

IN THE COURT OF THE SUB JUDGE, CHAVAKKAD

Present :- Sri.V.Vinod, Sub Judge

Saturday, the 18th day of March, 2023/ 27th Phalgunam, 1944 SE

O.S.54/2019

Plaintiff:-

Vincent, aged 64 years, S/o.Kuruthukulangaraveettil Anthony,
Anthikkad Village, Puthanpeedika desom, Puthanpeedika (P.O.),
Thrissur Taluk,

By Adv.P.Jayasree

Defendants:-

1. Puthiyaveettil Abdul Rahiman Shamsudheen, aged 54 years,
S/o.Bavu @ Abdul Rahiman, Pavaratty Village, Puthanpeedika desom,
Pavaratty (P.O.), Chavakkad Taluk, PIN 680 642.
2. Puthiyaveettil Abdul Rahiman Shamsudheen, aged 54 years,
S/o.Bavu @ Abdul Rahiman, Pavaratty Village, Puthanpeedika desom,
Pavaratty (P.O.), Chavakkad Taluk, PIN 680 642, rep. by his Power of
Attorney Holder and wife, Shebeena Rahiman Shamsudheen,
aged 48 years, W/o. Puthiyaveettil Abdul Rahiman Shamsudheen,
S/o.Bavu @ Abdul Rahiman, Pavaratty Village,
Puthanpeedika desom, Pavaratty (P.O.), Chavakkad Taluk, PIN 680 642

D1 exparte, D2 by Adv. C.Rajagopalan

Suit is coming on 06.03.2023 for final hearing in the presence of counsels for both sides and having stood over for consideration till this day, the court delivered the following :-

J U D G M E N T

The suit is one for return of advance money and for a charge over the plaint

schedule property, for interest and costs.

2. The case of the plaintiff, in brief, is as follows: The plaintiff schedule property is owned by the first defendant. In that there is a house. The second defendant is the power of attorney holder of the plaintiff. For and on behalf of the first defendant, the second defendant entered into an agreement with the plaintiff on 19.12.2017 for selling the plaintiff schedule property in favour of the plaintiff. As per the agreement, the defendants agreed to assign the plaintiff schedule property for a total sale consideration of ₹60,00,000/- and received an advance of ₹5,00,000/-. Out of that ₹ 5,00,000/- ₹3,00,000/- was paid as cash and the balance ₹2,00,000/- was paid by way of a cheque. The period for the agreement was fixed as six months. The first defendant has availed a loan by mortgaging the plaintiff schedule property. The defendants have agreed to release the mortgage and hand over all the necessary title deeds to the plaintiff and agreed to register the property in favour of the plaintiff within the above period. Thereafter on 02.01.2018 the second defendant collected ₹2,00,000/-, on 16.01.2018 ₹ 8,00,000/-, on 19.03.2018 ₹6,00,000/-, on 13.06.2018 ₹ 50,000/- and on 15.07.2018 ₹ 50,000/- from the plaintiff. Altogether the defendants have collected ₹ 22,00,000/- from the plaintiff. The receipt of the amounts of 17,00,000/- on various dates were been acknowledged by the second defendant by signing on the reverse side of the agreement. The agreement was extended from time to time till 8.12.2018.

3. The plaintiff was ready and willing to perform his part of the contract. The defendants were not ready and willing to perform their part of the contract. On 05.04.2019 the plaintiff issued a lawyer notice demanding the return of advance money. Though the defendants received the notice, they did not return the advance money nor replied to the notice. Both the defendants are jointly and severally liable for the return of the above

amount. Hence this suit for return of advance money of ₹22,00,000/- with 12% interest from the defendants and for a charge decree and for costs.

