

IN THE COURT OF THE MUNSIF, VATAKARA.

Present: Smt. Devika Lal, Munsiff

Thursday, the 23rd day of June, 2022**ORIGINAL SUIT. No. 35/2019 ALONG WITH COUNTER CLAIM****Between:**

1. Revathi Nanu, W/o Nanu, Aged 55 years, Residing at 'Sree Padam', EP IX/71A, Near OPK Bus Stop, Orkkattery Post, Eramala Amsom, Orkkattery Desom, Vatakara Taluk, Kozhikode District, Kerala State. Plaintiff
Counter claim
defendant

And:

1. Sudheesh, S/o P.P Sukumaran, Aged 39 years, Residing at Puthiyapurayil, Azhiyur Amsom Chombala Desom, Chombala Post, Vatakara Taluk, Kozhikode District, Kerala State. Defendant no.1
2. M/s Elmach Packages (India) Pvt. Ltd., Corporate Office, 410, Hill View Industrial Estate, LBS Marg, Ghatkopar West, Mumbai, 400086. Defendant no.2
Counter claim
plaintiff

The above suit and counterclaim coming on 14th day of June, 2022 for final hearing before me in the presence of Sri. Subramanian.C and Sri. P. Anoop, Advocates for plaintiff/counterclaim defendant and of Sri. K.M Ramdas, Advocate for defendant no.1 and defendant no.2/counterclaim plaintiff reported no instruction and the defendant no.1 and defendant no.2/ counterclaim plaintiff called absent and set exparte and having stood over to this day for consideration and the Court delivered the following.

JUDGMENT

Suit for perpetual prohibitory injunction and counterclaim filed by the defendant no.2 for mandatory injunction and permanent prohibitory injunction.

2. The plaint averments, in brief, are as follows:- The plaint schedule property belonged to the plaintiff. The plaintiff's husband P.M. Nanu is the Director of M/s Bombay Chits and Finance Company Pvt. Ltd. and Mr. P.P Sukumaran is the Director of the defendant company. Both were very close friends. Since the business of the plaintiff's husband was mainly at Mumbai, he would often be at Mumbai leaving the plaintiff and her 80 year old mother alone in the house in the plaint schedule property. Hence, the plaintiff and her husband wanted to dispose of the plaint schedule property so that they can purchase a flat at Vatakara so as to ensure more safety. When P.P. Sukumaran learned that the plaintiff is proposing to sell the plaint schedule property, he offered to purchase it in the name of the defendant no.2. He also agreed that the plaintiff and her family can continue to live in the house in the plaint schedule property until they find a suitable flat. Accordingly, the plaintiff sold the plaint schedule property and the house situated therein to the defendant no.2 company for a consideration of Rs.50,00,000/- vide Registered Assignment Deed No.576/2015 of S.R.O, Azhiyur on 10.04.2015. As agreed earlier, the plaintiff, her husband and mother continued to live in the house in the plaint schedule property and both had executed a Rent Agreement on 13.04.2015 for a monthly rent of Rs.7500/- and the original of the Agreement is retained by P.P. Sukumaran. While so, P.P Sukumaran was in need of urgent fund for his business and made a request to the husband of the plaintiff to lend him Rs.50,00,000/- in the month of February, 2017. The plaintiff's husband had Rs.42,00,000/- at his disposal, in the current account of M/s Bombay Chits and Finance Company Private Ltd, with the Syndicate Bank, Balaramapuram and hence he agreed to lend Rs.42,00,000/- to P.P. Sukumaran. The said money was transferred to the account of the P.P Sukumaran from the account of

M/s Bombay Chits and Finance Company Private Ltd, by RTGS on 03.02.2017. Then both had agreed that the plaintiff and her husband can continue to occupy the house in the plaint schedule property until the said amount is repaid. But the said amount has not been repaid till now and the defendant no.1 has been demanding the plaintiff to vacate from the house in the plaint schedule property. Since the demand was contrary to the Agreement, the plaintiff intimated that she will vacate only when the aforesaid amount is repaid. Thereafter the plaintiff and her husband were summoned to the Edachery Police Station in the month of January, 2019 since the defendant no.1 has lodged a complaint stating that the plaintiff is refusing to vacate. The police threatened the plaintiff and her husband that a criminal case would be registered against them and hence the plaintiff had signed, under coercion, in a Register of petitions maintained by the police station in which it was written that the plaintiff would vacate from the house in the plaint schedule property on 12.03.2019 after paying the entire arrears of rent. The defendants can evict the plaintiff only through due process of law. The plaintiff apprehends that the defendants would forcibly evict the plaintiff from the plaint schedule property with the illegal help of Police. Hence the suit is filed.

3. On service of summons, both defendants appeared through Counsels. The defendant no.1 filed written statement containing the averments, as follows:- The plaint schedule property belonged to the plaintiff. The husband of the plaintiff named P.M Nanu is the Director of M/s Bombay Chits and Finance Company Pvt. Ltd and Sukumaran, the deceased was the Director of the defendant no.2 company and they were friends. When the plaintiff and her husband intended to sell the plaint schedule property and the house therein, the father of the defendant no.1 offered to purchase it in the name of the defendant no.2. Accordingly, the plaintiff sold the plaint schedule property to defendant no.2 represented by Sukumaran, the then the Director of the defendant no.2 for a consideration of Rs.50 lakh as per Registered Document No.576/2015 of S.R.O, Azhiyur dated 10.04.2015. But the said

Sukumaran had not agreed that the plaintiff and her family can continue to live in the house in the plaint schedule property until they find a suitable flat. In fact, the plaintiff and her husband requested that they may be permitted to stay in the house for a few months on payment of monthly rent of Rs.7500/-. The plaintiff has executed an Agreement fixing the period as eleven months with the defendant no.2 company inter alia agreeing that the plaintiff shall pay monthly Rs.7500/- for the user of the premises and they started occupying the house since 13.04.2015. It was just a leave/license granted by the second defendant to the plaintiff to stay in the house from 13.04.2015 to 12.03.2016 and it became void in view of the very conduct of the plaintiff and her accomplices in the whole property. Sukumaran never borrowed any money from the plaintiff as alleged in the plaint. There was no such lending or borrowing between the late Sukumaran and the plaintiff's husband and also there was no Agreement between them. The plaintiff is unlawfully occupying the house in the plaint schedule property and they are liable to be evicted. The accusation against Edachery Police in the plaint are only to mislead this Court. The statement that the plaintiff can be evicted only after payment of Rs.42 lakh is totally baseless. Taking advantage of the friendship with late Sukumaran, the defendant no.2 company was enrolled as a subscriber in a chit conducted by the husband of the plaintiff. Towards the due amount of Rs.60,00,000/- , Rs.42 lakh has been transferred by way of RTGS transfer as part payment and there is balance of 18 lakh towards chit liability. The plaintiff or her husband have no manner of right over the plaint schedule property. By suppressing the entire material facts, the plaintiff has filed this suit.

4. The defendant no.2 filed written statement along with counter-claim, containing the averments as follows:- The plaintiff is the wife of P.M Nanu and Mr.Nanu had a business at Mumbai by name M/s Bombay Chits & Finance Company Private Limited. The defendant no.2 is a private limited company and the late P.P Sukumaran was its Director during his life time. The husband of the plaintiff and P.P Sukumaran were friends. When plaintiff and husband offered to sell the plaint

schedule property, the defendant no.2 company purchased it from them as per Registered Document No.576/2015 S.R.O, Azhiyur, dated 10.04.2015. The purchaser was requested by the plaintiff and her husband that they may be permitted to stay in the house for a few months offering to make monthly payments for the user. The plaintiff executed an Agreement fixing the period as eleven months with the defendant no.2 company inter alia agreeing that the plaintiff shall pay monthly of Rs.7500/- for the user of the premises and they started occupying the house since 13.04.2015. It was just a leave/license granted by the second defendant to the plaintiff to stay in the house from 13.04.2015 to 12.03.2016 and it became void in view of the very conduct of the plaintiff and her accomplices in the whole property. Sukumaran never borrowed any money from the plaintiff as alleged in the plaint. There was no such lending or borrowing between the late Sukumaran and the plaintiff's husband and also there was no Agreement between them. The plaintiff is unlawfully occupying the house in the plaint schedule property and they are liable to be evicted. The accusation against Edachery Police in the plaint are only to mislead this Court. The statement that the plaintiff can be evicted only after payment of Rs.42 lakh is totally baseless. Taking advantage of the friendship with late Sukumaran, the defendant no.2 company was enrolled as a subscriber in a chit conducted by the husband of the plaintiff. Towards the due amount of Rs.60,00,000/- , Rs.42 lakh has been transferred by way of RTGS transfer as part payment and there is balance of 18 lakh towards chit liability. The plaintiff or her husband have no manner of right over the plaint schedule property. By suppressing the entire material facts, the plaintiff has filed this suit. The valuation of the suit at Rs.1000/- and payment of court fee of Rs.40/- is wrong and the very remedy sought, is one relating to a sum of money of Rs.42,00,000/- for which the suit ought to be properly valued in a court of competent monetary and territorial jurisdiction. Hence the counterclaim filed by the defendant no.2 may be decreed.

