



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 25<sup>TH</sup> DAY OF JUNE 2025 / 4TH ASHADHA, 1947

RFA NO. 593 OF 2017 (J)

AGAINST THE JUDGMENT DATED 16.06.2017 IN OS NO.94 OF 2014  
OF ADDITIONAL SUB COURT, IRINJALAKUDA

APPELLANT/1<sup>st</sup> DEFENDANT:

SHAJU  
AGED 50 YEARS  
S/O.NAREPARAMBAN VAREED,  
MANNAMPETTA DESOM,  
AMBALLOR VILLAGE, MUNKANDAPURAM TALUK.

BY ADVS.  
SHRI.T.R.S.KUMAR  
SMT.DEENA JOSEPH  
SRI.K.V.SABU  
SRI.SOBIN SOMAN

RESPONDENTS/PLAINTIFF / 2ND RESPONDENT:

- 1 VICTORY GRANITE BRICKS PVT. LTD,  
PALACKAL DESOM, PALLISSERY VILLAGE,  
THRISSUR TALUK, REPRESENTED BY  
MANAGING DIRECTOR, SUNNY, AGED 53  
YEARS, S/O.EDATTUKARAN MATHEW,  
VARANDARAPILLY DESOM/VILLAGE,  
CHALAKKUDY TALUK , PIN-680307.
- 2 K.P.SREEDHARAN  
AGED 55 YEARS, S/O NARAYANAN EMPRATHIRI,  
'NAVANEETHAM' VEETIL,



2025:KER:45599

NEAR AYURVEDA HOSPITAL,  
VELLANGALLOOR DESOM,  
VADAKKUMKARA VILLAGE,  
MUKUNDAPURAM TALUK-680312  
(POWER OF ATTORNEY HOLDER OF FIRST DEFENDANT)

BY ADV SRI.S.SUJITH FOR R1  
ADV.SRI.T.M.CHANDRAN FOR R1

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON  
13.06.2025, ALONG WITH RFA.75/2019, THE COURT ON 25.06.2025  
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 25<sup>TH</sup> DAY OF JUNE 2025 / 4TH ASHADHA, 1947

RFA NO. 75 OF 2019

AGAINST THE COUNTER CLAIM JUDGMENT AND DECREE IN  
O.S.NO.94/2014 DATED 16.06.2017 OF ADDITIONAL SUB COURT,  
IRINJALAKUDA

APPELLANT/COUNTER CLAIM PLAINTIFF NO.1:

SHAJU  
AGED 50 YEARS  
S/O.NAREPARAMBAN VAREED,  
MANNAMPETTA DESOM ,  
AMBALLUR VILLAGE,  
MUNKUDAPURAM TALUK.

BY ADVS.  
SHRI.T.R.S.KUMAR  
SRI.K.V.SABU  
SMT.DEENA JOSEPH  
SMT.DEEPA R MENON

RESPONDENT/COUNTER CLAIM DEFENDANT/COUNTER CLAIM PLAINTIFF NO.2:

1 VICTORY CONCRETE BRIKS PVT. LTD. ,  
PALACKAL DESOM, PALLISSERY VILLAGE,  
THRISSUR TALUK, REP.BY ITS MANAGING DIRECTOR,  
SUNNY, AGED 53 YEARS,  
S/O.EDATTUKARAN MATHEW ,  
VARANDARAPILLY DESOM /VILLAGE,  
CHALAKKUDY TALUK- 680 303.



2 K.P.SREEDHARAN,  
AGED (55 YEARS), S/O.NARAYANAN EMPRATHIRI,  
'NAVANEETHAM' NEAR AYURVEDIC HOSPITAL  
VELLANGALLOOR DESOM ,VADAKKUMKARA VILLAGE,  
MUKANDAPURAM TALUK- 680 662.

