IN THE COURT OF THE ADDL.DISTRICT JUDGE-I, MAVELIKARA

Present:-Smt.V.G.Sreedevi, Addl.District Judge-I

Wednesday, the 25th day of March, 2026/4th Chaithram,1948

A.S.No.59/2024
(Filed on:15.10.2024)

(OS. No. 38/2022 on the file of Sub Court, Chengannur)

Appellant /Defendant : Suresh Kumar, aged 55 years,
S/o. Karunakran, Lavanya Veedu,
From Thaikoottathil,
Punthala Earam Muri,
Venmony Village, Chengannur Taluk.
(By Adv.Mujeeb Rehuman.A)

Respondent / Plaintiff : Shaji kumar, aged 65,
S/o.Bharathan,
Santhi Nikethan Veedu,
Punthala Earam Muri,
Venmony Village,
Chengannur Taluk.
(By Adv.T.V.Indu)

This appeal having been finally heard on 10.02.2026 and the court on the 25.03.2026 delivered the following:-

JUDGMENT

This appeal is preferred against the decree and judgment passed by the learned Sub Judge, Chengannur in O.S.38/2022. By the said judgment, the suit was decreed.

2. Aggrieved defendant is the appellant.

3. Averments in the plaint, in brief, are as follows:- The plaintiff and defendant are neighbours. The wife of the defendant

Renjini is the neighbour of the plaintiff's father's sister. After the marriage of Renjini, she started living at Venmoney and she was in good terms with the family of the defendant. The defendant is conducting financial institution for lending money on pledging gold ornaments. Whenever the defendant was in need of money, he approached the plaintiff and used to borrow money, and that would be repaid in time. So, the plaintiff had trust upon the defendant's dealings.

4. In connection with the loan transaction, after a discussion between the plaintiff, defendant and his wife Renjini, it is agreed that ₹17,10,000/- will be repaid by the defendant as and when demanded by the plaintiff. Thus, the defendant and his wife reached the house of plaintiff viz. 'Santhinikethan' on 26.10.2021 and executed an agreement on a stamp paper and handed over the same to the plaintiff. The same has been produced before the Court.

5. From the said amount, ₹30,500/- on 27.11.2021, ₹40,000/- on 08.12.2021, ₹20,000/- on 15.01.2022, ₹40,000/- on 10.02.2022, ₹60,000/- on 09.03.2022, ₹35,500/- on 28.08.2022 were transferred by the defendant through his account in Kerala Gramin Bank, Kulanada branch to the account of the plaintiff in Federal Bank, Venmoney branch. Thus, a total sum of ₹2,26,000/-

has been repaid. For the balance amount of ₹14,94,000/-, the defendant is liable. In order to repay the outstanding liability, the plaintiff approached the defendant several times, but the amount was not paid. Therefore, the plaintiff is entitled to realize the said amount from the movable and immovable properties of the defendant. Hence, the suit.

6. The defendant filed written statement through his daughter, the power of attorney holder with the following contentions:- The suit is not maintainable. The defendant is her father. In connection with his job, he is not available in the Station. The power of attorney holder is personally aware of the facts. It is incorrect to say that the plaintiff and defendant are neighbours. Likewise, it is also incorrect to say that they are family friends. But, it is true that her father is conducting financial institution in which gold is being pledged and money is being advanced. Now, the said institution is not functioning. Her father never borrowed any amount from the plaintiff.

7. The defendant has no connection with the document produced by the plaintiff. The defendant and his wife had no occasion to sign any document in favour of the plaintiff. The defendant or his wife had never gone to the house of the plaintiff and signed on a stamp paper. It is a fabricated document and the

handwriting in that document is not that of the defendant. The defendant has no liability to pay any amount and there is no outstanding liability. The plaintiff has not produced any document to show the tax returns given for the said amount.

8. There is no cause of action. The statement of account as well as interest calculated are not correct. The suit valuation is also not correct. The attempt of the plaintiff is to grab money from the defendant by fabricating a document. The defendant has no objection in sending the document to the handwriting expert to prove the handwriting of the document. In the document produced, the address of the defendant is not available and it is not mentioned when the amount was borrowed. Hence the suit is liable to be dismissed with costs.

