

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

RFA.No. 539 of 2014 ()

AGAINST THE JUDGMENT IN OS 242/2012 of PRINCIPAL SUB COURT, ERNAKULAM
DATED 31.1.2014

APPELLANTS/PLAINTIFFS IN THE ORIGINAL SUIT:

1. JOHN V. MUKKADAKKAL,
ANN JINO'S, OPP. H.S. IRIMPANAM, THIRUVANKULAM VILLAGE
KANAYANNUR TALUK, TRIPUNITHARA, ERNAKULAM
PIN-682309.
2. ALIYAMMA J. MUKKADAKKAL,
W/O. JOHN V. MUKKADAKKAL, ANN JINO'S, OPP. H.S. IRIMPANAM
THIRUVANKULAM VILLAGE, KANAYANNUR TALUK, TRIPUNITHARA
ERNAKULAM, PIN-682309.

BY ADV. SRI. JOLLY JOHN

RESPONDENTS/DEFENDANTS IN THE ORIGINAL SUIT.:

1. BLUE DOT CONSTRUCTIONS (P) LTD.,
XL/5010, FIRST FLOOR, INFANT JESUS BUILDING
BANERJI ROAD, ERNAKULAM REPRESENTED BY ITS
MANAGING DIRECTOR MR. T.G. VARGHESE
PIN-682018.
2. THE SECRETARY,
GREATER COCHIN DEVELOPMENT AUTHORITY
KADAVANTHARA P.O., KOCHI-682 020.

R2 BY ADV. SRI. C.A. MAJEED, GREATER COCHIN DEVELOPMENT AUTHORITY

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

R.F.A.No.539 OF 2014

DATED THIS THE 29th DAY OF JANUARY, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellants are the plaintiffs in O.S.No.242 of 2012 on the file of the Court of the Principal Subordinate Judge of Ernakulam. The appellants filed the said suit against the first respondent herein, who was arrayed as the sole defendant in that suit. Subsequently, the 2nd respondent herein was impleaded as additional second defendant in the suit. The suit was one for specific performance of an agreement executed between the plaintiffs and the first defendant by which the first defendant has agreed to assign plaint schedule item No.2, a flat bearing No.11B in the eleventh floor of 'Soorya Enclave' having a super built up area of 1944 Sq.Ft. together with all fittings, fixtures, etc. and the car parking area marked 11A on the ground floor together with 2.08% undivided share in plaint schedule item No.1.

2. The trial court by judgment and decree dated 31.1.2014 disallowed the prayer for specific performance of the agreement and held that the plaintiffs are entitled to realise a sum of ₹28,00,000/- together with interest at the rate of 12% per annum from the first defendant and

the second defendant was discharged from the said liability. Aggrieved by the judgment and decree of the trial court dated 31.1.2014 in O.S.No.242 of 2012 to the extent of disallowing the prayer for specific performance, the plaintiffs are before this Court in this appeal.

3. On 12.8.2014 this Court admitted the appeal on file and granted stay of operation of all further proceedings pursuant to the judgment and decree in O.S.No.242 of 2012 on the file of the Court of the Principal Subordinate Judge of Ernakulam, for a period of three months, which order was extended from time to time.

4. On 15.12.2014, on the request of both sides, the matter was referred for mediation to the Ernakulam Mediation Centre and the parties were directed to be present before the Nodal Officer of the Ernakulam mediation Centre on that day itself.

5. Now the parties have settled in mediation the disputes in this appeal and also that in O.S.No.500 of 2011, on the file of the Court of the Principal Subordinate Judge of Ernakulam, filed by one Mr.Bino Mathew, in which case as well the subject matter is the plaint schedule flat in O.S.No.242 of 2012 and the Mediator has forwarded to this Court a memorandum of settlement dated 28.1.2015, 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, for recording such compromise and to dispose of this appeal in terms of the said compromise. The terms of settlement contained in paragraphs 1 to 17 of the compromise petition dated 28.1.2015 read thus:

