

IN THE COURT OF MUNSIFF AT ALUVA

Present:Smt.Sindhu Thankam. M, B.Sc, LL.M., Munsiff
Saturday, the 29th day of February 2020/10th Phalguna 1941

OS No. 791/2014

Plaintiff:

Louis, Aged 44 years, S/o. Ambrose,
Puthenveetil, Angamaly Kara,
Angamaly Village, Aluva Taluk.

By Advs. Bose K. Thachil and Ann Emil Joseph.

Defendants:

1. Thomas, Aged about 49 years, S/o. Yohannan,
Chakkalackal, Kidangoor Kara,
Thuravoor Village, Aluva Taluk.
2. Moly, Aged about 42 years, W/o. Thomas,
Chakkalackal, Kidangoor Kara,
Thuravoor Village, Aluva Taluk.

By Adv. M.J. Paulson

This suit is filed under Order 7 Rule 1 and r/w Section 26 of the Civil Procedure Code.

This suit is coming on for hearing before me on 24.02.2020 and the court on the 29.02.2020 delivered the following.

JUDGMENT

Suit is for realisation advance sale consideration.

2. Plaintiff averments in brief are as follows:- Plaintiff schedule property belongs to the defendants. On 09.04.13, plaintiff entered into an agreement with the defendants for purchase of plaintiff schedule property executing an agreement in that regard. The term of the agreement was till 09.10.13. He paid an advance sale consideration of Rs.8,00,000/- to the defendants. Though he was ready and willing to perform his part of contract and approached the defendants, they did not perform their part

saying one or other reasons. So, on 27.09.14 he caused to sent a lawyer notice to the defendants demanding them to execute sale deed or return the advance sale consideration. Though they received the notice no reply is sent. At the request of the defendants, period of agreement ws extended till 30.10.14. But, so far they have not performed their part of agreement. Hence the suit.

3. Defendants filed written statement for the following contentions:-
Suit is not maintainable either in law or on facts. No such agreement as alleged is executed by them. They never received any advance sale consideration also. They never intended to sell the property to the plaintiff. They are not even having any aquintance with him. Agreement dated 09.04.13 is a fabricated document. Signatures therein is not put by them. Plaintiff is a money lender by profession. He is in the habit of obtaining signed blank papers and stamp papers and advance amount on exorbitant interest. The sister and brother in law of the second defendant borrowed Rs.4,00,000/- from the plaintiff by pledging the property belong to the defendants. It is making them believe that he will procure loan from the bank. Since they did not pay the amount borrowed from him, on 09.04.13 he obtained signed blank cheque of IDBI bank belong to the defendants and signed stamp papers. He fabricated the signatuares also. They never promised the plaintiff to sell their property. They never extended the

period of agreement as alleged. There is no occasion to commit any breach of contract. It is misusing the documents obtained from them the present suit is filed. Hence seek dismissal of the suit.

4. Issues arise for consideration are as follows:

- i. Whether the execution of Ext.A1 agreement is proved ?
- ii. Is the plaintiff entitled for a money decree as prayed for ?
- iii. Reliefs and costs ?

5. From the side of the plaintiff, PW1 to PW4 were examined and marked Exts.A1 to A3, A4 series. From the side of the defendants also examined DW1 and DW2 and marked Exts.B1 to B14.

6. Both sides are heard.

7. **Issue No.i and ii:-** For the sake of convenience and to avoid repetition of discussion of the very same facts these issues are considered together. According to PW1, plaintiff, he entered into Ext.A1 agreement with the defendants to purchase plaint schedule property by paying advance sale consideration of Rs.8,00,000/-. It was on 09.04.13 Ext.A1 is alleged to have executed. But the defendants were not ready and willing to perform their part of contract and so the sale deed could not be executed. So, he wants to reterun of advance sale consideration of Rs.8,00,000/- with interest. Ext.A2 is the notice issued by him demanding payment of money.

