

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Thursday, the 13th day of January 2022/23rd Pousha 1943.

ORIGINAL SUIT. 284/2018

(Filed on 27-07-2018)

Plaintiff:

Hussain, aged 42 years,
S/o.Yoosaf kunju,
Onamppallil kizhakkathil,
Keerikkadu South muri,
Keerikkadu Village.

(By Advs.Sri.H.Suni & Sri.C.M.Ansari)

Defendants:

1. Ranjan, aged 42 years,
S/o.Krishnan,
Kottakkattu thekkathil veedu,
Keerikkadu South muri,
Keerikkadu Village.
2. Sinimol, aged 31 years,
W/o.Ranjan,
Kottakkattu thekkathil veedu,
Keerikkadu South muri,
Keerikkadu Village.

(Exparte)

This plaint is filed under section XXVI Order VII and Rule 1 and 2 of the civil procedure code and coming on for final hearing before me on 13.01.2022 in the presence of the counsel for plaintiff and having been stood over consideration till 13.01.2022 and the court on the same day delivered the following.

JUDGMENT

Suit for return of advance money.

2. Plaintiff's case in brief is as follows:- The defendants are the owners-in-possession of plaint schedule property ad-measuring 2.45 ares comprised in re-survey No. 175/2 of Keerikkad Village. On 09.09.2015, the defendants entered into an agreement with the plaintiff for sale of plaint schedule property for a total sale consideration of Rs. 18,50,000/-. Accordingly, an amount of Rs.6,00,000/- given to the defendants by the plaintiff on 09.09.2015 as advance. On the same day, the defendants executed an agreement in favour of the plaintiff agreeing to sell the plaint schedule property within 11 months. The plaintiff was ready and willing to purchase the property. Whereas, the defendants evaded the execution of sale deed after receiving balance sale consideration from the plaintiff. Accordingly, on 30.01.2018, the plaintiff caused to issue a legal notice

to the defendants calling upon them to execute sale deed with regard to the plaint schedule property in favour of the plaintiff after receiving balance sale consideration. Though the defendants received the notice, they opted to send a reply notice instead of execution of the sale deed. The reply notice having certain untenable and false contentions. The cause of action for the suit arose on 09.09.2015, the date of execution of the agreement, on 30.01.2018, the date of notice, on 01.02.2018, the date of receipt of notice by the defendants and also on 24.07.2018, the date on which the plaintiff got information that the defendants are going to alienate the plaint schedule property in favour of others without honouring the agreement. The plaintiff is entitled to realise the advance amount from the defendants. Thus, the plaintiff has approached this court for return of advance money with interest as per law. Thus, the suit.

3. Though the defendants appeared and filed written statement, when the case listed for evidence on 10.01.2022, there was no representation on the side of the defendants. Hence, they were called, absent and set ex parte.

4. Plaintiff filed affidavit in lieu of examination in chief and he was examined as PW1. Exts. A1 to A5, A2 (a) and A3 (a) were marked.

Ext. A1 is the agreement executed by the defendants in favour of the plaintiff. As it is not sufficiently stamped, the document was impounded under s. 33 of the Kerala Stamp Act, 1959 and stamp duty and penalty was imposed. Thereafter, the document was admitted in evidence. On scrutiny of Ext. A1, it is seen that the defendants executed the agreement and agreed to sell the plaint schedule property in favour of the plaintiff for an amount of Rs. 18,50,000/-. Out of which, Rs. 6,00,000/- was received by the defendants as advance. Exts. A2 and A2 (a) are the postal receipts of legal notice. Exts. A3 and A3(a) are the acknowledgement cards of legal notice. Ext. A4 is the legal notice. Ext. A5 is the reply notice. The plaintiff has no case that he had received any amount from the defendants. So, the advance amount has to be realised from the defendants. The unchallenged evidence of the plaintiff proved his case. Thus, the suit is liable to be decreed.

In the result, the suit is decreed as follows:-

- (a) The plaintiff is entitled to realise an amount of Rs.7,05,000/- (Rupees seven lakhs and five thousand only) from the defendants and their assets with interest @ 6% per annum from the date of suit till

the date of realisation.

- (b) The defendants shall pay costs of the suit to the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on 13th day of January, 2022.)

Sd/-
SHANAVAS. A
MUNSIFF

APPENDIX

Exhibits for the Plaintiff:

A1	09.09.2015	:	Agreement.
A2	30.01.2018	:	Postal receipt.
A2(a)	30.01.2018	:	Postal receipt.
A3	---	:	Postal Acknowledgment Card.
A3(a)	---	:	Postal Acknowledgment Card.
A4	January 2018	:	Office copy of Legal Notice.
A5	02.02.2018	:	Replay Notice.

Exhibits for the Defendants : Nil.

Witness for the Plaintiff:

PW1 10.01.2022 : Hussain.

Witness for defendants : Nil.

Court Exhibits : Nil.

Sd/-
MUNSIFF

// True copy //

MUNSIFF

Typed by: Shafeek
Compd by:

Judgment in OS.284/2018
dated.13/01/2022