

IN THE COURT OF THE PRINCIPAL SUB JUDGE OF THRISSUR

Present:

Rejula P.V., Principal Sub Judge

Monday the 10th day of July, 2023/19th Ashadha, 1945 SE.

IA 5/2020 in O.S.174/2020

Petitioner/Plaintiff

Abhilash Varghese, aged 41 years, S/o Thathrathil
Thambiveettil Varghese, Vellanikkara village, Desom,
Madakkathara P.O., Thrissur Taluk.

By Adv.Baby P.Antony

Respondents/Defendants:

1. Lami Arackal, aged 50 years, S/o Arackaveettil Eppan,
Saron Villa, Nellikunnu Village, East Fort P.O., Kura,
Thrissur Taluk.
2. Sheeba B.John, aged 48 years, D/o Bhani John Paster
and W/o Lami Arackal, Saron Villa, Nellikunnu Village,
East Fort P.O., Kura, Thrissur Taluk.

By Adv.Soley Joseph

This petition is coming on this day for hearing before me the court
delivered the following:-

ORDER

Petition filed by the plaintiff under Order XVIII Rule 16 CPC.

2. Petitioner's/plaintiff's case, in brief, is as follows: - Suit is for
specific performance of agreement dated 28.05.2019 executed by petitioner and
his brother on one part and respondents on the other part, by directing the
respondents to execute sale deed with respect to plaint B schedule property in
favour of the petitioner and his brother. In counter statement dated 24.07.2019

in IA 4/2020, respondents put forward a new agreement executed by the parties and produced its copy. The signature in the agreement did not belong to the petitioner and his brother. Petitioner's brother left India on 19.06.2019. Respondents forged the agreement to abstain from execution of sale deed with respect to plaint B schedule property in favour of the petitioner and his brother. Examination of witnesses in the agreement is necessary to prove the forgery. Thus, this petition.

3.Respondent/defendant filed counter statement contending as follows:

- The original agreement dated 28.05.2019 was abandoned by oral agreement of the parties and a new agreement dated 24.07.2019 was executed. ₹80,00,000/- (Rupees Eighty lakh only) was fixed as consideration. Sale deed bearing No. 105/1/2020 was executed after payment of entire sale consideration. The terms of agreement dated 28.05.2019 become null and void. The contentions that agreement dated 24.07.2019 is a forged one is false. It was prepared by Adv. A.A Biju, Irinjalakuda, signed by petitioner and respondents and attested by Thottarath Veetil Vasudevan, S/o. Damodharan and Cheriyeckara Ajo John, S/o. Johny. petitioner took away the agreement undertaking to get it signed by his brother and returned after 3 weeks with his signature. Respondents presented the agreement before the bank for the purpose of loan. Petition is liable to be dismissed.

4. Heard both sides.

5.The plaintiff's case is that himself, his brother and respondents executed sale agreement dated 28.05.2019. As per the agreement, petitioner and his brother have to exchange their plaint A schedule property with respondents plaint B schedule property and for ₹42,00,000/-(Rupees Forty two lakhs only). In pursuance of the agreement, on 17.01.2020, petitioner and his brother executed sale deed No.105/1/2020 of SRO Ollukkara in favour of the respondents who paid ₹42,00,000/-(Rupees Forty two lakh only) to the petitioner. But, they did not execute sale deed with respect to plaint B schedule property in favour of the petitioner and his brother. Thus, petitioner filed the suit for specific performance directing the respondents to execute deed with respect to plaint B schedule property in favour of the petitioner and his brother. Respondents contended that the agreement dated 28.05.2019 was abandoned by the parties by an oral agreement and they have executed a new agreement dated 24.07.2019. As per the 2nd agreement, petitioner executed deed No. 105/1/2020 in favour of the defendants who paid entire consideration of ₹80,00,000/- (Rupees Eighty lakh only) as stipulated in 2nd agreement.

6. Order XVIII Rule 16 CPC provides that where a witnesses is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, the court may, upon the application of the any party or of the witness, at any time

after the institution of the suit, taken the evidence of such witness. In this case, the execution of agreement dated 28.05.2019 is admitted by the respondents. They have further contended that it was abandoned by oral agreement and new agreement dated 24.07.2019 was executed by the parties. Thus, it is the burden of respondents to prove the oral agreement abandoning the 1st agreement and execution of the 2nd agreement. There is no need for the petitioner to summon the witnesses to the agreement for proving its execution. Moreover, no ground is made out to examine the witnesses immediately as provided in Order XVIII Rule 16 CPC. Thus, this petition is liable to be dismissed.

In the result, this petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open court on this the 10th day of July, 2023).

Sd/-
Rejula P.V.
Principal Sub Judge

Appendix:Nil

Id/-
Principal Sub Judge