

IN THE COURT OF SUBORDINATE JUDGE, IRINJALAKUDA

Present:- T.B.Fazeela, Additional Sub Judge

Friday, the 3rd day of March, 2023/12th Falguna, 1944SE

O.S.28/2021

Plaintiff:-

Joy, Aged 64, S/o Kanjirathinkal Lazar,
Mukkattukara Desom, Nettissery Village, Thrissur Taluk.

By Adv. Vipin Chacko

Defendant:-

Sankaran, Aged 68, S/o Ponnathiveetil Kochandi,
Chembuchira Desom, Mattathur Village, Chalakudy Taluk.

By Adv. Venu M.R & Naveen N.V

This suit coming on this day for hearing before me the court on the same day delivered the following:

J U D G M E N T

Suit is for return of advance amount.

2. Plaintiff averments, in brief, are as follows:-

Plaint schedule property having an extent of 0.0924 Hectre (22.830 cents). belongs to defendant by virtue of sale deed No.2012/2016 of Kodali SRO. Plaintiff obtained 0.0789 Hectors(19.409 Cents)of property comprised in Sy. 133/1 of Varantharappilly Village by virtue of sale deed Nos. 3573/2010 and 3716/2010 of Kodali SRO. They mutually entered into an agreement on 21/11/2016 for sale of plaintiff schedule property to the plaintiff for a consideration of ₹2,90,000/- (Rupees two lakhs and ninety thousand only) per cent and for the sale of property of plaintiff for a consideration of ₹2,00,000/-

(Rupees two lakhs only) per cent to the defendant. It is also agreed to pay ₹27,20,700/- (Rupees twenty seven lakh twenty thousand and seven hundred only) by the plaintiff towards the excess value of the property of the defendant. Therefore, total consideration for the plaint schedule property is ₹66,20,700/- (Rupees sixty six lakh twenty thousand and seven hundred only). Towards the balance sale consideration of ₹27,20,700/- (Twenty seven lakh twenty thousand and seven hundred only) plaintiff gave an advance amount of ₹26,00,000/- (Rupees twenty six lakhs only) to the defendant on the date of the agreement. Period fixed for the performance of the agreement is 11 months upto 21.10.2017. There is a stipulation in the agreement to obtain 'pattayam' for the property of the defendant having an extent of 0.0546 hectre comprised in Sy.No.1007/5, 0.0121 hectre comprised in Sy.1007/4 and 0.0135 hectares comprised in Sy.No.1007/5 of Mattathur village. Since the defendant could not obtain 'pattayam' within the period of agreement, the period of agreement was extended for a further period of 6 months as per the demand of the defendant and endorsed the same on the agreement. Even after the expiry of the extended period of 21.04.2018, the defendant did not comply the stipulations in the agreement and did not obtain 'pattayam' for the property and committed breach of the agreement. The plaintiff is always ready and willing to perform his part of the agreement and informed the defendant after arranging the balance sale consideration. It is also learnt that defendant had pledged the property and therefore plaintiff abandoned the relief of specific performance. Plaintiff

issued a lawyer notice to the defendant demanding return of advance money, but the defendant did not pay the amount so far. Plaintiff is entitled to realize the advance amount together with interest from the defendant. Hence, the suit.

3. After receipt of summons though the defendant appeared before court, through counsel, he has not filed written statement. Hence, he was set exparte.

4. Plaintiff filed affidavit in tune with the averments in the plaint and got marked Exts.A1 to A4 documents. Ext.A1 is the agreement for sale entered into by the plaintiff and defendant on 21.11.2016. Ext.A2 is the lawyer notice dated 27.01.2021. Ext.A3 is its postal receipt and Ext.A4 is the acknowledgement card.

5. From the evidence and documents I find nothing to disbelieve the version of the plaintiff. The evidence of plaintiff coupled with documents proved the case of the plaintiff. Therefore, the suit is liable to be decreed.

In the result, suit is decreed with costs as follows:-

That the defendant do pay to the plaintiff a sum of ₹26,00,000/- (Rupees twenty six lakhs only) together with interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum

till its realization. Plaint schedule property will be a charge for the decree amount.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open court on this the 03rd day of March, 2023.

T.B.Fazeela,
Additional Sub Judge.

APPENDIX

Plaintiff's Exhibits:-

- A1 - 21.11.2016 - Agreement for sale entered into by the plaintiff and defendant.
- A2 - 27.01.2021 - Lawyer notice
- A3 - Postal receipt
- A4 - Acknowledgement card.

Additional Sub Judge.