IN THE COURT OF THE MUNSIFF AT ALUVA

Present:-Sri. Santhosh.T.K., Munsiff

Friday, the 5th day of August 2022/ 14th Sravana 1944

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,
Kanayannoor Taluk Now residing at SJRRA-042
Kodassery House, South Janatha Waterline Road
Palarivattom P.O., Cochin – 682025

By Adv. Shaheer A. J.

This suit is filed under Order VII Rule 1 and Section 26 of C.P.C.

This suit came up for hearing before me on 29.07.2022 and on 05.08.2022 delivered the following:-

JUDGMENT

This is a suit for specific perormance and to return the advance money and for a permenant prohibitory injunction restraining the defendant from alienating or giving in possession of the plaint schedule property to anybody other than the plaintiff or to his nominee.

2. The facts of the case in brief are as follows:- The plaintiff was residing in Vazhakala Village and he sold his residential building and the property thereby to one Mr.Anwar Sadath for a total sale

consideration of Rs.20,58,000/- as per sale deed No.4247/2014 on 28th Novemeber 2014. For the time being the plaintiff wanted to make arrangement for his residence and thereon he has decided to arrange a residential building by way of mortgage arrangement with one Salim.K.M. who is the defendant herein as per the agreement executed between them dated 12-09-2014 and accordingly a sum of Rs.8,00,000/- was given by the plaintiff to the defendant with respet to the building No.954A of Thrikkakara Muncipality and on 12-09-2014 a sum fo Rs.6,00,000/- and the balance of Rs.2,00,000/- was paid by the plaintiff to the defendant on 15-12-2014 and thus a total sum of Rs.8,00,000/- was paid by the plaintiff to the defendant for the above building and the plaintiff started to reside therein. The plaintiff got the possession of the building on 12-09-2014 and started to reside on 14.09.2014 onwards. On completion of eleven months mentioned in the agreement dated 12-09-2014 the said mortgage arrangement was extended for a further period of eleven months from 16-09-2015 onwards as per agreement dated 16-09-2015. The plaintiff was continuing his residence in the building along with his family members as per the said agreement. Meanwhile the decree holder who obtained the decree in OS 297/2010 had taken possession of the building and appurtenant property as per the decree of specific performance of an agreement for sale of that property and building to one Viji.P.Issace by the defendant herein. This fact was not known to the plaintiff and the defendant had purposely suppressed the above 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 when the plaintiff vacates the building to the defendant. In the court proceedings being the execution of the decree the plaitniff was vacated and the building was taken possession by the decree holder in OS No.297/2010 and the amount of Rs.8,00,000/- was not returned by the defendant. The defendant is duty bound to return the amount. Thereafter, the defendant suggested for the sale of the property belonged to him in Re Survey No.265/13 in 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 20-01-2016 that sum of Rs.8,00,000/- is received by the defendant from the plaintiff and as per that agreemet 60 cents of Nilam property was agreed to be sold at the rate of 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 the sale deed on registering the same. The amount of Rs.8,00,000/- received by the defendant as per the mortgage agreement dated 12-09-2014 which was subsequently renewed on 16-09-2015 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 mortgaged building by the plaintiff as per the above mentioned court proceedings. 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 mutate tax receipt and original document or the property including parent documents will be furnished by the defendant to the plaintiff within that period enabling the plaintiff to get registered the property. It was also agreed that if the defenant 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 said agreement was executed at Kakkanad. 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 orginal of the docuemnt for the property was given to the plaintiff as agreed in the agreement for sale. The period of three months got expired on 19-04-2016. The plaintiff on several occasion during the agreement period personally requested the defendant to execute the sale deed but all these occasions the defenant was simply stating that the registration can be done but he was not making any efforts for the same. At the time of executing the agreement for sale the defendant had entrusted to the plaintiff a photocopy of document No.1131/1995 of SRO, Aluva and document No.621/1975 dated 18.02.1975 and also a photocopy of certificate stating that the tax for

2015-16 is paid and the property in the name of the defenant as per the certificate issued by the Village Officer Keezhmad dated 21-11-2015. For the notice dated 19-04-2016 requesting for the registration of sale deed, no reply was send by the defendant. The plaintiff was throughout the time of agreement ready with respect to the balance sale consideration and also to meet all the related expenses for registration etc. and was ready and willing to purchase the plaint schedule property. Now it is come to the knowledge of the plaintiff that the defendnat is trying to alienate the plaint schedule property to some other people. The plaintiff is entitled for specific performance of the agreement. The plaintiff is ready and willing to deposit the balance sale consideration before the court as ordered by the court. The balance sale consideration as per the agreement is Rs.1,00,000/-. The plaintiff will comply with all the conditions fixed by the court for specific performance of the agreement. There is attempt for the defendant to alienate the property to some third parties and therefore it is highly necessary that the defendant and their men to be restrained by an order of permananet prohibitory injunction restraining the defenant and his men from alienating the plaint schedule property to the third parties. If the plaintiff is not entitled to get specific performance of the agreement then the plaintiff may be allowed to get back the advance sale consideration of Rs.8,00,000/- with interest @ 12% per annum from the date of agreement 20-01-2016 till the date of realization which will have a charge over the plaint schedule property.

3. The defendant filed written statement as follows:- The plaintiff approached the court with unclean hands. The suit is filed on experimental basis without any bonafides. It is admitted that the defendant had entered an agreement with the defendant for mortgaging the building of the defendant in favour of the plaintiff and thereafter by another agreeemnt dated 16.09.2015 the mortgage period was extended. It is admitted while the matters stood so, the plaintiff was evicted by the decree holder in OSNo.297/2010. The allegation that the defendant purposefully suppressed the matter regarding OS No.297/2010 is false and hence denied. At the time of first agreement the defendant informed the plaintiff about the pendency of the above case. After the plaintiff was evicted, the plaintiff demanded his money

back but at that time the defendant was facing financial problems hence he asked the defenant for a period of eight months for returning the amount, the plaintiff agreed the same but demanded to hand over two signed blank cheques and two signed non-judicial stamp paper and two signed blank paper as security for the said amount, the defendant agreed and handed over the same to the plaintiff becuase he has no other choice. The defendant had entered the agreeement for sale dated 20.01.2016 in respect of the plaint schedule property with the plaintiff is a false story. The defendant has never entered an agreement for sale with the plaintiff. The defendant repaid the entire amount to the plaintiff and the plaintiff returned the two blank signed cheques but not returned the stamp papers stating that the same were lost from his custody. The plaintiff filled up the blank areas of the stamp paper and make it a sale agreement only for making unlawful gain. At the time of the alleged agreement for sale, the plaint schedule property had a market value of Rs.1,00,000/- per cent which means the total sale consideration will be Sixty Lakh and no oridinary prudent man would sold his property for such a meager amount of

Rs.9,00,000/-. The defendant has not received any notice or communication from the plaintiff regarding this matter as alleged in Para 7 of the plaint and not entrusted any documents as alleged. The plaintiff is not entiteld to get any relief as prayed in the suit. The suit is frivolous, vexatious and experimental one and liable to be dismissed with costs of the defendant.

4. The following issues are framed for consideration:-

1. Did the defendant enter an agreeement for sale dated 20.01.2016 with the plaintiff?
2. Is the plaintiff entitled for a specific performance as prayed for?
3. Is the plaintiff entitled for an alternate relief of returning the advance amount as prayed for?
4. Is the plaintiff entitled for a permenant prohibitory injunction as prayed for?
5. Reliefs and costs?

5. PW1 to PW3 were examined and Exts.A1 to A13 were marked on the side of the plaintiff. The defendant himself was examined as DW1. Ext.B1 was marked.

6. Heard both sides.

7. Issue Nos.1 to 4:- These issues are considered together since inter-related with each other. The plaintiff's case is that he sold his residential building at Vazhakkala to one Mr.Anwar Sadath. The agreement for sale with respect to the said property entered with one Smt.Ramlath is marked as Ext.A13. After the sale of his property, he decided to arrange a residential building by way of mortgage arrangement with one Salim.K.M. who is the defendant as per the agreeement exeucted between them dated 12-09-2014 is marked as Ext.A11. According to the plaintiff, he started to reside in the residential building on 14-09-2014 after paying Rs.8,00,000/-. Ext.A11 was for eleven months. Later, the mortgage agreement was renewed on 16-09-2015 by virtue of Ext.A12. The plaintiff continued his residence in that building along with his family members as per the said agreement. Those facts are admitted by the defendant in his written statement. While so, the plaintiff was evicted from the building in the execution proceedings in OS No.297/2010. It was also admitted by the defendant.

8. The fact contended by the plaintiff that the defendant had purposely suppresed the above said suit and proceedings from the knowledge of the palintiff and fraudulently entered in the morgage agreement with the plaintiff was denied by the defendant. According to the defendant he has informed about the said suit and the proceedings therein to the plaintiff. Admittedly, the plaintiff demanded back the amount of Rs.8,00,000/- when he was evicted from the residential house. But the contention raised by the defendant that since he was facing financial problems he asked the plaintiff a period of eight month for return the amount. According to the defendant, the plaintiff agreed the same but demanded to hand over the two signed blank cheques and two signed non judicial stamp paper as security for the said amount. The defendant further contended that he agreed and handed over the same to the plaintiff because he has no other choice. The defendant further contended that he has repaid the entire amount to the plaintiff and the plaintiff returned two blank signed cheque leaves but he has not returned the stamp papers stating that the same were lost from his custody. The defendant stoutly

contended that he has never entered an agreement for sale with the plaintiff. The defendant averred that the plaintiff filled up the blank areas of stamp paper and make it a sale agreement and produced it as Ext.A1. Ext.A3 is the lawyer notice issued by the plaintiff to the defendant requesting to execute the sale deed on receiving the balance sale consideration. Ext.A4 is the postal receipt of Ext.A3. Ext.A5 is the acknowledgement card evidencing the receipt of Ext.A3 by the defendant. Exts.A6 and A7 are the encumbrance certificates with respect to the plaint schedule property.

9. As already point out, the case of DW1 is that he has paid out the entire liability to the plaintiff. During cross-examination, he would say that he has not obtained any receipt for the repayment of money. If the defendant has paid the amount, he could have obtained the receipts from the plaintiff. The non-production of the receipt for the repayment of the amount to the plaintiff would probabilise the case that he has not repaid the amount. Consequently, it is further probabilise the case of the plaintiff that the defendant has executed Ext.A1. The defendant further failed to prove the contention that the

blank signed paper handed over to the plaintiff converted into Ext.A1 agreement for sale. PW1 was cross-examined in detail. The defendant has attacked the authenticity and genuinity of Ext.A1. But nothing was elicited during the cross-examination to disprove Ext.A1. PW1 who is the son of the plaintiff would say that Ext.A1 was executed at the house of the defendant. The evidence of PW3 supported with the evidence of PW1 and PW2. On analysing the evidence, there is no reasons to disbelive Ext.A1.

10. Another main contention raised by the defendant is that the market value of the plaint schedule property is Rs.1,00,000/- per cent. The total extent of the plaint schedule property is 60 cents. Ext.B1 is the fair value cerificate of the plaint schedule property which shows the fair value per Are is Rs.6,05,000/-. If that be so, the plaint schedule property would fetch around Rs.60,00,000/-(Sixty Lakh). Admittedly, the plaint schedule property is a nilam property. According to the plaintiff, the market value of the plaint schedule porperty around Rs.20,000/- per cent. Anyway, when Ext.A1 is proved in this case, I am of the view that the market value of the

property is not a matter of concern since Ext.A1 was executed after agreeing the contents in the said documents. If that be so, the consideration whether sufficient or not is not a relevant factor to the case. Moreover, it is the case of the defendant that Ext.A1 is a false and fabricated document. The defendant contended that the blank signed stamp paper converted into the agreement for sale after filling it. The burden of proving is on the defendant is that Ext.A1 is a false and fabricated document. No evidence adduced on the side of the defendant that it is a false and fabricated document. The execution of Ext.A1 is proved. So much so, the purchase money was entered into Ext.A1 on the consensus of both parties. The defendant cannot turn around and say that the purchase money shown in Ext.A1 is too low. Ext.A1 was proved in this case and the defendant failed to substantiate his contentions raised in the written statement. On ascertinaing the evidence in this case, the payment of purchase money of Rs.8,00,000/- to the plaint schedule property proved in this case. The plaintiff is entitled for a specific performance of the agreement for sale as prayed in the suit.

Issue No.5

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

> The plaintiff is directed to deposit the balance sale consideration of Rs.1,00,000/- (Rupees One lakh only) before the court. The defendant is directed to execute the sale deed in favour of the plaintiff. In default, the plaintiff can approach the court to execute the sale deed through the process of the court.

(Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in the open court on the 5th day August 2022).

Munsiff
Santhosh T.K.

Appendix:

Plaintiff's Exhibits:

A1	20.01.2016	Sale Agreement.
A2	16.04.2016	The photocopy of the tax receipt.
A3	19.04.2016	The photocopy of lawyer notice
A4	19.04.2016	Postal receipt
A5	....	The A/D card
A6	17.11.2015	Copy of Encumberance Certificate
A7	21.04.2016	Encumberance Certificate
A8	28.02.1995	Certified copy of Sale deed No. 1131/95 SRO , Aluva .

A9	18.02.1975	Certified copyof Gift deed No. 621/1975 SRO, Aluva.
A10.	28.11.2014	Certified copy of Sale deed No.4274/2014 of SRO, Thrikkakara.
A11	12.09.2014	Photocopy of Agreement.
A12	16.09.2015	Photocopy of Agreement.
A13.	31.05.2014	Photocopy of Sale Agreement.

Defendant's Exhibits:

B1	....	Fair Value certificate of the plaint schedule property.

Court Exhibits : Nil

Plaintiff's Witness:-

PW1	01.07.2022	Asharaf
PW2	01.07.2022	Mohammed Sharook K.A
PW3	01.07.2022	Majeed.

Defendant's Witness:-

DW1	26.07.2022	Salim K.M.

Court Witness: Nil

Munsiff