

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Noorunnisa P., Munsiff-Magistrate

Monday, the 8th day of January, 2024
18th day of Pousha - 1945

ORIGINAL SUIT No.159/2018

K.P.Chakrapani, Aged 60 years,
S/o.Raman Nair, President, Kerala State Housing
Board Allottees Association, Meenangadi,
Wayanad District, Register No.154/08,
Purakkadi amsom and desom, Meenangadi P.O.,
Wayanad District -613591.

Plaintiff

Vs.

1. Raju V.V.@ Rajachan George, S/o.Varkey,
Aged 52 years, D-12/16, K.S.H.B.Colony,
P.O.Meenangadi, Purakkadi amsom desom,
Sulthanbathery Taluk, Wayanad District,
Pin – 673591.
2. K.V.Puravath, S/o.Varkey, Aged 58 years,
Kuzhikattil House, Karachal, Ambalavayal
amsom and desom, Sulthanbathery Taluk,
Wayanad District, Pin – 673 591.

Defendants

Counter claim.

1. Raju V.V.@ Rajachan George, S/o.Varkey,
Aged 52 years, D-12/16, K.S.H.B.Colony,
P.O.Meenangadi, Purakkadi amsom desom,
Sulthanbathery Taluk, Wayanad District,
Pin – 673591.
2. K.V.Puravath, S/o.Varkey, Aged 58 years,
Kuzhikattil House, Karachal, Ambalavayal
amsom and desom, Sulthanbathery Taluk,
Wayanad District, Pin – 673 591.

Counter claimant
Defendant

V/s

K.P.Chakrapani, Aged 60 years,
S/o.Raman Nair, President, Kerala State Housing
Board Allottees Association, Meenangadi, Wayanad
District, Register No.154/08,
Purakkadi amsom and desom, Meenangadi P.O.,
Wayanad District -613591.

Respondent
Plaintiff

This original suit and counter claim are coming on 3rd day of January, 2024 for final hearing before me in the presence of Sri.Bijesh K and Sri.Sunder Ram, Advocates for plaintiff in original suit and respondent in counter claim and defendants in original suit and counter claimants in counter claim set exparte and having stood over for consideration to this day court delivered the following:-

JUDGMENT

Suit is one for realisation of money.

2. Plaint averments in brief is as follows:- The plaintiff is the Kerala State Housing Board Allottees Association (Registration No.154/2008) registered under Society Registration Act and Kerala State Housing Board (Formation of Allottees Association) Regulations, 2000, engaged in managing the affairs of residents in Kerala state Housing board colony, Meenangadi, Wayanad. Plaintiff being its president is representing the association. Plaint schedule property was purchased by the board in the year 1994 for the construction and sale of dwelling houses. The houses shall be allotted to the plaintiff society, the dwelling houses have certain common facilities like garden, parking areas, internal road, water lines, sewage pipelines, open well, water tank, play ground, motors, pump-sets, Electrical supply lines, pump house, agricultural produces etc. To which, every member of the society shall liable to pay maintenance charges, initially it was ₹150/-. It was subsequently, hiked as per the resolution passed by the general body of the plaintiff's society due to the increase in expenses to maintain of the common

amenities and for the development of common areas. In the year 2014 on wards, the amount fixed as ₹500/- and the defendant and other occupants were paying the amount regularly without fail. However, after the general body meeting held on 29.3.2016, the monthly maintenance charges was hiked to ₹1000/-. Accordingly, the plaintiff society started to levy monthly maintenance charges at the rate of ₹1000/- per month from March 2016 on wards. The defendants herein was occupying F- 22-10 house and being a member of the plaintiff society from the date of purchase and continued using the common facilities of the board without fail. However, the defendants had made default in payment of maintenance charges from August, 2015. Thereafter, till the date, the defendants had not paid any amount towards the maintenance charge. As per the resolution passed on 25.9.2016, every member who makes default in paying the monthly subscription is also liable to pay fine of ₹100/- per month in addition to the monthly maintenance charges. As on 10.7.2018, the defendants are liable to pay ₹31750/- towards the overdue of monthly subscription and ₹2800/- towards the fine altogether an amount of ₹34550/- is due from the defendants to the plaintiff society. Even after the repeated requests, the defendants failed to make payment and continue to use the common areas and facilities. Consequently, the plaintiff had issued a notice on 20.4.2018, calling for the entire due amount as on the date and directed the defendants to clear the entire dues within 15 days of the receipt of the notice. Though the defendants receive notice, they neither replied nor paid any amount till date. Further case of the plaintiff is that the defendants are also liable to pay the charges of notice which amount to ₹1000/-. Hence the total amount payable by the defendants as on the date of the suit is ₹35,550/-. Later, the defendants and their henchmen came to the plaint schedule property, they were informed by the president of the plaintiff society that the society is going to terminate all the common facilities enjoyed by the defendants. The defendants threatened the plaintiff that he will implicate them in false criminal case by alleging the commission of non bailable offenses etc. The act of the defendants are highly arbitrary and illegal. The defendants have no right

to violate the rules and regulation of the plaintiff's society. All the allottees are bound by the rules and regulations and the decision of the managing committee of the plaintiff's society. The defendants have no manner of right to use the common amenities without paying monthly subscription to the plaintiff. Hence the suit is for return of money and for perpetual prohibitory injunction.

