IN THE COURT OF THE SUB JUDGE, MUVATTUPUZHA
Present:- Sri. M. R. Sasi, B.A., LL.M., Sub Judge
Wednesday, the 21st day of August, 2019/30th Sravana 1941

O.S No. 60/2014

Plaintiff:-

Sree Gokulam Chit and Finance Company (P) Ltd, Arcot Road, Kodambakkam, Chennai- 600024, represented by Power of Attorney holder Jomy M C, S/o Chacko, (Senior Business Manager, Thodupuzha Branch)

By Adv. Smt. V K Beena.

Defendants:-

1. Mathew M Desouza, aged 50 years, residing at Mamootil House, Karimkunnam P.O, Thodupuzha Taluk.
2. Rani Desuza, aged 45 years, W/o of Mathew Desuza residing at Mamoottil House, Karimkunnam P.O, Thodupuzha Taluk.
3. Dominic, aged 50 years, S/o. Joseph, Pedickattukunnel House, Vazhakulam kara. Manjalloor Village, Muvattupuzha Taluk.

D1 & D2 No vakalath, set ex-parte
D3 By Adv. Sri. N. Ramesh

The above suit is coming for final hearing on 19.08.2019 in the presence of counsel for both sides and having stood over for consideration of entire records till this date, the court on this day delivered the following:-

JUDGMENT

1. This is a suit for realisation of money.

2. The plaint averments, in its nutshell, are as follows:- The plaintiff is a private limited company constituted under the Indian Companies Act, 1956. Its registered office is at Chennai and one of the branches at Thodupuzha. The plaintiff is represented by its Power of Attorney Holder. The plaintiff company has been engaged in chitty business. The 1st defendant had joined six chitties with the said branch in Group No. J2J/0479/JMM/8.3.4.5 and J2J/0477/JMM/3.4 with sala Rs.10 lakhs each. Those chitties were prized, and the amount was paid to the subscriber on 14.07.2008. The 2nd defendant, who is the wife of the 1st defendant had also joined two chitties of Group No.J2H/1009/JMM/18, J2G/0972/JMM/10 for a sala of Rs.5 lakhs and Rs.3 lakhs. The 3rd defendant is a guarantor of the chitty. The said chitties were bid by the 1st defendant on 14.07.2008 and he received the prize amount of Rs.7,46,292/- in each chitty. The 2nd defendant also received an amount of Rs.3,75,000/- and Rs.2,25,000/- in the said chitties. Thus, a total amount of Rs.50,77,752/- was released to the defendants on 14.07.08, 29.03.08 and 26.11.07. Defendants 1 and 2 had executed all the relevant documents in favour of the plaintiff company. The 3rd defendant deposited title deed of his property bearing No. 913/94 & 916/94 of Kalloorkadu S.R.O. The subscribers and guarantor had executed a joint promissory note for the amount mentioned above. If the subscriber defaults the subscription of the chitty, he is liable to pay the amount with interst at the rate of 18% per annum for the defaulted amount, to the company. Defendants 1 to 3 agreed to pay the future

subscriptions without default and executed documents to that effect at the time of payment of prize money. In addition to that, as collateral security for the repayment of chitty subscriptions, the 3rd defendant created equitable mortgage of 32 Ares 38 sq.meter and 0.64 sq.meter of land comprised in survey No.157/1/2 of Manjalloor village covered by document No. 913/1994, 916/1994 of S.R.O, Kalloorkadu. The 3rd defendant deposited the original title deed mentioned above with the plaintiff. After availing the prized amount, the defendants defaulted subscriptions towards the chitty amount. Even though, the plaintiff issued registered notice, they failed to repay the amount. As per the ledger extract being maintained by the plaintiff, a sum of Rs.50,05,400/- as principal amount and interest at the rate of 12%, ie, Rs.28,25,916/- is due to the plaintiff as on 31.06.2014 from the 1st defendant. The plaintiff is entitled for realisation of the amount with interest at the rate of 12% per annum from the date of suit. Hence, the suit.

