

**IN THE COURT OF THE SUBORDINATE JUDGE,
KARUNAGAPPALLY**

Present:

Sri.Santhosh Das, Sub Judge, Karunagappally
Saturday 31st day of August, 2024/9th day of Bhadra, 1946

Common Order in I.A.No.01/24 & IA.No.4/2024 in OS No.14/2024

I.A.No. 01/2024

Between

Petitioner

Plaintiff : Sugunan, aged 46 years, S/o.Purushothaman,
Proprietor , T&B Builders, Edakulangara P.O.,
Thodiyoor Village, Karunagappally,
Residing at Kochayyathu,
Puliyoorvanchi South Muri,
Thodiyoor Village,
Karunagappally.

(By Adv.Shri. S.Jayaprakash).

And

Counter Petitioner/: Jinu, aged 40 years, S/o. Gopalan,
Defendant Lekshmi Mandiram, Pada North,
Karunagappally Village,
Karunagappally.

(By Adv.Smt.K.S.Rohini)

IA.04/2024

Between

Petitioner/:
1st Defendant

Jinu, aged 40 years, S/o. Gopalan,
Lekshmi Mandiram, Pada. North,
Karunagappally Village,
Karunagappally.

(By Adv.Smt.K.S.Rohini).

And

Respondent/
Plaintiff

: Sugunan, aged 46 years,
S/o.Purushothaman,
Kochayyathu, Edakulangara P.O.,
Thodiyoor Village, Karunagappally.

(By Adv.Shri.S.Jayaprakash).

Petition IA.01/2024 for attachment petition & IA.04/2024 for attachment lifting petition.

These petitions are coming on for final hearing before me on 31.08.2024 and on the same day the Court passed the following.

COMMON ORDER

1. Instant suit is filed by the Plaintiff against the defendants seeking recovery of an amount of ₹.26,43,083/- (Rupees Twenty Six Lakhs Forty Three Thousand and Eighty Three Only) with interest from the defendants and their assets. According to the plaintiff, 1st defendant

entered into an agreement with him for the construction of a residential building in plaint A schedule property with agreed construction cost @ ₹.2300/ sq. feet. Plaint A schedule property is actually owned by the 2nd defendant, but according to the plaintiff, 1st defendant represented and made the plaintiff believe that he is the owner of the property and accordingly the construction agreement was entered into between the plaintiff and the 1st defendant. The total built up area as per the approved plan was only 254.35 sq. meters (2838 sq. feet) and the proposed building was a single storied one. However, as demanded by 1st defendant, the height and area of the building was increased and 1st floor was also added, and thus the total area increased to 3210 sq. feet. Thus, according to plaintiff, he had done additional works to the tune of ₹ 26,38,083/-, more specifically narrated in the plaint. It is said that after completing the construction, plaintiff demanded 1st defendant for the balance amount due to him, but the same was not paid. Plaintiff approached Karunagappally Police, but there was no positive result, and finally plaintiff is constrained to file suit for recovery. Along with the suit, IA 01/2024 is filed and it was pointed out by that the 1st defendant is taking hasty steps for alienating his only asset namely plaint B schedule property with a view to defeat plaintiff's claim, and after hearing the Counsel for the plaintiff with records, plaint B schedule property was conditionally attached and 1st defendant was called upon to furnish security for the suit amount or to appear and show cause as to why he shall not furnish security for that amount.

2. In response, 1st defendant entered appearance and filed objection, and in addition he also filed IA 04/2024 seeking the lifting of the attachment.
3. According to the 1st defendant, the claim advanced by the plaintiff is false and mischievous. Plaintiff was well aware that the house was to be constructed in the property of the 2nd defendant, wife of the 1st defendant. Plaintiff committed breach of the terms and conditions of the construction agreement and after receiving additional amounts he abandoned the work. Finally, defendants got the construction completed facing stiff resistance from the plaintiff. Defendants sustained loss at the hands of the plaintiff, and they were forced to incur additional amounts for completing the work. In the matter OS 114/2024 was filed against the plaintiff before Munsiff Court, Karunagappally, it is said. Regarding the property under conditional attachment, it is claimed that the defendant is not having any intention to alienate the same, and it is pointed out that the plaintiff had mislead the Court for obtaining conditional attachment.
4. Both sides produced documents in IA 01/2024, and Exts.A1 to A10 were marked on the side of plaintiff, whereas Exts. B1 to B8 were got marked on the side of 1st defendant.
5. Heard the respective Advocates and perused the records.

6. The following points are drawn up for consideration:-

1. Has the plaintiff made out a prima facie case against defendants ?
2. Is the plaintiff entitled for an order of attachment before judgment of plaint B schedule property, as claimed ?
3. Order and costs.