Ext.A3 is the postal receipt and Ext.A4 is acknowledgment card evidencing the receipt of notice by the defendants. Defendants on the other hand, contended that Ext.A1 is the fabricated piece of document. They denied their signatures in pages 2 to 4 of Ext.A1. Though the signature in the first page of Ext.A1 is admitted, according to them it is misused by obtaining signature in blank stamp papers. They have come with a specific defence that sister of the second defendant borrowed Rs.4,00,000/- from the plaintiff on exorbitant interest and when she could not return the amount, plaintiff obtained documents of the defendants misrepresenting that it is to take loan from the bank. They handed over a blank signed cheque leaf of IDBI bank along with sign stamp paper to the plaintiff on 09.04.13. It is misusing that signed blank paper the present suit is filed. So, according to them, they never executed any agreement with the plaintiff to sell that property or received any sale consideration of Rs.8,00,000/- as alleged. Ext.B1 is the notice admitted to have issued by the plaintiff to the defendants dated 27.09.13 to specifically perform the contract. So, the same day Ext.A2 and B1 notices were issued, one for return of advance amount and another for specific performance of the contract.

8. When cross examined PW1 deposed that he is a construction contractor and employee. He has no other job. Though he stated that he is paying income tax and undertook to produce the documents pertaining to

the same, no document is produced in that regard. The specific contention taken by the defendant is that the plaintiff is a money lender by profession having the habit of advancing money on exorbitant interest and obtained signed blank papers from various persons. It is in a similar circumstance he advanced the amount to the sister of the second defendant Jolly and obtained signed blank papers and filed the present case on experimental basis. When cross examined PW1 deposed that he filed a complaint against Smt.Jolly before Judicial First Class Magistrate Court, Ankamaly for realisation of amount based on the cheque. That case was filed in a transaction where Smt.Jolly borrowed money from him on an undertaking that her building will be sold to him. He admitted that there are other cases filed by him before this court for realisation of money against one Varghese. He filed a suit for return of advance money before the Sub Court North Paravur. He filed another case against one Kavungal Binu, Xavier, Vinayan etc. That case was filed for specific performance of contract. Evidence of PW1 would go to show that he was filed against several persons for realisation of money. Admittedly, he is a construction contractor and an employee in that field. He has not produced any documents to show that he is paying income tax or having sufficient income at the relevant to pay such a huge amount of Rs.8,00,000/- to the defendants.

9. DW1, second defendant, deposed that it was when the sister of the second defendant could not repay the amount advanced from the plaintiff they handed over signed blank papers to the plaintiff. According to her, plaintiff told her that he will assist them to take loan of Rs.12,00,000/- from Service Co-operative Bank, Ankamaly branch. It was informed that she could not avail loan as she is not a resident of Thuravoor Panchayath. So, the plaintiff undertook to get loan from District Co-operative Bank, Ernakulam. He undertook to obtain encumbrance certificate, possession certificate and non attachment certificate pertaining to the property and she was asked to pay Rs.25,000/- for the same. When she paid Rs.25,000/- he obtained signatures of her and her husband in signed blank papers. Though an amount of Rs.2,00,000/- was received by Smt.Jolly she did not pay all the debt towards the plaintiff. It is due to that enimity plaintiff misused her documents.

10. Learned counsel for the plaintiff argued that the allegation regarding the undertaking to avail loan from Service Co-operative Bank and payment of Rs.25,000/- etc does not find a place in the pleadings. So, it is a new story putforward by the defendants. Though such allegations were silent in the written statement, it is contended therein that Ext.A1 is prepared in a signed blank stamp paper obtained from the defendants when Smt.Jolly did not pay off the amount due to the plaintiff. That cannot be

treated as a new story putforward by the defendants, but explanation to the contention they have taken in the written statement. DW2 is a relative of the second defendant. According to him, pliantiff is a money lender by profession and he borrowed some amount from him with interest at the rate of 60% per annum by pledging his motorcycle. It is he who introduced Smt.Jolly to the plaintiff and later when Smt. Jolly could not pay off the debt, plaintiff obtained Rs.25,000/- from the defendant and some blank signed papers and cheque leaves from them. Ext.B2 is the complaint filed by the defendants along with Smt.Jolly and her husband before SHO, Ankamaly against the plaintiff. The allegations in the written statement find a place in Ext.B2. Ext.B2 is filed after the institution of the present suit and cannot be considered. Ext.B6 is the final report submitted by SHO, Ankamaly in pursuance to Ext.B2. Ext.B6 is the reply notice issued by defendants to the plaintiff for Ext.A2 notice. Ext.B6 also contains the contentions taken by the defendants in the written statement. Ext.B9 is the notice issued by the plaintiff to Smt.Jolly demanding payment of Rs.6,18,000/-. In pursuance to Ext.B9 notice plaintiff filed complaint before Judicial First Class Magistrate Court, Ankamaly. As per Ext.B9 and B10 it is alleged that Smt.Jolly owes Rs.6,18,000/- to the plaintiff.

