

IN THE COURT OF THE MUNSIFF OF TIRUR

PRESENT: Sri. JANKISH NARAYANAN, B.Com., LL.B., LL.M., MUNSIFF

Saturday, the 25th day of January, 2020
the 5th day of Magha, 1941

ORIGINAL SUIT No. 190 OF 2019

Between:

Rajamani, 47 Years, S/o. Ramaswami Kodavath,
Naduvilangadi, Tirur amsom, desom, PO. Pookkayil Bazar,
Tirur Taluk, PIN 676 107. } Plaintiff

And:

1. Jamsheer, 32 Years, S/o. Madhukkal Abdul Razak,
Triprangode amsom, desom and post, Tirur Taluk, 676 108.
2. Jasna, 27 Years, W/o. Madhukkal Jamsheer,
D/o. Kadavath Kaderkutty, Triprangode amsom, desom
Triprangode PO, Tirur Taluk, PIN 676 108. } Defendants

This suit coming on 22-01-2020 for final hearing before me in the presence of Sri. P.Viswanathan and Sri. Jubin Mohamed, Advocates for the plaintiff and the defendants are called absent set exparte and having stood over to this day for consideration, the court delivered the following;

J U D G M E N T

Suit is one for Realization of Money:-

2. The plaint averments, in brief, are as follows:- The defendant No. 1 is the husband of defendant No.2. The plaint schedule property belong to the defendants jointly, by virtue of document No. 774/2017 of SRO Kodakkal. The defendants have decided to assign the plaint schedule property in favour of the plaintiff for a consideration of ₹ 7,50,000/-. Plaintiff has issued cheques bearing No. 013161 and 013162 drawn on his account with the Axis Bank for an amount of ₹5,00,000/- to the defendants as an advance sale consideration. The defendants have collected said amount from the bank. An agreement for sale is executed in this regard on

20.07.2017. The plaintiff is agreed to pay the balance amount of sale consideration within 11 months from the date of execution of agreement. The plaintiff has approached the defendant No.2 in April-May 2018 with balance consideration. At that time, the defendant No.1 was working abroad. 1St defendant promised him that the assignment deed will be executed on arrival of the defendant No.1 from abroad. But even after the defendant No.1 has arrived in India, the defendants have not executed assignment deed as agreed. The plaintiff has ready and willing to perform his part of the contract. The defendants have violated the terms of contract. The plaintiff has caused to issue a notice, dated 04.12.2018 to the defendants demanding the execution of assignment deed in favour of him after receiving the balance sale consideration. The defendants have evaded the receipts of said notices. The defendants did not execute the assignment deed so far. Therefore, the plaintiff is entitled to realise the amount paid by him to the defendants as an advance sale consideration of property with interest as ₹6,76,250/- . Hence, the suit.

3. The defendants opted to remain exparte.

4. Points for determination are as follows:-

i. Whether the plaintiff is entitled to recover a sum of ₹ 6,76,250/- (Rupees Six Lakh Seventy Six Thousand Two Hundred and Fifty only) from the defendants, as prayed for?

ii. What is the appropriate order as to interest, reliefs and costs?

5. Plaintiff filed proof affidavit in lieu of his examination in chief. Exbt. A1 to A3 are marked on the side of the plaintiff.

6. Heard the counsel for the plaintiff.

7. Points No.I to II:- These points are interconnected and therefore, discussed together. The plaint schedule property belong to the defendants jointly by virtue of document No. 774/2017 of SRO Kodakkal. The plaintiff and the defendants have entered into Exbt. A1 agreement for sale in respect of the plaint schedule property for consideration of ₹7,50,000/-. Plaintiff has paid ₹5,00,000/- to the defendants as

an advance sale consideration. Plaintiff has approached the defendants on several occasions with balance sale consideration. But the defendants did not ready to execute assignment deed in favour of the plaintiff as agreed. The plaintiff has caused to issue Exbt. A2 notice demanding the execution of assignment deed after receiving the balance sale consideration. The defendants have evaded the receipts of said notice. The returned notice is marked as Exbt. A3. The amount due to the plaintiff from the defendants including interest as on date of suit is calculated as ₹6,76,250/-. Since the defendant remained ex parte, the evidence adduced by the plaintiff remained unchallenged. I find no reason to disbelieve PW1. Therefore, I am satisfied that the plaintiff has proved his case by adducing cogent and reliable evidence. Hence the plaintiff is entitled to a decree as prayed for.

In the result, the suit is decreed as follows.

1. The defendants are directed to pay an amount of ₹ 676,250/- (Rupees Six Lakh Seventy Six Thousand Two Hundred and Fifty only) with interest @ 6% per annum from the date of suit, till realization, to the plaintiff.
2. Defendants are directed to pay costs of the suit to the plaintiff. .

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 25th day of January 2020).

Sd/-
MUNSIFF.

APPENDIX:

Plaintiff's Witness

PW1 : R.Rajamani.

Plaintiff's Exhibits:

- A1. 20-07-2017 Sale Agreement.
 A2. 04-12-2018 Cop of Lawyer Notice.
 A3. -nil- Unserved Letter.

Sd/-
MUNSIFF.

/True Copy/

MUNSIFF.

Copy of Fair Judgment in OS.190/2019,
Dated. 25-01-2020