- "1. The GCDA and Blue Dot Constructions (Pvt) Limited, the Respondents in RFA 539/2014 and Defendants in OS 242/2012 have agreed that, they will execute a sale deed of Plaint B Schedule ie, Apart No.11-B in the eleventh floor of the multi storied building together with 2.08% undivided share in the Plaint A schedule property; constructed by Blue Dot Constructions (Pvt) Limited in the property owned by GCDA, opposite Central School, Near Kadavanthra Police Station, Kochi-682 020 in favour of the Appellants in RFA 539/2014 and Plaintiffs in OS242/2012 jointly or in the name of any one of them as duly decided and requested by them.
2. The Appellants in RFA 539/2014 and Plaintiffs in OS 242/2012 have agreed to pay an amount of Rs.17,50,000/- (Rupees Seventeen Lakhs Fifty Thousand only) to Mr.Bino Mathew on or before 30-01-2015 towards compensation payable to Mr.Bino in addition to the sale consideration of Rs.28,00,000/-(Rupees Twenty Eight Lakhs only) already paid and as stated in the OS 242/2012 to M/s Blue Dot Constructions (P) Ltd. by the Appellants/Plaintiffs in interest against the aforesaid apartment.
3. Mr.Bino Mathew who is the Plaintiff in OS 500/2011 has secured a decree of specific performance against GCDA

and Blue Dot Constructions (Pvt) Limited against the aforesaid apartment and undivided share in land by before Honourable Principal Sub Court, Ernakulam in which IA No.6240/2012 is filed by Mr.Bino Mathew under section 28(3) of the Specific Relief Act seeking execution of sale deed. Appellants in RFA.539/2014 and Plaintiffs in OS 242/2012 have filed I.A.No.1209/2014 in IA No.6240/2012 in O.S.No.500/2011 pending before the Hon'ble Principal Sub Court, Ernakulam objecting thereto and seeking dismissal of the said I.A. on account of filing of the above suit by the plaintiffs. In view of this settlement, the Appellant shall get himself impleaded in O.S.No.500 of 2011 of Sub Court, Ernakulam and seek to set aside the judgment and decree along with 1st defendant to which the plaintiff/1st respondent will endorse no objection. On the decree and judgment being set aside the plaintiff will be entitled for refund of the entire court fees paid in O.S.No.500/2011. These proceedings shall not affect the date of agreed payment and registration of Sale Deed.

4. The amount of Rs.17,50,000/- (Rupees Seventeen Lakhs Fifty Thousand only) agreed to be paid in this compromise will be paid to Mr.Bino Mathew on or before 30-01-2015 before execution of the sale deed. Upon such payment any claim of Bino Mathew on the plaint schedule property shall be ceased and the appellants shall be eligible for registration of the sale deed in their name without any conditions and requirements to be complied with. The stamp paper will be purchased by

the Appellants in RFA.539/2014 and Plaintiffs in OS 242/2012 and the sale deed will be executed by GCDA & M/s Blue Dot Constructions Pvt.Ltd. and the same will be registered in favour of the Appellants in RFA 539/2014 and Plaintiffs in OS 242/2012 jointly or in the name of any one of them as duly decided and requested by them.

5. Bino Mathew or his authorized POA shall provide the appellants in their above given address by way of registered postal main, the Bank Account No., Bank Details and IFSC Code and SWIFT code of BINO MATHEW on or before 15th January, 2015. IN ADDITION, the same details shall be sent by Bino Mathew to muckadackal@yahoo.com or before 15th January 2015. These two actions shall be a requirement for timely payment of agreed payment.
6. If Bino Mathew refuses to receive the payment, or said Bino Mathew is not reachable for any reason to receive/hand over the agreed amount, the appellants herein, shall be at liberty to transfer/deposit the agreed payment on any day on or before 30th January 2015 in the given account of Mr.Bino Mathew. This would operate as agreed payment is made and received.
7. In case the account details of Mr.Bino Mathew is not available, the appellants herein namely John and Aliyamma shall be at liberty to deposit the said amount before the Hon'ble Court in OS 500/2011 either direct deposit or production of DD.
8. The photocopy of the Demand Draft OR the proof of transfer to the account of Bino Mathew OR proof of

deposit of the DD or amount with the Principal Sub Court, Ernakulam shall be a sufficient proof for GCDA and Blue Dot regarding the payment to Bino Mathew under this Agreement.

