

In the Court of the Munsiff at Aluva

Present:

Smt. Rajasree Rajgopal, LL.B., Munsiff
Saturday, the 23rd day of July 2016/1st Sravana 1938

O.S. No.232/2016

Plaintiff:

Ashraf, aged 48 years, S/o. Kadar, Kureekott House,
Kakanad Kara, Kakanad West P.O., Vazhakala Village,
Cochin - 30 Now residing at Madathiparambil House
Thrikakara P.O., Karumakkad PIN 682021

By Adv: M/s. Babu Cherukara & Anzar Basheer

Defendant:

Salim K.M., Kodaseery House, aged about 56 years,
S/o. K.K.Moideen, Kakanad Kara, Vazhakkala Village,
Kanayannoot Taluk Now residing at SJRRA-042
Kodassery House, South Janatha Waterline Road
Palarivattom P.O., Cochin – 682025

Exparte

This suit having come up for hearing before me on 11.7.2016 and the court on 23.7.2016 delivered the following.

JUDGMENT

Suit is for specific performance of contract.

2. Complaint averments, in brief are as follows: The plaintiff was residing in Vazhakkala village and he sold his residential building and the property thereby to Anwar Sadath for a total sale consideration of

Rs.20,58,000/- as per sale deed No.4274/2014 on 28/11/2014. For the time being the plaintiff wanted to make arrangement for his residence and thereon he had to decide to arrange a residential building by way of mortgage arrangement with the defendant as per the agreement executed between them dated 12/9/2014 and accordingly a sum of Rs.8,00,000/- was given by the plaintiff to the defendant with respect to the building No.954A of Thrikkakara Municipality and on 12/9/2014 a sum of Rs.6,00,000/- was given and the balance sum of Rs.2,00,000/- was paid by the plaintiff to the defendant on completion of that building as specified in that agreement. The said balance amount of Rs.2,00,000/- was paid by the plaintiff to the defendant on 15/12/2014 and thus the total

sum of Rs.8,00,000/- was paid by the plaintiff to the defendant with respect to the above building and the plaintiff started to reside in that building along with his family members on getting possession of the building from the defendant on 12/9/2014 and started residence on 14/9/2014 onwards. On completion of eleven months mentioned in

the agreement the said mortgage arrangement was extended for a further period of eleven months. The plaintiff was continuing his residence in that building along with his family members as per the said agreement. Meanwhile it happened that court proceeding happened with respect to the above said building as per OS No.297/2010 and the decree holder in that suit obtained possession of the building and appurtenant property as per that decree for specific performance of an agreement for sale of that property and building to Viji P. Issac by the defendant herein. This fact was not known to the plaintiff and the defendant had purposely suppressed the above

said suit and proceedings from the knowledge of the plaintiff and fraudulently entered into the mortgage agreement with the plaintiff and obtained the sum of Rs.8,00,000/-. As per the mortgage agreement the defendant had to return the sum of Rs.8,00,000/- without interest at the time when the plaintiff vacates the building to the defendant. The plaintiff was put in great difficulties on non return of above mentioned amount of Rs.8,00,000/- by the defendant

and thereafter the defendant suggested for the sale of the property belonged to him in re-survey No.265/2013 Block No.32 of Erstwhile Aluva East Village presently Keezhmad village Chalaka desom and agreed to make sale of that property for a total sale consideration of Rs.9,00,000/- and agreed in that agreement for sale dated 20/1/2016 that sum of Rs.8,00,000/- is received by the defendant from the plaintiff and as per that agreement 60 cents of nilam property was agreed to be sold @ Rs.15,000/- per cent. The period for registration of the property was three months and it was further agreed that the defendant will receive the balance sale consideration of Rs.1,00,000/- on executing of sale deed on registering the same. The amount of Rs.8,00,000/- received by the defendant is as per the mortgage agreement dated 12/9/2014 which was subsequently renewed on 16/9/2015 was treated as the advance sale consideration of Rs.8,00,000/- since that amount was not returned by the defendant at the time of vacating mortgage building by the plaintiff as per the above mentioned court proceedings.

3. It was further agreed that the defendant will measure out the property and a sketch will be prepared and an encumbrance certificate for the last 30 years and the mutated tax receipt and original document for property including parent documents will be provided by the defendant to the plaintiff within that period enabling the plaintiff to get registered the property. It was also agreed that if

the defendant fails to perform his part of the agreement the plaintiff has got every right to approach the court of law for the specific performance of the agreement and to get the document registered.

The defendant did not perform his part of the agreement and he never obtained the encumbrance certificate or the property was not measured out and no mutationed tax receipt was made available to the plaintiff or the original of the document for the property was attributed to the plaintiff as agreed in the agreement for sale. When the period of three months got expired the plaintiff sent a lawyer notice to the defendant. The plaintiff on several occasion during the agreement period personally requested the defendant to execute the

sale deed but the defendant was simply stating that the registration can be done but he was not making any efforts for the same. Hence, this suit is laid.

4. The defendant was set exparte.

5. Plaintiff filed proof affidavit and marked Exts. A1 to A9. Ext.A1 is the original agreement dated 20/1/2016. Ext.A2 is the photocopy of document No.621/1975 of Aluva SRO. Ext.A3 is photocopy of the document No.1131/1995 of Aluva SRO. Ext.A4 is the photocopy of the tax receipt. Ext.A5 is the photocopy of the lawyer notice dated 19/4/2016. Ext.A6 is it's postal receipt. Ext.A7 is the acknowledgment card. Ext.A8 is the copy of the encumbrance certificate for the period, 1/1/2003 to 12/11/2005. Ext.A9 is the original encumbrance certificate for the period, 1/1/2015 to 16/4/2016. The above evidence is unchallenged. From the above evidence the plaint claim stands proved.

In the result, the suit is decreed as follows:

1. Defendant is directed to execute sale deed in favour of plaintiff as per exhibit A1 agreement after accepting the balance sale consideration within thirty days from today. In the event of his

failure the plaintiff is at liberty to deposit the same before the court

and to get the sale deed executed through the process of the court.

2. The defendant is directed to pay the costs of the suit to the plaintiff.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open court on this the 23rd day of July 2016.

Rajasree Rajgopal.
Munsiff.

Appendix:

Plaintiff Exhibits:

- A1 - The original agreement dated 20.1.16
- A2 - The photocopy of document No. 621/1975 Aluva SRO
- A3 - The photocopy of document No. 1131/95 Aluva SRO
- A4 - The photocopy of the tax receipt
- A5 - The photocopy of lawyer notice dated 19.4.16
- A6 - The postal receipt
- A7 - The A/D card
- A8 - The copy of the encumbrance certificate for the period
1.1.03 to 12.11.05
- A9 - The original encumbrance certificate for the period of
1.1.15 to 16.4.16

Defendant's Exhibit: Nil

Witness for both sides: Nil

Munsiff

Judgment in O.S. 232/2016

Dated: 23..07..2016