

**IN THE COURT OF THE MUNSIF, KAYAMKULAM**

Present: Smt.Aneesa.A, Munsiff

Friday, the 5<sup>th</sup> day of April, 2024/16<sup>th</sup> Chaithra, 1946.

**ORIGINAL SUIT.284/2018**

(Filed on 27.07.2018)

(Suit restored as per order in RP.50/2022 dtd.03.02.2024)

**Plaintiff:**

Hussain, aged 42 years,  
S/o. Yoosuf kunju,  
Oanamballil kizhakkathil,  
Keerikkadu Thekku Muri,  
Keerikkadu Village.

**(By Adv.H.Suni)**

**Defendants:**

1. Renjan, aged 42 years,  
S/o. Krishnan,  
Kottackattu Thekkathil veettil,  
Keerikkadu Thekku Muri,  
Keerikkadu Village.
2. Sinimol, aged 31 years,  
W/o. Renjan,  
Kottackattu Thekkathil veettil,  
Keerikkadu Thekku Muri,  
Keerikkadu Village.

**(By Adv.Rajeev Rajadhani)**

This suit is coming on for final hearing on 05.04.2024 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. Defendants appeared and filed written statement contending *inter alia* as follows:- The suit is not maintainable either in law or on facts. The defendants are the owners-in-possession of 2 ares 45 Sq. Metres of property comprised in re-survey No. 13/175 by virtue of deed No. 310/2013 of Kareelakulangara Sub Registrar's Office and they are paying land tax for the same after effecting mutation of the same. Thereafter, they built a house therein and the defendants, their sons, 1<sup>st</sup> defendant's mother and sister are residing therein. The 1<sup>st</sup>

defendant has two sisters viz; Rejana and Renjini. Smt. Renjini was residing with her husband and children near the house of the defendants. The elder sister Renjini is blind and she is also suffering from bone diseases and she is residing with the defendants. The 1<sup>st</sup> defendant also blind and he is living with the help of his relatives and other people. As the defendants have no financial capacity to meet the treatment expense of the 1<sup>st</sup> defendant, his sister and mother, the defendants have mortgaged their property in Kayamkulam Pullukulangara Co-operative bank and availed a loan of Rs. 5,00,000/-. Thereafter, the defendants could not repay the loan amount as agreed. Therefore, they decided to sell their property for repayment of the loan and also decided to purchase another property and house with the remaining amount. Thereafter, the plaintiff came to purchase the property of the defendants and building therein and due to the financial stringency of the defendants, the defendants agreed to sell their property to the plaintiff for an amount of Rs. 18,50,000/-, though the plaintiff schedule property is having a value of Rs. 25,00,000/- during that period. The plaintiff and defendants entered into an agreement for sale that the plaintiff would give the

balance amount to the defendants within 11 months from 09.09.2015. For the residence of the defendants and family, they decided to purchase 10 cents of property and a house near Kayamkulam Purakavu Temple and they closed the loan in Pullukulangara Co-operative bank from the advance amount received from the plaintiff and the remaining amount given as advance to purchase the said 10 cents of property and the house. As per the agreement on 09.09.2015, at the end of the eleven months duration, the defendants approached the plaintiff and demanded to pay the balance sale consideration and informed the plaintiff that, if the plaintiff give the balance sale consideration to the defendants, they can execute the sale deed for the property, for which they already given advance, otherwise the advance amount would be lapsed. Whereas, the plaintiff did not heed to the demand of the defendants. Thereafter, the defendants sent a lawyer's notice to the plaintiff stating that the defendants are ready to execute the sale deed and also demanded the plaintiff to come before the Sub Registrar's Office Kareelakulangara for executing the sale deed after paying the balance sale consideration. Whereas, the plaintiff did not do so. After the agreement period, the plaintiff has no right to demand the

defendants to execute sale deed on the basis of an expired sale agreement because there is a clause in the sale agreement that “If there is any default on the side of the plaintiff in executing the sale deed, thereafter they have no right over the said property and the advance amount.” It is admitted that the plaintiff sent a legal notice on 02.02.2018 demanding the defendants to execute the sale deed after receiving the balance sale consideration. The defendants sent a reply notice to the plaintiff stating that the agreement period between the plaintiff and defendants is over. As there is no agreement between the plaintiff and defendant is existing and the defendants never violate the agreement with the plaintiff, the defendants are not liable to repay the advance amount to the plaintiff. Due to the act of the plaintiff, the defendants caused irreparable loss and hardships and they incurred huge debt also. So, they are in need to sell the property immediately. The plaintiff attached the property of the defendants by misrepresenting the court with an intention to harass the defendants. The plaintiff has no right to seek any relief as per the agreement. The plaintiff has no cause of action and the cause of action stated is false and fabricated. The reliefs sought in the plaint are not allowable. Hence the

suit is to be dismissed with costs of the defendants.

4. Based upon the above said pleadings, the following issues were raised for determination:-

1. Is the plaintiff entitled for a decree of return of advance money from defendants as sought for ?
2. Reliefs and costs ?

5. Though the defendants appeared and filed written statement, when the case listed for trial, there was no representation on the side of the defendants.

6. **Issue No. 1** :- The plaintiff in this case filed affidavit in lieu of examination in chief and he was examined as PW1. Exts. A1 to A4 were marked. Ext. A1 is the sale agreement dated 09.09.2015. Exts. A2 and A2(a) are the postal receipts two in numbers. Exts. A3 and A3 (a) are the postal acknowledgment cards two in numbers. Ext. A4 is the copy of advocate notice. Even though the defendants filed written statement rebutting the contentions in the plaint, they did not adduce any evidence to prove their contention. On the other hand, the unchallenged evidence of the plaintiff proved his case. Thus, issue No. 1 is found in favour of the plaintiff.

7. **Issue No. 2**:- In view of the above discussions in issue No. 1, 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 05<sup>th</sup> day of April 2024.)*

Sd/-  
ANEESA. A  
MUNSIFF

#### **APPENDIX**

##### Exhibit for the Plaintiff

A1.	09.09.2015	:	Sale Agreement.
A2.	30.01.2018	:	Postal receipt.
A2(a)	30.01.2018	:	Postal Receipt.
A3.	--	:	Postal Acknowledgment card.
A3(a)	--	:	Postal Acknowledgment card.
A4.	--	:	Advocate Notice.

##### Witness for the Plaintiff:

PW1. 01.04.2024 : Hussain.

Exhibits for the Defendants : Nil.

Witness for the Defendants : Nil.

Courts Exhibits : Nil.

Sd/- MUNSIFF

// True copy //

Typed by: Shafeek

Compd by:

MUNSIFF

Judgment in OS.284/2018  
Dated.05/04/2024