

IN THE COURT OF PRINCIPAL SUB JUDGE, NORTH PARAVUR

Present:- Smt. Bharathi S. BA(L), LL.B., Prl. Sub Judge

Tuesday, the 19<sup>th</sup> day of December, 2017/28<sup>th</sup> Marghaseersha, 1939

**O.S.No.237/2016**

**Plaintiffs:-**

1. Mohammed Asaraf, aged 69 years, S/o.Abdhul Khadir Kavumkada, Munambam Muri, Kuzhuppilly Village.
2. Doulath Asaraf, aged 61 years, W/o.Mohammed Asaraf, Kavumkada, Munambam Muri, Kuzhuppilly Village.

By Advs. P.A.Hilal & P.H.Rishad.

**Defendants:-**

1. Sasidharan, aged about 45 years, S/o.Prabhakara Menon residing at Brahmani Veetil, H.No.48/390, Cochin Corporation, Elamakkara Kara, Edappally South Village, Kanayannur Taluk, Elamakkara P.O., Pin - 682 026.
2. Jayalakshmi, working in Dr.N.International School, N.Paravur, aged about 40 years, W/o.Sasidharan, residing at Brahmani Veetil, H.No.48/390, Cochin Corporation, Elamakkara Kara, Edappally South Village, Kanayannur Taluk, Elamakkara P.O., Pin - 682 026.
3. Santha Matha Spiritual Mission, Registered Office Santha Mandiram, N.Paravur, Pin - 683513. Represented by its Chairman, Dr.P.A.Nair.
4. Dr.P.Appukuttan Nair @ Dr.P.A.Nair, aged about 90years, residing at H.No.VI/73, Santha Mandiram, Paravoothara Muri, Paravoor Village, Paravoor Taluk.

5. Anitha, aged about 35 years, D/o.Appukuttan Nair, residing at H.No.VI/73, Santha Mandiram, Paravoothara Muri, Paravoor Village, Paravoor Taluk. Now working as Teacher, Jama Ath Public School, Alangad.

D1 & 2 - By Advs. M.G.Jeevan & K.Sainool Abdeen (Exparte)

D3 to 5 – By Adv. Salini Krishnakumar (Exparte)

This Suit having been finally heard on 15.12.2017 and the court on 19.12.2017 delivered the following:-

### **JUDGMENT**

Suit for money.

2. Plaintiff averments in brief, are as follows:- Defendants 4 and 5 were running schools at Paravur under the 3<sup>rd</sup> defendant trust. On the request of defendants 4 and 5, the plaintiffs paid an amount of Rs.13,00,000/- as loan to the 3<sup>rd</sup> defendant trust. But defendants 4 and 5 did not repay the said amount thereafter on repeated requests by the plaintiffs. While so, defendants 4 and 5 attempted to sell their properties to defendants 1 and 2. On enquiry, they promised the plaintiffs that they would repay the amount borrowed from the plaintiffs on getting the sale consideration or that they will make arrangement for payment of the amount by the proposed purchaser. Defendants 1 and 2 then issued a cheque for ₹.13,03,000/-dated 30.4.2015 to the 1<sup>st</sup> plaintiff. Defendants 4 and 5 agreed that their liability will be discharged only on encashing

the above cheque. But when the 1<sup>st</sup> plaintiff presented the cheque, the same was dishonoured for want of sufficient funds in the account of defendants 1 and 2. The defendants did not pay the amount even thereafter. Defendants 1 and 2 are liable to pay the amount since they agreed to repay the amount out of the sale consideration, at the time of purchase of property by them. Hence the suit for realising an amount of ₹.13,03,000/- from defendants 1 and 2, in the alternative for a decree allowing the plaintiff to realise the above amount from defendants 3 to 5.

3. Initially, all the defendants entered appearance and filed their written statement. But later, when the suit has come up in the list for evidence, the defendants stood ex-parte.

4. PW1 was examined and Exts.A1 to A3 were marked from the side of the plaintiffs.

5. Heard the learned counsel for the plaintiffs.

6. PW1, who is the 1<sup>st</sup> plaintiff, deposed in tune with the plaint averments. The evidence of PW1 and his documents are not challenged. Ext.A1 is the cheque issued from the joint account of defendants 1 and 2 in favour of the 1<sup>st</sup> plaintiff for Rs.13,03,000/-. Ext.A2 is a letter issued by defendants 4 and 5 stating that the accounts of plaintiffs with them

will be settled only on encashment of the above cheque. Ext.A3 would show that Ext.A1 cheque was dishonoured. Considering the unchallenged evidence of the plaintiffs, it is found that the plaintiffs have proved their claim in the suit. However, the plaintiffs have no case that all the defendants are jointly and severally liable for the amount. Their claim is for a decree against defendants 1 and 2. They claimed for a decree against defendants 3 to 5 only if it is found that defendants 1 and 2 are not liable to repay the amount to the plaintiffs. The evidence of PW1 and issuance of Ext.A1 cheque by defendants 1 and 2 would show that defendants 1 and 2 have undertaken the liability and agreed to pay the amount to the plaintiffs. There is no circumstance seen to find that the plaintiffs are not entitled to realise the suit amount from defendants 1 and 2. The plaintiffs are therefore entitled for a decree against these defendants. Since the claim against defendants 3 to 5 is made only as alternative remedy, they are not entitled for any decree against those defendants. Plaintiffs are also entitled to realise the costs of the suit from defendants 1 and 2.

***In the result***, suit decreed with costs against defendants 1 and 2 as follows:-

Defendants 1 and 2 shall pay the plaintiffs an amount of ₹.13,03,000/- (Rupees Thirteen lakhs three thousand only) with interest at the rate of 12% per annum from 01.05.2015 till the date of suit and thereafter with interest at the rate of 6% per annum till the date of realisation. Suit against defendants 3 to 5 dismissed.

(Dictated and prepared through Dragon Natural Speaking Software in my Laptop and pronounced by me in open court on this the 19<sup>th</sup> day of December 2017.)

Bharathi. S.,  
Principal Sub Judge.

Appendix

Plaintiff's Exhibits:-

- A1 30.04.2015 Cheque issued by Defendants 1 & 2.  
A2. 22.07.2015 Letter signed by plaintiffs and Defendants 4 & 5.  
A3. Dishonour memo.

Defendant's Exhibits:- Nil

Plaintiff's Witness:-

PW1 27.11.2017 Mohammed Asraf.

Defendant's Witness:- Nil

Principal Sub Judge

Typed by: Siji  
Com. By: