IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY
Present: Smt.Aswathy Nair, Munsiff,Karunagappally.
Friday the 20th day of June, 2025/ 30th day of Jayshtam,1947.

O.S.No. 166/2020

Between

Plaintiff:-	Shyla, aged 42 years, W/o. Noushad, Kavadiyil puthen veedu, Kollaka muri, Vadakkumthala village, Karunagappally. By Adv. Deepak Ananthan
And Defendant:-	Sunil Viswanath, S/o. Viswanatha Panicker, Viswanatham house, Vadakkumthala mekku, Vadakkumthala village, Karunagappally (exparte) By Adv. S. Jayaprakash, R. Maya, M.S. Manjusha, P. Deepa

This suit filed U/s.26 order VII of CPC for realization of money.

This suit coming on for hearing before me on 12.06.2025 and on 20.06.2025 the court delivered the following.

J U D G M E N T

The suit is for realization of money.

2. The plaint averments in short are as follows: – The plaintiff and the defendant are family friends and they are residing in neighbouring areas. The defendant has executed an agreement for sale in favour of the plaintiff on 20.06.2019 agreeing to sell the immovable property of the defendant which he had purchased by

virtue of sale deed No. 271/2016 of Chavara SRO, in block No. 17, Re.Sy.Nos. 189/3/4/2, 189/3/3/4 having an extent of 0.65Ares of Vadakkumthala Village for a sale consideration of Rs. 15,00,000/- (Fifteen lakhs only). Out of the total sale consideration an amount of Rs. 6,00,000 (Six Lakhs only) was given to the defendant as advance sale consideration at the time of execution of the sale agreement. The period fixed for the performance of contract was six months starting from the date of agreement. But after three months, the scheduled property described in the agreement for sale was seen included in the published notification of National Highway Authority of India (NHAI) for the widening of NH 66. The chance of inclusion of the property in the National Highway notification was known to the defendant. But he suppressed the fact and executed the agreement for sale in favour of the plaintiff. When the matter came to the knowledge of the plaintiff through news paper advertisement of NHAI, she approached the defendant to return back the advanced money of Rs. 6,00,000/- and to cancel the agreement for sale. The defendant agreed to return back the advanced money but he wanted a three months time for the repayment. Accordingly on 25.09.2019 both the plaintiff and defendant has mutually executed a cancellation deed with defendant as first party and plaintiff as second party. The cancellation deed dated 25.09.2019 has specifically stated that the agreement for sale dated 20.06.2019 stands cancelled and the defendant promised to return back the advanced amount of Rs. 6,00,000/- within a period of 3 months from date of the cancellation deed. As a security the defendant has issued a signed cheque from his account No. 0000 000 6705 3362086 of State Bank of Travancore, Karunagappally Branch bearing No. 611169. The particulars with regard to cheque were specifically described in the agreement for cancellation. And at the time of execution of this cancellation deed, the defendant returned back the prior agreement for sale from the custody of the plaintiff. After the three months expiration of the deed of cancellation the plaintiff, personally demanded the defendant to repay the advance sale consideration he had received at the time of entering into agreement for sale. But the defendant has not turned up to the demand made by the plaintiff. There after the plaintiff presented the cheque issued by the defendant bearing No. 611169 dated 06.01.2020 before the State Bank of India, Karunagappally Main Branch, wherein the defendant maintained his account. But it was returned by the bank stating that the cheque was an outdated one and the account is no more and they were unable to issue even a dishonour memo, since the cheque belongs to SBT, a merged bank. The plaintiff has every right to recover the advance payment of Rs. 6.00.000/- along with interest that she had given to the defendant at the time of entering into the agreement for sale. The sale was not performed not due to any non - performance from the part of the plaintiff. The plaintiff is entitled to realize the debt amount together with the interest at the rate of 12% per annum and other expenses and costs from the defendant and his assets. Hence the suit.

