

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

RSA.No. 1075 of 2015 (C)

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 229/2012 OF ADDL.DISTRICT
COURT-1, KOTTAYAM DATED 17-01-2015)**

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 496/2009 OF ADDL.SUB
COURT, KOTTAYAM DATED 14-03-2012)**

APPELLANT/APPELLANT BEFORE THE LOWER APPELLATE/PLAINTIFF IN THE SUIT:

**VARGHESE VARGESE,
S/O.VARGHESE CHACHO, AGED 54 YEARS,
KADUVAKKUZHIYIL, MANARACADU VILLAGE,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.M.P.SREEKRISHNAN
SMT.M.H.BINDU**

RESPONDENT/RESPONDENT IN LAC/RESPONDENT IN THE SUIT:

**K.K.CHACHO, S/O.VARGHESE CHACHO, AGED 46 YEARS,
KIZHAKKEDATHU HOUSE, MANARACADU VILLAGE,
KOTTAYAM DISTRICT, PIN-686 610.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.S.A.No.1075 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

The plaintiff in a suit for realisation of money is the appellant in this Second Appeal.

2. The plaint schedule property belongs to the defendant. The case of the plaintiff is that on 1.5.2008, he entered into Ext.A1 agreement for purchase of the plaint schedule property from the defendant after paying a sum of Rs.50,001/- by way of advance sale consideration. It is also his case that later, on 3.8.2008, he has paid a sum of Rs.25,000/- also towards advance sale consideration. According to the plaintiff, the defendant has failed to convey the plaint schedule property as per the terms of the agreement and hence the suit for realisation of the advance sale consideration of Rs.75,001/- with

interest and costs. The defendant admitted the transaction. But, according to him, only a sum of Rs.5,000/- was collected by him by way of advance sale consideration on 1.5.2008 and that therefore, the money due to the plaintiff from him is only Rs.30,000/- and not Rs.75,001/-. The trial court accepted the case of the defendant and passed a decree permitting the plaintiff to recover a sum of Rs.30,000/- from the defendant. The appellate court, on a re-appraisal of the entire materials on record, confirmed the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions of the courts below, has thus come up in the Second Appeal.

3. Heard the learned counsel for the appellant.

4. The only question to be considered is as to whether the case of the plaintiff that he has paid a sum of Rs.50,001/- to the defendant on 1.5.2008 has been established by him. The said question is a pure question of fact. Both the courts below have found that only a sum of Rs.5,000/- has been paid by the plaintiff to the defendant on 1.5.2008. According to

me, the correctness of the said finding cannot be canvassed by the plaintiff in this Second Appeal filed under Section 100 of Code of Civil Procedure. That apart, Ext.A1 is the agreement for sale entered into between the plaintiff and the defendant. Ext.A1 is a document prepared in the handwriting of the defendant. It does not recite the advance sale consideration paid by the plaintiff to the defendant on 1.5.2008, in words. In other words, the advance amount paid by the plaintiff to the defendant on the date of agreement is shown in Ext.A1 agreement only in figures. After writing the figure 'five' and three zeros, there is a stroke. According to the plaintiff, the stroke after the figure 5000 is one and therefore, the advance paid is liable to be reckoned as Rs.50,001/-. According to the defendant, the stroke after the figure 5000 is not part of the figure and therefore, the advance paid is liable to be reckoned as Rs.5,000/- only. Ext.A2 is the receipt issued by the defendant to the plaintiff on 3.8.2008 while accepting Rs.25,000/- more towards advance sale consideration from the plaintiff. Ext.A2 also contains a stroke after the figure

'25000'. If the stroke contained in Ext.A2 after the figure '25000' is understood as figure 1, the advance paid on 3.8.2008 would be Rs.2,50,001/-. The plaintiff has no such case. In the said circumstances, I do not find any reason to interfere with the concurrent decisions of the courts below in this Second Appeal filed under Section 100 of the Code of Civil Procedure. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal is devoid of merits and the same is dismissed *in limine*.

P.B.SURESH KUMAR, JUDGE.

smm