4. The first defendant is abroad and summons to him was served by affixture. He was called, absent and was set ex-parte.

5. The second defendant appeared and filed written statement raising following contentions: The second defendant has denied the case of the plaintiff that she has entered into an agreement with the plaintiff as power of attorney holder of the first defendant and received an advance of ₹ 5,00,000/-. She has also denied the case of the plaintiff that, thereafter on various dates she has received ₹ 17,00,000/-. The second defendant has never entered into an agreement with the plaintiff as alleged. The first defendant has not entrusted the second defendant to assign the plaint schedule property in favour of the plaintiff. The agreement produced is a forged one. The power of attorney filed along with the plaint is also a forged one. For the last three years the second defendant is not in good terms with the first defendant. The plaintiff is a money lender. He was introduced to the second defendant by one Premanandan. The daughter of the plaintiff was studying for MBBS. For her educational purpose, ₹ 2,00,000/- was borrowed from the plaintiff by the second defendant for an interest of ₹ 8/- per ₹100/-. At that time the plaintiff made the second defendant sign in four blank stamp papers, three blank white papers and one unfilled printed form. The second defendant could not repay the interest in time due to financial difficulties. The plaintiff and Prenanandan have joined together and by misusing the blank signed papers created a false agreement for sale and has come out with a false suit. The suit is liable to be dismissed with costs.

6. Based on the above pleadings, following issues were settled.

- 1) Whether plaintiff and second defendant had executed an agreement for sale concerning the plaint schedule property on 19.12.2017?
- 2) Whether second defendant had received ₹22,00,000/- from the plaintiff as advance sale consideration as per agreement for sale dated 19.12.2017?
- 3) Whether plaintiff is entitled to realize ₹22,00,000/- from the defendants and their assets?
- 4) If so, what is the rate of interest to which plaintiff is entitled?
- 5) Whether plaintiff is entitled to charge over the plaint schedule property for the amount of ₹ 22,00,000/- ?
- 6) Reliefs and costs?

7. The plaintiff in order to establish his case testified as PW1, one witness was examined by him as PW2 and Exts. A1 to A5 were marked. The second defendant testified as DW1 and Ext. B1 was marked.

8. Heard both sides.

9. **Issue No. 1 to 5:-** It is the admitted case of the parties that the plaint schedule property is owned by the first defendant. It is the case of the plaintiff that the second defendant is the power of attorney holder of the first defendant. She has as per Ext. A1 entered into an agreement with the plaintiff for assigning the plaint schedule property to

the plaintiff for a sale consideration of ₹ 60,00,000/- and received an advance of ₹ 5,00,000/-. Out of which ₹2,00,000/- was paid as cheque and ₹ 3,00,000/- was paid in cash. The first defendant has obtained a loan from the Thrissur District Co-operative bank by mortgaging the plaint schedule property. The defendants will have to close that loan and produced the original title deed before the plaintiff. The period of agreement was for six months. It is the further case of the plaintiff that apart from 5,00,000/- the second defendant obtained altogether ₹ 17,00,000/- on various dates by endorsing the same on the reverse side of the document. It is the further case of the plaintiff that the defendant did not comply with the terms of the contract and hence he is entitled to get return of advance money of 22,00,000/- with interest. On the other hand, it is the case of the second defendant that she and her husband who is the first defendant are not in good terms for the last three years. She has launched a domestic violence case against the first defendant as per Ext. B1. Ext. A2 the power of attorney produced along with the plaint is a forged one. She has borrowed a sum of ₹ 2,00,000/- from the plaintiff through one Premanandan on 19.12.2017. At that time the plaintiff made the 2nd defendant sign in blank stamp papers, blank white papers and one unfilled printed form. Misusing the same, Ext. A1 document has been created. There is no agreement for sale as alleged by the plaintiff nor she has received any further amount from the plaintiff as alleged.

10. The learned counsel for the plaintiff vehemently argued that the contention of the second defendant that she has no connection with the first defendant and that they are living separately is a false story narrated only for the purpose wriggling out from the liability. The second defendant has admitted in the box that Ext. B1 Domestic Violence MC was dismissed for default for non prosecution of the same. The case of the second defendant in the box that she has not signed on the reverse side of the document and

collected amounts from the plaintiff is false. There is no specific pleading denying the signature on the reverse side of the document. Further to the notice issued by the plaintiff which is marked as Ext. A3 no reply has been send by the second defendant. Though the 2nd defendant claims that she has contacted the plaintiff for borrowing money through Premanandan, she has not cared to examine Premanandan to prove the same. The best person who could have spoke about the transaction from the side of the 2nd defendant is Premanandan. PW2 who is an attesor to Ext. A1 document has clearly deposed that he has witnessed the transaction between the plaintiff and the second defendant. Further, he has also on 2 or 3 instance signed on the reverse side of the agreement at the time of the second defendant receiving part payments. So the case put forth by the plaintiff is proved. The suit is to be decreed with costs.

