

IN THE COURT OF THE PRINCIPAL SUB JUDGE, KOLLAM

Present : Sri. Arun.M. Kuruvilla, Principal Sub Judge,

On Wednesday, the 6th day of November, 2024/ 15th day of Karthika,1946

O.S.292/2013

O.S.No.718/2010 is refiled as O.S.292/2013

Between

Plaintiff:-

Mr. Victor Clitus, aged 51 years,
S/o. Pathrose, residing at
Viju Vilasam, Perayam,
Kundara, Kollam District.

(By Adv. M I Alexander Panicker)

And

Defendants:-

1. Lal Kumar, aged 49 years,
S/o. Karuthakunju, residing at
Abhiramil, House No.311,
Ward No.VI, Perayam Cherry,
Perayam Panchayathu,
Mulavana P.O., Kundara-691503.
2. Smt.Rajalekshmi, aged 36 years,
W/o. Lal Kumar, residing at,
Abhiramil, House No.311,
Ward No.VI, Perayam Cherry,
Perayam Panchayathu,
Mulavana P.O., Kundara-691503.

3. Smt. Aswathy, aged 28 years,
D/o. Omana, residing at
Abhiramil, House No.311,
Ward No.VI, Perayam Cherry,
Perayam Panchayathu,
Mulavana P.O., Kundara-691503.
4. Mr. Prem Kumar, aged about 49 years,
S/o. Narayana Pillai, residing at,
Preetha Bhavan, Karuvelil P.O.,
Edavattom Cherry, Pavithreswaram Village,
Kottarakkara Taluk, Kollam District.

Addl.5th. Mr. Krishna Kumar, DYSP of Police
(Assistant Commissioner), Kollam.

Addl.6th. Mr.Sugathan, Circle Inspector of Police,
Kundara, Kollam. Now working as -
Circle Inspector, Kadakkavoor.

Addl.7th. Mr. Shabu Kumar, Sub Inspector of Police,
Kundara, Kollam.

(By Adv. R Mohanababu)

(Addl. D5 to D7 are impleaded as per order in I.A.3214/2011 in O.S.718/2010 dated 01/08/2011).

This suit is coming before me for final hearing on 05/11/2024 and on 06/11/2024 the court passed the following:-

JUDGMENT

Suit for mandatory injunction and permanent prohibitory injunction.

2. The averments contained in the plaint, in brief, are as follows: -

The plaintiff is the absolute owner of the plaint schedule property extending to 8 ares 80 square metres by virtue of the sale deed No. 3404/2009 of the Sub Registrar Office, Kundara. The plaintiff purchased the plaint schedule property from the 1st to 3rd defendants after paying consideration and the plaintiff obtained the possession of the plaint schedule property.

3. The 1st defendant approached the plaintiff on 31.03.2010 and introduced the 4th defendant and demanded to purchase the plaint schedule property for the 4th defendant. The plaintiff agreed to sell the plaint schedule property to 4th defendant by virtue of an agreement for sale dated 31.03.2010. As per the agreement for sale, the 4th defendant had executed a cheque for an amount of Rs. 50,000/- (Rupees Fifty Thousand only) dated 31.03.2010 drawn on Pavithreswaram Service Co-operative Bank Limited and issued in favour of the plaintiff as an advance sale consideration.

4. Though the plaintiff presented the cheque for encashment, it was dishonoured on 16.09.2010 due to the reason "funds insufficient". The 1st

defendant did not take any steps for the execution of sale deed in respect of the plaint schedule property. Hence, the agreement for sale executed in between the plaintiff and 4th defendant became infructuous.

5. On 13.10.2020, the 1st defendant along with his friends made preparations to sell the plaint schedule property fraudulently. The defendants are trying to take forceful possession of the plaint schedule property and to commit waste and damage into it.

6. On 18.10.2010, the defendants with the aid and assistance of DySP, Kollam, named Krishna Kumar and other police officials trespassed into the plaint schedule property and threatened the workers engaged in renovation work of the building situated in the plaint schedule property. The defendants started to occupy the plaint schedule property forcibly and illegally. Hence, the suit is filed for mandatory injunction and permanent prohibitory injunction.

7. The 1st to 3rd defendants entered appearance and filed written statements. The averments contained in the written statement, in brief, are as follows:-

It is submitted that the defendants did not sell the plaint schedule property to the plaintiff for consideration. The defendants borrowed an amount

of Rs. 3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) from the plaintiff. The defendants executed a sale deed only for a name sake in favour of the plaintiff as insisted by the latter. The sale deed executed is not supported by any consideration. The possession of the plaint schedule property was not handed over to the plaintiff. The plaintiff has no manner of right over the plaint schedule property. On 13.10.2010, the 1st and 2nd defendants lodged a complaint against the plaintiff since plaintiff tried to encroach into the plaint schedule property. The alleged sale deed executed by the defendants in favour of the plaintiff is a void one. The agreement for sale executed in between the plaintiff and the 4th defendant is a fraudulent one. The 1st defendant did not introduce the 4th defendant to the plaintiff. The defendants did not vacate the plaint schedule property at any point of time. The possession of the plaint schedule property was not handed over to the plaintiff. Hence, the suit is liable to be dismissed,

8. In the light of the rival contentions of the parties, the issues were raised by this court. Thereafter, on 05.11.2024 the issues were recast as follows:-

1. Whether the plaintiff has got absolute title over the plaint schedule property or not?

2. Whether the plaintiff is entitled to get a decree for mandatory injunction as prayed for?
3. Whether the plaintiff is entitled to get decree for permanent prohibitory injunction as prayed for?
4. Reliefs and costs.

