

IN THE COURT OF PRINCIPAL SUB JUDGE, NORTH PARAVUR

Present:- Smt. Wincy Ann Peter Joseph, Principal Sub Judge
Wednesday, the 23rd day of October, 2024/ 01st Karthika, 1946

O.S. No.63/2022

Plaintiff:-

Kunjumammed VI., aged 63 years, S/o. Ibrahim, Valloor
Veettil, Erumathala Kara, Erumathala P.O., Aluva – 683 112.

By Advs. Dinesh R. Shenoi, Rishad PH. & Nisha K.N.

Defendant :-

Chandrika, aged about 69 years, D/o. Raman and
W/o. Jagathy, Kavil House, Erumathala Kara, Aluva East
Village, now residing at Chungath House, Manakkappady,
Karumaloor Village, Karumaloor P.O., North Paravur.

Exparte.

This suit having been finally heard on 10.10.2024 and the court
on 23.10.2024 delivered the following:-

JUDGMENT

Suit for the reliefs of specific performance and permanent
prohibitory injunction.

2. The averments in the plaint are as follows:- Plaintiff and defendant had entered into an Agreement for Sale of the plaint schedule property, of which the defendant is the owner in possession and enjoyment of the same. The plaintiff had agreed to purchase the property at the rate of Rs.2.90 lakhs per cent and Rs.10 lakhs was paid towards advance sale consideration. As per the agreement, the Sale Deed would be executed within 3 months. Earlier the defendant and one Manoj M.J. entered in to an agreement for sale of the very same property on 28.03.2011. Later, the said Manoj backed out from the agreement and the defendant had to return Rs. 6 lakhs which received as advance. Therefore, the defendant had insisted to pay Rs.10 lakhs as advance sale consideration to clear the said liability. Advance amount given by the plaintiff has been used partly to pay off the liabilities incurred by the defendant. After the execution of the agreement, it was found that the property was not in the name of the defendant in the Revenue records and therefore, the agreement was extended by 3 months at the first instance and again by 6 months on defendant's request. Defendant submitted an application before the Land Tribunal, Ernakulam on 23.12.2011 for Certificate of Purchase.

On 15.04.2012, the defendant had requested for extension of the period of the agreement, till her application was adjudicated and allowed. On 22.10.2021, the proceedings were completed and order was passed by the Land Tribunal in S.M. No. 340/2012 and Certificate of Purchase No. 848/2021 was issued on 23/12/2021. In the second week of May 2022, the plaintiff came to know that the defendant was trying to sell off the property to third party and deliberately kept the fact of issuance of Certificate of Purchase secret. In the circumstances, the plaintiff and the middlemen / brokers had met the defendant and her son, and requested to perform her part of the agreement. The plaintiff was and is, always ready and willing to perform his part of the agreement and had been ready and willing to perform his part of the contract even in 2011. But they stated that the price of land in the locality had gone up substantially and therefore, not prepared to execute the Sale Deed. They said they would return the 10 lakhs rupees received as advance, but only after the property is sold. Thus, the plaintiff has issued a lawyer notice dated 28.05.2022, calling upon the defendant to perform her part of the agreement. No reply has been received from the defendant. In the meanwhile, the plaintiff has

received clear information from Shihab, S/o. Kalappurakkal Saidu Muhammed, the middleman and real estate broker that the defendant is trying to sell off the property secretly. Hence, this suit.

3. The defendant filed written statement by raising following contentions:- An unregistered contract was entered into between the plaintiff and defendants eleven years ago. It was extended once till 12.11.2011. So suit is barred by limitation. The price of the property mentioned is the price of 2011. After that, there has been a huge development and the price has gone up to more than 10 lakhs per cent. The suit is filed to see that if the plaintiff can get the old forbidden property. It is not correct to say that more money was taken from the plaintiff to settle the contractual obligation with Shri Manoj and the original contract was given to the plaintiff. The defendant had given all the documents in connection with the property to the plaintiff. Only after perusing the same, the plaintiff entered into the agreement for sale. The agreement was renewed for three months and the said term was expired on 12.11.2011. The contract was not renewed after that. Since the plaintiff did not have the balance sale consideration with him, he was failed to execute the sale deed. The averment of the

plaintiff that he has waited for more than 10 years without making any inquiry and without taking any action after paying Rs.10 lakhs is highly unbelievable. The plaintiff was not ready and willing to pay the balance sale consideration during the agreement period. The contention that the period was extended till the date of 15.4.2012 is false. The defendant has admitted her signature on the reverse side of the first page of the property sale agreement. However, the signature seen against the name of Chandrika dated 12.11.2011 extending the period for 6 months is not that of her. On the reverse side of the second page of the agreement, the signature against the name of Chandrika is not that of this defendant. The plaintiff did not approach the defendant after two years after the expiry of the contract. The plaintiff never approached the defendant either to settle the matter or demanded the property. The plaintiff has not suffered any loss and therefore, not entitled to compensation. During these period, the plaintiff has not sent any notice to the defendant. So he has no right to claim return of advance amount. Hence, the suit is to be dismissed.

