

IN THE COURT OF THE MUNSIFF PALA

Present Kum.Priyanka Paul, Munsiff, Pala

Tuesday, 1st day of August 2023

10th day of Sravana 1945

O.S.No.174/2021

Plaintiff:-

Bharathi A, 72 years, W/o E Chandrasekharan,
Deveekripa House, Kandankali P.O,
Payyannoor Amsham Desham,
Thalipparambu Taluk, Kannur District, PIN 670333

By Adv. Mithra G.R and Adv. Joseph Sebastian

Defendants:-

1. Seema P.D, 36 years, W/o Roy Joseph, Pulickalkunnel,
S.N Puram P.O, Kothala Kara, Kooroppada Village,
Kottayam Taluk, now residing at Pulickalkunnel,
Near Rubbermilk society, Kozhuvanal P.O,
Kozhuvanal Kara, Puliyanloor Village, Meenachil Taluk
2. Roy Joseph, 39 years, S/o P.J Joseph, Pulickal House,
Ponadu Kara, Lalam Village, Meenachil Taluk,
now residing at Pulickalkunnel, Near Rubbermilk society,
Kozhuvanal P.O, Kozhuvanal Kara, Puliyanloor Village,
Meenachil Taluk

D1 and D2 By Adv. George Emmanuel Podipara,
Adv. Kennady M George and Adv. Gigi Thomas

D1 and D2 set exparte

This suit has been finally heard on 01.08.2023 and the Court on same day delivered the following:-

JUDGMENT

The suit is one for eviction and permanent prohibitory injunction.

2. Plaintiff's case in brief is, as follows:- Plaintiff schedule property and house situated therein absolutely belongs to the plaintiff. Plaintiff leased out the house in plaintiff schedule property to the defendants on 01.07.2020 for a rent of ₹6,000/- per month. From then onwards defendants are in occupation of the house therein. As per the agreement defendants were to pay the rent on or before the 3rd of every month. On default of payment of rent defendants are liable to vacate the premises. Security amount of ₹25,000/- was received by the plaintiff herein. The lease agreement got terminated on 31.05.2021. From 01.04.2021 defendants failed to pay the rent. Further, during January-February 2021 without the permission of plaintiff, defendants renovated the house in plaintiff schedule property destroyed the compound wall and sold the timber trees. Since defendants violated the lease agreement plaintiff issued quit notice on 03.03.2021. Defendants duly received the quit notice but failed to vacate the premises. Hence plaintiff is entitled to evict the defendants from plaintiff schedule property, recover user and occupation charges at a monthly rate of Rs.6000/- and for a consequential injunction. Hence the suit.

3. Defendants filed written statement with the following contentions :- Defendants are husband and wife. Plaintiff schedule property was orally agreed to be sold to defendants by plaintiff for a total sale consideration of ₹1,20,00,000/-. It was also agreed that the renovation works and the expense for reconstruction of the old house will be spent by

the defendants and that the said amount would be adjusted with the purchase price. In pursuance to the agreement defendants spent ₹35,00,000/- for the renovation works. Thereafter on 15.12.2020 an agreement was made to pay the remaining sale consideration of ₹85,00,000/-. But due to covid-19 pandemic defendants were unable to arrange funds. But since plaintiff had already permitted the defendants to occupy the house therein a lease agreement was formally created for 11 months and rent is being paid regularly. Later plaintiff unilaterally retrieved from the agreement and that stated her intention not to sell plaintiff schedule property to the defendants. Thereafter plaintiff tried to evict defendants from plaintiff schedule property on the basis that defendants are merely tenants. Plaintiff threatened the defendants to forceful dispossession. Plaintiff has no right to do so. Plaintiff has no cause of action against the defendants. Hence the suit is to be dismissed with costs.

