

IN THE COURT OF THE MUNSIFF, NORTH PARAVUR
Present:- Sajitha M.N., Munsiff
Wednesday, the 10th day of January, 2024 / 20th Pousha 1945
O.S No. 215/2014

Plaintiff : Wg Cdr.V. Abraham (Retd) aged 64 years,, S/o Mathai Varghese.
ThalATHAYIL, Vattomparambil, Subash Chandra Bose Road,
Amritha Institute of Medical Science P O, Kochi- 682 041

By Advs. V M Kurian, , C N Sreekumar & Sabu P Joseph,

Defendants 1 Ranjan Kumar Shenoy, S/o Krishna Shenoy, Edavazhikal,
Varapuzha village, Paravur taluk, Ernakulam District
2 Rajesh, S/o Baby, Kollarikal house, Puthenpally kara,
Varapuzha village, Paravur taluk, Ernakulam District

Additional D3 Usha, W/o late Rajan kumar Shenoy, aged about 57 years,
Valiyaveetil house, Near Panchyath junction, Varapuzha – 683
517
*(Additional D3 is impeaded as per Order in IA 1/22 dated
20.05.2022)*

D1 – Died
D2 & D3 – Ex-parte

This suit having been finally heard on 09.01.2024 and the Court on
10.01.2024 delivered the following :-

JUDGMENT

Suit is for money.

2. Petition averments, in brief, are as follows:- Plaintiff is a wing
commander retired from Indian Air Force. 1st defendant is engaging the
real estate business. 2nd defendant is the owner of 78.659 cents of
property lying in Alangad village. 1st defendant had entered into an
agreement with 2nd defendant for the purchase of 6 cents from the

above mentioned property along with a pathway to the said property for an amount of 3,15,000/- on 20.08.2013. 1st defendant paid ₹ 8 lakhs to the 2nd defendant towards advance sale consideration. Meanwhile, 1st defendant approached the plaintiff offering the sale of the above said property. Thereafter plaintiff and 1st defendant agreed to enter into a sale agreement. Believing the words of the defendant, plaintiff paid ₹ 2 lakhs as token advance and 1st defendant had issued a receipt dated 12.12.2013 for the amount received by him. Thereafter, plaintiff and 1st defendant had a discussion regarding the execution of the sale agreement. At the time of discussion, 1st defendant informed the plaintiff that actual sale consideration could not be shown in the sale deed which may create problems to 2nd defendant. This proposal was not acceptable for the plaintiff. The plaintiff was not ready to accept the property without showing the actual sale consideration and paying the original stamp duty and registration fees. But the defendant were not ready for the same and agreeing to return the advance amount in a month. In spite of several request made by the plaintiff, 1st defendant has not returned the advance amount. Plaintiff issued a lawyer notice dated 08.02.2014 to the defendants calling upon the defendants to pay the amount. Whereas the defendants have not paid the amount. Hence this suit for realization of ₹ 2 lakhs with interest from the defendants.

3. 1st defendant appeared and filed written statement contending as follows:- 1st defendant admit the fact that ₹ 2 lakhs was received by the 1st defendant as token advance from the plaintiff. ₹ 5,45,000/- as fixed as consideration for per cent. Whereas thereafter plaintiff was not ready to perform his part. When the defendant asked the plaintiff to purchase the property, plaintiff informed the 1st defendant that he did not have the amount to purchase the property. This defendant never raised any objection for showing the actual value of the property in the document. This defendant sent a reply notice to the plaintiff stating that he is ready to execute the document in favour of the plaintiff. Whereas plaintiff was not ready to purchase the property. Due to the act of the plaintiff, 1st defendant sustained the loss of ₹ 15,80,000/-. Hence this defendant prays for dismissal of the suit.

4. Summons was served to the 2nd defendant. 2nd defendant was not appeared. Hence he was set exparte. During the pendency of the suit, 1st defendant passed away . His legal heir was impleaded as additional 3rd defendant by virtue of order in IA 1/2022 dated 20.05.2022.

5. 3rd defendant filed written statement adopting the contentions in the written statement filed by the 1st defendant. When

the suit was listed for evidence 3rd defendant was absent, 3rd defendant name called absent. Hence, D3 was set exparte.

6. From the side of the plaintiff, plaintiff was examined as PW1, Ext.A2 to A5 documents were marked. Ext.A1 was a photocopy hence not marked.

7. Heard the learned counsel for the plaintiff.

8. The case of the plaintiff is that there was a sale agreement between the 1st defendant and 2nd defendant with respect to 6 cents of property. Thereafter 1st defendant and plaintiff agreed to execute a sale agreement and as a token advance, plaintiff paid ₹ 2 lakhs to the 1st defendant. 1st defendant admit the agreement between the plaintiff and 1st defendant and receipt of ₹ 2 lakhs. The case of the plaintiff is that 1st defendant is not ready to show the actual sale consideration in the document. Hence plaintiff was not ready to purchase the property. Whereas the case of the defendant is that plaintiff has no fund to purchase the property. Due to the act of the plaintiff, huge loss was occurred to the defendant. No evidence was adduced from the side of the defendant to prove their case. From the side fo the plaintiff, Ext.A2 to A5 document were produced. Ext.A2 document was a receipt which shows that 1st defendant received ₹ 2 lakhs from the plaintiff. Ext.A2 document was admitted by the 1st defendant in his written statement. Ext.A3 was

the lawyer notice sent by the plaintiff to the defendant. Ext.A4 was the acknowledgment card of the lawyer notice. Ext.A5 was the reply notice sent by the defendant to the plaintiff. The contention of the defendant is that due to the non performance of the agreement by the plaintiff, defendant sustained huge loss. Whereas the contention of the plaintiff is that plaintiff was always ready to perform his part of the agreement. Whereas defendant was not ready to show the actual sale price in the document. Here only the 1st defendant got ₹ 2 lakhs from the plaintiff. 2nd defendant has not got any amount from the plaintiff. More over, 1st defendant has not become the owner of the plaint schedule property. In the written statement his contention is that 2nd defendant repaid only ₹ 6 lakhs out of ₹ 8 lakhs to the 1st defendant. At the time of entering into the Ext.A2 agreement, 1st defendant was not the owner of the plaint schedule property. There was only an agreement between the defendants. 1st defendant further stated in the written statement that 2nd defendant returned ₹ 6 lakhs to the 1st defendant after deducting the damages for the non performance of the agreement. Hence no relief can be granted against the 2nd defendant.

9. Plaintiff's unchallenged evidence prove that the 1st defendant is liable to pay an amount of ₹ 2,06,000/- to the plaintiff. Considering the facts and circumstances of the case, I am of the view

that an interest @ 9% per annum on principal amount of ₹ 2,00,000/- from the date of the suit till the date of the decree and thereafter an interest @ 6% per annum on principal amount of ₹ 2,00,000/- till the date of realization will serve the ends of justice. For the above said reasons, the suit is liable to be decreed in part with costs.

In the result, The suit is decreed in part with costs and the 1st defendant shall pay an amount of ₹ 2,06,000/- (Rupees Two lakhs six thousand only) to the plaintiff with an interest @ 9% per annum on principal amount of ₹ 2,00,000/- (Rupees Two lakhs only) from the date of the suit till the date of decree and thereafter an interest @ 6% per annum on principal amount of ₹ 2,00,000/- (Rupees Two lakhs only) till the date of realization.

Dictated to the Confdl. Asst., transcribed by him, corrected and pronounced by me in open court on this 10th day of January, 2024.

Sajitha M.N.,
Munsiff

Plaintiff's Exhibits:

A1	20.08.2013	Copy fo agreement (Not marked)
A2	12.12.2013	Receipt
A3	08.02.2014	Copy of lawyer notice
A4	Nil	Acknowledgment card
A5	15.02.2014	Reply notice

Plaintiff witness:-

PW1 05.06.2023 Varghese Abraham

Court Exhibits: - Nil

Plaintiff's Witnesses: Nil

Defendant's Witness: - Nil

Court Witness : Nil

Munsiff

O.S No. 215/2014
Judgment
Dtd. 10.01.2024