

IN THE COURT OF THE MUNSIFF, PUNALUR

PRESENT :- Sri. Mithun Gopi.G.S, Munsiff.

Saturday the 28th day of January, 2023/ 8th day of Magha, 1944.

OS 107/2016

Between

Plaintiff :- Mathai S/o Mathai, aged 62 years, Pullattu Veedu,
Karayalar mathu, Ariyankavu Village,
Pathanapuram Taluk.
Now at Punalur Taluk, Kollam District.

Addl.P2 : Leelamma, W/o Late Mathai, aged 65 years,
Pullattu Veedu, Karayalar mathu, Ariyankavu Village,
Punalur Taluk, Kollam District.

Addl.P3 : Cincy, aged 41, D/o Late Mathai, Pullattu Veedu,
Karayalar mathu, Ariyankavu Village,
Punalur Taluk, Kollam District.

Addl.P4 : Sinoj.S, aged 38 years, S/o Late Mathai,
Pullattu Veedu, Karayalar mathu, Ariyankavu Village,
Punalur Taluk, Kollam District.

Addl.P5 : Sajeesh, aged 37, S/o Late Mathai, Pullattu Veedu,
Karayalar mathu, Ariyankavu Village,
Punalur Taluk, Kollam District.

Addl. P6 : Siji, D/o Late Mathai, aged 35, Pullattu Veedu,
Karayalar mathu, Ariyankavu Village,
Punalur Taluk, Kollam District.

**(By Adv. Kaippallil.N. Gopalakrishnan Nair &
Adv. Kaippallil.G. Harikrishnan)**
(Additional Defendants P2 to P6 are impleaded as per order in

IA 2/2020 dated 01.01.2021)

And

Defendants : 1. Komalan, S/o Sreedharan, Komala Vilasom,
From, Thevarutharyil, Karimpintottam,
Ariyancavu Village, Punalur Taluk, Kollam District.

2. Rethnamma, W/o Komalan, Komala Vilasom,
From Thevarutharyil, Karimpintottam,
Ariyancavu Village, Punalur Taluk, Kollam District.

(Exparte)

This suit is coming on for final hearing before me on 07.01.2023 and having stood over for consideration to 28.01.2023 and on the same day court delivered the following.

JUDGMENT

Suit for realisation of money.

2. **The plaintiff averments, in brief, is as follows:-** The plaintiff and the defendants entered into an agreement for sale on 14/09/2013 agreeing to sell the defendants property. The sale consideration was Rs.15,25,000/- and the plaintiff paid Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) to the defendants on 14/09/2013 as advance sale consideration. As per terms of the agreement, balance consideration has to be paid by the plaintiff within 6 months from the date of the agreement. The plaintiff failed to pay the balance consideration in time and also informed the defendants regarding the reason for non-payment. The plaintiff already executed an agreement for sale of his property to one Mr.Shaji Thomas on 29/08/2013 for a consideration of Rs.24,00,000/- (Rupees Twenty Four Lakh Only) and received Rs.6,00,000/- (Rupees Six Lakh Only) as advance. Mr.Shaji Thomas failed to pay the balance consideration and also filed a suit against the plaintiff for realization of the advance amount as OS.145/2014. The non-payment of balance consideration of Mr.Shaji Thomas resulted the non full fill the agreement with the defendants as agreed. The plaintiff informed all these facts to the defendants in time. The plaintiff and defendants are neighbours, friends and known to each other. The defendants consented the payment of advance

with 12 % interest within three years. The plaintiff also agreed the same. Now it is reliably learnt from one Mr.Mathew Kuriacose, that the defendants are going to sell the property to defeat the plaintiff's claim. If so happened, it will cause irreparable injury and loss to the plaintiff. Thereafter on 08/02/2016, the plaintiff issued a lawyer's notice to the defendants demanding the advance amount with interest. But they neither repaid the advance amount nor gave any reply. Hence, the suit.

3. The defendants filed written statement contending as follows:-

The suit is not maintainable either in law or on facts. The suit is filed by producing false and forged documents and hence the same has to be dismissed with costs of the defendants. There was a sale agreement between the plaintiff and the defendants for an amount of Rs.15,25,000/-. From the said amount, Rs.3,00,000/- was received as advance by the defendants. The agreement produced along with the plaint is forged one and signature in the same does not belongs to the defendants. The defendants had loan with Aryankavu Service Co-operative Bank. Since the loan amount was defaulted, notice was issued by the bank for attachment. For the purpose of settling the dues with the bank and other liabilities, the defendants entered into an agreement with the plaintiff. Since the sale deed was not executed, the defendants incurred a liability of Rs.12,00,000/-. The defendants has every right to execute sale deed with respect to their property and the plaintiff has no right to obstruct the same. The defendants has no property as scheduled in the plaint. The property to an extend of 3.84 Ares was sold as per sale deed No. 365/2016 of

Punalur SRO and the defendants are only in possession of the remaining portion. The said property is now mortgaged with Aryankavu Service CO-operative Bank. Since the sale deed was not executed the defendants sustained loss and the plaintiff is liable to compensate the defendants. Hence, the suit is liable to be dismissed with costs.

4. Based on the above pleadings the following issues were settled by my predecessor-in-office:-

- 1) Whether the plaintiff is entitled to realise any money from the defendant?
- 2) What is the rate of interest if any the plaintiff is entitled for?
- 3) What is the order as to cost and relief?

5. The defendants 1 and 2 did not appear before the court on the listed day of trial. Hence, this court ordered to proceed the case against the defendants *ex-parte*.

6. From the side of the plaintiffs, the 3rd plaintiff was examined as PW1 and Exts.A1 to A5 documents were marked.

7. Heard the learned counsel for the plaintiffs. Perused records.

8. **Issue Nos.1 and 2:-** Since these issues are interconnected, they are considered together for the sake of brevity. The suit was originally instituted by Mr.Mathai and he died on 19/09/2019. Hence, the legal representatives of the deceased plaintiff was impleaded in the party array as per order in IA 1/2020 dated 01/01/2021. The

learned counsel for the plaintiffs 2 to 6 argued that the plaintiffs are entitled to realise the plaint amount from the defendants and their assets.

9. The Hon'ble High Court of Kerala in **T. Sheeja v. C.P. Balakrishnan** reported in **2018 (4) KLJ 395** held that; “**even in a case where the defendant is set *ex-parte*, the judgment shall reflect the facts of the case and the controversy involved and tried to be settled by the court.**”

10. Bearing in mind the above decision, I had gone through the evidence on record. PW1, the 3rd plaintiff, filed affidavit in-lieu of examination-in-chief reiterating the plaint averments. PW1 deposed that on 14/09/2013, her father and the defendants entered into an agreement for sale by agreeing to sell the defendants property. PW1 produced the said sale agreement dated 14/09/2013 and the same is marked as Ext.A1. It is the evidence of PW1 that even after repeated requests and demands made, the defendants did not pay the advance amount and thus on 08/02/2016 a suit notice was issued to them. The said suit notice is produced and the same is marked as Ext.A2. The postal receipts and postal acknowledgment cards evidencing the issuance and acceptance of Ext.A2 is marked as Exts.A3 series. The certified copy of the written statement in OS 145/2014 is marked as Ext.A5 and the certified copy of the plaint in OS 145/2014 is marked as Ext.A4.

11. In this case, the evidence adduced from the side of plaintiffs is unchallenged. The oral and documentary evidence of PW1 prove for

certain that an amount of Rs.3,50,000/- is due from the defendants. The documents produced from the side of the plaintiffs would go to show that the defendants are liable to pay the said amount. The defendants in their written statement admitted that they are entered into an agreement for sale with the plaintiffs and received Rs.3,00,000/- as advance. There is nothing on record to show that the defendants have discharged their liability to the plaintiffs. Ext.A1 to Ext.A5 prove for certain that the defendants are indebted to the plaintiffs. On consideration of evidence before this court, it is found that the plaintiffs are entitled to get a decree in their favour. Hence, these issues are answered accordingly.

12. **Issue No. 4:-** On the basis of the discussions in foregoing issues, this court is of the view that the plaintiffs are entitled to get the relief as prayed for.

In the result: the suit is decreed as follows :-

- a) The plaintiffs 2 to 6 are entitled to realise an amount of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) with interest @ 6% per annum from the date of filing of the suit till the date of realisation from the defendants and their assets.
- b) The plaintiffs 2 to 6 are also entitled to realise the costs of the suit from the defendants and their assets.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 28th day of January, 2023.)

Sd/-
Munsiff

Appendix

Witness for the Plaintiffs

PW1 05.12.2022 Smt. Cincy

Exhibits for the Plaintiffs

A1	14.09.2013	The sale agreement
A2	08.02.2016	The suit notice No. 10/16.
A3	08.02.2016	The Postal receipt
A3(a)	08.02.2016	The postal receipt
A3(b)	-	Postal acknowledgment card.
A4	13.03.2014	The certified copy of the plaint in OS. 145/2014
A5	16.09.2014	The certified copy of the written statement in O.S 145/2014.

Id/-
Munsiff

//True Copy//

Typed by : Bibitha.B
Compared by :

MUNSIFF