9. When the plaint was amended with respect to the amount that was subsequently paid to the plaintiff, additional written statement was filed by the defendant himself and it is contended as follows:- There was no payment from the account of the defendant to the account of the plaintiff. The daughter of the defendant Lekshmi used to send money from the account of the defendant to the account of the wife of the plaintiff, Sudharma. The averment that an amount of ₹14,94,000/- is liable to be paid by the defendant to the plaintiff is false. The averment that

₹36,500/- has been repaid by the defendant to the plaintiff on 28.08.2022 through bank is also false. On the said day, the daughter of the defendant transferred money from his account to the account of Sudharma.

10. There was money transaction between the elder daughter of defendant Lekshmi and the wife of plaintiff Sudharma, and the daughter has not informed about the same to the defendant. When the plaint was amended, then only the defendant came to know the transfer of money from his account to the account of the wife of the plaintiff by his daughter. When the amount was transferred through the mobile phone of the defendant to the plaintiff's wife, his daughter was not aware that the said account was a joint account of the plaintiff also. There was no connection with the amount alleged in the plaint and as that of the amount that was transferred by his daughter to the account of the plaintiff and his wife. Hence, the suit is liable to be dismissed.

11. On the basis of the above pleadings, the learned Sub Judge has framed necessary issues, and thereafter, evidence was taken, thereby, on the side of the plaintiff, PWs1 to 3 were examined and Exts.A1 to A8 series were marked; and on the side of the defendants, DWs1 to 3 were examined and Exts.B1 to B3 were marked; third party exhibits were marked as Exts.X1, X2,

X2(a) to X2(g) were also marked. After hearing both sides and considering the evidence, the learned Sub Judge decreed the suit.

12. Aggrieved by the said judgment, the defendant has come up with this appeal, raising various grounds.

13. Heard both sides.

14. The learned counsel for the appellant/defendant has filed argument notes.

15. The points that arise for consideration are:-

1. ***Did the defendant borrow ₹17,10,000/- from the plaintiff and execute Ext.A1 consent letter, as alleged?***
2. ***Did the plaintiff entitled to realize the plaint amount of ₹14,94,000/- together with interest from the defendant, as prayed for?***
3. ***Reliefs and costs.***

16. **Point Nos.1 and 2 :-** For brevity and convenience, these points are considered together. The parties and events are referred to as they are available before the trial court. The suit is filed by the plaintiff alleging that the defendant, who is a family friend and neighbour conducting a financiers, used to borrow money from him and at last, after discussing the matter and settling the account, the defendant and his wife DW3 reached the residence of the plaintiff, PW1 and executed a consent letter, Ext.A1 on a 100 Rupee stamp paper, undertaking to repay the

amount of ₹17,10,000/- as and when demanded by PW1.

17. When the amount was borrowed, whether it was a lump sum payment, what is the period agreed for the repayment, etc. are not available in Ext.A1 document. There is no date in the said document. It was not witnessed by anyone on perusal of the document, and there is blank space regarding the house address of the plaintiff. As per the testimony of PW1, plaintiff, there were other persons available and those two persons were examined as PWs2 and 3.

18. The suit was filed as early as on 25.11.2022. The prayer in the suit was for realization of ₹17,10,000/- with interest. Subsequently, the plaint was amended on 16.03.2024 and it was made clear that on six occasions, amount was seen repaid by the defendant through his account in the account of PW1 and the total of the said amount would come to ₹2,26,000/-. So, the balance outstanding was only ₹14,94,000/-.

19. On the other hand, the defendant is denying the friendship of PW1 and him, the borrowal of the amount as well as the execution of the consent letter, Ext.A1. He has even denied any kind of money transaction between PW1 and him. He came to know about the said fact only when the account was verified. The defendant has even disputed the financial capacity of PW1 to lend

this much amount as loan.

