 07, 2026.