

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 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

RFA.No. 519 of 2014 (B)

AGAINST THE ORDER/JUDGMENT IN OS 240/2010 of ADDL. SUB COURT,
NORTH PARAVUR DATED 4.4.2012

APPELLANT/DEFENDANT:

T.A. KURIAKOSE,
S/O. ABRAHAM, THADIKKARAN VEETIL, MATTOOR KARA
MATTOOR VILLAGE, ALUVA TALUK.

BY ADV. DR. GEORGE ABRAHAM

RESPONDENT/PLAINTIFF:

WILSON, S/O OUSEPH,
PATHAPPILLY VEETIL, POTHIAKARA KARA
MATTOOR VILLAGE, ALUVA TALUK-683 101.

BY ADV. SRI. WILSON URMESSE

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN RFA.519/14

APPELLANT'S ANNEXURES:

ANNEXURE A: COPY OF DISCHARGE SUMMARY OF SMT.SOPHIE KURIAN, WIFE OF THE APPELLANT, FROM THE MEDICAL TRUST HOSPITAL DT.10.7.09.

ANNEXURE B: COPY OF DISCHARGE SUMMARY OF SMT.SOPHIE KURIAN, WIFE OF THE APPELLANT, FROM THE MEDICAL TRUST HOSPITAL DT.30.6.2010.

ANNEXURE C: COPY OF DETAILS OF THE TEST DESCRIPTION OF THE PETITIONER'S WIFE DT.21.6.2014.

RESPONDENT'S ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

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

R.F.A.No.519 OF 2014

DATED THIS THE 6th DAY OF MARCH, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellant is the defendant in O.S.No.240 of 2010 on the file of the Court of the Additional Subordinate Judge of North Paravur. The said suit was filed by the respondent herein for realisation of money. By judgment and decree dated 4.4.2012, the court below decreed the suit allowing the respondent to realise a sum of ₹28,57,000/- from the appellant with interest on the principal sum of ₹22,00,000/- at 12% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum from the date of decree till realisation with costs of the suit from the appellant and his assets. As per the judgment and decree, the decree amount with interest and costs is charged on the plot A and B schedule properties belonging to the appellant unless those properties are actually taken over by the Government. Aggrieved by the judgment and decree of the court below, the appellant is before this Court in this appeal.

2. By order dated 24.7.2014 in I.A.No.1704 of 2014,

this Court has granted an interim stay of the sale of the residential building involved in the execution proceedings in O.S.No.240 of 2010, on the file of the Court of the Additional Subordinate Judge of North Paravur, initially for a period of three weeks, which was extended from time to time.

3. On 4.2.2015, when the appeal came up for admission hearing, the learned counsel appearing for the appellant submitted that, the appellant had received the sum of ₹22,00,000/- lakhs by way of advance on various dates, that the extent of the property agreed to be sold was 50 cents and that the sale consideration agreed was ₹55,000/- per cent and that having regard to the amount received by way of advance, the appellant is willing to execute a sale deed conveying 40 cents out of the aforesaid 50 cents of land to the respondent without demanding any further amount. In the light of the aforesaid development, this Court has directed both parties to jointly inspect the plaint schedule property and prepare a sketch setting out the 40 cents proposed to be sold and produce a copy thereof in this Court on the next posting date. Thereafter, by order dated 16.2.2015, both parties were directed to be present

before the Nodal Officer, Ernakulam Mediation Centre, at 11 AM on 18.2.2015 for mediation talks and to reduce the terms of agreement to writing.

4. 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 memorandum of mediation settlement agreement dated 26.2.2015, under Section 89 of the Code of Civil Procedure, 1908 read with Rules 24 and 25 of the Kerala Civil Procedure (Mediation) Rules, 2008 verified and signed by both the parties and attested by their respective counsel is forwarded to this Court along with a report of the Mediator dated 28.2.2015, for recording such compromise and to dispose of this appeal in terms of the said compromise.

5. Going by the terms of settlement contained in the said memorandum of agreement dated 26.2.2015, the appellant/defendant has agreed to assign an extent of 40 cents, out of a total extent of land situate in 50 cents in re-survey Nos.377/12/2, 13/2, 14/3 in Block No.13 of Thuravoor Village in Aluva Taluk in favour of the respondent/plaintiff within a period of one month from 26.2.2015. Annexure D produced along with

the aforesaid memorandum of agreement is the sketch of the property prepared by a licensed surveyor and countersigned by both parties, in which the 40 cents proposed to be assigned/sold is shown with new sub division numbers 12/3, 13/3, 14/4 and the 10 cents proposed to be retained by the appellant is separately shown. Going by the aforesaid memorandum of agreement, the appellant has to execute a sale deed at the expense of the respondent/plaintiff before SRO, Angamaly without insisting on payment of any further amount. In case of default, the respondent/plaintiff can get it executed through court.

6. In view of the compromise entered into between the parties, this appeal is disposed of modifying the impugned judgment and decree in terms of the agreement contained in the memorandum of mediation settlement agreement dated 26.2.2015 and directing the appellant/defendant to execute a sale deed in favour of the respondent/plaintiff in terms of para.1 of the aforesaid memorandum of agreement. In case of default on the part of the appellant/defendant in executing a sale deed in terms of para.1 of the aforesaid memorandum of agreement,

the respondent/plaintiff shall be entitled to get the same executed through court.

In view of the settlement of 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. A copy of the memorandum of mediation settlement agreement dated 26.2.2015 along with the sketch annexed thereto as Annexure-D shall form part of this judgment.

**Sd/-
P.N.RAVINDRAN, JUDGE**

**Sd/-
ANIL K.NARENDRA, JUDGE**

dsn