

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

RFA.No. 818 of 2012

AGAINST THE ORDER/JUDGMENT IN OS 499/2011 of PRINCIPAL SUBORDINATE
JUDGE'S COURT, ERNAKULAM DATED 31-05-2012

APPELLANT :

JACOB MANI, AGED 42 YEARS,
S/O.A.S.MANI, RESIDING AT AYROOKUZHIYIL HOUSE,
THEKKUMTHALA ROAD, KALoor, COCHIN-682017.

BY ADVS.SRI.K.P.SREEKUMAR
SRI.BIJU BALAKRISHNAN

RESPONDENTS/PLAINTIFF AND DEFENDANTS:

1. K.M. LUKOSE, AGED 50 YEARS,
S/O.K.K.MATHAI, KIZHAKKANADAYIL HOUSE, DOOR NO.10/381,
THELLAKOM KARA, THELLAKOM P.O., KOTTAYAM-16.

2. BLUE DOT CONSTRUCTIONS (PVT.) LTD.,
A COMPANY HAVING ITS REGISTERED OFFICE AT 1ST FLOOR,
INFANT JESUS BUILDING, DOOR NO.XL/5010, BANERJI ROAD,
HIGH COURT JUNCTION, KOCHI-682031,
REPRESENTED BY ITS MANAGING DIRECTOR, T.G.VARGHESE,
S/O.T.A.GEORGE, AGED 54 YEARS, RESIDING AT FLAT NO.A-2D,
CHAKOLAS HABITAT, OLD THEVARA ROAD, THEVARA P.O.
ERNAKULAM-682013.

3. THE GREATER COCHIN DEVELOPMENT AUTHORITY,
KOCHI-682020, REPRESENTED BY ITS SECRETARY.

*ADDL.R4 : HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED,
(IN SHORT HDFC), M.G.ROAD, KOCHI-16,
REPRESENTED BY ITS ASSISTANT MANAGER (LEGAL) SACHIN.A.S.

* (ADDL.R4 IMPEADED AS PER ORDER IN I.A.No.1088/2013
DTD.20-1-2015.)

R3 BY ADV. SRI.S.B.PREMACHANDRA PRABHU
R1 BY ADV. SRI.P.MARTIN JOSE
R1 BY ADV. SRI.P.PRIJITH
ADDL.4 BY ADV. SRI.C.P.SAJI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A.No.818 OF 2012

DATED THIS THE 20th DAY OF JANUARY, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellant is a third-party to O.S.No.499/2011 on the file of the Court of the Subordinate Judge of Ernakulam. The first respondent herein is the plaintiff, who filed the said suit against the second and third respondents herein, who are arrayed as defendants 1 and 2 in the suit. The suit was one for specific performance of an agreement dated 2.4.2009, which was marked as Ext.A1 during trial, executed between the plaintiff and the first defendant, by which the first defendant has agreed to assign Plaint B schedule apartment bearing No.1A in the first floor of 'Soorya Enclave' having a super built up area of 2013 sq.ft. in a fully completed stage with fully furnished interior works together with all fittings and fixtures, electric and water connections and a car parking marked 1A on the ground floor, together with 2.08% undivided share in the Plaint A schedule property. The plaintiff has also made an alternative prayer for refund of the advance sale consideration. The aforesaid agreement dated 2.4.2009 was executed in pursuance of an agreement dated 19.12.2005 entered into between the first defendant and the second defendant whereby, after the completion of construction of the apartment building, a super built up area having 6106.77 sq.mt.

comprising of 34 flats with proportionate undivided share in the Plaint A schedule property and interest in the common area was agreed to be allotted/sold to the first defendant or his clients by the second defendant.

2. The trial court, by judgment and decree dated 31.5.2012 decreed the suit and the second defendant was directed to execute a sale deed in respect of the plaint B schedule property pursuant to Ext.A1 agreement read with Ext.B2 agreement, after receiving Rs.2,00,000/- either from the first defendant or the plaintiff. It was further directed that, if the said amount of Rs.2,00,000/- is paid by the plaintiff, then, he will be entitled to realise the said amount from the first defendant. If the second defendant fails to execute the sale deed within 2 months, it was directed that the plaintiff can get it executed through the process of court. Aggrieved by the judgment and decree of the court below dated 31.5.2012 in O.S.No.499 of 2011, the appellant, who is a third-party to the said suit, is before this Court in this appeal.

3. According to the appellant, he had entered into an agreement for sale dated 17.12.2007 with the first defendant in respect of 2.08% undivided share together with the right to construct a three-bedroom apartment No.1A on the first floor of 'Soorya Enclave' in the property owned by the second defendant. It is stated that for

the said purpose, the appellant has availed a home loan from the Housing Development Finance Corporation (HDFC), the additional fourth respondent in this appeal, that the appellant was sanctioned a home loan of Rs.48 lakhs and the HDFC released the said amount to the first defendant vide 2 cheques for Rs.24 lakhs each and the first defendant appropriated the said sum. In addition to this, the appellant paid a further sum of Rs.14 lakhs to the first defendant, who had acknowledged receipt of the said amount. Thus, altogether the appellant paid an amount of Rs.62 lakhs towards the cost of the said apartment. It is alleged in the memorandum of appeal that, the first defendant fraudulently entered into Annexure A1 sale agreement in respect of the self-same flat with the plaintiff, agreeing to execute the sale deed on or before 30/9/2009, for an amount of Rs.32 lakhs. The plaintiff instituted the suit without impleading the appellant, who is a necessary party, and obtained a decree for specific performance. On coming to know about the said decree, the appellant filed the present appeal before this court, along with I.A.No.2155 of 2012, seeking the leave of this Court to file an appeal against the judgment and decree in O.S.No.499 of 2011, which was granted by order dated 15/10/2012.

4. On 15/10/2002, this Court admitted the appeal to file and granted an interim stay of all further proceedings in execution of the

decree in O.S.No.499 of 2011, initially for a period of 4 months, which order was later extended until further orders on 19/6/2013. On 2/12/2014, as requested by both sides, the matter was referred for mediation to the Ernakulam Mediation Centre and the parties were directed to be present before the Ernakulam Mediation Centre on 9/12/2014.

5. Now, the parties have settled the dispute in mediation and the terms and conditions of the settlement, reduced to writing in the form of a compromise petition filed under Order XXIII, Rule 3 of the Code of Civil Procedure, 1908, verified and signed by all the parties and attested by their respective counsel, is forwarded to this Court along with a report of the Mediator dated 12/1/2014, for recording such compromise and to dispose of this appeal in terms of the said compromise. The terms of settlement contained in clauses (a) to (k) of paragraph 4 of the compromise petition dated 20/12/2014 read thus;

- "a) The 1st respondent herein ie. the plaintiff in O.S.499 of 2011 on the file of the Principal Subordinate Judge's Court, Ernakulam has agreed to relinquish all his rights over the scheduled property in the Suit ie. 2.08% of undivided share in the 49 cents of land comprised in Sy.Nos.378 and 384 of Ernakulam Village together with a 3 bed room apartment No.1A on the 1st floor and proportionate share in the common areas and common facilities in the multi-storied residential building in the name and style 'Surya Enclave' on receipt of Rs.22,00,000/- (Rupees Twenty Two Lakhs only) on or before 30-01-2015 from the appellant and

consequently the 1st respondent agreed to withdraw all his claims and contentions raised in the Suit and seek to set aside the Judgment and decree dt.31-05-2012 in O.S.499 of 2011 on the file of the Principal Subordinate Judge's Court, Ernakulam and to dismiss the Suit. On the failure of the 1st respondent to accept the said payment, as agreed above, the appellant is at liberty to deposit the said amount before the Principal Sub Court, Ernakulam, on the next immediate working day and the 1st respondent will be at liberty to withdraw the said amount from the Court.

- b) The respondents 2 and 3 herein/defendants 1 and 2 in the Suit have agreed that, they will execute a sale deed with respect to the schedule property in the Suit ie. 2.08% of undivided share in the 49 cents of land comprised in Sy.Nos.378 and 384 of Ernakulam Village together with a 3 bed room apartment No.1A on the 1st floor and proportionate share in the common areas and common facilities in the multi-storied residential building in the name and style 'Surya Enclave' in favour of the appellant herein or to his nominee on or before 20.12.2015. In the interregnum the 2nd respondent will execute and register a fresh agreement for sale with respect to the said property ie.2.08% of undivided share in the 49 cents of land comprised in Sy.Nos.378 and 384 of Ernakulam Village together with a 3 bed room apartment No.1A on the 1st floor and proportionate share in the common areas and common facilities in the multi-storied residential building in the name and style 'Surya Enclave' in favour of the appellant herein on or before 12-01-2015.
- c) In the event of failure of the respondents 2 and 3 in executing the sale deed or the agreement for sale by the 2nd respondent, as mentioned above, in favour of the appellant or his nominee, within the time limit stipulated as above, the appellant is at liberty to get the sale deed executed with respect to the above described property, through Court on the basis of this compromise.