20. When the plaint was amended, additional written statement was filed, and in the additional written statement, the defendant has a case that the amount that was deposited in the account of PW1 was not with respect to this transaction and there was no payment in the account of the plaintiff by the defendant. The payments were effected by his elder daughter Lekshmi to the account of the wife of PW1, Sudharma.

21. The defendant has a further case that Lekshmi borrowed money from the wife of PW1 and that was repaid through the Gpay account of the defendant to the account of Sudharma. Apart from that, there was no liability outstanding. The signatures seen in Ext.A1 are not that of the defendant or his wife DW3, and there was no occasion for them to execute such a document. It is a fabricated one.

22. In the background of these rival contentions, the parties have adduced evidence. PW1, the plaintiff is a retired Military Officer and he was working in the Southern Railway. He is getting pension from both the employers. So, he is asserting that he has sufficient financial capacity. He would further say that there was a criminal case against him in the Assistant Sessions Court, Chengannur and that has been finally settled. The defendant is a

man conducting a financiers, in which, gold loan business was being conducted, but that institution is now defunct. Whenever the defendant was said to have some financial difficulty, he used to borrow money from PW1 and that amount has been accumulated and at last came to ₹17,10,000/-. This is the case set up by PW1.

23. PW1 would further say that he used to avail agricultural loans from Nationalized banks by pledging gold ornaments which has only 4% interest. He also used to take loan from his Fixed Deposit account, for that, only 2% interest has to be paid. During that period he used to get 7% interest from the F.D. account. That means when PW1 was getting money by pledging gold ornaments as well as taking loan from fixed deposit and was said to have lend the same to the defendant, it cannot be believed that it was not for interest. Even though he would assert that he is not a money lender, during the course of evidence, he would admit that the defendant used to give him interest @12% for ₹1 lakh and that payment was there up to 6 – 7 months.

24. PW1 has account in the Federal Bank as well as SBI in Kulanada and Venmoney and his wife Sudharma is holding the primary account in the Federal Bank. PW1 is only the joint account holder of his wife. He tried to say some dates with respect to the alleged transaction, but he could not assert and say

the exact amount. According to him, on 04.11.2019, ₹1 lakh and above was borrowed by cash. The first amount that was paid in connection with this transaction is ₹20,000/- on 16.08.2020, on the second time, ₹2,10,000/- was paid and then another ₹30,000/-. There were payments of ₹1 lakh and ₹3 lakh, and in April 2021, ₹3,80,000/- was paid. After bidding a chitty, ₹4 lakh was also paid. Again he would say that after giving the consent letter, the defendant went away from the native place in September, 2022.

25. PW1 would further say that he used to give money as loan to other persons also. When he retired from Railway in March, 2021, ₹3 lakh has been paid to the defendant. Regarding the other meticulous dates, he could not recollect and he would say that he has to check the accounts.

26. The witness to the alleged money transaction is PW2, a milk vendor. He would say that he is residing three houses away from the house of PW1. He was not actually aware of the transaction, but on the day when he reached the house of the plaintiff-PW1, he saw Renjini, DW3 writing something on a 100 Rupee stamp paper. He did not go through the document. He along with PW1, wife of defendant-DW3 and PW3 were present there. During the entire evidence, the said disputed document, Ext.A1 has not tendered to the said witness so as to identify the

signature of DW3 or the defendant.

27. Likewise, PW3 who is a relative of PW1 when examined, he started to say some dates with respect to the alleged transaction, but he would concede that he could not correctly say the dates of each transaction. But, he would only assert that PW1 is not a money lender and even if any amount was paid, that would not be for interest. PW3 would further say that Sudharma had no money transaction with anyone. According to him, PW1 and the defendant have only this transaction between them. But, this has been disproved through the testimony of PW1 that there were early transactions also between him and the defendant, and after paying some amount and settling the account, the consent letter was said to have executed.

