

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO(S).....OF 2024**  
**ARISING OUT OF SLP (CIVIL) NO. 22470 OF 2019**

**THEKKATTU HAJARA  
IBRAHIM** **...APPELLANT(S)**  
**VERSUS**  
**MOHAMMED KUTTY  
AND ORS.** **...RESPONDENT(S)**

**ORDER**

1. Leave granted.
2. The appeal arises against judgment of the Kerala High Court dated 03.06.2019 in First Appeal No. 508 of 2012, whereby the High Court allowed the appeal preferred by respondent no.1 herein, who is the original plaintiff in a suit for recovery of earnest money and creation of charge under Section 55(6)(b) of the Transfer of Property Act, 1882,<sup>1</sup> and thereby created a statutory charge upon the suit property in possession of the appellant herein.
3. The matter involves competing claims of the appellant, a bona fide purchaser, and respondent no.

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<sup>1</sup> TP Act

1, who seeks a statutory charge under Section 55(6)(b) of TP Act.

4. The brief facts of the case are that an agreement dated 22.01.2007 was signed between respondent no. 2, the original owner of the property, and one Areekkara Abdul Basheer, under which the property was to be sold by respondent no.2 for Rs. 50,00,000 (Rupees Fifty Lakhs Only), with an advance payment being made. This agreement also allowed the property to be registered in favor of Areekkara Abdul Basheer or his nominee. Subsequently, on 31.03.2007, respondent no. 2 entered into another agreement to sell the same property to respondent nos. 1 and 3, accepting Rs. 25,00,000 (Rupees Twenty Five Lakhs Only) as an advance.
5. On 04.05.2007, a power of attorney holder of respondent no. 2 executed an assignment deed in favor of the appellant, who was the nominee under the first agreement. The appellant also took possession of the property under this assignment deed. However, shortly after, on 13.06.2007, respondent no. 2 issued a registered lawyer's notice to respondent no. 1, rescinding the second agreement

dated 31.03.2007, citing non-performance within the stipulated time frame. Aggrieved by the cancellation of the agreement to sell, respondent no. 1 instituted a civil suit registered as O.S. No. 322/2007 before the Sub-Judge, Kozhikode, on 06.09.2007, seeking recovery of the advance amount paid under the agreement and requesting the creation of a statutory charge over the property.

6. The Trial Court, in its judgment dated 18.01.2012, decreed the suit in favor of respondent no. 1 for the recovery of the advance amount with interest but denied the plea for a statutory charge. The Trial Court's decision was based on the appellant's prior possession of the property under the assignment deed executed on 04.05.2007. Aggrieved by this, respondent no. 1 filed an appeal registered as RFA No. 508/2012 before the High Court of Kerala on 27.06.2012, challenging the Trial Court's findings and reiterating the request for a statutory charge.
7. The Kerala High Court, vide the impugned order, reversed the Trial Court's judgment and created a statutory charge in favor of respondent no. 1 under Section 55(6)(b) of TP Act. The High Court held that

respondent no. 2 had unjustifiably rescinded the agreement dated 31.03.2007 and found respondent no. 1 not at fault for its non-performance. Additionally, the High Court rejected the appellant's claims under the assignment deed, citing insufficient evidence to establish its validity as being tied to the earlier agreement of 22.01.2007. Furthermore, the court noted that the appellant failed to prove that they were a bona fide purchaser for value without notice of the prior agreement.

8. The appellant challenges this judgment of the High Court, on the grounds that their rights under the earlier agreement dated 22.01.2007 and the subsequent assignment deed predate and override respondent no. 1's claims. The appellant also contends that the statutory charge granted by the High Court is barred under Section 100 of TP Act.
9. We have heard the learned senior counsel appearing for the appellant and the counsel for the respondent as well.
10. This Court finds that the High Court erred in granting a statutory charge in favor of respondent no. 1 under

Section 55(6)(b) of the TP Act. The principles governing the creation of such charges, as well as the equity between the parties, do not support the impugned order.

11. Respondent No. 1 did not challenge the cancellation of the agreement to sell dated 31.03.2007 nor did he file a suit for specific performance of the contract. By abstaining from such legal remedies, respondent no. 1 tacitly accepted the rescission of the agreement. It is a settled principle of law that once an agreement to sell is cancelled and no steps are taken to enforce its specific performance, the agreement ceases to be legally enforceable. Consequently, the right to claim a statutory charge under Section 55(6)(b) of the TP Act, which is contingent on the enforceability of the agreement, is extinguished. Respondent No. 1's remedies were rightly confined to the recovery of the advance amount paid.

12. Section 55(6)(b) of the TP Act permits the creation of a charge in favor of a buyer for the amount paid under an agreement for sale only when the agreement is enforceable. In the instant case, the rescission of the agreement coupled with respondent no. 1's

inaction in seeking specific performance, rendered the agreement unenforceable. Therefore, the statutory charge granted by the High Court was contrary to the legal framework and established precedents. A charge cannot subsist in law when the underlying agreement ceases to exist.

13. The appellant derived title to the property through the earlier agreement dated 22.01.2007, followed by the assignment deed executed on 04.05.2007, pursuant to which possession was also handed over. The appellant's acquisition of rights predates the agreement dated 31.03.2007 relied upon by respondent no. 1. The Trial Court had correctly recognized the validity of the assignment deed and upheld the appellant's title. The High Court's conclusion to the contrary was based on insufficient evidence and overlooked the priority of the appellant's rights under the earlier agreement.

14. Section 100 of the TP Act protects the interests of bona fide purchasers for value without notice against the creation of charges. The appellant, acting as a nominee under the first agreement, acquired the property through an assignment deed duly executed

by the power of attorney holder. The High Court failed to conclusively establish that the appellant was not a bona fide purchaser or that the assignment deed was invalid. Therefore, any statutory charge detrimental to the appellant's title would violate the protective provisions of Section 100 of TP Act.

15. Equity demands that the rights of the parties be adjudicated in the light of their conduct and the chronology of events. The appellant, having acted on an earlier agreement and perfected title through an assignment deed, cannot be deprived of their rights on account of a subsequent agreement that was rescinded and made unenforceable. Respondent No. 1, having failed to assert their contractual rights through appropriate remedies, cannot claim equity over the property.

16. The statutory charge created by the High Court in favor of respondent No. 1 is unsustainable in law and equity. Consequently, the impugned judgment is modified to the extent of setting aside the charge. However, the monetary decree for recovery of the advance amount with interest, as granted by the Trial Court and affirmed by the High Court, remains

undisturbed. This ensures that respondent No. 1 is adequately compensated without infringing upon the appellant's rightful ownership and possession of the property.

17. The appeal is accordingly allowed.

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

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

.....**J.**  
**(PRASANNA B. VARALE)**

**NEW DELHI**

**NOVEMBER 28, 2024**