- d) The agreement dt.02-04-2009 and the supplementary agreement for sale dt.03-04-2009 executed by the 2nd respondent/1st defendant in favour of the 1st respondent/plaintiff, marked as Exts.A1 and A2 in Judgment dt.31-05-2012 in O.S.499 of 2011 on the file of the Principal Subordinate Judge's Court, Ernakulam, which is the subject matter of O.S.499/2011, will stand rescinded on payment of Rs.22,00,000/- to the 1st respondent as agreed above. It is agreed by the 3rd respondent, the Greater Cochin Development Authority, that without insisting for any further formality, they will give consent and no objection in registering the Sale Deed with respect to the above-mentioned property in favour of the appellant or his nominee.
- e) The 1st respondent/plaintiff and the 2nd respondent/1st defendant had agreed to get the order of injunction vacated in respect of scheduled property in the Suit ie. 2.08% of undivided share in the 49 cents of land comprised in Sy.Nos.378 and 384 of Ernakulam Village together with a 3 bed room apartment with No.1A on the 1st floor and proportionate share in the common areas and common facilities in the multi-storied residential building in the name and style 'Surya Enclave' in O.S.No.499 of 2011 on the file of the Principal Subordinate Judge's Court, Ernakulam and communicate the same to the concerned revenue and registration authorities.
- f) In view of this settlement the HDFC Ltd., Ravipuram, Ernakulam has agreed to withdraw their suit namely O.S.No.368 of 2012, pertaining to Loan A/c No.3144, pending before the Subordinate Judge's Court-IV, Ernakulam, seeking recovery of money from the appellant and 4 others on condition that the appellant herein has to give an undertaking to them to the effect that he will deposit the sale deed with respect to the above mentioned property as soon as it is registered as described in Clause (b) supra.
- g) The Appellant shall get himself impleaded in O.S.No.499 of 2011 of Sub Court, Ernakulam and seek to set aside the judgment and

decree along with the 1st defendant to which the plaintiff/1st respondent will endorse no objection. On the decree and judgment being set aside, to which the plaintiff will not object and the plaintiff will be entitled for refund of the entire court fees paid in O.S.No.499/2011. The respondents have no objection in refunding the court fees in R.F.A.No.818 of 2012 to the appellant.

- h) The defendants in O.S.No.368 of 2012 on the file of the Sub Court-IV, Ernakulam have no objection in refunding the court fees to the plaintiff in the said suit.
- i) The Judgment and decree may be passed in terms of this agreement and this compromise petition may be made part of the decree.
- j) Parties have agreed to suffer their other respective costs.
- k) If the payment of Rs.22 lakhs as stated in Clause 4(a) is not paid to the 1st respondent on or before 30-01-2015 the said amount will carry interest @ 18% per annum from 30-01-2015 onwards till the date of payment and that amount will create a charge upon the above mentioned property."

6. In view of the compromise entered into between the parties, we set aside the impugned decree and judgment and remand the suit to the Court of the Principal Subordinate Judge of Ernakulam, so as to enable the parties to act in terms of the compromise recorded before the Mediator on 20/12/2014. It will be open to the appellant and the additional fourth respondent (who is the plaintiff in O.S.No.368 of 2012 on the file of the Court of the Subordinate Judge-IV of Ernakulam) to act in terms of the compromise recorded before the Mediator on 20/12/2014, and seek withdrawal of O.S.No.368 of

2012 pending before the Court of the Subordinate Judge-IV of Ernakulam, on production of a certified copy of this judgment.

7. The registry shall sent back the lower court records in O.S.No.499 of 2011 forthwith to the Court of the Principal Subordinate Judge of Ernakulam, along with original of the compromise petition dated 20/12/2014 entered into between the parties, after retaining a certified copy of that petition in the case records of this appeal.

In view of settlement of the disputes through mediation, it is ordered that, the appellant shall be refunded the whole court fee paid on the memorandum of appeal in this case. It would also be open to the first respondent (who is the plaintiff in O.S.No.499 of 2011 on the Court of the Principal Subordinate Judge of Ernakulam) and the Addl. Fourth respondent (who is the plaintiff in O.S.No.368 of 2012 on the Court of the Subordinate Judge-IV of Ernakulam) to seek refund of the whole court fee paid on the plaint in the respective suits, in view of settlement of the disputes through mediation.

**P.N.RAVINDRAN,
JUDGE**

**ANIL K.NARENDRA,
JUDGE**

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