IN THE COURT OF THE SUBORDINATE JUDGE OF HOSDURG.

Present:- Sri. Biju.M.C., Subordinate Judge

Thursday, the 18th day of January, 2024/28th Pousha,1945

ORIGINAL SUIT No. 09 OF 2020

Between:-

1. Kodoor Veetil Devaki, aged 70 years
   W/o.late Alakkadan Veetil Kunhiraman,
2. Kodoor Veetil Beena, aged 45 years
   D/o.late Alakkadan Veetil Kunhiraman
3. Kodoor Veetil Sundaresh, aged 41 years
   S/o.late Alakkadan Veetil Kunhiraman
   All are R/at.Nhanamkai, Chervathur Village,
   Hosdurg Taluk P.O,Chervathur, 671313.

Plaintiffs

And

1. Aboobacker Kuttikole, aged 47 years
   S/o.Nheru Ibrahim,
   R/at. "Rahmath Manzil" Padnekkad,
   Kanhangad Village, Hosdurg Taluk, Kasaragod
   District, P.O.Padnekkad, 671314.
2. O.V.Sudhakaran, aged 55 years
   S/o.Raghavan Nair,
   R/at.Melathiyadam, Sreestha, Cheruthazham
   Village, P.O.Sreestha, 670303, Kannur District.
3. Shahul Hameed Pattathur, aged 40 years
   R/at.645 Pattathur, Kzhamkkara, Prilissery,
   Tirur, Malappuram District.
4. Kodoor Veetil Anitha, aged 47 years
   W/o. 2nd defendant O.V.Sudhakaran,
   R/at.Melathiyadam, Sreestha, Cheruthazham
   Village, Kannur District, P.O.Sreestha, 670 303.

Defendants

This suit coming on 16th day of January 2024 for final hearing before me in the presence of Sri. P.Narayanan and V.M.Gayathri., Advocates for Plaintiffs; Defendants are being called absent and set exparte and having stood over to this day for consideration, the court delivered the following:-

JUDGMENT

The suit is one for recovery of money.

2. **Brief facts:** The husband of the 1st plaintiff and the father of the plaintiffs No.2 to 4, late Alakkadan Kunhiraman was the owner of 18.21 Acres of property in R.S.No.421/2A and 4.15 Acres of land in R.S.No.423/2 of Cheruvathur Village. Both properties were lying as a compact plot. The plaintiffs and the 4th defendant proposed to start a petroleum outlet of Bharat petroleum in the said property. Therefore, the plaintiffs and the 4th defendant authorized the 2nd defendant to take steps to obtain a license in his name. The 2nd defendant is the son-in-law of the 1st defendant. Accordingly, he had obtained a license in his name. As per the terms of license, the plaintiffs and 4th defendant executed a lease deed in favour of the petroleum outlet namely 'Devi Agencies'. The plaintiffs and 4th defendant mortgaged the properties before the State Bank of Travancore, Payyannur Branch for raising funds for the business. The 3rd plaintiff was conducting the outlet along with the 2nd defendant till 2014. However, the 3rd plaintiff could not participate in the business. Thereafter, the 2nd defendant alone was in charge of the business as authorized by the plaintiffs and 4th defendant. In January 2017, the 1st defendant approached the plaintiff and defendant No.2 and 4 and made proposal for purchasing the petroleum outlet along with the property. The plaintiffs and defendants No. 2 and 4 have agreed to sell the property with petroleum out let to the 1st defendant for a total sale consideration of Rs.3,50,00,000/- (Rupees three crore and fifty lakhs only). As per the terms of the agreement, the plaintiffs and defendant No. 4 entitled to Rs.75,00,000/- (Rupees seventy five lakhs only) each and 2nd defendant is entitled to Rs.50,00,000/- (Rupees fifty lakhs only). As per the terms of the contract, the plaintiffs and 4th defendant had executed the sale deed in favour of the 1st defendant. The plaintiffs and 4th defendant received Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) as part of the sale consideration. The plaintiffs were made believe by the 1st defendant that unless the property was transferred in his name, the license could not transferred in his name. Believing the words of 1st defendant, the plaintiffs and 4th

