

IN THE COURT OF THE MUNSIF, THODUPUZHA
Present:- Smt. Dr. ELSA CATHERINE GEORGE, MUNSIF
Monday, the 31st day of October, 2022/9th day of Karthika, 1944.

OS.23/2022

Plaintiff:-

Leela W/o Gopalan Nair, aged 62 years,
Karakunnel (Ram Nivas) House, Kumaramangalam P.O.,
Kumaramangalam Kara, Kumaramangalam Village,
Thodupuzha Taluk, Pin-685608.

By Adv. Sri.A.M Vijayan.

Defendant:-

Sreedharan @ Sreedhar K Kottaram, aged 60 years,
S/o Kumaran, Kottarathil House, Kumaramangalam P.O.,
Kumaramangalam Village, Thodupuzha Taluk, Pin-685608.

No Vakalath (Set exparte on 25.02.2022).

This Suit is coming on for final hearing before me on 31.10.2022 in the presence of the above counsel and the Court on the same day delivered the following:-

J U D G M E N T

The suit is for realisation of money.

2. Plaint averments, in brief, are as follows:- Defendant is the owner of 20.50 Ares of nilam comprised in resurvey Nos. 154/10 and 1581/1 in Kumaramangalam Village, described herein as the plaint schedule property. On 01.07.2021, the plaintiff and the defendant entered into an agreement for sale of the said property. Defendant agreed to sell

and plaintiff agreed to buy the plaint schedule property at a price of ₹25,00,000/-. Plaintiff, on the date of agreement itself paid a sum of ₹5,00,000/- as advance and agreed to pay the balance sale consideration within three months and get the sale deed executed at her expense. Defendant agreed to execute sale deed in favour of the plaintiff within the stipulated period on payment of the balance sale consideration by the plaintiff. The defendant had represented that the property is free from encumbrances and also undertook that even if any encumbrance is found to be outstanding on the property, he will clear all those liabilities within the stipulated period and the property will be transferred to the plaintiff free of all encumbrances.

Plaintiff was ready and willing to pay the balance sale consideration to the defendant and to get the sale deed executed within the time prescribed in the agreement. Plaintiff and defendant are close neighbours and plaintiff repeatedly informed the defendant that she is ready with the balance amount and requested the defendant to execute the sale deed. The defendant under some pretext or the other, evaded from doing so. In the meantime, the plaintiff got an information that the plaint

schedule property had been hypothecated by the defendant with the Urban Co-operative Bank, Thodupuzha as security for a loan, availed by him and that the loan is in huge arrears. Thereupon, plaintiff demanded the defendant to settle the loan liability and execute the sale deed. The defendant did not pay any heed to the demand made by the plaintiff and he was not even prepared to answer the phone calls made by the plaintiff. Eventually plaintiff got convinced that defendant is not going to act as per the terms of the agreement and to convey the plaint schedule property to her.

In the above circumstances, the plaintiff had no way out but to withdraw from the contract and demand return of the advance amount paid. As already stated, plaintiff was ready and willing to perform her part of the contract by paying the balance sale consideration but the agreement fell through due to the breach committed by the defendant. Hence the plaintiff is entitled to get back the advance amount paid by her but the defendant was not prepared to return the amount. As a last resort, the plaintiff caused to issue lawyer's notice dated 04.01.2022 to the defendant, informing him that she is withdrawing from the contract and calling upon

him to return the advance amount within seven days of receipt of the notice. There is no response from the side of the defendant to the notice and the advance paid by the plaintiff still remains to be repaid. Plaintiff is entitled to get back the advance amount paid together with interest and also for compensation for breach of contract. Since the defendant is a close neighbour and known to the plaintiff for the last several years, she is not claiming any interest for the past period. Claim for damages is also relinquished. Plaintiff is entitled to get back the advance amount of ₹5,00,000/- together with future interest from the defendant personally and all his assets including the plaint schedule property. Hence the suit is filed.

3. Though summons was duly served to the defendant, he did not appear before the court or contest the case. The defendant was called absent and set *ex parte* on 25.02.2022.

4. On her side, the plaintiff adduced evidence as PW1. Exts.A1 to A3 are also marked.

5. The points that arise for consideration are as follows:

1. Whether the plaintiff is entitled to realize the amount of ₹5,00,000/- with future interest as prayed for?
2. Reliefs and costs.

6. Heard the learned counsel for the plaintiff.

7. **Point No.1:-** The suit is for return of advance money due to plaintiff under an agreement for sale of the immovable property of the defendant. As per the plaintiff, even after repeated demands, the defendant was not ready to execute the sale deed after receiving the balance sale consideration and thereby he committed breach. On enquiry, the plaintiff came to know that there is huge loan liability upon the plaint schedule property, and the defendant was not ready to clear the loan arrears and to convey the property to the plaintiff. Therefore, the plaintiff withdrew from the agreement and demanded for return of advance sale consideration of ₹5,00,000/- paid under the agreement. The suit is filed for the said amount with future interest. The plaintiff deposed in tune with the plaint averments. Ext.A1 is the original agreement for sale dated 01.07.2021. Ext.A2 is the office copy of lawyer's notice dated 4.01.2022. Ext.A3 is the postal receipt dated 07.01.2022 for issuance of Ext.A2 notice to the defendant. Thus, the un-controverted evidence of PW1 and Exts.A1 to A3 would go to prove the plaint averments. The plaintiff is entitled to get a decree for the amount as prayed for. The plaintiff is praying for future

interest alone. Considering the nature of the case and the overall facts and circumstances, future interest @ 6% per annum is allowable, and the suit is to be decreed accordingly. Point No.1 is found in favour of the plaintiff.

8. **Point No.2:-** As per the findings in point No.1 above, the suit is to be decreed for ₹5,00,000/--, with future interest at the rate of 6% per annum from the date of the suit till its realization. The plaintiff is also entitled to realize the costs of the suit. Point No.2 is also found in favour of the plaintiff.

In the result, the suit is **decreed with costs** as follows.

1. The plaintiff shall be entitled to recover ₹5,00,000/- (Rupees Five Lakhs only) with 6% interest from the date of the suit till the date of realization from the defendant personally and also from his assets.
2. The plaintiff shall also be entitled to realise the costs of the suit from the defendant and his assets.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in the open Court on this the 31st day of October, 2022.

ELSA CATHERINE GEORGE
MUNSIFF

APPENDIXPlaintiff's Exhibits:

- A1 - 01.07.2021 : Original agreement for sale.
A2 - 04.01.2022 : Office copy of the Lawyer's Notice.
A3 - 07.01.2022 : Postal receipt.

Defendant's Exhibits:- Nil.

Court Exhibits:- Nil

Plaintiff's Witnesses: -

PW1 – 05.04.2022 : Leela Gopalan Nair.

Defendant's Witnesses:- Nil

Court Witnesses : - : Nil

MUNSIFF

Copied by : Smitha C.R
Compd.by. : Vineetha Das S

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in

O.S. No.23/2022

Dated:31.10.2022