28. The Branch Manager of Federal Bank, Venmony branch was examined as DW1 and that evidence was admitted to prove that in the account of the wife of PW1, there were payments and that account holder has withdrawn an amount of ₹1,42,000/-. DW2 is the Branch Manager of SBI, Venmony branch, and the account statement of Lekshmi is Ext.X2 and UPID certificate is Ext.X1.

29. The amount alleged to have borrowed by the defendant from PW1 is a large sum. The case of PW1 that the defendant is

his neighbour as well as a family friend has been denied and disputed by the defendant. The other case set up by PW1 was that he is not a money lender and the amount given to the defendant was not for interest, but in the latter part of his examination, it was admitted that the amount given was for interest and interest @12% for ₹One lakh has been paid by the defendant for 6 – 7 months.

30. When Ext.A1 was disputed by the defendant, in order to prove that fact, PWs2 and 3 were examined. The presence of PWs2 and 3 at the time of execution of Ext.A1 does not find a place in the said document or in the plaint. When those persons ie., PW2 a milk vendor and PW3, a relative of PW1 were examined, Ext.A1 document was not tendered to them to prove that it was the same document they have seen at the house of PW1 and that was written by Renjini, DW3 and the defendant was available at the place.

31. PW2 fairly admitted that he did not go through the document. He had only hearsay information regarding the alleged transaction. PW3, the close relative of PW1 even though has a case that he is aware of the entire transaction, the details of transaction mentioned by him were not correct as per PW1's case. He had pinpointed a particular time as to when the document was

executed ie., 04.50 in the evening. He reached there at 04.30 p.m. and the document was signed by the parties at 04.50 p.m., whereas that fact is not seen corroborated when PW2 gave evidence. He could not exactly recollect the time at which he reached the said place.

32. The disputed document was not sent for comparison and no attempt was made from the side of PW1 to send the same to the forensic science laboratory. Instead of that, the admitted signatures of the defendant as well as DW3 were caused to be produced. Ext.B1 is the passport of DW3 to show her signature. Likewise, Ext.B2 is the power of attorney executed by the defendant in favour of his daughter Meenakshi Suresh in which DW3 is the witness. The said document was executed in the year 2022. So, that can be treated as a contemporary document. When this document was tendered to DW3, she denied her signature in Ext.B2. Ext.B3 is the copy of passport of the defendant which shows his signature also.

33. The learned Sub Judge ventured to take the responsibility to compare the signature in Ext.A1 with the admitted signatures. Exts.B1, B2 and B3 are the documents produced for the said comparison, but the signature in Ext.B2 was not seen admitted by DW3. Because of the said fact, the trial

Court has come to the conclusion that the evidence of DW3 is not believable because she has even disputed her own signature in Ext.B2.

34. Another aspect is that the defendant even though disputed any kind of transaction with PW1, it has been admitted when DW1 and 2 were examined that through the UPI account, using the mobile phone of the defendant, money transactions were done by the daughter of the defendant Lekshmi with Sudharma, wife of PW1. The case set up when the fact was specifically put to the witness, DW3, it has been deposed that for the purpose of building construction of a friend of the daughter of the defendant, the said daughter Lekshmi borrowed money from the wife of PW1 and those amounts are seen transferred to the account of Sudharma which is a joint account with PW1 also. Another aspect to be proved is the financial capacity of Sudharma who was said to have given large amount to the daughter of the defendant who is a student.

35. The conclusion reached by the learned Sub Judge that the transactions between Lekshmi and Sudharma were without the knowledge of DW3 and the defendant is quite unbelievable due to the fact that Lekshmi was only a student at the time of the said transaction. Apart from that, what is the acquaintance of

these parties for availing this much amount as loan, that too, for another family has not been established and therefore, the said story put forward is quite unbelievable.

36. There is no case that PW1 and the defendant are close acquaintance as per defence. The case of PW1 is that they are close neighbours and acquaintance as well as family friends, but that fact is disputed and denied in the written statement. So, the fact that without the knowledge of the parents, a daughter who is only a student had indulged in such a financial transaction including a huge amount appears to be impossible to believe for a prudent mind.