5. On the basis of the above pleadings, the following issues were

framed in suit and counterclaim for trial:-

Issues in Suit:-

- (i) Whether the alleged financial transaction of Rs.42,00,000/- between the plaintiff and defendant No.2 is true?
- (ii) Whether the plaintiff is entitled to a permanent prohibitory injunction as sought for in the plaint?
- (iii) What is the order as to costs?

Issues in counter-claim:-

- (i) Whether the counter-claim plaintiff is entitled to the mandatory injunction as sought for in the counter-claim?
- (ii) Whether the counter-claim plaintiff is entitled to the permanent prohibitory injunction as sought for in the counter claim?
- (iii) What is the order as to costs?

6. When the case was listed for trial on 10.06.2022, the counter-claim plaintiff was absent and he was not ready for evidence. Hence the counter-claim was dismissed for default on 10.06.2022.

7. To prove the case of the plaintiff in the suit, the husband of the plaintiff was examined as P.W.1 and Ext.A1 to Ext.A3 were marked. Thereafter the learned Counsel for the defendants in the suit had reported no instruction. Hence the defendants were called absent and set ex-parte.

8. Heard both sides.

9. **Issues No.(i) &(ii) in the suit:-** The case of the plaintiff is that she is

residing in the house in the plaint schedule property as per Ext.A2 Agreement and hence she shall not be evicted from the said house except through due process of law. P.W.1, who is the husband of the plaintiff, had adduced oral evidence in support of the case of the plaintiff. The alleged transaction of Rs.42,00,000/- as projected by the plaintiff through the oral evidence of P.W.1 and through Ext.A2 and Ext.A3, remains unrebutted. Hence the said transaction is found to be true. Since the legality and other aspects of Ext.A2 is not a fact in issue at present, I am not intending to go deeper on that aspect. The apprehension of the plaintiff that she would be forcefully evicted from the plaint schedule property, by the defendants is probalised by the fact that the defendants had not cared to cross-examine her. Even if the plaintiff is residing unauthorisedly in the plaint schedule property, then also the defendants are having no right to forcefully evict her except through due process of law. So I am of the opinion that the plaintiff is entitled to a decree as sought for in the plaint against the defendants. These issues are found in favour of the plaintiff.

10. **Issue No.(iii) in the suit:-**As far as the costs is concerned, I find no reason to deviate from the normal rule and hence the costs shall follow the event. This issue is found accordingly.

In the result, the counter-claim is dismissed for default on 10.06.2022 and the suit is decreed with costs as follows:-

The defendants in the suit are restrained by a decree of permanent prohibitory injunction from evicting the plaintiff and her family from the house situated in the plaint schedule property except through due process of law.

(Typed by me in my lap top, corrected and pronounced by me in
Open Court, on this the 23rd day of June, 2022)

Sd/-
MUNSIFF, VATAKARA.

Plaintiff's Witness :-

PW1.	10.06.2022	:	P.M Nanu, S/o P.M Chathu.
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Plaintiff's Exhibits :-

A1.	10.04.2015	:	Photocopy of Assignment deed executed by Revathi in favour of P.P. Sukumaran.
A2.	13.04.2015	:	Photocopy of Lease Agreement entered into between Sukumaran.P.P and Revathi.
A3.	05.02.2019	:	Detailed Bank Account Statement of Syndicate Bank

Defendant's Witness :- Nil

Defendant's Exhibits :- Nil

Court Witness :- Nil

Court Exhibits :- Nil

Sd/-
MUNSIFF, VATAKARA.

Fair/Copy of Order in O.S.No.35/2019
Dated 23.06.2022.