4. Following issues were settled for trial:-

1. Whether the suit is barred by the law of limitation?
 2. Whether the defendant has signed in the endorsements dated 12.11.2011 and 15.04.2012 in the agreement for sale dated 13.05.2011?
 3. Who has breach the terms of contract in the agreement for sale dated 13.05.2011?
 4. Whether the plaintiff is entitled to get a decree of Specific Performance of contract in the agreement for sale dated 13.05.2011?
 5. Whether the plaintiff is entitled to get a decree for the alternate relief for the realization of Rs.10 lakhs with interest at the rate of 12% per annum from 13.05.2011 onwards from the defendant and her assets?
 6. Whether the plaintiff is entitled to realize Rs.5 lakhs as damages from the defendant and her assets?
 7. Reliefs and Costs?
5. On the date of the list, the defendant was absent and there were no representations for the defendant. Hence, the defendant was

set ex-parte. Plaintiff filed proof affidavit and was examined as PW1 and Exts. A1 to A9 were marked.

6. Heard the learned counsel for the plaintiff.

7. In support of the claim put forwarded by the plaintiffs, they have produced Exts.A1 to A9 documents. Ext.A1 is the Sale Agreement dated 13.5.2011, which would show that the parties to the suit had entered into agreement on 13.5.2011 and the term of the said agreement is three months. The further endorsement on the reverse side of Ext.A1 document would show that the term of the agreement was initially extended for three months on 12.08.2011 and thereafter, for another six months with effect from 12.11.2021. The endorsement on the reverse side of the 2nd page would show that the defendant had submitted an application before the Tahsildar (Land Tribunal), Ernakulam on 23.12.2021 and agreed to execute the Sale Deed upon adjudication of the said application. These endorsements would substantiate that the contentions raised by the plaintiff is correct. Ext.A2 is the cancelled agreement executed between the defendant and Manoj M.J dated 28.3.2011. Ext.A3 is the certified copy of Partition

Deed No.1908/1/2004 of Aluva S.R.O dated 07.04.2004. Ext.A4 is the application for *Patta* submitted by the defendant before the Land Tribunal, Ernakulam on 23.12.2011, which the plaintiff obtained by filing an application under Right to Information Act. Ext.A5 is the certified copy of the Order issued by the Land Tribunal, Ernakulam dated 22.10.2021. Ext.A6 is the certified copy of Purchase Certificate No.848/21 dated 23.12.2021 issued by the Land Tribunal, Ernakulam. Ext.A7 is the certified copy of Sale Deed No. 2784/1/2011 of Aluva S.R.O dated 25.08.2011, which is produced from the side of the plaintiff in order to show that he has raised funds for the execution of Sale Deed by the sale of his properties by virtue of the said Sale Deed and kept sufficient amount in his Bank account. Ext.A8 is the certified copy of Sale Deed No.3072/1/2011 of Aluva S.R.O dated 02.09.2011. Ext.A9 is the Lawyer's notice issued by the plaintiff to the defendant on 28.05.2022. These documents are sufficient to substantiate the case of the plaintiffs that the term of Ext.A1 agreement for sale has been extended thrice and he had sufficient amount in his account by selling his properties. Exts.A4 to A6 would also show that proceedings were pending before the Land Tribunal as contended by the plaintiff. The

defendant obtained the Certificate of Purchase with respect to the plaint schedule property only on 23.12.2021 as averred by the plaintiff. These facts and evidence remain unchallenged. Hence, the suit is to be decreed.

- 1) A decree of specific performance is passed by directing the defendant to execute the sale deed in respect of the plaint schedule property after receiving the balance sale consideration in Ext.A1 agreement for sale, within one month from today. If the defendant fails to comply the above direction, the plaintiff is allowed to get the execution of the said Sale Deed through the process of court after depositing the balance sale consideration.
- 2) A decree of Permanent Prohibitory Injunction is granted restraining the defendant or her agents from alienating, encumbering or transferring possession of the plaint schedule property to anybody other than the plaintiff or his nominee and also from committing any waste therein.
- 3) Considering the nature and circumstance of the suit, plaintiff counsel is also allowed to realise the costs of the suit from the defendant and her assets.

- The decree is made as a charge over the plaint schedule property. Plaintiff shall take steps for intimating the charge over the plaint scheduled property to the S.R.O. and Village Officer concerned.
- 4)

Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in open court, this the 23rd day of October, 2024.

Wincy Ann Peter Joseph,
Principal Sub Judge.

Appendix:-

Plaintiff's Exhibits:-

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| A1. | 13.05.2011 | Sale Agreement. |
| A2. | 28.03.2011 | Cancelled agreement |
| A3. | 07.04.2004 | Certified copy of Partition Deed No.1908/1/2004 of Aluva Sub Registrar's Office. |
| A4. | 23.12.2011 | Application for Patta submitted by the defendant before the Land Tribunal, Ernakulam. |
| A5. | 22.10.2021 | Certified copy of the Order issued by the Land Tribunal, Ernakulam. |
| A6. | 23.12.2021 | Certified copy of Purchase Certificate No.848/21 issued by the Land Tribunal, Ernakulam. |
| A7. | 25.08.2011 | Certified copy of Sale Deed No.2784/1/2011 of Aluva Sub Registrar's Office. |

A8. 02.09.2011 Certified copy of Sale Deed No.3072/1/2011 of Aluva Sub Registrar's Office.

A9. 28.05.2022 Lawyers notice.

Defendant's Exhibits:- Nil

Plaintiff's Witness:-

PW1 10.10.2024 VI. Kunjumohammed

Defendant's Witness:- Nil

Principal Sub Judge.

Typed by:Jagadeeswari M.V
Com. By:Swapnamol

