

IN THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI

Present:- Smt.Neema Noor Mohamed, Munsiff-Magistrate

Saturday, the 26<sup>th</sup> day of October, 2024/4<sup>th</sup> Karthika, 1946 S.E.

**ORIGINAL SUIT No.6/2018.**

**Between:-**

Basheer,Aged-30 years, : Plaintiff  
S/o.Yoosuf,Alikkal House,  
Mulayamkavu Post,Pattambi Taluk,  
Palakkad District.

**And:-**

1. Rajendran,Aged-59 years, : Defendants  
S/o.Madhavan,  
Melepurakkal House,Kulukallur Post,  
Pattambi Taluk,Palakkad District.
2. Shylajadevi,Aged-48 years,  
W/o.Rajendran,  
Melepurakkal House,Kulukallur Post,  
Pattambi Taluk,Palakkad District.

This suit coming on 21/10/2024 for final hearing before me in the presence of Sri.C.V.Sureshkumar and Smt.V.K.Smitha, Advocates for the plaintiffs and of Sri.C.P.Sudheer, Advocate for the defendant reported no instruction and defendants called absent, set exparte and after having stood over for consideration till this day and this court delivered the following:

**JUDGMENT**

Suit for return of advance amount.

2. Plaint averments in brief are as follows:- Plaint schedule properties are the properties devolved upon defendants as per Kanam deed No. 1498/1998 of SRO, Cherpulassery which comprises 86 cents of properties. On 20/08/2016, the plaintiff and defendants entered into an agreement for sale of aforesaid 86 cents of property for ₹ 33,000/- per cent. On the date of agreement itself, the plaintiff paid ₹ 3,00,000/- to the defendants towards the advance sale consideration. As per the agreement, it is agreed to register the properties on receipt of balance amount from plaintiff within 8 months of date of agreement. Thereafter in several occasion, the plaintiff approached defendants for the original documents of the properties for legal verification,

defendants requested for some more time to produce the documents. Thereafter it is informed to the plaintiff that there are some liabilities with respect to the property and the original documents of the properties are pledged in Federal Bank, Kulukkallur branch and the properties have some more claimants. But the same were suppressed to plaintiff before executing the above mentioned sale agreement. That the plaintiff was and has always been ready and willing to perform his part of the contract but the defendants were not ready to perform their part. After giving the advance amount, the plaintiff was prepared to pay the entire remaining sale consideration and to get the property registered. In spite of repeated requests, the defendants willfully neglected to perform their part of contract by giving evasive replies. Thereafter on 23/11/2017 plaintiff issued a lawyer notice to the defendants. But the defendants sent a reply notice with false allegations saying that the plaintiff has not given ₹ 3,00,000/- towards advance of sale consideration and that the defendant had made a concocted story denying the execution of sale agreement. Hence this suit for the return of the advance amount of ₹ 3,00,000/- with an interest of 12% per annum from the defendants.

3. Defendants appeared before the court and represented through a counsel of their choice. At the time of hearing the counsel for defendants reported no instruction. Both the accused called absent despite being required to appear for evidence. Hence proceedings heard *ex parte* against them.

4. Plaintiff filed an affidavit in lieu of examination in chief and got himself examined as PW1 and Exts. A1, A2 series (3 in numbers) and A3 were marked. The plaintiff in his examination in chief as PW1 has reiterated and reaffirmed the averments made in the plaint and proved that the plaintiff entered into Ext. A1 agreement for the sale of the plaint schedule property on 20/08/2016 and paid an amount of ₹ 3,00,000/- to the defendants towards the sale consideration. Exhibit A2(a) is the copy of lawyer notice dated 23/11/2017, A2(b) is its postal receipt and A2(c) is the acknowledgment card. Exhibit A3 is the reply notice sent by the counsel for defence to the plaintiff. The evidence of the plaintiff has remained

unchallenged and uncontroverted. There is no evidence to prove the averments in the reply notice. Hence the plaintiff claims stands proved from the oral and documentary evidence adduced from the side of plaintiff. So far as the rate of interest is concerned, I find that a reasonable rate of 6 % per annum can be awarded as pendente-lite interest and future interest.

In the result, the suit is decreed as follows:

1. The plaintiff is entitled to realise ₹ 3,49,085/- (Rupees three lakhs forty nine thousand and eighty five only) from the defendants and their assets.
2. The plaintiff is entitled to realise interest @ 6% per annum on the principal amount (₹ 3,00,000/-) from the date of suit till realisation from the defendants and their assets.
3. The plaintiff is also entitled to realise the costs of the suit from the defendants and their assets.

*Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 26<sup>th</sup> day of October, 2024.*

Sd/-  
Munsiff

Witness examined on plaintiff's sides :

PW1 - 07-10-2024 - Basheer.

Exhibit marked on plaintiff's side:

A1 - 20-08-2016 - Agreement executed by the defendants in favour of the plaintiff.

A2 - 23-11-2017 - Copy of Lawyer notice.

A2(a) - 23-11-2017 - Postal receipt.

A2(b) - 23-11-2017 - Acknowledgment Card.

A3 - 12-12-2017 - Reply notice.

Witness examined and Exhibit marked on defendant's side: NIL

Sd/-  
Munsiff

Copied by : Chitra.T

Compared by : Brijimol.K.S.

