

IN THE COURT OF THE SUB JUDGE, ERNAKULAM

Present:

**Smt. Aaj Sudarsan, LL.B, LL.M, Ist Additional Sub Judge.
Saturday, the 30th day of March, 2019/ 9th Chaithra, 1941.**

O. S. No. 243/2016.

PLAINTIFF

Mrs. Sajeena. T.K, aged 36 years, W/o. P.M. Kamaludeen,
Pathuppilli house, Ponekkara Kara, AIMS Ponekkara. P.O.,
Edappally North Village, Kanayannur Taluk, Cochin Corporation,
Pin- 682 041.

(Plaintiff is permitted to continue the suit as
indigent as per order in IA 3503/17 dated 1.01.2019).

By Adv.M/s. Eldho Cherian, M.A. Mohammed Siraj,
K.S. Sreejith, Saju Wahab and Hani P. Nair.

DEFENDANTS:

1. Mrs. Sandra Thomas, aged 23 years, D/o. P.J. Thomas,
Pallichamparambil house, Kannachanthode Road, Thrikkanarvattom
Desom, Pachalam. P.O., Ernakulam Village, Kanayannur Taluk,
Ernakulam District Pin- 682 012.
2. Mrs. Reliant Credits (India) Limited, XV/ 1B-5, K.J.K. Estate, A.M.
Road, Kothamangalam, represented by its Assistant Manager and POA
Holder, Sunil Kumar. M.P, aged 39 years, S/o. Prabhakaran Nair,
Mecherikudy House, Pindimana. P.O., Kothamangalam- 686691.

By Adv. M/s. M.P. Ramnath, P. Rajesh Kottakkal, Varghese
Varghese. M, Sebastian. K.J, Sandhya. S, Bipin Paul,
Shalu Varghes Mayflower. B.J & Abdul Hassan. T.

This Suit having come up for hearing before me on 30.03.2019 and the
court same day delivered the following.

JUDGMENT

1. Suit for declaration and injunction.
2. Brief averments in the plaint are as follows:

The father-in-law of the plaintiff had 2.02 ares of land in Sy No. 86/1/2/4 in Edapally Village. He executed Deed No. 997/2009 of Edapally SRO in favour of the plaintiff. Plaintiff mortgaged the said property with UCO Bank, Broadway branch by way of deposit of title deeds. She availed a loan of Rs. 25,00,000/-. The husband of the plaintiff is a business man. She assists him in the business. Using the profits from their business they constructed a 3 storied building in 2.02 ares. This property along with all improvements therein are mentioned in the plaint as plaint schedule property. The plaintiff has given the ground floor of the said building on rent for godown purpose. Plaintiff is residing with her family in the 1st floor of the building. The 2nd floor is leased out for residence. Plaintiff has been repaying the loan from the rent she receives from these building. When the tenant on the ground floor vacated the premises, the plaintiff found it difficult to repay the loan amount. The 1st defendant is known to the plaintiff. She is running a shop in the Broadway. The 1st defendant expressed her willingness to help the plaintiff and her husband financially. On 30-06-2014 the loan account with UCO Bank fell NPA. Plaintiff and her husband approached DRT and sought permission to conduct private sale of plaint schedule property. The plaintiff and her husband

availed loan from the 1st defendant during 02-02-2016 to 02-06-2016. For their business purpose. Plaintiff received all the payments through RTGS transfer. Altogether, plaintiff received Rs. 3,30,000/- from the 1st defendant. She has repaid this amount to the 1st defendant in cash. The plaintiff repaid the amount on mutual understanding without any written document. When the bank was proceeding against plaint schedule property under SARFAESI Act, the 1st defendant approached the plaintiff with financial aid and negotiated to purchase plaint schedule property. It was agreed to sell plaint schedule property for 1.75 crores. The 1st defendant paid Rs. 20,00,000/- to the plaintiff to discharge the mortgage over plaint schedule property. On 30-05-2016 the 1st defendant transferred Rs. 10,00,000/- to the loan account of the plaintiff with UCO Bank. On the same day, she transferred another amount of Rs.10,00,000/- to the SB account of the plaintiff maintained with UCO Bank. Thus, the plaintiff could close her loan account and get back the title deeds. The 1st defendant was of the opinion that she will purchase plaint schedule property for 1.75 crores by pledging the same. So, she requested the plaintiff to execute a sale deed in her favour. The plaintiff who had reposed good faith in the 1st defendant executed Sale Deed No. 2383/2016 in her favour. But the 1st defendant betrayed her. On 16-08-2016 the 1st defendant transferred Rs.10,00,000/- to the SB Account of the plaintiff maintained with Andra Bank. Thereafter, when the 1st defendant did not pay the sale

consideration she agreed to execute an agreement in this regard. Thus, on 24-08-2016 the 1st defendant executed an agreement in favour of the plaintiff in the presence of 2 witnesses, viz., Sabin C.C and Mahesh K.S that she will pay Rs. 1.75 crores within 15 days from the date of agreement or re-convey the property to the plaintiff. After the expiry of those 15 days, the plaintiff and her husband approached the 1st defendant. But she evaded from payment. Thereafter, the 1st defendant registered a false case before the Central Police Station against the plaintiff, her husband and few others. The husband of the plaintiff and certain others were arrested by the police. Though the plaintiff had executed sale deed in favour of the 1st defendant, she retained the possession of plaint schedule property. The 1st defendant mortgaged plaint schedule property with the 2nd defendant for Rs. 72,91,666/-. As per the order in OP (Arb) 959/2016 of the District Court, Ernakulam the plaint schedule property is attached. The 1st defendant managed to get a sale deed executed in her favour and thereafter mortgaged it. The mortgage by the 1st defendant is not binding on the plaintiff. The sale deed is perse null and void. Hence, the Sale Deed No. 2383/2016 of Edapally SRO be declared void and a decree for mandatory injunction be passed against the 1st defendant or in alternative allow the plaintiff to realise Rs. 1.65 crores from the 1st defendant from the date of the suit till realisation by charging on the plaint schedule property.

Cause of action for the suit arose on 12-07-2016 the date of execution of

Sale Deed No. 2383/2016 of Edapally SRO by the plaintiff in favour of the 1st defendant and on 24-08-2016 the date on which the 1st defendant executed an agreement and on 19-10-2016 the date on which a police complaint was registered against the husband of the plaintiff and on 26-10-2016 the date on which the plaint schedule property was attached by the court in OP (Arb) 959/2016 of the District Court, Ernakulam and thereafter at Edapally North Village, which is within the jurisdiction of this court. Hence, the suit.

3. The defendants remained ex parte. Plaintiff filed chief affidavit in lieu of her examination in chief in tune with the plaint averments and marked Exts A1 to A6, A6 (a), A7, A8, A8 (a) to A8(c) A9, A9(a), A10 and A11. Ext C1 is marked as court exhibit. Plaintiff has admitted that she has executed sale deed in favour of the 1st defendant with respect to the plaint schedule property. It is understood from the plaint averments and the affidavit and the exhibits produced by the plaintiff that the 1st defendant has to pay the balance sale consideration of Rs. 1.65 crores. In cases where the buyer has to pay consideration to the seller, the remedy is under Section 55 (4)(b) of the Transfer of Property Act. So, the alternate remedy sought by the plaintiff can be allowed. Thus, the suit is liable to be decreed with costs.

In the result, the suit is decreed as follows:

1. The plaintiff is allowed to realise Rs. 1,65,00,000/- (Rupees One Crore Sixty Five Lakh only) with 6% interest from the date of the

suit till the date of realisation from the 1st defendant and her assets.

2. Plaintiff schedule property which now stands in the name of the 1st defendant is charged with the decree as per Section 55(4)(b) of the Transfer of Property Act, 1881.
3. Plaintiff is allowed to realise the cost of the suit from the 1st defendant and her assets.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the 30th day of March, 2019.

**Aaj Sudarsan,
I Addl. Sub Judge.**

APPENDIX

Plaintiff's Exhibits:-

- | | |
|----|--|
| A1 | Certified copy of Document No. 977 of 2009 of Edappally S.R.O executed in favour of Plaintiff. |
| A2 | 10.06.16 Certified copy order in S.A. No. 38/2015 of Debt Recovery Tribunal. |
| A3 | Certified copy of sale deed No. 2383/2016 of Edappally S.R.O executed by the Plaintiff in favour of 1 st defendant. |
| A4 | 24.08.16 Certified copy of Judgment executed between the Plaintiff and 1 st defendant. |
| A5 | True copy of F.I.R No. 2361/16 of Central Police Station, Ernakulam. |
| A6 | 24.11.16 Certified copy of Order in B.A. No. 7993/2016 of Hon`ble High Court. |
| A6 | 24.11.16 Certified copy of Order in B.A. No. 7993/2016 of Hon`ble High Court. |
| A7 | – Copy of affixture notice in I.A. No. 7096/2016 in O.P (Arb) No. 959/2016 of District Court, Ernakulam. |

A8 14.01.19 The Original bill issued by K.S.E.B

A8

(a) 14.01.19 The Original bill issued by K.S.E.B

A8

(b) 18.03.19 The Original bill issued by K.S.E.B

A8

(c) 18.03.19 The Original bill issued by K.S.E.B

A9 01.08.18 The Original bill issued by Kerala Water Authority.

A9

(a) 01.10.18 The Original bill issued by Kerala Water Authority.

A10 25.01.19 Original receipt issued by Kerala Water Authority.

A11 02.03.19 Original land tax Receipt issued by Village Officer, Edappally.

Defendant's Exhibits:-Nil

Court Exts:

C1- 30.11.2016 – Commission Report.

Plaintiff Witness:

PW1- 20.03.2019-- Sajeena. T.K.

Defendant Witness: Nil

Witness Exts:Nil

I Addl. Sub Judge.

Typed by:vmk

comp.by:SP

