

O.S.No.50/2020

IN THE COURT OF THE SUBORDINATE JUDGE, PERUMBAVOOR

Present : Sri.Johnson M.I, Sub Judge

Monday, the 31st day of October, 2022/ 9th Karthika, 1944

O.S.No.50/2020

Plaintiff :-

Ujwal Garg, S/o Deenadayal, aged 49 years, residing at 3/4, Kaliyamman Nagar, behind Cheran Nagar, M.T.P.Road, G.N.Mills (P.O), Coimbatore - 641029, represented by his Power of Attorney Holder, Ramakant Gupta alias Ramakant Garg, aged 53 years, S/o Sreenivas Gupta, residing at 31/999 M-17, Prestige Palmgreen Villa, Kunjan Bava Road, Vyttila Desom, Vyttila P.O., Ernakulam (dist), Cochin - 682019.

By Advs.M/s.K.S.Sajeevkumar, P.Sam Zachariah,
Leena Sara Zachariah, Mohandas Chacko & Bismi.

Defendants :-

1. C.M.Mathew, aged 52 years, S/o Mathai, Chakkungal House, Pazhamthottam Kara, Aikkaranadu North Village, Kunnathunadu Taluk, Perumbavoor - 683562
2. C.M.Varghese, aged about 35 years, S/o Mathai, Chakkungal House, Pazhamthottam Kara, Aikkaranadu North Village, Kunnathunadu Taluk, Perumbavoor – 683562.

Addl. Priya Mol Baby, Thekke Kaithakkal House, Pullukandom Kara, D3. Konnathadi Village, Udumbuchola Taluk, Idukki District, Pin – 685554.

Addl. 3rd Defendant is impleaded as per order in I.A.No.2/2022 dated 29.06.2022.

D1, D2 & Addl.D3 - Exparte.

O.S.No.50/2020

This suit is coming on for final hearing on 28.10.2022 in the presence of the plaintiff's counsels and the Court on 31.10.2022 delivered the following :-

JUDGMENT

Suit is for declaration and recovery of possession.

2. Plaintiff's case in brief is as follows:- 1st defendant herein filed O.S.11/2010 against plaintiff herein for recovery of an amount of Rs.7,17,550/- from plaintiff herein with future interest at 12% per annum for the principal sum of Rs.6 lakh from the date of suit till its realisation on the basis of alleged agreement for sale. In that suit, it is alleged by 1st defendant herein that, he entered into an agreement with plaintiff herein for purchase of plaint schedule item No.1 and 2 properties therein and the agreement was entered into on 2-6-2008. Plaint schedule item No.2 property therein is shown as plaint schedule property herein. In that suit, it is alleged that, 1st defendant herein paid a sum of Rs.6 lakh to plaintiff herein in connection with abovesaid agreement and thereafter, plaintiff herein evaded from executing the sale deed in favour of

O.S.No.50/2020

1st defendant herein. Thereafter, 1st defendant herein filed that suit for return of advance money. All the allegations in that suit are incorrect. At that time, plaintiff herein was residing permanently at Coimbatore and after concealing the said fact, 1st defendant herein, by playing fraud on this court issued summons through paper publication and thereby obtained an ex parte decree against plaintiff herein. On getting information about that ex parte decree, plaintiff herein filed petition for setting aside that ex parte judgment and decree, but, the same was dismissed by this court. Against the same, plaintiff herein approached Hon'ble High Court of Kerala through FAO 190/2018 and as per judgment in that FAO, the Hon'ble High Court of Kerala set aside the ex parte judgment and decree. Thereafter, suit was restored to file and finally, case was posted for evidence. At that time, 1st defendant herein remained absent and hence, that suit was dismissed for default. In the meanwhile, 1st defendant herein obtained a sale certificate dated 26-11-2013 in his favour with respect to plaint schedule property herein and thereafter, a portion of plaint schedule property was sold out by

O.S.No.50/2020

1st defendant herein to 2nd defendant herein and remaining portion was sold out to 3rd defendant herein. After setting aside the exparte judgment and decree in O.S.11/2010, abovesaid sale certificate and subsequent sale became void and the same are not binding on plaintiff herein. In the said circumstances, it is to be declared that, auction sale dated 13-06-2013 in E.P.86/2011 in O.S.11/2010 with respect to plaint schedule property is null and void. It is further to be declared that, sale certificate dated 26-11-2013 in E.P.86/2011 in O.S.11/2010 and its subsequent transactions are null and void. It is to be declared that, sale deed No.6907/2014 and sale deed No.7376/2014 of Puthencruz SRO are null and void. Plaintiff is to be allowed to recover possession of plaint schedule property. The decree of the court is to be communicated to Sub Registrar, Puthencruz. For the said reliefs, plaintiff filed the suit.

3. Defendants remained absent and hence, they were set exparte.

4. Plaintiff filed proof affidavit and marked Exts.A1 to A10.

5. I heard the counsel for plaintiff.

O.S.No.50/2020

6. Plaintiff filed proof affidavit stating the facts in the suit. In the same, it is stated that, 1st defendant herein filed O.S.11/2010 against plaintiff herein for recovery of an amount of Rs.7,17,550/- from plaintiff herein with future interest at 12% per annum for the principal sum of Rs.6 lakh from the date of suit till its realisation on the basis of alleged agreement for sale. It is further stated that, in that suit, it is alleged by 1st defendant herein that, he entered into an agreement with plaintiff herein for purchase of plaint schedule item No.1 and 2 properties therein and the agreement was entered into on 2-6-2008. Plaint schedule item No.2 property therein is shown as plaint schedule property herein. According to plaintiff, in that suit, it is alleged that, 1st defendant herein paid a sum of Rs.6 lakh to plaintiff herein in connection with abovesaid agreement and thereafter, plaintiff herein evaded from executing the sale deed in favour of 1st defendant herein. Plaintiff has further stated that, thereafter, 1st defendant herein filed that suit for return of advance money. It is further alleged that, at that time, plaintiff herein was residing permanently at Coimbatore and after concealing the said fact,

O.S.No.50/2020

1st defendant herein, by playing fraud on this court issued summons through paper publication and thereby obtained an ex parte decree against plaintiff herein. According to plaintiff, on getting information about that ex parte decree, plaintiff herein filed petition for setting aside that ex parte judgment and decree, but, the same was dismissed by this court. Against the same, plaintiff herein approached Hon'ble High Court of Kerala through FAO 190/2018 and as per judgment in that FAO, the Hon'ble High Court of Kerala set aside the ex parte judgment and decree. It is further stated that, thereafter, suit was restored to file and finally, case was posted for evidence and at that time, 1st defendant herein remained absent and hence, that was dismissed for default. According to plaintiff, in the meanwhile, 1st defendant herein obtained a sale certificate dated 26-11-2013 in his favour with respect to plaint schedule property herein and thereafter, a portion of plaint schedule property was sold out by 1st defendant herein to 2nd defendant herein and remaining portion was sold out to 3rd defendant herein. According to plaintiff, after setting aside the ex parte judgment and decree in O.S.11/2010, abovesaid sale

O.S.No.50/2020

certificate and subsequent sale became void and the same are not binding on plaintiff herein and in the said circumstances, it is to be declared that, auction sale dated 13-06-2013 in E.P.86/2011 in O.S.11/2010 with respect to plaint schedule property is null and void. Plaintiff has further prayed that, it is further to be declared that, sale certificate dated 26-11-2013 in E.P.86/2011 in O.S.11/2010 and its subsequent transactions are null and void as well as it is to be declared that, sale deed No.6907/2014 and sale deed No.7376/2014 of Puthencruz SRO are null and void. Plaintiff has requested that, he is to be allowed to recover possession of plaint schedule property and the decree of the court in this suit is to be communicated to Sub Registrar, Puthencruz. For the said reliefs, plaintiff filed the suit.

7. So as to prove his case, plaintiff produced 10 documents and the same were marked as Exts.A1 to A10. In considering the unchallenged version of plaintiff and Exts.A1 to A10, it is only to be held that, plaintiff has proved his case that, court auction dated 13-6-2013 in E.P.86/2011 in O.S.11/2010 and issuance of sale certificate

O.S.No.50/2020

dated 26-11-2013 on the basis of abovesaid court auction as well as subsequent sale deed 6907/2014 and 7376/2014 are null and void. Plaintiff is entitled to recover possession of plaint schedule proeprty on the strength of his title. Hence, suit is only to be decreed.

In the result, the suit is decreed. It is declared that, auction sale dated 13-6-2013 in E.P.86/2011 in O.S.11/2010 and sale certificate dated 26-11-2013 on the basis of abovesaid auction sale and subsequent sale deed 6907/2014 and 7376/2014 of Puthencruz SRO are null and void. Plaintiff is entitled to recover possession of plaint schedule property on the strength of his title.

Communicate the decree to SRO and Village Office concerned.

Considering the facts and circumstances of the case, there is no cost.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 31st day of October, 2022.

Sd/-
JOHNSON M.I
SUB JUDGE

APPENDIX

Plaintiff's Exhibits :-

A1	04.01.2017	General Power of Attorney executed by Ujwal Garg in favour of Ramakant Gupta alias Ramakant Garg.
A2	21.01.2010	Certified Copy of Complaint in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A3	22.06.2010	Certified Copy of Judgment in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A4	22.06.2010	Certified Copy of Decree in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A5	20.08.2019	Certified Copy of the Judgment in FAO No.190/2018 issued from Hon'ble High Court of Kerala
A6	23.12.2011	Certified Copy of Petition in E.P. No.86/2011 in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A7	13.06.2013	Certified Copy of Sale Warrant with report in E.P. No.86/2011 in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A8	26.11.2013	Certified Copy of Sale Certificate in E.P. No.86/2011 in O.S.No.11/2010 issued from Sub Court, Perumbavoor.
A9	23.10.2014	Certified Copy of Sale Deed No.6907/2014 of Puthencruz SRO issued from Sub Court, Perumbavoor.
A10	22.11.2014	Certified Copy of Sale Deed No.7376/2014 of Puthencruz SRO issued from Sub Court, Perumbavoor.

O.S.No.50/2020

Defendant's Exhibits :- Nil

Witness Exhibits :- Nil.

Court Exhibits :- Nil.

Plaintiff's Witnesses :- Nil

Defendant's Witnesses :- Nil.

Court Witnesses :- Nil.

Sd/-
Sub Judge

Ss
Compd by Pkm

O.S.No.50/2020

O.S.No.50/2020

JUDGMENT

Dated : 31-10-2022