

In the High Court of Judicature of the State of Travancore-Cochin  
at Ernakulam.

Monday the 21st March 1955.

Present

The Hon'ble Justice Shri K. Sankaran &  
The Hon'ble Justice Shri M.S. Menon.

A.S. No. 5 of 1953.

O.S.No.49 of 1125 on the file of the Trichur District Court.  
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Appellant: Narayanan Namboodri Neelakantan Namboodri, Padinjatte-  
dathu Puthenveli Manakkal, alias Jantteeyala, Puthen-  
velikkara, Puthenvelikkara Pakuthy, Paravoor Taluk.  
(Defendant).

By Advocate Shri N.D.P. Nambooripad.

Respondent: Balakrishna Pisharadi, son of Padinjare Thonnangamathu  
Pisharathu Narayani Pisharassiar, Thrissivaperoor Vil-  
lage. (Plaintiff).

By Advocate Shri M.K. Narayana Menon.

This appeal having been finally heard today the court delivered  
the following

Judgment.  
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The defendant is the appellant. The suit is based on the agreement Ext.A executed by the defendant in favour of the plaintiff on 22.2.1123. Ext.II of the same ~~year~~ date is the counterpart executed by the plaintiff to the defendant. The contract was for the sale of a building which the defendant had purchased from the guardian of a minor. The price agreed was Rs.4000 of which Rs.1200 was paid as advance under Ext.A. The period fixed for completing the sale and removal of the building was up to 10.3.123. The contract fell through and hence the plaintiff instituted the suit for the return of the advance amount of Rs.1200 and also for a further sum of Rs.1000 by way of damages. The lower court negatived the claim for damages and decreed the suit in respect of the advance amount. Plaintiff has submitted to the decree while the defendant has come up in appeal.

2. The only question for consideration is whether the contract

fell through on account of the default of the defendant in fulfilling his part of the agreement within the stipulated period. Soon after the date of the agreement, the guardian of the minor to whom the building belonged, sent Ext.B notice on 30.2.1123 to the plaintiff intimating that the defendant had not paid the price of the building ~~at the guidance and bid of the guardian~~ and that unless that amount is paid, the building will not be allowed to be removed. Plaintiff intimated the fact of such a notice to the defendant promptly. The defendant promised that he will pacify the guardian and see that he agrees to the removal of the building. Beyond making such a promise nothing was done in that direction. Hence on 9.3.1123 the plaintiff issued Ext.I notice to the defendant stating ~~all~~ all the facts mentioned above and also that the defendant will be ~~liable~~ held answerable in case he does not make the building available to the plaintiff. No doubt this notice was received by the defendant only a few days after 10.3.1123 the last date for performance of the contract. But there is the significant fact that the defendant did not care to reply to Ext.I notice or even to deny from the witness box when he was examined as D.W.1 the truth of the averments made in Ext.I. Hence it has to be taken that plaintiff had drawn timely attention to the obstruction caused by the minor's guardian and yet the defendant did not care to facilitate the removal of the building by the plaintiff. The lower court has also definitely found that the defendant was not in a position to carry out his part of the agreement when he entered into the same. It may also be mentioned that the guardian is the defendant's sister's husband and that when the plaintiff was discussing with the defendant about the objection raised by the guardian, the defendant did not ask anything about it to the guardian who was also present. Still another significant fact is that the guardian later on sold the building to a third party who was able to remove the building without any objection from the defendant. The defendant who had executed Ext.A as if he had

become the owner of the building, has not yet filed any suit to vindicate his supposed rights. All these facts have come out from his own evidence as D.W.1. Thus there can be no <sup>doubt</sup> default that the defaulting party was the defendant himself and that the decree for the return of the advance amount paid under Ext.A calls for no interference.

3. In the result this appeal is dismissed with costs.

(Sd) K.Sankaran, Judge.

(Sd) M.S. Menon, Judge.

(True copy)

21-3-55  
Confrmed by

K. Sankaran

M. S. Menon

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h. Menon  
Deputy Registrar,  
for Registrar.