

IN THE COURT OF THE ADDITIONAL SUB JUDGE, KOLLAM

Present : Smt. P. S. Saima, LL.M., Additional Sub Judge

Friday, the 20th day of January 2017/30th day of Pousham, 1938.

OS 20/2015

Between

Plaintiff:

Prabhakumar, aged 54 years,
S/o. Bhaskaran Pillai,
Oorampallil Prabhanjam, Kesava Nagar – 9,
Mundakkal Village, Kollam Taluk,
Kollam – 691 001.

(By Adv. P. K. Chandrasekharan Pillai)

And

Defendant:

T. Kannan, aged 38 years,
S/o. Thankkappan Nadar, Sayabi,
Kadappakkada P. O.,
Kollam East Village, Uliyakkovil cherry,
Kollam Taluk Kadappakkada, Kollam.

(Ex-Parte)

This suit coming on for hearing before me on 20.01.2017 and court on the same day delivered the following.

JUDGMENT

Suit for specific performance of contract for sale dated 26.6.13 with alternative prayer for refund of advance amount.

2. Plaintiff averments are as follows:

On 26.6.13, defendant entered into an agreement for sale with

the plaintiff in respect of plaint schedule property having an extent of 7.200 cents comprised in resurvey no. 62/3 of Kollam East Village for a total sale consideration of Rs.36,00,000/- (Rupees Thirty Six Lakhs Only) and on the same day accepted Rs.5,00,000/- (Rupees Five Lakhs Only) as advance sale consideration. It is further agreed that the defendant will execute a sale deed within 6 months in favour of plaintiff or in the name of his agents. Though the plaintiff was always ready and willing to perform his part of contract, the defendant never convinced plaintiff about the details of plaint schedule property including encumbrance certificate and original title deed and thus violated the sale agreement. Though the plaintiff approached the defendant in person and expressed his willingness to get the sale executed in his favour, the defendant evaded in fulfilling the agreement. While so, the plaintiff got reliable information that the defendant will not perform his part of contract. The Plaintiff informed the defendant that he will be present before Sub Registrar Office, Kollam on 20.11.14 with balance sale consideration. Though, the plaintiff was present before Sub Registrar Office, the defendant abstained from appearing before Sub Registrar Office and in executing the deed. Further on 24.11.14 also the plaintiff was present before Sub Registrar Office with balance sale consideration. Later on, plaintiff has got information that the defendant is doing real estate business. As the defendant failed to perform his part of contract, the plaintiff sustained huge loss. As per the terms of

agreement, the defendant is bound to execute sale deed in favour of the plaintiff by accepting balance sale consideration. So the plaintiff prays for a decree for specific performance of contract or in alternative plaintiff may be allowed to realise Rs.5,00,000/- (Rupees five lakhs only) with 15% interest from the defendant by creating charge upon the plaint schedule property.

3. Defendant remained exparte.

4. Plaintiff filed proof affidavit in lieu of chief examination reiterating the averments in the plaint. Ext. A1, sale agreement dated 26.6.13 was marked. Plaintiff has succeeded in proving his case by proof affidavit and by documentary evidence of Ext A1.

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

The defendant is hereby directed to execute a sale deed in respect of plaint schedule property in favour of plaintiff in terms of Ext. A1 agreement within a period of one month from the date of decree failing which the plaintiff is allowed to get the sale deed executed in respect of schedule property through court on deposit of balance sale consideration within two months from the date of decree.

Dictated to the Conf. Asst., transcribed and typed by her, corrected by me and pronounced in open court on this the 20th day of January, 2017

Sd/-
Saima P.S
Additional Sub Judge.

APPENDIX :**Plaintiff's Exhibits :-**

A1 - 26.06.2013 - Sale Agreement

Defendant Exhibits :- - NIL

Plaintiff's Witness :-

PW1 - - Prabhakumar

Defendant Witness :- - Ex-parte

Id/-
Addl. Sub Judge.

Typed by: Aswathi. P
Compd by:

Saima P. S.
Additional Sub Judge.