3 The defendants filed a written statement with following contentions:- The defendants denied all the allegations in the plaint and according to the defendants, this is a fictitious suit. According to the defendants, they are not allottees, but a purchaser of the property. Therefore, they need not be a member of the Kerala State Housing Board Allottees Association. Therefore, the defendants are not bound to obey the demands of the society. The plaintiff and his men insisted the defendants and certain other residents of the housing colony to give more money towards the electricity bill which a complaint has made before the Meenangadi Police. On vengeance of which this, frivolous suit has been instituted against this defendants along with six other residents of the colony. Further, the defendants have every authority to dig private bore well in his own property and the plaintiff has no question the digging. However, the plaintiff had filed a complaint before ground Water Department and digging of bore well is now suspended. The plaintiff is not entitled to any of the relief as prayed for and the defendants sought a counter claim claiming compensatory costs and to pass a decree of mandatory injunction directing the plaintiff to take steps to vacate the prohibitory order issued by the District Officer, Ground Water Department.

4. The plaintiff filed replication to the counter claim with the contentions as follows:- According to the plaintiff, counter claim by the defendants are not filed in the format prescribed by law and it is liable to be dismissed in limine which does not disclose in the cause of action and with the ulterior intention to drag the proceedings to an uncertain extent of time and denied all the claims raised by the

defendant and prayed for dismissing the counter claim with compensatory costs of the plaintiff.

5. Based on the above contentions, following issues were framed for trial:-

1. Whether the plaintiff entitled to get decree of money as sought for?
2. Whether the plaintiff entitled to get decree of permanent prohibitory injunction as sought for?
3. Whether the defendant entitled to get decree of mandatory injunction as sought for?
4. Reliefs and costs?

6. When the suit was listed for trial on 3.1.2024, defendant's counsel reported no instruction. Hence defendants set exparte in the suit and counter claim dismissed for default. The President of the plaintiff' society entered into the box and examined as PW1. Exts.A1 to A13 were marked on the side of the plaintiff.

7. Issue Nos.1 to 3:- For the sake of convenience issue Nos.1 to 3 are considered together. The plaintiff himself entered into the box and examined as PW1 and filed a proof affidavit in tune with the plaint. Exts.A1 to A13 were marked. Ext.A1 is the true copy certificate of registration Memorandum of association and Bye-law of the Plaintiff's society. Ext.A2 is the true copy of certificate of recognition of the plaintiff's society by the Kerala state Housing Board. Ext.A3 is the true copy of the auction confirmation letter issued by Kerala State Housing Board. Ext.A4 is the true copy of the agreement executed between plaintiff's society and Mr.Shibu George. Ext.A5 is the true copy of the agreement executed between Shibu George and defendants. Ext.A6 is the true copy of the agreement executed between plaintiffs society and the defendants. Ext.A7, A8 and

A9 are the true copies of the extract of minutes of General body meeting conducted by the plaintiff. Ext.A10 is the relevant pages of the register showing payment default of the defendants. Ext.A11 is the copy of the letter issued by the plaintiff to the defendants demanding to clear the dues. Ext.A12 series are the acknowledgment cards (2 in numbers). Ext.A13 is the attested copy of minutes of general body meeting of the plaintiff society.

8. As the plaintiff was constrained to file the suit on the basis of the acts committed by the defendants, the plaintiff is entitled to realise the cost of the proceedings from the defendants. There is no contrary evidence to disbelieve the evidence of PW1. The claim of the plaintiff is established through unchallenged testimony of oral and documentary evidence. Since the defendants failed to adduce evidence to establish the case in the counter claim, counter claim is dismissed for default. After considering the material facts, this court is of the view that plaintiff is entitled to get decree for permanent prohibitory injunction against the defendants. So issue Nos.1 to 3 are found in favour of the plaintiff in the suit.

9. Issue No.4 : As the plaintiff was constrained to file the suit on the basis of the acts committed by the defendants, the plaintiff is entitled to realise the costs of the proceedings from the defendants. There is no contrary evidence to disbelieve the evidence of PW1. Hence, suit decreed as follows:-.

- 1 Defendants are directed to pay a sum of ₹ 35,550/- (Rupees thirty five thousand five hundred and fifty only) with future subscription, and fine at the rate of ₹100/- per month from the date of suit till the date of realization, to the plaintiff.

2. The defendants are also restrained from using the common amenities without paying the monthly subscription/maintenance charges to the plaintiff.
3. Counter claim raised by the defendants dismissed, no costs.
- 4) Defendant is also directed to pay costs of the proceedings.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the, 8th day of January, 2024)

MUNSIFF-MAGISTRATE

Appendix:

Plaintiff Witness :

PW1 - 03.01.2024 - K.P.Chakrapani.

Plaintiff Exhibits:

A1	-	14.08.2008	-	Certificate of registration, memorandum of Association and bye-law (True copy)
A2	-	13.10.2017	-	Certificate of registration of the plaintiff Society by the Kerala State Housing Board (True copy)
A3	-	25.04.2008	-	Auction confirmation letter.
A4	-	21.05.2008	-	Agreement.
A5	-	29.01.2009	-	Agreement.
A6	-	01.07.2009	-	Agreement.
A7	-	29.03.2016	-	Extract of the minutes.
A8	-	25.09.2016	-	Extract of the minutes.
A9	-	29.06.2016	-	Extract of the minutes.
A10	-	-	-	The relevant pages of the register.

A11	-	20.04.2018	-	Letter.
A12	-	-	-	Acknowledgment Card.
A12(a)	-	-	-	Acknowledgment Card.
A13	-	31.01.2018	-	Attested copy of minutes.

Defendant's Witness and Exhibits: Nil.

MUNSIFF-MAGISTRATE

Typed by : Geetha V.
 Compared by : Sajeer E.