3. Defendants 1 and 2 remained exparte.

4. The 3rd defendant entered appearance and filed written statement. The averments are as follows:- The suit is not maintainable either in law or on facts. The plaintiff has no cause of action against the 3rd defendant. The signatory of the plaint has no authority to sign the plaint and to file the suit. The power of attorney of the signatory is not legally valid. The plaintiff has no right or authority to conduct chitty business. If at all any amount is due to the plaintiff from 3rd defendant, the plaintiff is not legally entitled to realise the said amount. The court has no territorial jurisdiction to entertain the suit. There is no averment in the plaint that the

defendants 1 and 2 joined the chitty in any of the branches of the plaintiff company within the jurisdiction of this court. The 3rd defendant is not aware of the fact that whether the plaintiff is the foreman of ticket No. J2J/0479.JMM/8.3.4.5 and J2J/0477/JMM/3.4. All these are some bogus numbers. Under the cover of chitty, the plaintiff is doing illegal money lending business for exorbitant interest, without any authority. The 3rd defendant is not aware of the transaction between plaintiff and defendants 1 and 2. He does not know whether defendants 1 and 2 were subscribers of the chitty mentioned in para 2 of the plaint. The 3rd defendant is not a guarantor of any of the transactions of defendants 1 and 2 with the plaintiff. He has not executed any chitty agreement and has not undertaken to pay any future installments to the plaintiff. He had not executed joint promissory note, alongwith other defendants as alleged. The agreement and promissory note produced by the plaintiff is forged. The 3rd defendant did not receive any notice from the plaintiff. The interest claimed by the plaintiff is highly excessive. He has not deposited title deed of his property with the plaintiff. He has no contact or connection with defendants 1 and 2. The defendants 1 and 2 were involved in real estate business. The 3rd defendant, who was Sales Manager of Reliance Life Insurance Company approached defendants 1 and 2 for giving an insurance policy. The defendants 1 and 2 were missing from July 2007 onwards. The 3rd defendant was a subscriber of a chitty of the plaintiff at Thodupuzha branch for a sala of Rs.2 lakhs. He paid the monthly installments at the rate of Rs.10,000/- per month, for four months. The plaintiff could have misused the document produced by the 3rd defendant at the time of joining and auctioning the chitty subscribed by him in collusion with defendants 1 and 2. The properties sought to be attached are not belonging to 3rd defendant and most of the properties were sold out. Hence, the suit is to be dismissed.

5. Based on the pleadings on both sides my learned predecessor framed the following issues:

1. Whether the plaintiff has any cause of action against 3rd defendant?

2. Whether the power of attorney holder has right to conduct the case?

3. Whether this court has territorial jurisdiction?

4. Whether the 3rd defendant has stood as guarantor of the chitty transaction with plaintiff and defendants 1 and 2?

5. Whether alleged documents are genuine?

6. Whether the plaintiff is entitled to get a decree as prayed for?

7. Reliefs and costs?

6. On the side of plaintiff, P.W.1 was examined. Exts.A1 to A12 series are marked. On the side of defendants, D.W.1 was examined. Ext.B1 was also marked.

7. Issue No.2 :- The plaintiff is a kury company registered under the provisions of Companies Act. As per the plaint averments, Mr.Jomy M.C, Senior Business Manager of the company is appointed as power of attorney holder to institute the suit against the defendants 1 to 3. He is examined as P.W.1. In the affidavit in lieu of chief examination, he has stated that the Managing Director of the company has executed Power of Attorney dated 27.01.11 in favour of P.W.1, to conduct the case. The Managing Director issued power of attorney as per resolution dated 03.01.11 adopted by the Board of Directors of the company. Ext.A2 is the resolution dated 03.01.11 duly signed by one of the directors. As per Ext.A2, the Board of Directors authorised P.W.1, who is the Senior Business Manager of Sree Gokulam Chit & Finance Co. (P) Ltd., Idukki region, is authorized to initiate legal action, civil, criminal or both against all the defaulters of branches of the company, and also to adduce evidence, oral or documentary, and to settle, compromise or withdraw the suits etc. Accordingly, the Managing Director executed general power of attorney in favour of P.W.1 to conduct the case. The 3rd defendant contended that P.W.1 has no authority to conduct the case. The power of attorney is marked as Ext.A1 and resolution of the board of directors is marked as Ext.A2. Even though the 3rd defendant contended that P.W.1 has no authority to represent the plaintiff company, there is no averments in written statement showing how P.W1 is not entitled to represent the company. No evidence is adduced by the 3rd defendant to prove the same. On perusing Exts.A1 and A2, it can be seen that the plaintiff is duly authorized by Ext.A1 and A2 to represent the plaintiff company to institute the suit, to adduce evidence and to settle the matter if required and also to prefer appeal. Therefore, it is found that P.W.1 is duly authorized to

conduct the case on behalf of the plaintiff company. This issue is found in favour of the plaintiff.

8. Issue No.3:- Another contention of the 3rd defendant is that, as per the plaint, subject matter of the suit is a chitty transaction. The chitty was allegedly conducted by Thodupuhza branch of the plaintiff company. This court has no territorial jurisdiction to cover the place in which the branch of the company is located. Therefore, this court has no territorial jurisdiction to entertain the suit. Per contra, the learned counsel for the plaintiff argued that the suit against the defendants is based on equitable mortgage. Therefore, the suit can be filed in the court which has territorial jurisdiction over the property is located. S. 16 CPC deals with the jurisdiction of the court to entertain a suit. S. 16 CPC read as follows:- "Suit to be instituted where subject-matter situate. As per S. 16 sub clause (d), for the determination of any other right to or interest in immovable property, the suit is to be instituted where the subject matter situate". In the case on hand, the property in plaint schedule is 32 Ares 38 square meter of Kallorkadu SRO of Manjalloor village in Muvattupuzha taluk. So it is found that the property is within the territorial jurisdiction of this court. In Paragraph 5 of plaint, it is categorically stated that the 3rd defendant has created equitable mortgage of 32 Ares 38 sq.meter and 0.64 sq.meter of land comprised in survey No. 157/1/2 of Manjalloor village covered by title deeds No.913/94 and 916/94. P.W1, in affidavit in lieu of chief examination, stated that fact. So it is proved that the property involved in this case is within the jurisdiction and therefore this court has got territorial jurisdiction to entertain the suit. So this issue is found in favour of the plaintiff.

9. Issue Nos. 1, 4 & 5:- The plaintiff has another contention that there is no cause of action against the 3rd defendant. The contention of the plaintiff is that the defendants 1 and 2 subscribed chitties being conducted by the plaintiff and the 3rd defendant stood as a surety to defendants 1 and 2, when they bid the chitties. The 1st defendant joined six chitties with the Thodupuzha branch of the company, having sala Rs.10 lakhs each and he had bid each chitty for a sum of Rs.7,46,292/-. The 2nd defendant had also joined two chitties having sala Rs.5 lakhs and Rs. 3 lakhs and on bidding the same, Rs.3,75,000/- and Rs.2,25,000/- were given to her. Therefore, a total sum of Rs.50,77,752/- was released on 14.07.2008, 29.03.2008 and 26.11.2007. The plaint averments and the evidence of P.W.1 show that, 3rd defendant deposited his title deeds No. 913/94 and 916/94 of Kalloorkadu SRO, as a security, for the amount given to defendants 1 and 2. It is true that defendants 1 and 2 are the principal debtors in this case. They remained ex-parte. Therefore, the plaintiff can realise the amount from the principal debtors as well as the guarantor. The 3rd defendant, being the guarantor of the transaction between plaintiff and defendants 1 and 2, has liability to pay the amount, if the entitlement of the plaintiff is proved. Exts.A5 and A6 are the title deeds mentioned above produced by the 3rd defendant, before the plaintiff, in order to create equitable mortgage. So the evidence of P.W.1 substantiated by production of Exts.A5 and A6. The 3rd defendant contended that he has joined for a chitty having sala Rs. 2 lakhs and he had remitted monthly installments for four months. The plaintiff had agreed to give prize money on 5th installment. However, the plaintiff insisted that the 3rd defendant's wife should also execute documents for the guarantee of the amount to be given. The 3rd defendant produced Exts.A5 and

