

IN THE COURT OF THE PRINCIPAL MUNSIFF, CHERTHALA
Present: Smt.Ashadevi V.S., Principal Munsiff
Thursday, the 5th day of August, 2021/14th Sravana, 1943

O.S. No.709/2015
(Filed on 19.10.2015)

Plaintiff: Antony Jacob, aged 55 years
S/o Antony, Pollayil veetil,
Ward – 9, Cherthala Municipality,
Cherthala Kizhakkum muri,
Kokkothamangalam village

By Adv.Sri.C.J.Varghese

Defendant: John, aged 50 years
S/o Abraham, Puthenveetil,
Thuravoor Grama Panchayath,
Padinjattumkara thekkum mruri,
Thuravoor thekku village

Exparte

This suit having been finally heard on 05.08.2021 and the court on the same day delivered the following:

J U D G M E N T

Suit for Mandatory Injunction and Permanent Prohibitory Injunction.

2. Brief facts averred in plaint : Plaintiff and defendant are friends. The defendant for the purpose of his business used to take loan from the plaintiff and in order to release the debt of the residential

house and property of the defendant, he demanded the plaintiff to purchase the same. Accordingly, the plaintiff and defendant entered into an agreement for sale for the purchase of said property for Rs.15,00,000 and Rs.12,00,000/- accepted by him as part of sale consideration. In the agreement for sale, there is stipulation to the effect that the defendant would clear off the debt the property had with Malabar Gramin Bank within a period of 6 months from 24/04/2014. The defendant though executed the sale deed in favour of the plaintiff on 18/07/2014 he failed to clear off the debt within the agreed period and hence the sale deed was also not executed as agreed. The plaintiff permitted the defendant to continue his residence in the property but taking advantage of such concession granted, the defendant filed false complaint against the plaintiff in police alleging that the plaintiff is a money lender receiving exorbitant interest. The defendant in spite of repeated demands remained in the plaint schedule property. Hence the suit.

3. The suit was earlier decreed exparte on 21/05/2019. Thereafter, the defendant filed petition to set aside the exparte decree as I.A.51/2020. Said petition allowed and defendant contested the suit

by filing written statement with following contentions: The sale deed relied on by the plaintiff is a sham document without any consideration. It is executed by applying coercion and undue influence on defendant. The defendant received Rs.6,50,000/- on different occasion from the plaintiff and in security for said transaction 6 blank cheque leafs and an agreement for sale in respect of plaint schedule property were obtained from the defendant. When the defendant got an opportunity to go abroad, the plaintiff compelled him to execute the sale deed. Said sale deed has no free will or consent and is not intended for execution. Based on said document, no right can be claimed upon plaint schedule property.

4. Following issues were raised for trial :

- 1) Whether the plaintiff has exclusive possession over suit property?
- 2) Whether the plaintiff is entitled to Permanent Prohibitory Injunction as prayed for?
- 3) Whether the plaintiff is entitled to Mandatory Injunction as prayed for?
- 4) Whether the plaintiff is entitled to damages as prayed for?
- 5) Whether the plaintiff is entitled to use and occupation

charge as prayed for?

6) Reliefs and costs?

5. The suit listed for trial on 02/08/2021. Plaintiff filed proof affidavit and Exts A1 to A7 were marked. Defendant remained absent on said date and also on 04/08/2021 when the case posted for further evidence.

6. Heard.

7. Through the pleadings and documents produced, the plaintiff proved that a sale deed was executed by the defendant in his favour in respect of plaint schedule property. The property was mutated in the name of plaintiff. The allegation against the execution of the sale deed was not proved by the defendant. Hence, the Court is having no hesitation to accept the evidence adduced by the plaintiff as proof of his claim. Hence, I find that the plaintiff is entitled to get the decree as prayed for.

8. In the result, the suit is decreed as follows :

1) The defendant is hereby restrained by way of permanent prohibitory injunction from inducting strangers into the plaint schedule property and from

committing any waste therein.

- 2) Defendant is hereby directed to clear off the debts with respect to plaint schedule property, before the North Malabar Gramin bank, and to hand over the prior title deeds to the plaintiff within one month from the date of this order, failing which, the plaintiff is entitled to clear off the liabilities of the defendant with respect to the suit property at North Malabar Gramin Bank and to collect the documents, and get the amount so paid, realized from, the assets of the defendant.
- 3) Defendant is directed to give use and occupation charges at the rate of Rs.3,000/- per month till he surrenders vacant possession of the residential building to the plaintiff.
- 4) Plaintiff is entitled to the costs of the suit.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in the open Court on this the 05th day of August, 2021.

Sd/-
Ashadevi V.S.
Principal Munsiff

Appendix:-**Witness for the Plaintiff:**

PW1 :- Antony Jacob dated, 02.08.2021.

Exhibits for the Plaintiff:

A1 :- Agreement for Sale dated, 24.04.2014.

A2 :- Sale deed No.1139/14 of Kuthiathode SRO dated, 18.07.2014.

A3 :- Lawyer notice dated, 12.10.2015.

A4 series :- Postal receipts (2 in numbers) dated, 12.10.2015.

A5 :- Tax receipt (T.P.No.23126) of Thuravoor South village Office dated, 24.07.2015.

A6 :- Tax receipt (T.P.No.23126) of Thuravoor South village Office dated, 19.12.2014.

A7 :- Receipt from Thruavoor South village Office dated, 24.11.2014.

Id/-
Principal Munsiff