4. Upon the pleadings, required issues were framed as follows;

- 1) Whether the defendants have any right over plaintiff schedule property ?
- 2) Is the plaintiff entitled to get a decree for eviction as prayed for?
- 3) Is the plaintiff entitled to realise arrears of rent @ ₹6,000/- per month as prayed for?
- 4) Is the plaintiff entitled to get a decree for permanent prohibitory injunction, as prayed for?
- 5) Order as to costs ?

5. Thereafter, both sides were given opportunity to take pre-trial steps. Suit was included in the list and was posted to 01.08.2023 for trial.

When the case was called, defendants remained absent and counsel for defendants endorsed no instruction. Hence the suit was proceeded exparte.

6. PW1 was examined and Exts.A1 to A7 were marked.

7. I heard the learned counsel for plaintiff.

8. Issue Nos.1 to 4 :- Power of attorney holder of plaintiff was examined as PW1 and he filed proof affidavit in tune with the plaint averments. Ext.A1 is the power of attorney of plaintiff. Ext.A2 is the certified copy of settlement deed No.576 dated 04.10.2017 of Kozhuvanal SRO. Ext.A3 is the tax receipt of plaint schedule property. Ext.A4 is the tax receipt with respect to the house situated in plaint schedule property. Ext.A5 is the lawyer notice dated 03.03.2021. Ext.A6 is the certified copy of charge sheet of C.C 1357/21 of Judicial First Class Magistrate, Pala. Ext.A7 is the rent agreement dated 01.07.2020 between plaintiff and first defendant.

9. Rental arrangement and rate of rent is proved through Ext.A7. From the unrebutted evidence of PW1 and Exts.A1 to A7, the lease agreement and its terms stand proved. I am satisfied that despite issuing quit notice defendants have failed to vacate the premises. There is no contra evidence to disprove the case of the plaintiff. Under these circumstances, I find that plaintiff is entitled to get a decree against the defendants.

10. Issue No.3 :- General rule is that costs shall follow the event. I don't intend to deviate from the said rule. Therefore, I am of the view that the plaintiff is entitled to realise the costs of the suit from defendants.

In the result, the suit is decreed with costs as follows ;

- 1) Defendants are hereby directed to give vacant possession of the house situated in plaint schedule property to the plaintiff within 30 days from today, failing which, the plaintiff can enforce the decree through the process of Court at the expense of the defendants.
- 2) Plaintiff is allowed to realise user and occupation charges from 01.04.2021 @ ₹6,000/- per month till date of surrender of vacant possession of house in plaint schedule property from the defendants and their assets.
- 3) Defendants and their men are hereby restrained by a decree of permanent prohibitory injunction from making any construction in plaint schedule property, from taking yields from plaint schedule property, from cutting and removing trees standing therein and from committing any acts or mischief therein.
- 4) Plaintiff is entitled to recover costs from the defendants.

(Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open court on this the 1st day of August, 2023)

Sd/-
PRIYANKA PAUL
MUNSIFF

APPENDIX:

Exhibit marked for plaintiff:-

A1 24.07.2023 Power of attorney by plaintiff

- A2 04.10.2017 Certified copy of deed No. 576/2017 of Kozhuvanal SRO
- A3 12.05.2023 Tax receipt of TP No.4992 of Puliyanloor Village
- A4 12.05.2023 Building / property tax receipt of Kozhuvanal Panchayath
- A5 03.03.2021 Copy of lawyers notice sent to first defendant
- A6 06.08.2021 Certified copy of charge sheet in CC 1357/21 JFCM-1 Court, Pala

Exhibits marked for Defendants : Nil

Court Exhibits: Nil

Third Party Exhibits : Nil

Witness Examined for Plaintiff:

PW1 01.08.2023 Chandrasekharan E

Witness Examined for Defendants : Nil

Id/-
MUNSIFF

Typed By: Manju

Comp. By: Sherina

/True copy/

Sd/-
PRIYANKA PAUL
MUNSIFF

**Copy of
JUDGMENT
In
O.S. No.174/2021
Dtd. 01.08.2023**