11. As already discussed above, plaintiff filed cases against one Sri.Varghese. Ext.B12 and B14 are the certified copies of written

statement and petition to sent the documents to handwriting expert and judgment in O.S.No.205/10. That case is filed by one Augustine against one Bhanumathi and Manoj. It is alleged by the defendants that plaintiff filed a suit against Bhanumathi and Manoj through one Augustine which is denied by him. The specific contention taken by the defendants therein is that the documents handed over to the plaintiff herein is misused by the plaintiff therein. O.S.No.205/10 is dismissed by Sub Court, North Paravur. In that case also defendants admitted the signatures in the first page of the agreement and denied their signatures in the subsequent pages. The same defence is taken in O.S.No.205/10. Hon'ble Sub Court has dismissed that suit on the ground that plaintiff failed to prove the execution of the agreement. Hon'ble Sub Court expressed the view that the signatures of the parties in page No.2 to 5 in the agreement is not in fact written by them. It is an admitted fact that plaintiff has filed cases against Smt.Jolly, one Varghese, Kavungal Binu, Vinayan, Xavier etc. Those cases are for realisation of the amount and specific performance of contract. Plaintiff is a construction contractor and an employee. He has not produced any document to show that he is getting a huge amount to advance money to various persons. There is no material to show the source of income of the plaintiff at the relevant time. That leads to an inference that the plaintiff is in the habit of obtaining signed blank papers from various persons for

advancing money on exorbitant rate of interest.

12. Coming to the question of execution of Ext.A1, plaintiff examined PW1 to PW3. PW2 is a document writer alleged to have prepared Ext.A1. According to him, parties in Ext.A1 put their signatures in Ext.A1 in his office. At the time when parties put their signatures witnesses were also present. He witnessed parties putting their signatures. When cross examined he stated that after getting the signature of the parties in the first page of Ext.A1 he handed over Ext.A1 to them to put their signatures in the subsequent pages. He clarified that the witnesses in Ext.A1 put their signatures standing away from him. In re-examination, PW2 deposed that it is under the instructions of the plaintiff and defendants he prepared Ext.A1. Here, the defendants are denying the signatures in page No.2 to 6 of Ext.A1. PW2 did not witness them putting their signatures in page No.2 to 4. If he did not witness the defendants putting their signatures in page No.2 to 4, it cannot be said that he witnessed the execution of the entire document. So, the evidence of PW2 will not help the plaintiff to prove his case. PW3 is alleged to be a witness to Ext.A1. According to him, he did not witness the defendants putting their signatures in Ext.A1. Though he put his signatures therein after writing his name in his handwriting, according to him he put his signatures in Ext.A1 in his office. He also did not see other witnesses putting their signatures.

Evidence of PW3 clearly shows that he did not witness the parties or other witnesses putting their signatures in Ext.A1. Ext.A1 is alleged to have executed in the office of PW2. But PW3 has put his signature therein in his shop. So, his evidence cannot be considered for proving the execution of Ext.A1.

13. PW4 is alleged to be another witness to Ext.A1. He deposed that he put his signatures in Ext.A1 in the office of the vendor. According to him, PW3 was present in the office when he put his signatures which is against the version given by PW3. It is to a leading question put by learned counsel for the plaintiff PW4 affirmed that he witnessed the plaintiff and defendants putting their signatures in Ext.A1. When cross examined PW1 deposed that the signatures in different pages of Ext.A1 are different. When each pages of Ext.A1 was shown to PW1 he stated that the signatures of the defendants therein are one and the same. When re-examined he turn around and stated that what he meant is that the signatures of the defendants in all the pages are one and the same. According to him, actually the first defendant has put his signatures across the name of the second defendant and vice versa. Plaintiff has not taken any effort to compare the signatures of defendants and that put in page Nos.2 to 4 of Ext.A1. Though the defendants have taken a specific contention that the signatures in those pages are not put by them, on a

perusal of signatures of the defendants in first page and pages 2 to 4 of Ext.A1 it can be seen that there is some difference in the signatures in page No.2 to 4. When their signatures in the written statement and vakalath filed by defendants 1 and 2 is compared with the signatures in page Nos.2 to 4 of Ext.A1 it seems that there is some difference in the signatures. On the other hand, the signatures in page No.1 of Ext.A1 and other admitted signatures seems to be one and the same. So, on a naked eye comparison, this court does not feel that the signatures of the defendants in page No.2 to 4 are same as that in page No.1.

14. Here, the evidence of PW3 will not prove the execution of Ext.A1. The evidence of PW4, regarding the presence of PW3 at the time of execution, is against the evidence of PW3. So, there is some doubt in the version putforward by PW4 regarding the execution of Ext.A1. So, the witnesses examined from the side of the plaintiff could not prove execution of Ext.A1. On a naked eye comparison also the signatures in page No.2 to 4 and page No.1 of Ext.A1 are seem to be different. So, without comparison the signatures in page Nos.2 to 4 of Ext.A1 with the help of an expert it cannot be said that defendants have put their signatures in Ext.A1. In the absence of better evidence, this court is unable to hold a view that execution of Ext.A1 is proved. So, the story putforward by the defendants 1 and 2 can only be treated as probable. Since execution of Ext.A1 is not

proved handing over of amount of Rs.8,00,000/- to the defendants towards advance sale consideration cannot be believable. If that be so, plaintiff is not entitled for any reliefs as prayed for. These issues found against the plaintiff.

8. **Issue No.iii:-** In view of my findings in Issue Nos.i and ii, the suit is dismissed with costs.

Dictated to Confl. Asst., transcribed and typed by him, corrected and pronounced by me in the open court on this the 29th day of February, 2020.

**Sindhu Thankam.M.,
Munsiff.**

Appendix

Plaintiffs Exhibits:

A1	09.04.2013	Sale Agreement.
A2	27.09.2014	Office copy of Lawyer Notice
A3	27.09.2014	Postal Receipt.
A4	Acknowledgement Card
A4(a)	Acknowledgement Card.

Defendants Exhibits:

B1	27.09.2013	Office copy of Lawyer Notice
B2	26.11.2014	Copy of Complaint filed by defendants.
B3	26.11.2014	Postal Receipt
B3(a)	26.11.2014	Postal receipt
B4	27.11.2014	Acknowledgement Card
B4(a)	27.11.2014	Acknowledgement Card.

B5	29.11.2016	Final Report submitted by SHO Angamaly.
B6	25.11.2014	Office copy of Lawyer Notice (Reply Notice).
B7	25.11.2014	Postal Receipt.
B8	Acknowledgement Card.
B9	05.04.2013	Lawyer Notice issued by Plaintiff.
B10	Copy of Plaint submitted before JFCM II Aluva.
B11	03.06.2010	Certified copy of Plaint and proceedings in OS 205/2010 of Sub Court North Parur.
B12	02.06.2012	Certified copy of Written statement in OS 205/2010 of Sub Court North Parur.
B13	21.11.2012	Certified copy of IA 3260/12 in OS 205/2010 of Sub Court North Parur.
B14	24.07.2019	Certified copy of Judgment in OS 205/2010 of Sub Court North Parur.

Court Exhibits: Nil

Plaintiffs Witness:

PW1	15.07.2019	Louis
PW2	01.08.2019	Jose
PW3	01.08.2019	M.T.Joseph.
PW4	28.10.2019	Jaison K. V.

Defendants Witness:

DW1	29.11.2019	Moly Thomas
DW2	29.11.2019	Jain alias Jino

Court Witness: Nil

Munsiff