defendant executed a registered sale deed in the name of the 1st defendant and received Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) on 9.02.2017. On that day itself another agreement was entered into between the plaintiff and defendants No.1, 2 and 4 as regards the terms and conditions of the contract. As per the agreement the management of the petroleum out let has to be handed over the 1st defendant prior to the transfer of license. When the 2nd defendant was asked to handed over the possession of the outlet to the 1st defendant, he informed that he entrusted the petroleum out let to one Aravindakshan and obtained a sum of Rs.64,00,000/- (Rupees sixty four lakhs only) and unless and until the said amount paid to Aravindakshan, he would not handover the outlet to the 1st defendant. The plaintiffs never authorized the 2nd defendant to handover the possession of the outlet to 3rd parties like Aravindakshan. Since the things being so, the plaintiffs were constrained to pay Rs.14,00,000/- (Rupees fourteen lakhs only) to the 2nd defendant and the petroleum outlet was handed over to the 1st defendant. Therefore, the 2nd defendant is liable to pay the sum of Rs.7,00,000/- (Rupees seven lakhs only) each to the 1st and 3rd plaintiffs each. The 2nd defendant already received a sum of Rs.50,00,000/- (Rupees fifty lakhs only) from the 1st defendant towards his interest in the petroleum outlet and he is not entitled get any amount in connection with the said transaction. In order to discharge the partial liability, the 1st defendant had issued a cheque for Rs.50,00,000/- (Rupees fifty lakhs only) drawn by Axis Bank Kanhangad branch dated 15.03.2017. It was stipulated in the agreement that the 51% of the shares is to be transferred in the name of the 1st defendant or his nominee after receiving the balance consideration. The 1st defendant issued another cheque for Rupees One Crore drawn by Axis bank Kanhangad branch dated 15.09.2017 towards his liability. When the plaintiff enquired about the balance amount of Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) the 1st defendant evaded the payment on flimsy grounds. Consequently, there was a discussion between plaintiffs and defendants and in terms of the same the 1st defendant issued a cheque for Rs.93,00,000/- (Rupees ninety three lakhs only) dated 28.3.2018 to discharge his entire liability. The 1st defendant requested to the plaintiff not to present the cheque and he ensured that he will pay the amount covered by the cheque by cash. At that time the earlier cheques issued by him drawn on Axis bank were returned. Subsequently, the petroleum outlet was transferred in the name of 3rd defendant, the nominee of the 1st defendant without informing the plaintiff. However, the 1st defendant did not pay the amount covered by the cheque. The 1st defendant is liable to pay Rs.93,00,000/- (Rupees ninety three lakhs only) to the plaintiff together with future interest. The original agreement dated 09.02.2017 is in the custody of the 1st defendant. When the plaintiffs came to know about the fraudulent and dishonest act of the 1st defendant he made a complaint before the Station House Officer, Chandera and a crime was registered against the 1st defendant as crime No. 438/2019 for cheating. The plaintiffs are entitled to Rs.93,00,000/- (Rupees ninety three lakhs only) from the 1st defendant with future interest. In the above said circumstances, suit has been filed.

3. The 1st defendant filed a detailed written statement denying all the averments in the suit. The other defendants have not turned up and they were set ex-parte.

4. When the matter was posted for evidence by including the case in the published list, the learned counsel for the 1st defendant filed a memo reporting no instruction. Accordingly, the 1st defendant also was set ex-parte.

5. When the plaintiffs were called upon to prove their case, they preferred the 3rd plaintiff as witness on their side and he was examined as PW1. Exts. A1 to A3 were marked.

6. I have heard the learned counsel for the plaintiff.

7. PW1 filed a proof affidavit in lieu of the chief examination reiterating the matters put forth in the plaint. He has produced Exts. A1 to A3 in support of this case. The evidence of PW1 and the documents produced by him remains unchallenged. As such, I find that the plaintiff have succeeded to prove their case and they are entitled to a decree as prayed for. Costs of the suit shall follow the event.

In the result, the suit is decreed as follows.

1. The 1st defendant shall pay a sum of Rs.93,00,000/- (Rupees ninety three lakhs only) to the plaintiffs with future interest at 12% per annum from the date of suit till realization.

2. The 1st defendant shall pay the costs of the suit.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in Open Court on this the 18th day of January, 2024)

SUBORDINATE JUDGE

APPENDIX OF EVIDENCE

Exhibits marked for Plaintiff:-

A1	19.02.2017	Photocopy of the agreement entered into between the plaintiffs and defendants 1 and 2.
A2	28.03.2018	Certified copy of the Cheque bearing No.0133233 of ICICI Bank, Kanhangad Branch.
A3	09.02.207	Registration copy of the sale deed executed by Koodor Veetil Devaki (Plaintiffs and 4th Defendant) and others in favour of Kuttikole Aboobacker (1st Defendant) (Document No.405/17 of SRO, Trikaripur.

Exhibits marked for Defendants:- Nil

Witness examined for Plaintiff:-

PW1 Koodor Veetil Sundaresh

Witness examined for Defendant:- Nil

SUBORDINATE JUDGE

Typed by: Sanitha.P.V
Compared by:Krishnaprasad.V.S

Fair/Copy of Judgment in O.S.No. 20/2023

Dated : 18.01.2024