9. On the side of the plaintiff, PW1 was examined and Exts. A1 to A24 are marked. The defendants were called absent. Hence, defendants were set exparte. No evidence was adduced on the side of the defendants.

10. **Issue No. 1:-**

The case of the plaintiff is that he has got absolute title and possession over the plaint schedule property by virtue of sale deed No. 3404/2009 of Sub Registrar Office, Kundara. The defendants who filed written statement contended that the aforesaid sale deed is a sham document and it was not supported by consideration. According to the defendants, the alleged sale deed was executed only for a name sake in favour of the plaintiff, since defendants borrowed an amount of Rs. 3,50,000/- (Rupees Three lakhs and Fifty Thousand only) from the plaintiff. Therefore, the plaintiff cannot claim absolute right and title over the plaint schedule property on the strength of aforesaid sale deed.

11. The plaintiff who filed proof affidavit reiterating the averments contained in the plaint. The plaintiff was examined as PW1. But the testimony of the plaintiff in this regard was not challenged by the defendants. The Ext.A1 sale deed and the unchallenged testimony of the PW1 throw light upon the fact that the plaintiff has got absolute title over the plaint schedule property. No evidence was tendering by the defendants to dispel the aforesaid contention. From the above discussion, it can be concluded that the plaintiff has got absolute title over the plaint schedule property. This issue is answered in favour of the plaintiff.

12. **Issue No.2:-** It is already found issue No.1 that the plaintiff has got absolute title over the plaint schedule property. The averments contained in the plaint and the testimony of the PW1 shed light upon the fact that the defendants trespassed into the plaint schedule property after the alleged execution of the Ext.A1. Therefore, the plaintiff is entitled to get the decree for mandatory injunction on the strength of Ext.A1 as prayed for. This issue answered in favour of the plaintiff.

13. **Issue No.3:-** The plaintiff sought a decree for permanent prohibitory injunction restraining the defendants or any other person under them from

trespassing into the plaint schedule property. The averments contained in the written statement filed by the defendants itself shows that they are claiming right and possession over the plaint schedule property. The intention of the defendants in this regard is manifested from their pleadings. In other words, the defendants have got an intention to take possession of the plaint schedule property . In the above circumstances, the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for. This issue is answered in favour of the plaintiff.

14. Issue No.4:-

In the result, suit is decreed with costs as follows:-

The plaintiff is given a decree for mandatory injunction of plaint schedule property on the strength of title. The defendants will surrender the possession of the plaint schedule property to the plaintiff within a period of one month. If the defendants fail to surrender the possession of the plaint schedule property to the plaintiff, the plaintiff is entitled to get the vacant possession of the plaint schedule property through this court.

2. The defendants are restrained by a decree of permanent prohibitory injunction from trespassing into the plaint schedule property and from causing

any disturbance to the plaintiff's peaceful possession over the plaint schedule property.

Dictated to the Conf. Asst., transcribed and typed by her, corrected by me and pronounced in open court on this the 6th day of November, 2024.

Sd/-
Arun.M.Kuruvilla,
Principal Sub Judge.

APPENDIX:-

Exhibits on the side Plaintiff:-

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|-------|--|---------------------|
| A1 | : Sale deed | : dated, 17.08.2009 |
| A2 | : Tax receipt | : dated, 06.08.2010 |
| A2(a) | : Tax receipt | : dated, 09.11.2009 |
| A3 | : Certified copy of Complaint in O.S.767/2010 of Sub Court, Kollam | |
| A4 | : Certified copy of written Statement in O.S.767/2010, of Sub Court Kollam. | |
| A5 | : Certified Copy of Judgment in O.S.767/2010 | : dated, 04.08.2014 |
| A6 | : Copy of agreement for sale deed | : dated, 31.03.2010 |
| A7 | : Cheque dated 31.03.2020 of the Pavithreswaram Service-Co-Operative Bank Ltd. | |
| A8 | : Cheque dishonour memo | :dated, 16.09.2020 |
| A9 | : Copy of rent agreement | :dated, 27.01.2010 |
| A10 | : Copy of rent agreement | :dated, 11.10.2010 |
| A11 | : Copy of rent agreement | :dated, 11.09.2010 |
| A12 | : Sale deed No.3575/2006 | :dated, 17.08.2006 |
| A13 | : Sale deed No.700/1997 | :dated, 10.02.1997 |
| A14 | : Sale deed No.386/1997 | :dated, 22.01.1997 |
| A15 | : Sale deed No.388/1997 | :dated, 22.01.1997 |

A16 : Sale deed No.5912/1996 :dated, 22.11.1996
A17 : Sale deed No.2140 :dated, 20.05.1971
A18 : Information from State Bank of Travancore,
Kundara Branch, :dated, 27.02.2012
A19 : Certificate from SBI, Kundara Branch, :dated, 03.11.2023.
A20 : Account Statement :dated, 11.01.2012
A21 : Certified Copy of Judgment in SC.563/2015 :dated, 23.02.2024
A22 : Certified Copy of Judgment in CC.939/2011 : dated, 16.03.2017
A23 : Certified Copy of Judgment in
Calandar Case No.583/2011 : dated, 31.10.2023
A24 : Certified Copy of Judgment in CC.486/2011 : dated, 28.10.2023

Exhibits on the side of Defendants:- Nil

Witness on the side of Plaintiff:-

PW1 :Victor Clitus : dated, 05.11.2024

Witness on the side of Defendants:- Nil

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Sd/-
Principal Sub Judge

\\True Copy//

Sd/-
Arun.M. Kuruvilla
Principal Sub Judge