9. The sale agreement executed by the Blue Dot Constructions (Pvt.) Limited in favour of Mr.Bino Mathew in respect of the Plaint Schedule Property bearing No.955/2009 of the Office of the Sub Registrar, Ernakulam in Stamp Paper No.W498953 which is the subject matter of O.S.500/2011 will stand terminated and cancelled on payment of Rs.17,50,000/- as referred to in Clause 2 and 4 in view of the settlement. The said Agreement shall not be binding on the said property.
10. GCDA shall not make any claim, demand any documents for registration, than ensuring the agreed payments to Mr.Bino Mathew. All the amounts payable to GCDA under any head by any of the parties under the transaction of the scheduled property covered by this Agreement stands received. No further documents shall be required or demanded by GCDA for registration of the Sale Deed into the name of the Appellants or their nominees.
11. No consent or approval of any sort is required for registration of the plaint schedule property into the name of the Appellants by GCDA. Blue Dot do hereby relinquishes all their rights and claims over the Plaint Schedule Property to the Appellants.
12. If GCDA refuses to register the Sale Deed in the name of the Appellants or their nominees even after making the agreed payment to Mr.Bino Mathew, the Appellant shall

have the right to specifically enforce the registration of the Sale Deed, in their/nominees name without any further payment through Court as execution of this compromise deed/decreed.

13. The defendants namely GCDA, Blue Dot Constructions (Pvt) Limited and Mr.Bino Mathew have no objection in refunding the court fees in OS No.242/2012 of Principal Munsiff Court, Ernakulam and RFA No.539/2014 before the Hon'ble High Court, Ernakulam to the Plaintiffs and Appellants in the respective cases. If required Blue Dot shall file a petition to set aside the ex parte decree in OS 242/2012 so as to enter into a compromise in favour of the Appellants.
14. The Defendants in O.S.500/2011, namely GCDA and Blue Dot Constructions (Pvt)Limited have no objection in refunding the court fees to the Plaintiff, Mr.Bino Mathew in the said suit. Blue Dot's construction will file a CrI.M.C. U/s.482 of Cr.P.C. before the HC of Kerala to quash the proceedings in CC.338/13 pending before CJM, Ekm in view of the above final settlement arrived.
15. The Judgment and decree may be passed in terms of this agreement and this compromise petition may be made part of the decree.
16. Parties have agreed to suffer their other respective costs.
17. If the payment of Rs.17,50,000/- as stated in Clause 2 & 4 is not paid to Bino Mathew, the plaintiff in O.S.No.500/2011 on or before 30-01-2015, the same shall carry 18% interest p.a. upon the agreed amount from 30.01.2015 until the date of payment. The

scheduled property shall carry charge of such defaulted amount and Mr.Bino Mathew shall have the right to realise the defaulted amount as above through court.”

6. In view of the compromise entered into between the parties, we set aside the impugned judgment and decree 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 in the compromise petition dated 28.1.2015. It will be open to the appellants and Sri Bino Mathew who is the plaintiff in O.S.No.500 of 2011 on the file of the Court of the Principal Subordinate Judge of Ernakulam to act in terms of the compromise recorded in the compromise petition dated 28.1.2015 and seek withdrawal of O.S.No.500 of 2011, on production of a certified copy of this judgment.

7. The Registry shall send back the lower court records in O.S.No.242 of 2012 forthwith to the Court of the Principal Subordinate Judge of Ernakulam, along with original of the compromise petition dated 28.1.2015 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 appellants shall be refunded the whole court fee paid on the memorandum of appeal in this case. It would also be open to

the appellants (who are the plaintiffs in O.S.No.242 of 2012 on the Court of the Principal Subordinate Judge of Ernakulam) and also Mr.Bino Mathew (who is the plaintiff in O.S.No.500 of 2011 on the file of the Court of the Principal Subordinate Judge 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.

Sd/-
P.N.RAVINDRAN,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn