

Jose Vs. Lazar and Another

Jose Vs. Lazar and Another

SooperKanoon Citation : sooperkanoon.com/1136857

Court : Kerala

Decided On : Apr-02-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Jose

Respondent : Lazar and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW WEDNESDAY, THE 2D DAY OF APRIL 2014 12TH CHAITHRA, 1936 RFA.No. 561 of 2008 ()
----- OS2652006 of PRINCIPAL SUB COURT, THRISSUR

===== APPELLANT/PLAINTIFF: -----

JOSE, PENSIONER, S/O. ALAPPADAN VARGHESE PALISSERY VILLAGE DESOM, THRISSUR TALUK. BY ADVS.SRI.P.SANTHOSH (PODUVAL) SMT.R.RAJITHA

RESPONDENTS/DEFENDANTS:

----- 1. LAZAR, S/O. KURUTHUKULAGARA VARGHESE PARALAM VILLAGE DESOM, THRISSUR TALUK.

2. ALPHONSA @ OMANA, W/O KURUTHUKULANGARA LAZAR, PARALAM VILLAGE DESOM, THRISSUR TALUK. BY ADV. SRI.K.S.RAJESH BY ADV. SRI.M.SHAJU PURUSHOTHAMAN THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 02/04-2014, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: RFA NO. 561/08 APPENDIX PETITIONER'S EXHIBITS ANNEXURE A ORIGINAL COPY OF THE RECEIPT EVIDENCEING THE PAYMENT MADE BY THE APPELLANT THROUGH THE INDIAN BANK FOR AN AMOUNT OF RS.25,000/- ANNEXURE B ORIGINAL COPY OF THE RECEIPT EVIDENCEING THE PAYMENT MADE BY THE APPELLANT THROUGH THE INDIA BANK FOR AN AMOUNT OF RS.25,000/- ANNEXURE C ORIGINAL COPY OF THE RECEIPT EVIDENCING THE PAYMENT MADE BY THE APPELLANT THROUGH THE INDIAN BANK FOR AN AMOUNT OF RS.27,000/- ANNEXURE D ORIGINAL COPY OF THE RECEIPT EVIDENCING THE PAYMENT MADE BY THE APPELLANT THROUGH THE INDIAN BANK FOR AN AMOUNT OF RS.30,000/- ANNEXURE E ORIGINAL COPY OF THE RECEIPT EVIDENCING THE PAYMENT MADE BY THE APPELLANT TO THE KANIMANGALAM KURIES FOR AN AMOUNT OF RS.50,000/- DATED 28.09.2005 RESPONDENTS' EXHIBITS NIL // TRUE COPY // P.A. TO JUDGE SD T.R. RAMACHANDRAN NAIR & K.ABRAHAM MATHEW, JJ
----- R.F.A. No. 561 of 2008
----- Dated this the 2nd day of April, 2014.

JUDGMENT

T.R.Ramachandran Nair, J.

This is an appeal filed by the plaintiff, challenging the decree in O.S.No. 265/2006 of the Principal Sub Court, Thrissur.

2. We heard learned counsel for the appellant and learned counsel for the respondents.
3. Learned counsel for the appellant prayed for remand of the matter for fresh consideration after allowing both parties to adduce evidence. It is submitted that the defendants did not contest the suit though they filed a written statement. It is submitted that since the respondent/defendants did not contest the matter, only a proof affidavit was filed.
4. Learned counsel for the respondents also submitted that if the matter is being remanded, the respondents may also be allowed an opportunity to contest the

matter.

5. The suit is one for specific performance of the contract. It is alleged that the total consideration shown was `11 Lakhs and `4 Lakhs was given as advance on 01.07.2005. Again, R.F.A. No. 561 of 2008 2 plaintiff paid `3 Lakhs on 20.09.2005 and ` 1 Lakh on 28.09.2005 to discharge some liabilities of the property with a bank. According to the stand taken by the defendants in the written statement, they did not receive any amount as advance. But actually, they have borrowed only ` 2 Lakhs and there is no other transactions. The suit was only partly decreed.

6. After going through the findings, we are also of the view that plaintiff and the defendants can be given an opportunity to adduce fresh evidence. Accordingly, the judgment and decree are set aside and the matter is remanded to the court below for fresh consideration. Parties will appear on 28.05.2014. The court below will take steps expeditiously to dispose of the suit, at any rate, within a period of six months. Appeal is allowed. Parties will suffer their costs in the appeal. Sd/- T.R.RAMACHANRAN NAIR, JUDGE Sd/- K.ABRAHAM MATHEW, JUDGE SD // TRUE COPY // P.A. TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com