

**IN THE COURT OF ADDL.DISTRICT JUDGE-II (SPECIAL)
KOTTAYAM**

Present : Sri. Subash.S,
Addl.District Judge-II (Special), Kottayam.

Monday, the 30th day of March 2026.
9th day of Chaithra, 1948.

Appeal Suit No. 26/2021
(O.S. No.611/2013 of the Addl. Munsiff's Court, Kottayam)

Appellant:-

Viju P.S, aged 49, S/o Sreedharan, residing at Parambukarottu House, Meenadom Village, Kottayam, represented by his power of attorney holder Saji P.S, aged 50, S/o Sreedharan, residing at Parambukarottu House, Meenadom P.O, Meenadom Village, Kottayam, Pin-686516.

By Adv. B. Ashok and Adv. Reshmi K.M

Respondents:-

1. Mollykutty Varghese, aged 47, W/o K.J Varghese, residing at Kottoraparambil House, House No. 2045(2044) , Palluruthi 18, Cochin Corporation, Vallumalil Road, Rameswaram Village, Kanayannur Taluk, Ernakulam District, Pin-682006
2. Sasidharan, aged about 57, S/o Govindan, residing at Puthenpurakkal House, Velloor kara, Pampady Village, Kottayam now residing at Puthuparambil House, No. 291, Ward No. 5, Manarcadu Panchayath, Areeparambu P.O, Kottayam Dsitrict, Pin-686501

R1 By Adv. Sasikumar Anickad
R2 Set Exparte

This Appeal Suit filed Under Section 96 and order 41 rule 1 of Civil Procedure Code.

This Appeal Suit having been finally heard on 27.02.2026 and the court on 30.03.2026 delivered the following :-

J U D G M E N T

The 2nd defendant in O.S. No.611/2013 on the file of the Additional Munsiff's Court, Kottayam, is the appellant herein. The parties are referred to in their original status in the trial court for convenience.

2. The brief facts leading to this appeal are as follows:

The above suit was for the realisation of money. The plaintiff's case is that on 13.12.2012, the 1st defendant executed an agreement for the sale of plaint schedule property belonging to the 1st defendant. As per the said agreement, the 1st defendant agreed to sell the said property for a total sale consideration of ₹29,60,000/- and out of the sale consideration, he received a sum of ₹5,00,000/- in advance. The 1st defendant had to execute the sale deed on or before 13.04.2013. It was specifically stipulated in the said agreement that the defendant shall deliver the plaint schedule property to the plaintiff without any encumbrance within the said period, but the 1st defendant failed to do so. Even though the plaintiff approached the 1st defendant many times

after arranging the balance sale consideration before 13.04.2013, the 1st defendant sought extension of the period for executing the sale deed, saying that he needed some more time to receive the documents pertaining to the said property from the bank. It was also stipulated in the agreement that the 1st defendant shall deliver the current building tax receipt, the receipt of payment of current charges, along with the encumbrance certificate and shall deliver the house in an occupiable condition to the plaintiff, but the defendant has not complied with the above conditions with an intention to evade the execution of the sale deed. On the expiry of the above period, the plaintiff approached the 1st defendant for registration of the sale deed, but the 1st defendant evaded the execution of the sale deed, saying lame excuses. At last, after many demands and requests for the execution of the sale deed after receiving the balance sale consideration, the 1st defendant promised that he would pay back the advance amount on or before 20.09.2013. Whereas, the 1st defendant didn't repay the advance amount to the plaintiff. The plaintiff was always ready and willing to perform her part of the contract, but the 1st defendant was not amenable to the same. The 1st defendant, in collusion with the 2nd defendant, and to defraud and cheat the

plaintiff, sold the said property to the 2nd defendant. In the circumstances, the plaintiff instituted the above suit to realise the said amount charged upon the plaint schedule property.

3. Defendants entered appearance and filed written statements. 1st defendant filed written statement contending as follows:

He had not entered into an agreement with the plaintiff. The plaint schedule property was mortgaged with SBT, Elangulam Branch. As he couldn't repay the said loan, he had entered into an agreement for sale with one Roshan for the sale of the said property for a sale consideration of ₹29,60,000/-. At the time of the said agreement, he received ₹5,00,000/- out of the total sale consideration in advance from Roshan and Roshan obtained a blank signed stamp paper of ₹100/- and a blank signed paper from him. As the said Roshan couldn't buy the said property as per the terms of the agreement, they decided to revoke the agreement, and they came to an understanding that if the 1st defendant sustains any loss by selling the said property for a price of less than ₹29,60,000/-, the said loss will be adjusted against the advance money, and if there is any surplus amount it will be paid to Roshan and if the loss exceeds ₹5,00,000/-, he will

bear the loss. Even though the 1st defendant, along with the said Roshan, tried to sell the property, they couldn't sell it. While so, SBT officials informed him that they will proceed against the property. Thereafter, the 2nd defendant agreed to buy the property for a price of ₹24,00,000/- and the property was sold to him. As Roshan withdrew from the agreement, he suffered a loss of ₹5,60,000/- and the interest paid for a period of 9 months to SBT. The said Roshan, along with the plaintiff, misutilised the blank signed stamp paper and fabricated an agreement and filed this suit. The plaintiff has no cause of action against the 1st defendant. He had neither entered into an agreement with the plaintiff nor received any amount from her.

4. 2nd defendant filed written statement contending as follows:

From the nature of the allegations it is difficult to believe or accept the suit as true. If the plaintiff had paid an amount of ₹5,00,000/- in advance out of the sale consideration, the plaintiff could have received some documents with respect to the plaint schedule property and he would have registered or notarised the agreement. There is no evidence to show that the plaintiff had paid an advance of ₹5,00,000/- and had arranged the balance

consideration for the execution of the sale deed. There is nothing to show that the plaintiff had approached the 1st defendant several times demanding the execution of the sale deed. There is no material to show that the title deed and other documents pertaining to the plaint schedule property were mortgaged with any bank. If the plaintiff had arranged the balance sale consideration and the story of the agreement and the payment of advance money is true, he would have filed a suit for specific performance of contract. So, the averment that after the expiry of the period of the agreement the plaintiff approached the 1st defendant for registration of the sale deed, but the defendant avoided the plaintiff saying lame excuses is false. The 2nd defendant is abroad and he purchased the plaint schedule property bonafide for his own use. The 2nd defendant has no property or residential building at the time of purchase of the plaint schedule property. The 2nd defendant had no knowledge of the alleged agreement if any, with the plaintiff and 1st defendant. The 2nd defendant came to know about the alleged agreement only when his brother, the power of attorney holder, approached the village officer for effecting mutation of his property. Immediately, the 2nd defendant through his brother lodged a

complaint against the 1st defendant before the Circle Inspector of Police, Pampady and as the 1st defendant influenced the police officer the 2nd defendant preferred a private complaint before the Hon'ble JFCM Court-I, Kottayam as CMP No.443/2014 and the said case is pending.

5. Based on the above pleadings, the following issues were framed:-

1. Is the sale agreement relied on by the plaintiff is a properly executed agreement between herself and 1st defendant?
2. Are the defendants liable to pay any amount to the plaintiff as per the terms of the agreement?
3. Is the plaintiff entitled to get a decree charged upon plaint schedule property?
4. Reliefs and costs.

6. On the side of the plaintiff, PW1 and PW2 were examined, and Exts.A1 to A4 were marked. Ext.B1 was marked from the side of the defendants. After the trial, the learned Munsiff decreed the suit as per the judgment and decree dated 14.01.2021. Aggrieved by the said decree and judgment, the 2nd defendant preferred this appeal.

7. Heard and perused records.

8. The following points arise for determination in this appeal:-

1. Is the plaintiff entitled to a decree for the realisation of money as prayed for?
2. Whether the decree and judgment of the trial court in the suit in O.S. No.611/2013 warrant any interference by this court?
3. Reliefs and costs.

9. **Point Nos. 1 and 2:-** For the sake of convenience, brevity, and to avoid repetition, these two points are considered together. The above suit was instituted for the realisation of advance money. According to the plaintiff, the 1st defendant entered into Ext.A1 agreement with the plaintiff for the sale of the plaint schedule property for a total sale consideration of ₹29,60,000/- and at the time of the agreement, the 1st defendant received ₹5,00,000/- in advance, but he neither executed the sale deed within the stipulated period nor repaid the advance amount. To establish the case of the plaintiff, she herself was examined as PW1 and one of the attesters to Ext.A1 agreement was examined as PW2. The execution of Ext.A1 agreement by the 1st defendant is proved through the evidence of PW1 and PW2. Even though

they were cross-examined in detail, nothing was brought out to disbelieve their testimony. On a conjoint reading of the evidence of PW1, PW2 and Ext.A1 agreement, what is discernible that the 1st defendant entered into Ext A1 agreement for the sale of the plaint schedule property for a price of ₹29,60,000/-, and out of the sale consideration, the 1st defendant received ₹5,00,000/- in advance. The oral evidence of PW1 would show further that she was ready and willing to perform her part of the contract, but the 1st defendant has failed to execute the sale deed after receiving the balance of the sale consideration, and he sold the property to the 2nd defendant. In the circumstances, the 1st defendant is liable to repay the advance money to the plaintiff. Now the question that arises is whether the plaintiff is entitled to realise the said amount charged on the plaint schedule property. In this context, it is quite apposite to refer to Section 55(6)(b) of the Transfer of Property Act. S.55(6) (b) reads as follows:

“ The buyer is entitled, unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded

to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.”

10. As per the above provision, where the buyer has not improperly declined to accept delivery of the property, he is entitled to a charge over the property for the purchase money paid and interest thereon, and where the buyer properly declines to accept delivery, in addition to the above he is entitled for charge even for the earnest money if any paid and for costs. Coming to the case at hand, the first aspect to be considered is whether the plaintiff has improperly declined to accept delivery of the property. In this context, it is useful to refer to the judgment of the Hon’ble High Court in Puthiyapurayil Ramakrishnan V Pullani Prabhakaran (2016(1) KLJ 336). In the said case the Hon’ble High Court held as follows:

“It is evident from the aforesaid provision that if the buyer in an agreement for sale does not improperly decline to accept delivery of the property, a charge is created over the property by operation of Section 55(6)(b) of the Transfer of Property Act for the amount of the advance sale consideration. A close reading of Section 55(6)(b) of the Transfer of Property Act would indicate that the creation of charge as per the said provision dependent on the issue as to whether the buyer has improperly declined to accept delivery of the property. It is thus evident that if the buyer does not improperly declines to accept delivery of the property as per the terms of the

agreement, a charge will be created in favour of the buyer in respect of the property by operation of the provision contained in Section 55(6)(b)."

11. Coming back to the present case, the plaintiff has succeeded in establishing that she was always ready and willing to perform her part of the contract, but the 1st defendant failed to execute the sale deed after obtaining the title documents from the bank by closing the loan. There is no material before the court to show that the plaintiff had improperly declined to accept the delivery of property. So, the plaintiff is entitled to realise the advance money with interest charged upon the plaint schedule property. In the circumstances, I don't find any reason to interfere with the judgment and decree of the trial court and the learned Munsiff decreed the suit correctly. The above points are answered accordingly.

12. **Point No.3:-** For the foregoing discussion, this court is of the considered opinion that there is absolutely no reason to interfere with the findings of the trial court in the above regard in the decree under challenge. Needless to say, the decree and judgment in O.S. No.611/2013 rendered by the trial Court are not liable to be reversed, altered or modified. The point is answered accordingly.

In the result, the above appeal is hereby dismissed and the decree and judgment rendered by the trial court in the suit in O.S. 611/2013 dated 14.01.2021 stand confirmed. Considering the facts and circumstances of the case, I feel it proper to direct the parties to suffer their respective costs.

Dictated to the Confidential Assistant, transcribed by her, revised and corrected by me and pronounced in Open Court on this, the 30th day of March, 2026.

Sd/-
Subash.S.
Addl. District Judge -II (Spl.),
Kottayam.

A P P E N D I X : N I L.

Id/-
Addl.District Judge -II (Spl.),
Kottayam.

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Copied By:
Compared By:

Sd/-
Subash.S.
Addl. District Judge -II (Spl.),
Kottayam.