

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RFA.No. 83 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OS 362/2011 of PRINCIPAL SUB COURT,
THRISSUR DATED 21-10-2014

APPELLANT(S)/DEFENDANTS:

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1. VIJAYAKUMARAN AGED 64 YEARS,
S/O.VETTISSERI KAVIL @ KAVIL MADHAVIKUTTY AMMA,
VAILATHUR NAYARANGADI DESAM,
VADAKKEKKAD, THALAPPILLY, THRISSUR.
 2. JAYARAJAN AGED 61 YEARS
S/O.VETTISSERI KAVIL @ KAVIL MADHAVIKUTTY AMMA
VAILATHUR NAYARANGADI DESAM
VADAKKEKKAD, THALAPPILLY THRISSUR.
 3. SATHYAPALAN AGED 57 YEARS
S/O.VETTISSERI KAVIL @ KAVIL MADHAVIKUTTY AMMA,
VAILATHUR NAYARANGADI DESAM
VADAKKEKKAD, THALAPPILLY THRISSUR.

BY ADVS.SRI.P.V.SREENIVASAN
SRI.K.A.SREEJITH

RESPONDENT(S)/PLAINTIFF:

K.V.MOHANDAS, AGED 61 YEARS,
S/O.KUNNATHULLY VELAYUDHAN, KECHERY DESAM,
ERANELLUR VILLAGE, THALAPPILLY THALUK,
THRISSUR, PIN-680 501.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

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

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R.F.A.No.83 of 2015

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Dated this the 20th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the defendants in O.S.No.362 of 2011 on the file of the Court of the Principal Subordinate Judge of Thrissur. The sole respondent is the plaintiff therein. The suit instituted by the respondent for realisation of the sum of Rs.19,33,866/- together with interest and costs was decreed after trial by judgment delivered on 21.10.2014. The defendants have aggrieved thereby filed this appeal. The brief facts of the case are as follows:-

2. The sole respondent instituted the suit for realisation of the advance paid by him to the defendants pursuant to Ext.A1 agreement dated 12.6.2009. He contended that the defendants had suppressed the fact that they had entered into an agreement with one Abdul Azeez on 16.5.2007 to sell the plaint schedule property to him, at the time of execution of Ext.A1 agreement. Upon receipt of summons, the defendants entered appearance and filed a written statement resisting the suit. They contended in paragraphs 5 and 8 of the written statement that as the plaintiff was guilty of breach

they are not liable to repay the advance received by them. In the trial court, the plaintiff examined himself as PW1 and produced and marked Exts.A1 to A5. On the side of the defendants, the second defendant was examined as PW1 and Exts.B1 to B3 were marked. The trial court on an analysis of the pleadings and evidence, oral and documentary available in the case held that the defendants were at fault. The suit was accordingly decreed. Hence this appeal.

3. We heard Sri.K.A.Sreejith, learned counsel appearing for the appellants. The learned counsel appearing for the appellants contended that as the appellants had proved that it is the plaintiff who has committed breach of contract and as a result thereof the appellants had suffered a loss, the court below erred in decreeing the suit for return of the advance. The learned counsel also submitted that many aspects of the case arising out of the pleadings have not been considered by the trial court. To a query from us as to whether the defendants had in their written statement contended that as a result of the breach committed by the plaintiff they had suffered a loss, no answer was forthcoming from the learned counsel for the appellants.

4. A Division Bench of this Court has in **State of Kerala v. United Shippers and Dredgers** [1982 KLT 738] held that the party complaining of breach of contract and claiming compensation

is entitled to succeed only on proof of legal injury having been suffered by him on account of such breach. The same view has been reiterated by a learned single Judge of this Court in **Nalini Sheela v. Subramaniyan Chettiar Shanmughom** [2011 (1) KLT 486]. Apart from vaguely contending in the written statement that as the plaintiff was guilty of breach the defendants are not liable to repay the advance, the appellants have not pleaded or proved that as a result of the breach committed by the plaintiff, they had in fact suffered legal injury in the sense that they had suffered some loss or damage on account of such breach. In such circumstances, even if we were to assume for the sake of arguments that it was the plaintiff who was guilty of breach of contract, so long as the defendants have not proved that they had suffered damage or loss as a result of such breach, the plaintiff is in our opinion entitled to refund of the advance paid by him. The appellants cannot in our opinion in the absence of a plea that they had suffered any loss or damage, contend that they are not liable to disgorge the benefits received by them pursuant to the agreement for sale. Though the learned counsel appearing for the appellants contended that what was paid was not advance but only earnest money, having regard to the fact that the advance paid was Rs.16,00,000/- as against the total sale consideration of Rs.43,54,350/-, by no stretch of

imagination can it be said that the amount paid was earnest money to secure performance of the agreement. That apart, the appellants have no case in the written statement filed by them that the amount paid by the plaintiff was earnest money.

We therefore find no good grounds to entertain the appeal. The appeal fails and it is accordingly dismissed *in limine*.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**

/true copy/

P.A. to Judge

vpv