A6 before the plaintiff, for the purpose of bidding the said chitty. He produced Ext.B1 also to prove the same. Ext.B1 is the chitty pass book issued by the plaintiff to 3rd defendant. During cross-examination, P.W.1 admitted that Ext.B1 was issued by the plaintiff to the 3rd defendant. On perusing Ext.B1 it can be seen that there is no endorsement in Ext.B1 to show that the 3rd defendant bid the kury and he received the amount. D.W.1, the 3rd defendant, admitted that he did not receive the prize money in the chitty mentioned in Ext.B1. Then, why he had produced Exts.A5 and A7 before the plaintiff. There is no convincing explanation for the same. Further, it is to be noted that the chitty allegedly subscribed by the 3rd defendant had sala only Rs. 2 lakhs. Therefore, he need not deposit Exts.A5 and A6 title deeds for the said meager amount. So, the only possibility is that Exts.A5 and A6 were produced before the plaintiff by the 3rd defendant as a security for a bigger amount. It is to be noted that the transaction of the plaintiff with the defendants 1 and 2 is for more than Rs.15 lakhs. Therefore, it is to be inferred that those documents were produced by the 3rd defendant as a security for the transaction with defendants 1 and 2. Hence, the plaintiff has got cause of action against the 3rd defendant. These issues are found in favour of the plaintiff.

10. Issue No. 6:- Now it is to be decided whether the plaintiff is entitled for a decree as prayed for. The case of the plaintiff is that the 1st defendant subscribed six chitties having sala of Rs.10 lakhs each and he had bid the chitty for a sum of Rs.7,46,292/- each and prize money was given to the 1st defendant on 14.07.08. The 2nd defendant also joined another two chitties having sala of Rs.5 lakhs and Rs.3 lakhs each. She had also bid the same and prize money at

the rate of Rs.3,75,000/- and Rs.2,25,000/- were also given. Hence a total sum of Rs.50,77,752/- was released to defendants 1 and 2 in three installments on 14.07.08, 29.03.08 and 26.11.07. At the time of receiving the amount, defendant No.1 executed Ext.A4 series documents. On perusing Ext.A4 series, all receipts are seen executed on 14.07.08 for a sum of Rs.7,46,292/- each. It further shows that in each chitty, a sum of Rs.2,53,708/- was given as divident, including a sum of Rs. 50,000/-, the commission of the company. Defendants 1 and 2 are ex-parte and they did not dispute the receipt of the amount or the genuineness of the six receipts dated 14.07.08 in Ext.A4 series. However, the receipts allegedly issued by the 2nd defendant for the sum of Rs.3,75,000/- and Rs.2,25,000/- are not seen produced by the plaintiff.

11. Ext.A7 series to A12 series are the other documents executed by defendants 1 to 3. Ext.A7(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A7(b) is memorandum of deposit of title deeds dated 15.07.08. Ext.A7(c) is debt acknowledgement dated 14.07.08 and Ext.A7(d) is acknowledgement of debt, revival of documents/securities dated 15.07.08. Ext.A8 series contains promissory note, letter of guarantee, memorandum of deposit of title deeds, debt acknowledgement, acknowledgement of debt and revival of documents/securities. Ext.A8(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A8(b) is letter of guarantee signed by defendants 1 to 3 dated 14.07.08. Ext.A8(c) is the memorandum of deposit of title deed dated 15.07.08. Ext.A7(d) is debt acknowledgement dated 15.07.08 signed by all the defendants and Ext.A7(e) is acknowledgement of debt, revival of

documents/securities dated 15.07.08 signed by 2nd defendant. Ext.A9 series also contains promissory note, letter of guarantee, memorandum of deposit of title deeds, debt acknowledgement, acknowledgement of debt, revival of documents/securities. Ext.A9(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A9(b) is letter of guarantee signed by defendants 1 to 3 dated 14.07.08. Ext.A9(c) is the memorandum of deposit of title deed dated 15.07.08. Ext.A9(d) is debt acknowledgement dated 14.07.08 signed by all the defendants and Ext.A9(e) is acknowledgement of debt, revival of documents/ securities dated 15.07.08 signed by 2nd defendant. Ext.A10 series contains promissory note, letter of guarantee, memorandum of deposit of title deeds, debt acknowledgement, acknowledgement of debt and revival of documents/securities. Ext.A10(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A10(b) is letter of guarantee signed by defendants 1 to 3 dated 14.07.08. Ext.A10(c) is the memorandum of deposit of title deed dated 15.07.08. Ext.A10(d) is debt acknowledgement dated 14.07.08 signed by all the defendants and Ext.A10(e) is acknowledgement of debt, revival of documents/securities dated 15.07.08 signed by 2nd defendant. Ext.A11 series contains promissory note, letter of guarantee, memorandum of deposit of title deeds, debt acknowledgement, acknowledgement of debt and revival of documents/securities. Ext.A11(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A11(b) is letter of guarantee signed by defendants 1 to 3 dated 14.07.08. Ext.A11(c) is the memorandum of deposit of title deed dated 15.07.08. Ext.A11(d) is debt acknowledgement dated 14.07.08 signed by all the defendants and Ext.A11(e) is acknowledgement of debt, revival of documents/securities dated 15.07.08 signed by 2nd defendant. Ext.A12 series contains promissory note, letter of guarantee, memorandum of deposit of title deeds, debt acknowledgement, acknowledgement of debt, revival of documents/securities. Ext.A12(a) is promissory note dated 14.07.08 for a sum of Rs.7,60,000/- signed by defendants 1 to 3. Ext.A12(b) is letter of guarantee signed by defendants 1 to 3 dated 14.07.08. Ext.A12(c) is the memorandum of deposit of title deed dated 15.07.08. Ext.A12(d) is debt acknowledgement dated 14.07.08 signed by all the defendants and Ext.A12(e) is acknowledgement of debt, revival of documents/securities dated 15.07.08 signed by 2nd defendant.