11. The learned counsel for the 2nd defendant on the other hand vehemently argued that she and the 1st defendant are not in good terms and that is evident from Ext. B1. Ext. B1 is much prior to Ext. A1 document. So, it cannot be said that it is collusive one. With regard to Ext. A2 power of attorney, it was submitted that the same is a forged document and it cannot be believed. It is the categorical case of the 2nd defendant that she has borrowed a sum of ₹2,00,000/- from the plaintiff. The mediator for the above transaction was Premanandan. At that time of borrowal, she has signed in blank stamp papers, white papers and unfilled printed form. The interest fixed was ₹ 8/- per ₹ 100/-. The 2nd defendant could not pay the amount or interest after some period. So, the plaintiff misusing the above stamp papers has created a false document. The signatures of the 2nd defendant seen on the reverse side of the agreement are forged. PW2 who claims that he has witnessed the transaction is a aide of plaintiff and he cannot be believed. It is the evidence of the plaintiff that prior to the purchase of the plaint schedule property he did

not see the house situated in the property from inside. It is his case that he did not enter into the house even once. It is quiet unbelievable that a person will be purchasing the property including the house without inspecting the house. The house is a two storied building. It itself is worth ₹60,00,000/-. The case of the plaintiff that the 2nd defendant agreed to sell the house and the land for a paltry amount cannot be believed. It can be seen from the agreement that the defendants will have to clear the loan which they have availed from the Co-operative Bank, prior to the registration. The plaintiff even without verifying as to whether the loan have to be cleared after the execution of Ext. A1 again and again gave money to the 2nd defendant and it is his claim that after Ext. A1 altogether he has paid ₹17,00,000/-. The act of the plaintiff cannot be believed. It was further argued that Ext. A1 is seen drafted in stamp papers , blank papers and printed form. Other than the printed forms all other pages are computer printed pages. If the transaction was genuine there was no difficulty to incorporate the terms seen in the printed form also in the computer typed sheets. This is not done. The same itself will indicate that Ext. A1 is a forged document. It is the claim of the plaintiff that he has for the purpose of giving ₹17,00,000/- to the 2nd defendant on various occasions borrowed money from his brother in law. So, the plaintiff was not having sufficient financial capacity to give the money to the 2nd defendant. He has not proved the borrowal of the money by examining his brother in law. The plaintiff has failed to establish his case and hence, the suit is liable to be dismissed.

13. I have carefully gone through the evidence tendered by both sides. It is the case of the plaintiff that the 2nd defendant is the power of attorney holder of the 1st defendant and Ext. A2 is the power of attorney. Whereas it is the case of the 2nd defendant that Ext. A2 is a forged document. The above contention of the 2nd defendant

cannot be accepted without any contra evidence about the genuineness of Ext. A2 for the reason that it is an Indian Embassy attested power of attorney with the seal of the Indian Embassy. In that the photograph of the 1st defendant, his address and passport number is also given. So, by no stretch of imagination it can be said that the power of attorney is a forged one.

14. Now, coming to the signatures of the 2nd defendant's seen in Ext. A1, the 2nd defendant is admitting the signatures in all the pages. Whereas, she is denying the signatures on the reverse side. However, it is pertinent to note that though there is an averment in the plaint that the endorsements made by the 2nd defendant on the reverse side of the documents on various dates, the 2nd defendant has not denied those signatures in her written statement. For the 1st time such a denial was made at the time of cross examination of the plaintiff. Further the evidence of PW1 that the 2nd defendant has signed on the reverse side of the document has been corroborated by the evidence of PW2. It is true that PW2 is an aide of the plaintiff. PW2 has deposed that when he came to know that the suit is filed, he collected a copy of Ext. A1. That shows he is interested in the case filed by the plaintiff. However, on a close analysis of his evidence, I do not find any reason to disbelieve his evidence. As there is no denial of the signature on the reverse side of the agreement by the 2nd defendant and also from the evidence of PW1 and PW2 the plaintiff could successfully establish that the 2nd defendant has signed also on the reverse side of the Ext. A1 agreement.

