

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 31ST DAY OF JANUARY 2014/11TH MAGHA, 1935

RSA.No. 92 of 2014

AGAINST THE JUDGMENT IN APPEAL SUIT NO. 229/2012 & 232/2012 OF
SUB COURT, KANNUR DATED 16-08-2013

...
AGAINST THE JUDGMENT IN OS NO.116/2009 OF ADDL.MUNSIFF'S COURT,
KANNUR DATED 24-01-2011

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APPELLANT(S)/APPELLANT/PLAINTIFF:

MULIYIL KISHORE KUMAR, AGED 52 YEARS,
S/O.BHARATHAN, KAMBIL HOUSE, PALLIKUNNU,
KANNUR DISTRICT.

BY ADVS.SRI.K.RAJESH SUKUMARAN
SRI.R.SREEHARI

RESPONDENT(S)/RESPONDENT/DEFENDANT:

ACHAVATH PARAKATTU MALIKAPURAYIL SOOPYKUTTY,
AGED 65 YEARS, S/O.HASSANKUTTY, 'MARHABA', THAYATHERU,
KANNUR 670 010.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 31-01-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Kss

P.BHAVADASAN, J.

R.S.A. No. 92 of 2014

Dated this the 31st day of January, 2014

J U D G M E N T

The appellant who is the plaintiff before the trial court took the premises, involved in this proceedings, on lease for running a workshop. The allegation is that at the time when the building was taken on lease, there was an undertaking that the land lord would carry out sufficient repairs and the plaintiff claimed that he had entrusted a sum of ₹ 20,000/- for that purpose. That was not done and the building gave way causing damages to the plaintiff. He therefore filed a suit for damages.

2. The defendant resisted the suit by pointing out that there was no such undertaking and that in fact, the plaintiff had taken two rooms on lease under a common roof. He had, without the permission of the land lord, removed the intervening wall and thereby weakening the building and that caused the building to collapse. He made a counter claim for the damages suffered by him.

3. The trial court raised necessary issues for consideration. The evidence consist of testimony of PWs 1 to 4 and had Exts. A1 to A4 marked. The defendant had DWs1 examined and had Exts.B1 to B12 marked. Exts. C1 and C2 are the Commissioner's report and plan.

4. On an appreciation of the evidence in the case, the courts below came to the conclusion that there was no evidence of any undertaking by the land lord to effect necessary repairs and also that there was no sufficient evidence to establish the claim for damages made by the plaintiff. Accordingly, the suit was dismissed. The same was the fate of the counter claim also.

5. The matter was carried in appeal and the appellate court concurred with the findings of the court below and dismissed the appeal filed by the appellant. The appeal against the counter claim was also dismissed.

6. The learned counsel appearing for the appellant pointed out that the Commission report tells the state of the

building at the time of taking it on lease and the Commissioner's report also discloses that damages suffered as a result of the collapse of the building. It is contended that Commission report has not been properly evaluated by the courts below. It is also contended that the reason for rejecting the evidence adduced by the plaintiff with regard to the loss sustained by him is also unsustainable both on facts and in law.

7. Though the argument may look attractive at the first blush, they are without any basis whatsoever. There is nothing to show that there was any undertaking by the land lord at the relevant time that he would carry out necessary repairs and make the building suitable for occupation of the tenant. It is evident that a tenant had taken the premises with open eyes on lease and the agreement for the same does not indicate that there was any undertaking by the land lord to do any repairs or to make it suitable enough for occupation of the tenant. In the absence of any such recital

in the lease agreement, the claim based on an oral agreement cannot be countenanced. The courts below were therefore justified in rejecting the said claim.

8. Both the courts below have given cogent and convincing reason as to why the evidence adduced regarding the damages cannot be accepted. Ext.A1 series which is taken aid of by the plaintiff, according to both the courts below, have not been properly proved. The view taken by the courts below in this regard is a legal and possible view and it could not be said that conclusions drawn by the courts below are either perverse or contrary to the evidence on record. The mere fact that a different view is possible, this Court will not be justified in interfering with the findings of the court below.

The second appeal is without any merits and is accordingly dismissed.

**P.BHAVADASAN
JUDGE**

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