12. On perusing Exts.A7 series to A12 series, in A7(a), A8(a), A9(a), A10(a), A11(a) & A12(a), all the promissory notes, the 3rd defendant signed. On perusing the memorandum of deposit of title deeds marked as Exts.A7(b), A8(b), A9(b), A10(b), A11(b) & A12(b), the 3rd defendant put his signature in all those documents. It is stated that sale deed No. 913/94 & 916/94 were deposited with the plaintiff with an intention to create equitable mortgage by way of collateral security for the amount already advanced by the plaintiff to the 1st defendant in the said six chitties. The extent of the property, survey number of the property, nature of the land, location and village in which the property is located are also stated in all these documents. A joint perusal of the property description in Exts.A5 and A6, with the memorandum of deposit of title deeds, it can be seen that Exts.A7(a), A7(b), A8(b), A9(b), A10(b), A11(b) & A12(b) were executed by depositing Exts.A5 and A6 with respect to the same property. The learned counsel for the 3rd defendant argued that in

Ext.A9(b), there is correction in the name of 3rd defendant. On perusing Ext.A9(b), the name and address was seen corrected by using whitener and by way of over writing. However, no tampering can be seen on the signature of the defendants. Therefore, the correction, if any, seen on Ext.A9(b) has no significance regarding the genuineness of the documents produced. Further, the claim of the plaintiff is based on Exts.A7(a). A7(b), A8(b), A9(b), A10(b), A11(b) & A12(b). In no other documents such a correction is seen. Therefore, no tampering can be alleged merely because over writing is seen on the name and address of the 3rd defendant in Ext.A9(b).

13. The contention of the learned counsel for the 3rd defendant is that he had not stood as surety to defendants 1 and 2 and no documents were given by him for that purpose. According to him, he had submitted Exts. A5 & A6 for the prize money of his own chitty subscription as shown in Ext.B1. But it is already found that it is not believable that the 3rd defendant had produced Exts.A5 and A6 to get prize money of a chitty having sala of only Rs.2 lakhs. The market value of the landed property covered by Exts.A5 and A6 comes to crores of rupees. Therefore, that contention is not sustainable. Therefore, it is to be inferred that the 3rd defendant submitted Exts.A5 and A6 for creating equitable mortgage for the defendants 1 and 2 as security of the loan availed by them. Now it is to be decided, whether the plaintiff proved signature of the 3rd defendant in relevant documents. P.W.1 is the Power of Attorney holder of the plaintiff company. In affidavit in lieu of chief examination he has categorically stated that he knows the facts of the case directly and he is competent to swear the affidavit in lieu of chief examination on behalf of the company. During re-examination, in

page 9, P.W.1 categorically stated that the 3rd defendant had signed the document in front of him. Section 47 of the Indian Evidence Act, is as follows “S.47. Opinion as to handwriting, when relevant.- when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact”. In explanation to S.47, it is explained that – “A person is said to be acquainted, with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him”. In the case on hand, the evidence of P.W.1 shows that he saw the 3rd defendant signed the document produced by the plaintiff. So, I am of the firm view that the initial burden to prove the signature of 3rd defendant is discharged by the plaintiff. So, the onus shifted to the 3rd defendant to prove that he is not the subscriber of the documents in Exts.A7 series to A12 series. No steps has been taken by the 3rd defendant to disprove his signature in those documents. Therefore, the evidence of the plaintiff with regard to the signature of 3rd defendant remains unchallenged. So, it is proved that the 3rd defendant himself has subscribed signature in Exts.A7 series to A12 series. The learned counsel for the plaintiff submitted that by producing Ext.A3 series, the plaintiff succeeded to prove the plaint claim. In Ext.A3 series the first three statement of accounts are in respect of the alleged transaction of 1st defendant with plaintiff. The next two statement of accounts are in respect of the alleged transaction of 2nd defendant with the plaintiff. The evidence in this case was recorded by Advocate Commissioner. On perusing Ext.A3 series, I am of the view that the certificate contained in Ext.A3 series does not comply section 65(b) of the Evidence Act. However, on perusing the records, it can be seen that marking of that document has not been opposed by the learned counsel for the defendants. Therefore, Ext.A3 series is to be admitted in evidence and to be relied on. The learned counsel for the plaintiff submitted that the transactions of the 1st defendant in all the six transactions interest is calculated only upto 07.06.14. Therefore, in all the six cases the principal amount and interest as on 07.06.14 is Rs.11,85,600/-. So the total amount of six chitty transactions, which is to be realised from the 1st defendant is a sum of Rs.71,13,600/-.

14. Ext.A3 series contains two account statement of the transactions of the 2nd defendant. As per the 1st statement, the total sala of that transaction was Rs.3 lakhs and the prize money was Rs.2,25,000/-. As per the statement of account as on 06.06.14, a sum of Rs.1,26,900/- was due towards principal amount. Further, a sum of Rs.81,216/- was due towards interest. Therefore, the total amount allegedly due to the plaintiff as on 26.06.17 was Rs.208116/-. As per the other statement of accounts, the total sala of chitty was Rs.5 lakhs. Prize money was Rs.3,75,000/-. As per the statement of account, as on 27.06.14, the amount due to the plaintiff was Rs.3,18,500/- towards principal amount. Further a sum of Rs.1,91,100/- was also due as interest. Therefore, the total amount allegedly due to the plaintiff is Rs.5,09,600/-. So from the chitty transaction of the 2nd defendant, the plaintiff is claiming a sum of Rs.7,17,716/-. However, except the said two account statement in

Ext.A3 series, no other records were produced by the plaintiff showing the transaction between the 2nd defendant and plaintiff. If she had subscribed the said two chitties, application for subscription, letter of guarantee, promissory note, memorandum for deposit of title deed, acknowledgment of debt etc, are to be there with the plaintiff. However, none of those documents are produced before the court by the plaintiff. Therefore, I am of the strong view that merely by producing the two statement of account in Ext.A3 series, the plaintiff cannot succeed to claim a sum of Rs.7,17,716/- on account of the transaction with the 2nd defendant. If there was actual transaction with the 2nd defendant, the plaintiff could have produced all relevant records as in the case of 1st defendant which are produced as Exts.A7 to A12 series. Therefore, I am of the view that the plaintiff has not succeeded to prove the transaction with the 2nd defendant.

15. The plaintiff has claimed realisation of a sum of Rs.78,31,316/-. But that amount covers the total amount due from the 1st defendant as per the first six statement of accounts in Ext.A3 series and the amount covered by the next two statement of accounts in Ext.A3 series. As observed above, it is found that the plaintiff failed to prove the transaction with the 2nd defendant. Therefore, plaintiff is not entitled for a decree for realisation of money on account of the alleged transaction with the 2nd defendant. The plaintiff is claiming future interest at the rate of 12% in Exts.A7(a), A8(a), A9(a), A10(a), A11(a), A12(a). The defendants 1 to 3 had agreed to pay interest at the rate of 12% per annum. Being a chitty transaction, with a kury company, it is a commercial transaction. Therefore, the plaintiff is entitled for interest at the rate of 12% per annum. Therefore, plaintiff is entitled to realise the amount only on account of the

transaction of the 1st defendant. Hence, I am of the considered view that the plaintiff is entitled to realise a sum of Rs.71,13,600/-. The issue is answered in favour of the plaintiff.

16. Issue No. 7 :- In the result, suit is decreed as follows:-

1. Plaintiff is allowed to realise a sum of Rs.71,13,600/- from defendants 1 to 3 with future interest at the rate of 12% per annum from the date of suit till realisation of the entire amount from the defendants 1 to 3 jointly and severally and also charged on the plaint schedule properties and by sale of the said property and also from the assets of the defendants 1 to 3.

2. The plaintiff is also entitled for costs.

Dictated to Confdl. Asst. typed by her, corrected by me, and pronounced in open court on this the 21st day of August, 2019.

Sd/-
V.Udayakumar
Sub Judge
for
M.R. Sasi
Sub Judge

APPENDIX

Plaintiff's Exhibits :

1.	General Power of Attorney	A1	27.01.2011

2.	Extract from the minutes	A2	03.01.2011
3.	Payment Voucher	A3(a)	14.07.2008
4.	Payment Voucher	A3(b)	14.07.2008
5.	Payment Voucher	A3(c)	14.07.2008
6.	Payment Voucher	A3(d)	14.07.2008
7.	Payment Voucher	A3(e)	14.07.2008
8.	Payment Voucher	A3(f)	14.07.2008
9.	Payment Voucher	A3(g)	26.11.2007
10.	Payment Voucher	A3(h)	29.03.2008
11.	Promissory Note	A4(a)	14.07.2008
12.	Promissory Note	A4(b)	14.07.2008
13.	Promissory Note	A4(c)	14.07.2008
14.	Promissory Note	A4(d)	14.07.2008
15.	Promissory Note	A4(e)	14.07.2008
16.	Promissory Note	A4(f)	14.07.2008
17.	Title Deed	A5	01.07.1994
18.	Title Deed	A6	01.07.1994
19.	Promissory Note	A7(a)	14.07.2008
20.	Memorandum of Deposit of Title Deeds	A7(b)	15.07.2008
21.	Debt Acknowledgment	A7(c)	14.07.2008
22.	Acknowledgment of Debt	A7(d)	15.07.2008
23.	Promissory Note	A8(a)	14.07.2008
24.	Guarantee Agreement	A8(b)	14.07.2008
25.	Memorandum of Deposit of Title Deeds	A8(c)	15.07.2008
26.	Debt Acknowledgment	A8(d)	14.07.2008
27.	Acknowledgment of Debt	A8(e)	15.07.2008
28.	Promissory Note	A9(a)	14.07.2008
29.	Guarantee Agreement	A9(b)	14.07.2008
30.	Memorandum of Deposit of Title Deeds	A9(c)	15.07.2008
31.	Debt Acknowledgment	A9(d)	14.07.2008
32.	Acknowledgment of Debt	A9(e)	15.07.2008
33.	Promissory Note	A10(a)	14.07.2008

34.	Guarantee Agreement	A10(b)	14.07.2008
35.	Memorandum of Deposit of Title Deeds	A10(c)	15.07.2008
36.	Debt Acknowledgment	A10(d)	14.07.2008
37.	Acknowledgment of Debt	A10(e)	15.07.2008
38.	Promissory Note	A11(a)	14.07.2008
39.	Guarantee Agreement	A11(b)	14.07.2008
40	Memorandum of Deposit of Title Deeds	A11(c)	15.07.2008
41.	Debt Acknowledgment	A11(d)	14.07.2008
42.	Acknowledgment of Debt	A11(e)	15.07.2008
43.	Promissory Note	A12(a)	14.07.2008
44.	Guarantee Agreement	A12(b)	14.07.2008
45.	Memorandum of Deposit of Title Deeds	A12(c)	15.07.2008
46.	Debt Acknowledgment	A12(d)	14.07.2008
47.	Acknowledgment of Debt	A12(e)	15.07.2008

<u>Defendants' Exhibits</u> :

1.	Chitty Passbook	B1	

<u>Plaintiff's Witness</u>:

1.	Jommy M C	PW1	22.06.2019

<u>Defendants' Witness</u>:

1.	Domini Joseph	DW1	03.07.2019

Id/-
Sub Judge

//True Copy//

(By Order)

Sheristadar

Copied by: stn/-
Comp. By: ktp/-

O.S. 60/2014
Copy of Judgment
Dated: 21.08.2019