15. Now, I shall deal with the case of the 2nd defendant that there was actually no agreement for sale. It is the evidence of the plaintiff that he came to know about the fact that the bank is going to auction the plaint schedule property owned by the 1st defendant

through his brother in law. His brother in law has assessed the value of the property and he did not directly assess the value of the property. Premanandan was the mediator. The defendant is also admitting that Premanandan was the mediator for the transaction (of course it is her case that it is only a financial transaction). It is the case of the plaintiff that most of the sum which he has given was borrowed from his brother in law and he has repaid the same. It has to be born in mind that the plaintiff is a business man who is doing electrical business. So, his financial capacity cannot be disbelieved. It is true that PW2 is a dependent / aide of the plaintiff. However, from his evidence, it can be seen that he has witnessed the transaction. So, there is nothing to disbelieve the evidence given by him. The version of the 2nd defendant that at the time of Ext. A1 she was not in good terms with her husband cannot be believed for the reason that Ext. A2 is dated 11.8.2016 and after getting the power of attorney on 7.10.2016 Ext. B1 MC has been filed. Further it has been admitted by the 2nd defendant that the MC was dismissed in 2018 for non prosecution. Hence I am of the considered view that the filing of MC is not a reason to hold that she has not entered into Ext. A1 agreement with the plaintiff. If at all anyone who can raise any grievance about Ext. A1, it is only the 1st defendant. He has not bothered to appear or raise any grievance.

16. Now I shall deal with the contention of the learned counsel for the 2nd defendant that plaintiff without verify as to whether the loan in the Co-operative Bank was cleared has kept on giving money. It is the version of the plaintiff that the 2nd defendant every now and then came to him and kept on asking him for money for the educational purpose his daughter, who is studying for MBBS in China. So, he kept on giving money. From the nature of the plaintiff and the way in which he has tendered evidence, I am of the view that he can be believed on the above aspects.

17. With regard to the value of the property, DW1 herself has deposed that the property will be worth around ₹60,00,000/-. So the claim of the learned counsel for the defendant that the property is worth more than ₹60,00,000/- cannot be accepted. With regard to printed form in Ext. A1, it is the version of PW1 that the same was prepared by a document writer and it has been filled by him and appended in Ext. A1. I do not find anything unusual in appending a printed form in an agreement for sale.

18. On an over all analysis of the evidence, I am of the considered view that the plaintiff could successfully established the execution of the Ext.A1 and also the passing of consideration. Since the 2nd defendant is denying the transaction, it is clear that it was not the plaintiff who was properly declined to receive the property. So he is entitled for a charge decree. Hence, I am of the considered view that the plaintiff is entitled to realize from the 1st defendant ₹25,13,930/- with 9% interest on the principal sum of ₹23,00,000/- from the date of the suit till the date of the decree. Thereafter, the interest shall be at the rate of 6%. The issues are answered in favour of the plaintiff.

19. **Issue No. 6**:-With regard to the reliefs, I have already narrated about the reliefs which the plaintiff is entitled to while answering issue Nos. 1 to 5. On the facts and circumstances of the case , I am of the view that the plaintiff is entitled to get costs of the proceedings.

In the result,

a) The suit is decreed.

- b) The plaintiff is entitled to realize from the 1st defendant ₹25,13,930/- with 9% interest on the principal sum of ₹23,00,000/- from the date of the suit till the date of the decree. Thereafter, the interest shall be at the rate of 6%.
- c) The plaint schedule property shall be charge for the decree amount.
- d) The plaintiff is also entitled to get costs of the proceedings.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, on this the 18th day of March, 2023).

V.Vinod,
Sub Judge

APPENDIX

Plaintiff's Witness:-

Pw1.	Vincent.
Pw2.	Sajeevan.

Defendant's Witness:-

Dw1.	Shebeena
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Plaintiff's Exhibits:-

A1.	19.12.2017	Original Karar.
A2.	11.08.2016	Power of attorney.
A3.	05.04.2019	Lawyer notice.
A4.	09.04.2019	Postal receipts.

A4(a) 09.04.2019 Postal receipts.

A5. 08.04.2019 A/D card.

Defendant's Exhibits:-

B1. 07.10.2016 Certified copy of MC 68/16 from JFCM Chavakkad.

Sub Judge.

Mns :
Compared by :

Judgment in O.S.54/2019
Dated : 18/03/2023
