

**IN THE COURT OF THE MUNSIFF OF TALIPARAMBA**

Present: Smt.Athulya.A, Munsiff

Wednesday, the 12<sup>th</sup> day of February, 2025

(23<sup>rd</sup> Magha,1946)

**COUNTER CLAIM IN**  
**ORIGINAL SUIT NO. 308 OF 2017**

- |   |   |            |
|---|---|------------|
| 1. Korambeth Sanil, Aged 30 years, S/o. Kannan, | ] |            |
| Chelora Amsom, Macheri Desom, Kannur Taluk,     | ] |            |
| Kannur District.                                | ] | Counter    |
|   | ] | Claimants/ |
| 2. Chelankara Prasad C, S/o. Kunhikannan,       | ] | Defendants |
| Aged 43 years, Mouvancheri P.O., Chelora Amsom, | ] |            |
| Macheri Desom, Kannur Taluk, Kannur District.   | ] |            |

**Vs.**

- |  |   |             |
|--|---|-------------|
| Nhallimackal Louly Rajesh, Aged 44 years,        | ] |             |
| W/o.Rajesh Chacko, Nhallimackal, Sreechandapuram | ] | Respondent/ |
| Amsom Desom, Taliparamba Taluk, Kannur District. | ] | Plaintiff   |

This Counter claim coming on this day for hearing before me in the presence of A.K.Santhosh and M.P.Salini, Advocates for the Counter claimants/ defendants; M.C. Ramachandran and B Sujatha, Advocates for respondent/plaintiff and Respondent/Plaintiff name called absent and set exparte and the court delivered the following:

## **J U D G M E N T**

The suit is one for permanent prohibitory injunction restraining the defendants from forcefully evicting the plaintiff and her family from the house in the plaint schedule property.

2. Earlier, on the listed day of trial, the plaintiff in the suit remained absent and reported no instruction. Hence the suit is dismissed for default.

3. The defendants in the suit entered appearance and filed written statement along with a counter claim.

4. The averments in the counter claim are in brief as follows: Plaintiff sold the plaint schedule property to the defendants on receiving valid consideration of ₹4,44,000/- (Rupees Four lakh forty four thousand only) as per deed of jenm assignment dated 21.11.2013. The said document is not executed as a security as alleged by the plaintiff. The plaintiff has vacated the house and the house building was kept locked by the defendants on the date of execution of document No. 3192/2013. On the request of the plaintiff, she was allowed to occupy the house in the plaint schedule property for a month so as to enable her to find out an alternative accommodation for the residence of herself and her family. The plaintiff has vacated the house after one month as agreed and handed over possession of the same to the defendants and the defendants have locked the building and have been in exclusive possession and enjoyment of the same. The defendants are residing about 45 kilometers away from the plaint schedule property. Taking advantage of the absence of the defendants, the plaintiff has trespassed into the plaint schedule property again during the month

of June 2017 and broke open the lock of the house and started to reside therein. When the defendants came to know about this, the defendants have asked the plaintiff to vacate the house to which the plaintiff agreed to vacate the premises after Onam festival. But the plaintiff did not vacate the house as agreed. Instead of vacating the premises, the plaintiff filed the above suit for injunction. As the plaintiff is a rank trespasser of the plaint schedule property, she has no lawful right to continue possession of the plaint schedule property. Hence the defendants preferred this Counter claim for eviction of the plaintiff from the plaint schedule property on the strength of defendants' title.

5. The respondent/plaintiff (Counter claim) entered appearance and filed statement denying the entire averments in the counter claim. There is no counter claim preferred as per the provisions of the Civil Procedure Code. The counter claim shall be in addition to the written statement and it shall governed by the rules applicable to the plaint, if it is preferred in proper manner. It is only a claim along with the statement and hence this plaintiff prefers this statement to such claim. There is no schedule of property shown along with the claim of the defendants. For the plaint schedule property, the defendants are not entitled to get any relief. The cause of action alleged in the counter claim is not correct. The market value of the property assessed and court fee paid ares not correct. The defendants are not entitled for the relief sought in the written statement and prayed for dismissal of the counter claim.

6. The respondent/plaintiff filed additional statement denying the averment in the amended counter claim and submitted that the counter claim schedule property is not identified with the descriptions in the counter claim petition. The counter claim petitioner ought to have preferred the counter claim with cause title. Since the suit itself is not in existence, the counter claimant

will have to file a separate suit for the redressal of the grievances of the counter claim petitioner and sought for dismissal of the counter claim.

7. Despite filing statement by the respondent/plaintiff, on the day fixed for trial, they remained absent and the counter claim has proceeded exparte against them.

8. The 2<sup>nd</sup> counter claimant/ 2<sup>nd</sup> defendant was examined as PW1 and Exts.A1, A2, A3, A3(a), A3(b), A4, A5, A5(a) were marked.

9. Heard.

10. The second counter claimant/second defendant filed proof affidavit. As the respondent/plaintiff absent, the evidence of PW1 and Exts. A1, A2, A3, A3(a), A3(b), A4, A5, A5(a) remained unchallenged. Even though the respondent/plaintiff filed written statement denying the counter claim, he did not enter appearance to rebut the contention of the counter claimants nor produced any documents to prove his contention. The unchallenged testimony of PW1 and documentary evidence would establish the case of the counter claimants. Hence the counter claimants are entitled to obtain a decree.

**In the result,** the counter claim is decreed as follows.

1. The respondent/plaintiff is directed to surrender the counter claim schedule property including the house and every thing contained therein to the counter claimant/defendant.

2. The respondent/plaintiff is directed to pay cost of the counter claim proceedings.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open court this the 12<sup>th</sup> day of February 2025)

Sd/-  
MUNSIFF.

