

**IN THE COURT OF THE MUNSIFF, VARKALA**  
**PRESENT: Smt. RAJASREE C.R, B.A.L., L.L.M., MUNSIFF**  
**SATURDAY 26<sup>th</sup> SEPTEMBER 2019/ 4<sup>th</sup> ASWINA 1941**  
**OS No. 276/2013**

**Plaintiff/Defendant in the counter claim:**

Devapuram Rajendran, aged 54 years, S/o  
Balakrishnan Chettiar, Revathi Nilayam,  
Charumkuzhy, Ayiroor desom,  
Ayiroor Village.

**By Adv. Sri. Vakkom R Jayaprakash**

**Defendants/Plaintiffs in the counter claim:-**

1. Nisamudheen, aged 48 years, S/o Ismail, S.S.Villa,  
Kannamba Desom, Varkala Village.
2. Saifudeen, aged 45 years, O.V.House, Vettoor,  
Vettoor Village.
3. Salim, aged 40 years, of -do-  
(Defendants 2 and 3 are strike out from the party array  
as per IA 377/17 dtd 09-10-2017)

**By Adv.: Sri. F.Nahas and M. M. Fathima**

This original suit having been heard on 16-08-2019 and the  
Court on 26-09-2019 delivered the following:-

**J U D G M E N T**

Suit is for mandatory injunction, permanent prohibitory  
injunction and for recovery of money.

2. Plaint averments in brief are stated as follows:- Plaintiff is a  
construction contractor and an astrologer. Plaintiff is the owner in  
possession of the plaint A schedule building bearing No. E.P. III/125, 126

and 127 situated in re-survey 349/9 of Ayiroor village measuring an extent of 3.85 Ares. The property wherein the plaint A schedule buildings are situated was purchased by the plaintiff by virtue of sale deed 3675/1983 of Varkala, SRO. The plaint A schedule buildings were constructed during the year 1986-1989. He started a bakery in the double storied terrace building in the year 2009 and sheds were constructed on the north- eastern side of the building for the production of food items. The plaint A schedule includes all constructions excluding one shop room stated in the schedule. The plaintiff is in possession of the plaint A schedule property and is possessing all the movable articles shown as plaint B schedule and also in possession the plaint C schedule vehicles. Plaintiff is conducting a bakery named and styled 'Essar Bakers'. Due to the avocation of the plaintiff, he wanted a person interested to conduct business as a licensee. The first defendant approached the plaintiff and expressed his readiness to continue the business as a licensee. On 15/6/2011, a license deed was executed between the plaintiff, the first defendant and Sumesh S.R. Though Sumesh was also a party in the agreement, the first defendant was conducting the bakery using the plaint B and C schedule items. As per the license deed, an advance amount of Rs. 2,00,000/- (Rupees Two Lakhs only) was paid and it was agreed that a monthly fee of Rs. 60,000/- (Rupees Sixty Thousand only) will be paid by the first defendant and Sumesh. It was further agreed that once in every 11 months the first defendant and Sumesh will pay an amount of Rs.10,000/- (Rupees Ten Thousand only) as share of profit and would execute an agreement of license. After the expiration of 11 months the first defendant approached the plaintiff and requested to reduce the license fee. A new agreement was executed on 2/6/2012 including the second and third defendants as parties. As per the new agreement, Rs. 30,000/- (Rupees Thirty Thousand only) is fixed as the

monthly license fee and share of profit was relinquished. The second and the third defendant were not in actual occupation of the plaint schedule properties. Despite the instructions from the plaintiff, the first defendant, who was conducting bakery business, failed to comply with the food safety measures. Due to this the goodwill of the bakery was lost. The first defendant was callous and negligent in conducting the business. On 1/10/2012, the first defendant failed to pay license fee and the bakery is also seen closed. On 8/01/2013, a notice was issued to the first defendant terminating the license. As per the notice damages is also claimed to the tune of Rs. 6,00,000/- (Rupees Six Lakhs only) with a demand that the same has to be paid within 10 days from the date of receipt of the notice. The vehicles noted as the plaint C schedule is still kept in the plaint A schedule property. Item No. 3 is used by the first defendant for his income. Plaintiff has every right to eject the first defendant from the plaint A schedule building and to direct them to handover the plaint B and C schedule movables and is also entitled to for damages. Thus, this suit.

3. The first defendant entered appearance and filed written statement and counter claim contending as follows:- It is true that there was an agreement between the plaintiff and the first defendant. Sumesh was not an active party to the agreement. The advanced amount of Rs. 2,00,000/- (Rupees Two Lakhs only) paid to plaintiff as advance is still in his hand. He has not returned the same. After resending the contract, another contract was executed between the plaintiff and the defendants. As per the new contract, an amount of Rs. 2,00,000/- (Rupees Two Lakhs only) was paid as advance by the second and the third defendants. The deed is not a license but a lease deed. The plaintiff failed to renew the license every year. The first defendant was ready to handover the possession of the plaint schedule properties to the plaintiff and has

demanded the advanced deposit of Rs. 4,00,000/- (Rupees Four Lakhs only). Due to a difference of opinion regarding the monthly rent due for 3 months, the plaintiff failed to accept the key of the shop room. The first defendant is entitled to get an amount of Rs.4,00,000/- (Rupees Four Lakhs only) paid as advance. Thus, a counterclaim is also preferred stating that on 15/6/2011 and on 2/6/2012 an amount of Rs.4,00,000/- (Rupees Four Lakhs only) in total was received by the plaintiff. Even though the said amount was demanded, the plaintiff failed to handover the same. Thus, this counterclaim is preferred to realise the amount of Rs.4,00,000/- (Rupees Four Lakhs only) from the plaintiff.

4. On the basis of the pleadings, the following issues were framed for trial:-

1. Is the plaintiff entitled to decree for mandatory injunction prayed for?
2. Is the plaintiff entitled to get a decree for money prayed for?
3. Is the plaintiff entitled to get a decree for damages prayed for?
4. Is the first defendant entitled to get a decree for money prayed for?
5. What is the order as to costs?

5. The counter claim filed by the first defendant was rejected for non payment of BCF.

6. On the date of trial, the defendants remained absent. Thus, the first defendant was set ex parte. Suit against the second and the third defendants was dismissed on 14/3/2014. On the side of the plaintiff, the plaintiff was examined as PW1 and Ext.A1 to Ext.A7, Ext.C1, Ext.C1(a) and Ext.C2 were marked.

7. The counsel for the plaintiff filed a memo stating that the

prayer A and B in the plaint is not pressed. Memo dated 9/8/2019 was recorded.

8. Heard both sides.

9. PW1 filed affidavit in lieu of his examination in chief reiterating the plaint averments. PW1 is in possession of the plaint A schedule property and is possessing all the movable articles shown as plaint B schedule and also in possession the plaint C schedule vehicles. Plaintiff is conducting a bakery named and styled 'Essar Bakers'. PW1 is a contractor by profession. Due to his avocation, he is unable to conduct the bakery business and was in search of an interested person who is ready to conduct business as a licensee. The first defendant approached the plaintiff and expressed his readiness to do the business as a licensee. On 15/6/2011, Ext.A1 license deed was executed between the plaintiff, the first defendant and Sumesh S.R. Though Sumesh was also a party in the agreement, the first defendant was conducting the bakery using the plaint B and C schedule items. As per the license deed an advance amount of Rs.2,00,000/- (Rupees Two Lakhs only) was paid and it was agreed that a monthly fee of Rs. 60,000/- (Rupees Sixty Thousand only) will be paid by the first defendant and Sumesh. It was further agreed that once in every 11 months the first defendant and Sumesh will pay an amount of Rs.10,000/- (Rupees Ten Thousand only) as share of profit and would execute an agreement of license. After the expiration of 11 months the first defendant approached the plaintiff and requested to reduce the license fee. Ext.A2 agreement was executed on 2/6/2012 including the second and third defendants as parties. As per Ext.A2 agreement, Rs. 30,000/- (Rupees Thirty Thousand only) was fixed as the monthly license fee and share of profit was relinquished. The second and the third defendant were not in actual occupation of the plaint schedule properties. Despite the instructions from the plaintiff, the first defendant, who was

conducting bakery business, failed to comply with the food safety measures. The affidavit filed discloses that due to the careless and negligent conduct of business by the first defendant, the goodwill of the bakery conducted by the plaintiff was lost and the bakery was closed and thereby PW1 incurred damages to the tune of Rs.50,000/- (Rupees Fifty Thousand only). At present there is no contra evidence to discard the testimony of PW1. Having satisfied with the evidence on record, I am inclined to pass a decree in respect of the arrears of license fee and damages for the use and occupation of the A schedule property and for damages in favour of PW1.

In the result, this suit is decreed in part as follows:-

a. The first Defendant shall pay an amount Rs.2,85,000/- (Rupees Two Lakhs and Eighty Five Thousand only) to the plaintiff together with interest at the rate of 6% per annum from the date of suit till the date of realisation of the amount as arrears of license fee and for damages for the use and occupation of the plaint schedule properties.

b. The first defendant shall pay an amount of Rs.50,000/- (Rupees Fifty Thousand only) to the plaintiff as damages.

c. The first defendant shall pay the costs of this suit.

*Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 26<sup>th</sup> day of September, 2019.*

Sd/-  
RAJASREE. C.R,  
MUNSIFF.

**APPENDIX :**

**Exhibits for the Plaintiff :**

A1	15-06-2011	Agreement between Devapuram Rajendran and Nizam.
A2	02-06-2012	Agreement between Devapuram Nizamudheen.
A3	08-01-2013	Copy of advocate Notice

A4	28-01-2013	Replay Notice to Advocate Notice
A5	01-09-1983	Certified Copy of sale Deed No. 3675/1983 of SRO, Varkala
A6	29-06-2013	Tax Receipt No. 2990116 of Ayiroor Village
A7	29-06-2013	Property Tax Receipt No. 1688079 of Elakamon Grama Panchayath.

**Exhibits for the Defendants :** Nil

**Court Exhibits :-**

C1 & C1(a)	23-07-13	Commission Report and Rough sketch filed by Adv. Varkala B Sajeev Kumar
C2	14-03-2014	Commission Report filed by Varkala B Sajeev Kumar

**Witness for Plaintiff:**

PW1	08-08-2019	Rajendran
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**Witness for Defendant :** Nil

Id/-  
MUNSIFF

// True copy //

MUNSIFF

Typed by : David

Compd by:

**JUDGMENT IN O.S. 276/2013  
DATED: 26-09-2019.**