7. **Point No. 1 & 2:-**

1. These points are considered together for the sake of brevity.
2. According to the plaintiff, 1st defendant entered into an agreement with him for the construction of a residential building in plaint A schedule property with agreed construction cost @ ₹. 2300/ sq. feet, and 1st defendant represented and made the plaintiff believe that he is the owner of the property wherein the building was to be constructed, while in fact that property was actually in the name of the 2nd defendant, wife of the 1st defendant. It is for this reason that the plaintiff insisted for an attachment over plaint B schedule property, which belongs to the 1st defendant.
3. That claim of the plaintiff is refuted by the 1st defendant who would content that the plaintiff was provided with the approved plan, which would clearly show that the approval was in the name of the 2nd

defendant. I have carefully considered the contentions in this regard, with the records, and I note from Ext. A4 produced by the plaintiff that the building permit was issued in the name of Smt. Honey, the 2nd defendant. That apart, Ext. A1 is the copy of the construction agreement produced by the plaintiff, and Ext. B1 is the copy of the very said agreement produced by the 1st defendant. Ext. B1 mentions above the title holder, and it is written therein that the property is in the name of the wife of the 1st party to the agreement. However, that writings regarding the title holder is not seen in Ext. A1, and it appears that an effort is made to screen the same for suiting the case advanced by the plaintiff, which is nothing but fraud upon the Court by the party.

4. According to 1st defendant, OS.114/2024 was filed against the plaintiff before Munsiff Court, Karunagappally in the matter of the construction of the house, and Ext. B2 is the copy of the plaint. It is understood from Ext. B2 that the same was filed on 02/04/2024 and that an amount of ₹ 7,66,149/- is claimed to be recovered from the defendants therein, and 1st defendant is none other than the plaintiff herein. Ext B4 is the copy of the order dated 3/4/24 in IA 1/24 of OS 114/24, whereby this plaintiff as 1st defendant in that suit was restrained from trespassing into plaint schedule property and from obstructing the construction work of the house / building therein until further orders. Now, OS 14/2024 was filed before this Court on 11/04/2024 and the conditional attachment was obtained in IA

01/2024 on 12/04/2024. Therefore, it appears that OS 14/2024 is a counter blast with inflated claims, leaving room for serious doubt on its correctness.

5. This Court had conditionally attached plaint B schedule property. The same is the property of the 1st defendant, and it is vehemently pointed out by him that he has no intention what so ever to alienate the same. According to him, he along with his wife (D2) had spend huge amounts and completed the construction of the house in plaint A schedule property, which stands in the name of the wife and they have no intention to dispose their assets and leave the jurisdiction of the Court for defeating any creditors. Now, when the construction was admittedly done in the property of the 2nd defendant, and improvements are seen made in that property, if the plaintiff proves his monitory claim with cogent evidence, it will be open for him to realize the amount even from that property of the 2nd defendant, notwithstanding the fact that the construction agreement was with the 1st defendant. Therefore, it was unwarranted for the plaintiff to seek an attachment of 1st defendant's property.
6. It is settled law that attachment before judgment is not to be granted on a mere assertion by the plaintiff that the defendant is attempting to dispose of the whole or part of his property. The attachment on flimsy grounds has potential to expose the defendant to immense

hardships and even to ruin his reputation, credibility and standing in the society.

7. Regarding attachment before judgment, Hon'ble Supreme Court in '**Raman Tech and Process Engineering Co. v. Solanki Traders**', reported in 2008 (2) SCC 302 has held as follows:-

“The power under O. 38 R.5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of O. 38 R. 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of O. 38 R. 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of Court settlement, under threat of attachment”.

8. At any rate, it appears from the discussions above that the plaintiff had rushed to this Court with OS 14/2024 and IA 01/2024 after receipt of the injunction order in OS 114/2024 from Munsiff Court, Karunagappally, only as a counter blast. Therefore, I don't find that plaintiff had made out a prima-facie case against the defendants let alone the 1st defendant so as to bind the 1st defendant with an order of attachment before judgment of plaint B schedule property.
9. In fine, these points are answered against plaintiff.

8. Point No. 3:-

1. In view of my finding on point No. 1 & 2 above, this petition fails and the same is accordingly dismissed, and the conditional attachment dated 12/04/2024 is hereby vacated, and the same will be communicated to the SRO and VO having jurisdiction.
2. 1st defendant had suffered conditional attachment, which is now vacated and therefore he is entitled for his costs from plaintiff.
9. In the backdrop, IA 01/2024 stands dismissed with costs, and it follows IA 04/2024 filed by the 1st defendant for lifting the attachment is treated as allowed.

Dictated to the Typist, typed by him, corrected by me and pronounced in open Court on this the 31st day of August, 2024.

Sd/-
SANTHOSH DAS
SUB JUDGE

Appendix :**Exhibits marked on the side of the petitioner:-**

- A1 Copy of Building agreement dated 23.02.23
- A2 Advocate Notice dated 01.04.2024
- A3 Postal Receipt dated 01.04.2024
- A4 Building Permit dated 17.08.23
- A5 Plan

A6 Statement of Accounts dated 11.03.24

A7 Statement of accounts dated 11.03.24

A8 Statement of accounts dated 11.03.24

A9 Letter from Karunagappally Municipality dated 13.08.24

A10 Copy of photograph.

Exhibits marked on the side of the respondents:-

B1 Building Agreement dated 23.02.23

B2 Copy of plaint in OS.114/24 of Munsiff Court, Karunagappally

B3 series Copy of Tax invoice and bills

B4 Copy of order in IA 1/24 in OS 114/24 of Munsiff Court,
Karunagappally.

B5 series Tax invoice

B6 series Labour charges and materials

B7 Fare value of land searched

B8 Commission Report in IA 2/24 in OS.114/24.

Sd/-
Sub Judge.

// True Copy //

Typed by : Sunilkumar.S

Compared by:Sini.G

Sub Judge.