

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS**

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

RFA.No. 172 of 2011

**AGAINST DECREE OF JUDMENT IN O.S.NO.43/2009 OF SUBORDINATE COURT,
PERUMBAVOOR DATED 30.10.2010.**

APPELLANT(S)/DEFENDANTS :

- 1. ABRAHAM, AGED 65 YEARS, S/O.PAVU,
CHIRACKAL HOUSE, AKANADU KARA, VENGOOR WEST VILLAGE,
KUNNATHUNADU TALUK.**
- 2. ANNAM, AGED 60 YEARS, W/O.ABRAHAM,
CHIRACKAL HOUSE, AKANADU KARA, VENGOOR WEST VILLAGE,
KUNNATHUNADU TALUK.**
- 3. PAUL ABRAHAM, AGED 42 YEARS,
S/O.ABRAHAM, CHIRACKAL HOUSE, AKANADU KARA,
VENGOOR WEST VILLAGE, KUNNATHUNADU TALUK.**
- 4. JAMES, AGED 40 YEARS, S/O.ABRAHAM,
CHIRACKAL HOUSE, AKANADU KARA, VENGOOR WEST VILLAGE,
KUNNATHUNADU TALUK.**
- 5. KUNJAMMA, AGED 60 YEARS, D/O.VARGHESE,
CHIRACKAL HOUSE, MUDAKKUZHA KARA, VENGOOR WEST VILLAGE,
KUNNATHUNADE TALUK.**

**BY ADVS.SRI.M.NARENDRA KUMAR
SRI.P.B.PRADEEP
SMT.LAYA SIMON**

RESPONDENT(S)/PLAINTIFF :

**SUBIN BABU @ BABU, AGED 22 YEARS,
S/O.VARGHESE, THAZHATH VAZHAYIL HOUSE, AIMURI KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK- 37.**

**BY ADVS. SRI.DINESH R.SHENOY
SRI.G.HARIKRISHNAN (TRIPUNITHURA)
SRI.MAHESH MENON**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE A1: TRUE COPY OF THE SCHEDULE OF PROPERTY.

ANNEXURE A2: TRUE COPY OF ATTACHMENT ORDER DATED 23.03.2010.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
RFA No.172 of 2011
.....

Dated this the 27th day of May, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.We have heard the learned counsel for the parties.
- 2.This appeal is by the defendants in a suit for return of advance contribution paid under a contract for sale of immovable property. The defendants admitted receipt of advance, but set up a case that they suffered loss on account of plaintiff's breach. Accordingly, they claimed that they are entitled to forfeit the loss sustained, going by the terms of the contract for sale.
- 3.The trial court heard the evidence of plaintiff as PW1 and PW2. It also heard the first defendant as DW3 and fourth defendant as DW1. DW2 is Augustine Damian, who is stated to have agreed to purchase the property from the defendants after the alleged breach by the plaintiff under Exts.X1 and X2. The court below held that there is nothing on record to hold that DW2 Augustine

Damian was put in possession of the suit property. That position notwithstanding, it cannot but be said that there is no claim or charge created on the property or any diminution of interest in the immovable property created by Exts.X1 and X2 on account of the so-called breach by the plaintiff to perform his part of the contract under Ext.A1 contract for sale.

4. In the aforesaid view of the matter, we do not find any justiciable reason to disturb the finding rendered by the trial court that the plaintiff is entitled to return of advance. The findings rendered by the trial court are in conformity with the legal evidence on record and the probabilities emanating out of the totality of the facts and circumstances. The decree to that extent is sustained. The trial court, however, granted interest on the principal amount at the rate of 12% per annum from the date of suit till the date of realisation. We are of the view that this is not permissible for two reasons. Firstly, there is no contract to pay interest, going by the terms of Ext.A1. Secondly and more importantly, Section 34 of the Code of Civil Procedure which governs post suit interest and

post decree interest stands to advise that if a transaction is not one of a commercial nature, the trial court ought not to have granted interest more than 6% per annum.

5. In the result, this appeal is allowed in part modifying the decree granted by the trial court whereby reducing the rate of interest to 6% per annum from the date of the suit till the date of recovery.

Transmit the lower court records forthwith. It is submitted that the entire amounts, including interest have been deposited before the court below. On proper application, the court below will settle finalisation of payments due in terms of this appellate decree and any application for return of documents will also be considered at that end most expeditiously.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)