37. The most important aspect is that Ext.A1 is a document said to have executed by the defendant and DW3 on a 100 Rupee stamp paper acknowledging the liability of ₹17,10,000/- and there is an undertaking to repay the amount on demand. But, perusal of the said document would show that the house address of PW1 is not mentioned and it is kept blank. The amount in figure is seen corrected. There is no counter signature. There is no witness to the document. When the document executed is not proved apart from the oral testimonies of PWs1 to 3.

38. When a document is disputed and the witnesses said to have present at the time of execution when adduced evidence, it is

the duty of the person who wants a decree on the basis of that document to prove the document by tendering the same to the witnesses so as to convince the Court that this is the very same document that was said to have executed.

39. The learned counsel for the appellant/defendant has relied upon the decision in **2025(4) KHC 230, Adam Veettil Muhammed Saleem Madani v. Perinkadakattil Kamal Sherif**, in which, it is held that *when the suit is not upon a negotiable instrument but upon an agreement, the mere proof of its execution does not entail in any presumption regarding consideration or truth of the contents. Mere proof of execution of a document does not amount to proof of the contents and the truth of the recitals therein. This cardinal distinction is not to be overlooked.*

40. In **2003 KHC 1695, Narbada Devi Gupta V. Birendra Kumar Jaiswal and Another,** the Hon'ble Supreme Court held that *mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'.*

41. **2025 KHC OnLine 1120, Koranil Yusaf v. V.A. Firoz** is a case under the N.I. Act wherein, the appeal was dismissed on account of serious doubts about the existence of debt and about the transaction and the complainant failed to establish the source of funds. **2025 KHC OnLine 1136, Thangam v. V.V. Haridasan** is also case where the complainant failed to prove the financial capacity of the accused. Here, in this case, no attempt was made from the part of the plaintiff/PW1 to prove his source of income to lend this much money to the defendant. He served in Military as well as Southern Railway, and hence he could have very well produced the documents showing his income.

42. In **2003 KHC 1694, Kashi Nath (Dead) through Lrs. v. Jaganath**, the Hon'ble Apex Court held that adverse inference has to be drawn when the evidence is not in line with the pleadings.

43. The learned counsel for the appellant would argue that the issues framed by the trial Court are not proper and hence the finding of the trial Court without necessary issues is not binding on the parties to the suit, and to substantiate the said argument, he has relied upon **1970 KHC 654, Mohammed Mustafa v. Sri Abu Bakar and Others** and **1958 KHC 149, Moran Mar Basselios Catholicos v. T.P. Avora and Others**.

44. In **2023 (6) KHC 216, Saji M.N. v. K.R. Krishnakumar**, it is held that in order to have a fair trial, it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. In **2019(5) KHC 103, Subanamma Ninan and Others v. George Veeran**, the Hon'ble High Court held that non-disclosure of material facts was held to be fatal to the complainant's case in a prosecution under S.138 of the N.I.Act.

45. In **2015 (4) KHC 76, Paruthikkattuparambil Ayisha v. Permbra Abdul Nassar and Others**, the Hon'ble High Court held: "*In a case where entire transaction including payment of consideration is disputed by specific pleadings and challenged in evidence, burden will be heavily upon the person claiming payment of consideration, to prove it by clear, cogent and convincing evidence*".

46. So, on an overall evaluation of the entire evidence, I am of the view that even though there is evidence to show that there were transactions between PW1 and the defendant, the execution of Ext.A1 could not be proved. Therefore, I find that the conclusion reached by the learned Sub Judge cannot be supported and appreciated. Hence, I find that PW1 failed to prove Ext.A1 is executed by the defendant in favour of PW1 for the discharge of

the liability. So, these points are found against PW1/respondent and in favour of the defendant/appellant.

47. **<u>Point No.3:</u>-**

In the result,

The appeal is allowed, with costs thereby, the judgment and decree of the trial Court are set aside.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 25th day of March 2026.)

Sd/-
V.G.Sreedevi
Additional District Judge-I

<u>Appendix</u> : Nil

Id/-
Additional District Judge-I