BY ADV SRI.S.SUJITH FOR R1  
ADV.SRI.T.M.CHANDRAN FOR R1

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON  
13.06.2025, ALONG WITH RFA.593/2017, THE COURT ON 25.06.2025  
DELIVERED THE FOLLOWING:



2025:KER:45599

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SATHISH NINAN &amp; P. KRISHNA KUMAR, JJ.

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R.F.A.Nos.593 of 2017 &  
75 of 2019

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Dated this the 25th day of June, 2025

JUDGMENTP.Krishna Kumar, J.

These appeals arise from a suit instituted by the first respondent (hereinafter referred to as "the plaintiff") seeking specific performance of an agreement for the sale of immovable property. The trial court decreed the suit in favour of the plaintiff and dismissed the counterclaim raised by the appellant, who was the first defendant in the original suit (hereinafter referred to as "the defendant"). The defendant now challenges the said decree in these appeals.

2. As per the agreement dated 20.01.2014, the defendant agreed to sell 1.26 acres of land owned by him to the plaintiff at the rate of Rs.9,000/- per cent, within a



period of three months. The plaintiff contended that an amount of Rs.11.37 lakhs was paid as advance sale consideration to the defendant's Power of Attorney holder. Subsequently, the plaintiff paid the entire sale consideration through three cheques to the said Power of Attorney holder. Expecting that the defendant would execute the sale deed as agreed, the plaintiff purchased stamp paper worth Rs.1.8 lakhs on 19.04.2014. The plaintiff was compelled to institute the suit since the defendant failed to execute the sale deed.

3. According to the plaintiff, the agreement for sale was part of a broader compromise arrangement involving certain other parties, aimed at resolving long standing disputes between them with the defendant's brother, a multimillionaire. The agreement was also signed by the Power of Attorney holder of the defendant, on behalf of the defendant. Pursuant to this compromise, the plaintiff and certain other individuals had already transferred their respective properties to the intended parties. The defendant, however, failed to act in accordance with the



agreement, it is alleged.

4. The defendant denied being a party to the aforementioned compromise and challenged the validity and enforceability of the sale agreement, asserting that it was unregistered and, therefore, not legally binding. He further alleged that the actual agreed sale price was Rs.61,000/- per cent, but in the agreement, the plaintiff falsely recorded it as Rs.9,000/- per cent, contrary to the real understanding between the parties. The defendant also alleged that the plaintiff had trespassed upon the land in question prior to the expiry of the agreement period and had altered its physical features by levelling the terrain. On these grounds, he raised a counterclaim seeking recovery of possession.

5. Upon consideration of the oral and documentary evidence, the trial court found that the sale agreement (Ext.A2) had indeed been executed between the plaintiff and the defendant, and that the plaintiff had paid the entire consideration. Accordingly, the suit was decreed in favour of the plaintiff. Consequently, the counterclaim was



dismissed.

6. We have heard Sri.T.R.S.Kumar, the learned counsel appearing for the defendant/appellant and Sri.T.M.Chandran, the learned counsel appearing for the plaintiff/first respondent.

7. The principal contention advanced by the learned counsel for the defendant is that the decree for specific performance ought not to have been granted by the trial court, as the agreement for sale was unregistered. According to him, pursuant to the amendment introduced by the State Legislature to Section 17(1) of the Registration Act (hereinafter referred to as "the Act"), all contracts for sale are mandatorily required to be registered, with effect from 13.09.2013. The learned counsel further contended that, although Section 49 of the Act permits an unregistered document to be received as evidence of a contract in a suit for specific performance, such admissibility is confined to granting a decree for the refund of earnest money or advance sale consideration. According to him, permitting specific performance on the basis of an unregistered agreement would





defeat the very object of the statutory amendment.

8. In response, the learned counsel for the plaintiff submitted that the proviso to Section 49 of the Act expressly exempts suits for specific performance from the general prohibition set out in the main clause of the section. Therefore, an unregistered agreement for sale may still be relied upon for the purpose of seeking specific performance, it is contented.

9. Section 17(1) of the Act has been amended by the State of Kerala by introducing the Registration (Kerala Amendment) Act, 2012 ('the Amendment Act', for short) on 13/09/2013, with Presidential assent. As per Section 2 of the Amendment Act a new clause is inserted as Section 17(1) (f) in the Registration Act. Relevant part of Section 17(1) thus reads as follows:

**"17. Documents of which registration is compulsory -** (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (7 of 1871) or the Indian Registration Act, 1877 (3 of



1877), or this Act came or comes into force, namely:-

(a) xxxxx

(f) "Instruments purporting or operating to effect a contract for the sale of immovable property of the value of one hundred rupees and upwards.

xxxxxx

The Amendment Act further deleted the explanation provided at the end of Section 17(2). The explanation reads thus:

**"Explanation** - A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money."

At the outset, we have no hesitation in accepting the contention advanced by the learned counsel for the defendant that, pursuant to the aforesaid amendment, an agreement for sale is compulsorily registrable in the State of Kerala by virtue of the provisions contained in Section 17(1) of the Registration Act. The legal consequence of non-registration of a document that is required to be registered under Section 17 is expressly addressed in Section 49 of the Act, which reads as follows:



**“Effect of non-registration of documents required to be registered.-**

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.”

(Emphasis added)

As per Section 49, an unregistered document that is compulsorily registrable under Section 17 shall neither affect any immovable property referred to therein nor be received as evidence of any transaction affecting such property. Nevertheless, the section carves out specific exceptions to this general rule. Notably, an unregistered document affecting immovable property may still be admitted in evidence: (a) as evidence of a contract in a suit for specific performance, and (b) for the purpose of proving any



collateral transaction not required to be effected by a registered instrument. It is evident from the Amendment Act that the legislature, in its wisdom, chose not to amend Section 49, even as it introduced clause (f) to Section 17(1) of the Act. By retaining the proviso to Section 49, the legislature presumably intended to preserve the exceptions it contains—particularly, the admissibility of unregistered documents in suits for specific performance. Consequently, the legal effect of the proviso remains intact and is not diluted by the amendment.

10. Therefore, we are unable to accept the contention raised by the learned counsel for the defendant. There is nothing in the newly introduced provisions or in Section 49 that supports the proposition that an unregistered document can be used in a suit for specific performance only for the limited purpose of claiming alternate relief, such as a refund of the payment made towards the purchase price or earnest money.

11. We are fortified in our view by the law laid down by



the Hon'ble Supreme Court in **R. Hemalatha v. Kasthuri** (AIR 2023 SC 1895). In that case, the Court considered the impact of an amendment introduced by the State of Tamil Nadu to Section 17(1) of the Registration Act. By the Tamil Nadu Amendment Act 29 of 2012, a new clause was inserted into Section 17(1), making it mandatory to register all instruments or agreements relating to the sale of immovable property valued at one hundred rupees or more. Tamil Nadu also omitted the Explanation after Section 17 (2).

12. Notably, Section 49 of the Registration Act remained unamended in Tamil Nadu. While the trial court had ruled in favour of the defendant, holding that an unregistered agreement executed after the amendment was inadmissible in evidence, it was contended before the Supreme Court that, in view of Section 49(1)(c) read with the newly inserted clause (g) in Section 17(1), such an agreement could not be admitted in evidence to prove a transaction involving immovable property.

13. However, the Hon'ble Supreme Court, after examining the proviso to Section 49, held that despite the insertion



of clause (g) in Section 17(1) and the omission of the Explanation, no corresponding amendment had been made to Section 49. It was further observed that the Explanation to Section 17(2) had also been omitted by the State of Tamil Nadu. The Court took note of the primary object and intent behind the 2012 Amendment and ultimately concluded that an agreement for sale remains admissible in evidence in a suit for specific performance, by virtue of the proviso to Section 49 of the Act. The relevant portion of the judgment is reproduced below:

“9. Thus, on and after the Tamil Nadu Amendment Act, 2012, as per Section 17(1) (g), instrument of agreement relating to sale of immovable property of the value of Rs. 100/- and upwards is required to be registered compulsorily. However, despite the same and despite the "explanation" to sub-section (2) of Section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act. Section 49 of the Registration Act.

x x x x x x

11. At this stage, the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary statement of objects and reasons seem to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable property etc. on white paper or on stamp paper of nominal value.



12. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is



exception to the first part of Section 49.”

14. Though the learned counsel for the defendant placed reliance on a host of decisions rendered by this Court and the Hon’ble Supreme Court concerning the effect of non-registration of documents that are compulsorily registrable, we find those decisions inapplicable to the present case, as none of them addresses the interplay between Section 17(1) (f) and Section 49 of the Registration Act.

15. However, relying on **Ignatious v. Dominic** [2017 (3) KHC 836], the learned counsel for the defendant further contended that the expression “as evidence” in Section 49 ought not to be construed as synonymous with “in evidence,” and therefore, the agreement in question should not have been admitted in evidence.

16. We find no merit in the above submission, particularly in light of the law laid down by the Hon’ble Supreme Court in **Hemalatha’s** case (supra). Moreover, the observations made by this Court in **Ignatious’s** case (supra) arose in an entirely different context—namely, whether a





document required to be registered under Section 17(1A) of the Act could be acted upon in a suit for specific performance of a contract. That decision, therefore, has no bearing on the present issue.

17. The next point for consideration is whether the trial court was justified in granting a decree for specific performance. In all fairness, the learned counsel for the defendant did not dispute the execution of the agreement or the payment of the full sale consideration. There is no dispute regarding the genuineness of Ext.A2 agreement, as already noted. The only contention raised by the defendant before the trial court was in respect of the sale price mentioned in the document. While the agreement signed by him stipulated a sale price of Rs.9,000/- per cent, his claim was that the actual agreed amount was Rs.61,000/- per cent. However, despite admitting the execution of the agreement and receipt of the advance sale consideration, the defendant did not step into the witness box nor adduce any other evidence in support of his contention. He did not even choose to reply to the notice sent by the plaintiff.



18. On the other hand, the documents produced by the plaintiff clearly establish that the fair value of the land in question was less than Rs.9,000/- per cent, at that time. It also emerged in evidence that there existed an agreement among certain other individuals who were parties to various litigations then pending before the court, one of whom was the defendant's brother. The compromise agreement was signed by the Power of Attorney holder of the defendant. Although the defendant did not personally sign that agreement, he was a party to one of the said cases, which was subsequently withdrawn as part of the compromise arrangement.

19. It is also undisputed that the plaintiff had already transferred his land in furtherance of the said agreement, with the legitimate expectation that the defendant would execute a sale deed in respect of the plaintiff's scheduled property. These facts clearly point to the conclusion that failure to specifically enforce the contract would result in undue hardship and substantial loss to the plaintiff.

20. Upon a comprehensive evaluation of the entire evidence on record, we find no reason to interfere with the



trial court's decree for specific performance, which is fully justified. Accordingly, we are of the view that the judgment and decree impugned in the appeals are liable to be upheld. The dismissal of the counterclaim by the trial court is also found to be proper and calls for no interference.

In the result, the appeals are dismissed.

Sd/-

**SATHISH NINAN**

**JUDGE**

Sd/-

**P. KRISHNA KUMAR**

**JUDGE**

SV



**APPENDIX OF RFA 593/2017**

**PETITIONER ANNEXURES**

<b>Annexure A1</b>	<b>TRUE COPY OF FIR NO. 696/2015 OF INFORPARK POLICE STATION</b>
<b>Annexure A2</b>	<b>TRUE COPY OF RELEVANT PAGE OF FAIR VALUE REGISTER, REGISTRATION DEPARTMENT, KERALA</b>
<b>Annexure A3</b>	<b>TRUE COPY OF RELEVANT FAIR VALUE REGISTER</b>