

K.X.Xavier vs Rajesh

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Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : RFA/604/2010

Appellant : K.X.Xavier

Respondent : Rajesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 RFA
NO. 604 OF 2010 AGAINST THE JUDGMENT AND DECREE IN OS
NO.1106/2008 OF PRINCIPAL SUB COURT, ERNAKULAM DATED
27/03/2010 ----- APPELLANT/1ST DEFENDANT: K.X.XAVIER S/O
K.C.XAVIER, KOVATT HOUSE, KATHRIKADAVU DESOM,
ELAMKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM
DISTRICT. BY ADVS. K.V.BHADRA KUMARI T.C.MARYKUTTY
RESPONDENTS/PLAINTIFF & 2ND DEFENDANT: 1 RAJESH, S/O
RAGHAVAN, VARIPPADATH, MARADU.P.O., MARADU VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT-682304. 2

V.M.OMANA, D/O. MADHAVAN, VALLINGATHUNDY, NORTH PALATHURUTHY, KALOOR, KOCHI-682017. BY ADVS. A.B.XAVIER J.JULIAN XAVIER JOSE. V.V. (THENGATHARA) SANTHOSH G. PRABHU THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 30.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Dated this the 30th day of June, 2023

J U D G M E N T

The decree for return of advance sale consideration is under challenge by the first defendant.

2. According to the plaintiff, on 21.08.2007 the first defendant entered into Ext.A1 agreement with the plaintiff whereunder 5.03 cents of property was agreed

to be conveyed to the plaintiff. The total sale consideration fixed was ` 2,50,000/-. The advance sale consideration paid was ` 2 lakhs. The period fixed for performance was six months. Subsequently the period was extended for a further duration of six months. Alleging that the first defendant is not co-operating to go ahead with the agreement and that the plaintiff is satisfied with the return of the advance sale consideration, the suit was filed.

-: 2 :-

3. The first defendant denied Ext.A1 agreement. It was contended that Ext.A1 is a fabricated and forged document. The signature in Ext.A1 was denied. It was contended that no amount was received from the plaintiff.

4. The trial court on appreciating the evidence upheld Ext.A1 agreement and granted a decree as prayed for by the plaintiff.

5. Heard learned counsel on either side.

6. The main point that arises for determination is

regarding the genuineness of Ext.A1 agreement. Ext.A1 contains the signature and thumb impression purported to be that of the first defendant. The plaintiff caused the Bank Account opening form of the first defendant to be summoned. The same was marked as Ext.X1. The same contains the signature of the first defendant. The Bank manager was examined. Ext.A5 is the power of attorney executed by the first defendant in favour of the second defendant. The first defendant denied the signature in -: 3 :- Ext.A5 also. Ext.A5 is a notarised power of attorney. PW4 is the notary who attested the power of attorney. He has deposed in favour of execution.

7. Ext.A1 contains the thumb impression of the

first defendant in addition to the signature. It was open for the first defendant to take appropriate steps to have the same compared with his thumb impression. However, such a course was not adopted to by him.

8. There are yet another circumstances available,

to find the genuineness of the transaction. It is the case of the first defendant that the second defendant who had access to the house of the first defendant had stolen certain cheques and the title deed relating to the property. Though according to the first defendant a police complaint was filed with the said regard, there

is no evidence regarding the same. Exts.B3 and B4 agreements have been produced by the first defendant to show that the second defendant had agreed to return the title deeds. However, the contents of Exts.B3 and B4 -: 4 :- negatives the first defendants allegation of theft. No steps have been taken by the first defendant against the second defendant in respect of the alleged theft. As noticed earlier, the genuineness of the power of attorney executed by the first defendant in favour of the second defendant has been vouched to by PW4, the Notary Public.

9. The period of Ext.A1 agreement was extended for a further period of six months by the second defendant as power of attorney holder of the first defendant.

10. The entire circumstances justify the conclusion

of the trial court with regard to the genuineness of Ext.A1 agreement. Ext.A1 having found to be genuine, the first defendant is bound to return the advance sale consideration paid, with interest.

11. It is seen that the trial court has granted interest at 18% per annum from the date of suit till date of decree. The rate granted is arbitrary and unjustifiable. Considering the entire facts of the case -: 5 :-

and the prevailing rate of interest in Banking transactions, it is deemed that grant of interest at the rate of 6% per annum from the date of suit till date of decree is just and reasonable. In the result, this appeal is allowed in part. The decree and judgment of the trial court is modified re- fixing the rate of interest from date of suit till date of decree at 6% per annum. In all other respects, the decree of the trial court will stand affirmed. Sd/- SATHISH NINAN JUDGE kns/- //True Copy// P.S. to Judge

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