3. <u>Defendant filed written statement contending as follows:-</u> The suit is not maintainable either in law or on facts. The plaintiff has filed this suit by suppressing the real facts. The statement that Rs.6,00,000/- was received as advance on the date of the agreement is false. The agreement was not actually executed between the plaintiff and the defendant. It was decided that the defendant and the plaintiff's husband, Noushad, would execute a sale agreement for the property and at the

instance of Noushad, the defendant signed an agreement in the plaintiff's name. Noushad is engaged in the real estate business, and the agreement was written for that purpose. As a property broker, Noushad requested the defendant to sign an agreement to show to potential buyers for selling the property at a higher price, and the defendant signed the agreement prepared by the plaintiff. As per the agreement with Noushad, it was stipulated that the property would be transferred within six months. However, since the suit property is in the direct view of Puthethu Temple, Noushad avoided and evaded taking possession of the property. Defendant submitted that the plaint schedule property would be acquired for the widening of the National Highway, is a figment of the plaintiff’s imagination. No steps have been taken to acquire the plaint schedule property for the national highway. A stone has been placed on the eastern side of the plaint schedule property to determine the boundary of the acquisition. The defendant has not received any amount as alleged in the complaint. The plaintiff's husband, a real estate dealer, acted as an intermediary and did not receive any buyers after giving a nominal advance to the seller. The defendant has violated the contract by not purchasing the property. Since the plaintiff's husband has unilaterally violated the contract, the defendant has suffered great losses. Since the plaintiff's husband has unilaterally violated the contract, the plaintiff has no right or authority to recover any amount. Hence the suit may be dismissed.

4. On the basis of the rival contention of the parties, following issues were raised for consideration.

1. Whether the defendant assured the plaintiff for returning the advance sale consideration of Rs.6,00,000/- based on cancellation deed?

2. Is the plaintiff entitled to get recovery of money as prayed for?
3. Reliefs and costs.?

5. On the day when the matter was listed for trial, the defendant called absent and no representation. Hence, the case was decided to be proceeded *exparte.* From the side of the plaintiff, PW1 was examined and Exts.A1 & A2 documents were marked.

6. Heard the counsel for the plaintiff. Perused the documents and analysed the documents on records.

7. **<u>Issue Nos. 1 & 2</u>** :- For the sake of convenience these issues are considered together. The plaintiff is examined as PW1. She filed affidavit in lieu of examination in chief. Ext.A1 is the cancellation agreement executed between the plaintiff and the defendant. Ext.A2 is the cheque No.611169 dated 06.01.2020 of State Bank of Travancore, Karunagappally.

8. From the un-rebutted evidence of PW1 and Exts.A1 & A2, it is proved that defendant had received a sale consideration of Rs.6,00,000/- (Rupees Six Lakhs only) from the plaintiff and in turn they entered into an agreement thereafter they executed Ext.A1 cancellation agreement remains unchallenged. I am satisfied that plaintiff has a cause of action against the defendant. There is no contra evidence to disprove the case of the plaintiff. Under these circumstances, I find that plaintiff is entitled to realise an amount of Rs.6,70,000/- (Rupees Six Lakhs and Seventy Thousand only) from the defendant. Thus makes the plaintiff entitled to a decree as sought for. These issues are answered infavour of the plaintiff.

9. **Issue No.3** : In the result, the suit is decreed with costs as follows:-

(1). The plaintiff is allowed to realize an amount of Rs.6,70,000/- (Rupees Six Lakhs and Seventy Thousand only)with interest at the rate of 6% per annum, from the date of suit till the date of realization on the principal amount of Rs.6,00,000/- from the defendant and his assets.

(2). Plaintiff is entitled to recover costs from the defendant.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 20th day of June, 2025)

Sd/-
Aswathy Nair,
Munsiff.

Appendix

Exhibits marked from the side of the plaintiff:-

A1	26.09.2019	Cancellation agreement executed between the plaintiff and the defendant
A2	06.01.2020	Cheque No. 611169 for Rs. 6,00,000/- of State Bank of Trivancore, Karunagappally

Exhibits marked from the side of the defendant:- Nil

Court Exhibits: Nil

Witness examined from the side of plaintiff:-

PW1 12.06.2025 Shyla

Witness examined from the side of defendant:- Nil

Id/-
Munsiff.

// True Copy//

Munsiff.

Typed by : Hareesh P
Compd.by: