

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present: Miss. Annu Mary Jose., Munsiff

Monday, the 30^h day of March, 2026

9th day of Chaithra, 1948

OS. No. 50/2016

Plaintiff:

Omana Jayan, aged 60,
W/o. Jayakumar, Vallechalil House,
Choorakkulangara Bhagom,
Ettumanoor P.O., Ettumanoor Village,
Kottayam Taluk.

By Adv. E. M. Suresh

Defendant:

Jisso K. Anand, aged 38,
S/o. Krishnan, Theruvil House,
Kazhimbram P. O., Valappad Village,
Chavakkad Taluk, Thrissur District.

By Adv. Avaneesh V. N.

This Suit have been finally heard on 28.03.2026 and the court on 30.03.2026 delivered the following:-

J U D G M E N T

Suit is for realization of money based on a dishonoured cheque.

2.The plaint averments in brief are as follows:- The defendant had financial transactions with the plaintiff and her husband. The defendant and the plaintiff's husband had done real estate business and as part of settlement arrived between them on 18.3.2014, the defendant agreed to transfer Rs.16,80,000/- to the joint account of the plaintiff and her husband. The defendant had issued two cheques for the balance amount of Rs.13,00,000/-. The above cheques were filled up by the defendant and he had signed on the cheques in the presence of the plaintiff. The cheque dated 30.04.2014 for Rs.6,50,000/- drawn on State Bank of India Edamuttam branch was presented for encashment through State Bank of Travancore, Ettumanoor branch. The same was dishonoured for the reason funds insufficient. Even though the plaintiff issued lawyer's notice on 10.09.2014, it was returned unserved with the endorsement 'not known, return to sender'. The defendant had also issued another cheque for Rs.6,50,000/- dated 30.05.2024. The said cheque was also dishonoured and O.S.26/2015 was filed before this court. Hence the plaintiff is entitled to realize the plaint amount with interest.

3.The defendant filed written statement contending

as follows:- The suit is not maintainable. The plaintiff is the close relative of the defendant. The plaintiff's husband and defendant on one part (as the second party) and Navas, Zeenath, Shinas, Regeef and Hajirabi on the other part (as the first party) had entered into agreement for sale dated 11.07.2011 whereby the second party agreed to purchase the property of the first party. The total consideration fixed for 25¼ cents of property is Rs.27,77,750/-. The amount to be taken by each person of the second party of the agreement was Rs.13,88,750/-. The plaintiff's husband had paid only Rs.7,00,000/- and the rest of Rs.20,27,750/- was paid by the defendant. The property purchased from the first party was sold for a total consideration of Rs.59,33,750/. The plaintiff was entitled to Rs. 14,95,455/- only according to his investment. The plaintiff claimed more profit than the proportionate amount given by him. At the instance of the father of the defendant, the defendant had issued two cheques for Rs.6,50,000/- each in favour of the plaintiff. Thereafter as part of settlement arrived between the parties at the instance of the defendant's father, Rs.16,80,000/- was transferred to the joint account of the plaintiff and her husband. The cheque dated 30.4.2014 was

presented for encashment after that and there is no consideration for the cheque. OS 26/2015 was dismissed by this court. The mother of the defendant had undergone cancer treatment at Medical College hospital, Kottayam and she had stayed at the plaintiff's house. The defendant and his father had transferred money to the account of the plaintiff for expenses. There is no cause of action for the suit. Hence, it is prayed to dismiss the suit.

4. The following issues were framed for trial by my learned predecessor:

1. Whether the plaintiff is entitled to get a decree for realization of Rs.7,93,465/- from the defendant as alleged by the plaintiff?
2. What is the order as to interest?
3. What is the order as to costs?

5. From the side of the plaintiff, PW1 and PW2 were examined and Ext.A1 to A5 (a) were marked. DW1 was examined and Ext.B1 to B5 were marked from the side of the defendants.

6. Heard both sides. Perused the records.

7. Issue no.1:- The case of the plaintiff is that the defendant had financial transaction with her and her husband and he had issued Ext.A1 cheque as part of the settlement arrived between them. The cheque was dishonoured due to the reason funds insufficient as per Ext.P2 memo. It is also contended that Ext.A3 copy of lawyer notice was issued to the defendant, but he has not paid the amount so far. On the other hand, the defendant would contend that there is no consideration for Ext.A1 cheque. The defendant and the husband of the plaintiff had done real estate business and the plaintiff's husband had given the share of Rs. 7,00,000/- and rest of amount was given by the defendant. It is further stated that the defendant had transferred an amount of Rs.16,80,000/- to the joint account of the plaintiff and her husband as part of the settlement arrived between the parties at the instance of his father. He had already transferred more than the amount to which the plaintiff and her husband are entitled.

8. It is pertinent to note that the defendant has no case that he had no transaction with the defendant. It can be seen from the plaint that there were financial transactions between the plaintiff, her husband and the defendant. They had also done

real estate business and Ext.A1 cheque was issued towards the settlement of the balance amount due to the plaintiff. The written statement would show that there was only one transaction between the plaintiff's husband and the defendant. The plaintiff's husband and the defendant had done a real estate business. Ext.B4 is the certified copy of agreement. It would show that the plaintiff's husband and the defendant as the second party and others as first party had entered into agreement for sale on 11.07.2011. It would show that the second party had agreed to purchase the property of the first party for Rs.27,77,750/-. It is averred in the written statement that the plaintiff's husband had not given the half of the sale consideration and the defendant had paid the balance amount of Rs.20,77,750/-. It is significant to note that it is not averred in the plaint about all these facts.

9.The plaintiff was examined as PW1. She filed proof affidavit and a perusal of proof affidavit would show that she narrated a new story. It can be seen from paragraphs 6 to 9 of the proof affidavit that the defendant and his father had financial transaction with plaintiff and her husband from 2007 onwards. It is stated that an amount of Rs.2,00,000/- was due to

the plaintiff and the defendant and his father had transferred interest of the above amount to her account and the same was not given for the treatment expenses of the defendant's mother as stated in the written statement. It is also stated that they had borrowed an amount of Rs.7,00,000/- from the plaintiff's husband. According to the plaintiff, the sale consideration to be paid by her husband was Rs.14,00,000/- and out of that Rs.7,00,000/- was paid by her husband and the remaining Rs. 7,00,000/- was added to the amount due from the defendant. So, that Rs.7,00,000/- was given by the defendant. The evidence of PW1 would show that the facts stated in paragraph no. 6 to 8 are important facts and such facts are not stated in the plaint. She would depose that she had lent money to the defendant's father on interest basis. She and her husband had lent money to the defendant's father on interest basis and he used to give the profit of the same to them. She would further depose that Rs.7,00,000/- due to her and her husband is the amount which was obtained by the defendant's father for lending that money to others on interest basis. It was also deposed that Rs.7,00,000/- was given by cash and also transferred through the bank account of the defendant, his wife and his father. The

learned counsel for the defendants submitted that there is suppression of material facts and there is no pleading with regard to the facts stated in the proof affidavit. The counsel relied on the decisions of the Hon'ble Supreme Court in **Muhammad Abdul Vaheed v. Nilofer (2023 KHC 1033)**, the decision of the Hon'ble High court of Kerala in **Kunjalima v. Muhammed (2024 KHC 267)** and **Vinod S.R v. Travancore Devasom Board (2024 (4) KHC 590)**. Per contra, the learned counsel for the plaintiff submitted that the plaintiff cannot draft the plaint in such a way as a reply to facts which might have narrated in the written statement. It is pertinent to note that according to the plaintiff, the defendant and his father had borrowed Rs.7,00,000/- from her husband prior to the real estate business. It is relevant to note that the above contention has no foundation in pleadings. It is a well settled principle that all necessary materials should be pleaded by the party and no party can travel beyond the pleadings. It is clear that facts stated in the proof affidavit are not pleaded by the plaintiff. It is also significant to note that the plaintiff has made contradictory versions with regard to alleged borrowal of Rs.7,00,000/-. Her proof affidavit would show that the defendant and his father

had borrowed Rs.7,00,000/- from her husband for their business purpose whereas her evidence is to the effect that the defendant's father had borrowed Rs.7,00,000/- from her and her husband for lending that money to others on interest basis. It is pertinent to note that it is not averred in the plaint that the plaintiff and her husband had financial transaction with the defendant's husband. It also affects the veracity of the plaintiff's case. It would also reveal that the plaintiff has no consistent case.

10. It is also pertinent to note that the plaintiff has not produced any documents to show that Rs.7,00,000/- was borrowed by the defendant and his father. The case of the plaintiff in the proof affidavit is that Rs.7,00,000/- was given to the defendant and his father by way of cash and cheque. Her evidence is to the effect that Rs.7,00,000/- was given by way of cash and also transferred through the bank account of the defendant, his father and his wife. It is relevant to note that the plaintiff has not adduced any evidence to prove the above version. PW1 was recalled as per order in IA No. 3/2026. Ext. A5 statement of account of the plaintiff's and her husband's joint account from 1.1.2007 to 31.3.2014 was marked as Ext.A5

and Certificate under Bankers Book Evidence Act were marked as Ext.A5(a). PW1 would depose that Ext.A5 would not show that amount was transferred to the account of the defendant and his father. It was further deposed that Rs.7,00,000- was lent to the defendant and his father by her and her husband. They had lent that money to others on interest basis and they used to transfer the profit incurred from that to PW1 and her husband's account. She further deposed that the case of the defendant that Rs.1,00,000/- transferred to their account was for the cancer treatment of defendant's mother since she stayed with them is not correct. His mother died on 11.02.2013. She would also depose that Ext.A5 was produced to prove the same. It is pleaded by the defendant that his mother had undergone cancer treatment at Medical College hospital, Kottayam and she had stayed at the plaintiff's house. He and his father had transferred money to the account of the plaintiff for the expenses. PW2 was examined to prove the plaintiff's above version also. PW2 is the father of the defendant. He would depose that his wife died in February 2012. He would further depose that the defendant had issued cheque in favour of the plaintiff as part of settlement arrived between them and

the amount due as per cheque was given by the defendant. He had not borrowed any from the plaintiff. He further deposed that he had deposited money in the plaintiff's account for his wife's treatment expenses. He would also depose that he suffers from memory loss. It is to be noted that the evidence of PW2 would not go to show that Rs.7 lakhs was borrowed by him and the defendant from the plaintiff's husband. It is also evident from his evidence that the amount transferred to plaintiff's account was for his wife's treatment. It is true that he deposed that his wife died in February 2012. However, his evidence would also reveal that he suffers from memory loss. So, the evidence of PW2 would not help to improve the case of the plaintiff. Hence, it strikes at the root of the plaintiff's case that Rs.7,00,000/- was borrowed by the defendant and his father prior to the real estate business, even though the above case is set up the plaintiff in her proof affidavit.

11. It is also contended by the plaintiff that she had filed O.S 26/2015 before this court since the cheque issued by the defendant dated 30.05.2014 was dishonoured. Ext.B1 certified copy of plaint in O.S 26/2015 and Ext.B2 certified copy of judgment in O.S 26/2015 were marked through PW1. Ext.A4 is

the certified copy of written statement in OS 26/2015. It was marked through DW1. Ext.A4, Ext.B1 and Ext.B2 would also show that it is only averred in the plaint that the defendant had financial transaction with the plaintiff and her husband and the defendant had issued cheque dated 30.5.2014 as part of the settlement arrived between them. It is not stated in the plaint about the real estate business and alleged borrowed of Rs.7,00,000/-, whereas it is clearly pleaded by the defendant that he had transferred Rs.16,80,000/- to the joint account of the plaintiff and her husband. A perusal of above documents would show that the defendant has a consistent case throughout.

12. The learned counsel for the plaintiff submitted that the defendant admitted the execution of Ext.A1 cheque. The defendant has admitted his signature on Ext.A1 cheque. Hence, presumption under section 118(a) of the Negotiable Instruments Act has to be drawn. The counsel relied on the decision of the Hon'ble Apex court in **Bharat Barrel and Drum Manufacturing Co. v Amin Chand (1999 KHC 467)**. Per contra, the learned counsel for the defendant submitted

that the defendant has not denied the execution of Ext.A1 cheque, but there is no consideration or Ext.A1 cheque. The counsel relied on the decision of the Hon'ble High Court in **Suni Chacko v. Annamma Alex (2025 KHC 78)**. It is contended by the defendant that he had done real estate business with the husband of the plaintiff. Ext.A1 cheque and cheque dated 30.5.2014 were executed and issued by him in favour of the plaintiff as per the direction of his father. Thereafter, he had transferred Rs.16,80,000/- to the joint account of the plaintiff and her husband as part of the settlement arrived between them at the instance of his father. It is further contended that no amount is due as per Ext.A1 cheque and the plaintiff did not return the cheque. The defendant was examined as DW1. His evidence would show that he or his father had not borrowed any amount from the plaintiff or her husband. His evidence would also go to show that he had transferred more than the proportionate amount given by the plaintiff's husband as sale consideration. Ext.B3(a) to Ext.B3(f) entries in Ext.B3 statement of account were marked through him. It would also show that Rs.16,80,000/- were transferred to the joint account of the plaintiff and her husband. It can be seen

from Ext.B3(a) entry that Rs.5,00,000/- was transferred on 28.3.2014. Ext.A1 cheque is dated 30.4.2014. It is clearly pleaded by the defendant that he had issued Ext.A1 as per the direction of his father and thereafter he had transferred a total amount of Rs.16,80,000/- to the joint account of the plaintiff and her husband as part of the settlement arrived between them. So, this would go to show that the defendant's case is reliable.

13. The evidence on record would show that the plaintiff failed to plead and prove her case. There is nothing on record to show that the defendant and his father had borrowed Rs.7,00,000/- from the plaintiff's husband. The evidence on record would show that an amount of Rs. 6,50,000/- is not due from the defendant and no amount is due as per Ext.A1 cheque. There is no consideration for Ext.A1 cheque. It is also observed that Ext.B3 would show that the defendant had transferred Rs.16,80,000/- to the plaintiff and no amount is due to the plaintiff. Hence, the plaintiff is not entitled to realize any amount from the defendant.

14. Issue no.2: - Since suit is liable to be dismissed, this issue does not arise for consideration.

15. Issue no.3: - Considering the relationship between the parties, they are directed to suffer their respective costs.

16. In the result, the suit is dismissed. No order as to costs.

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

Sd/-

**Annu Mary Jose
Munsiff**

APPENDIX

Exhibits marked for the Plaintiff:

A1	30.04.2014	Original Cheque No.065092 for Rs.6,50,000/-
A2	26.07.2014	Cheque return memo.
A3	-	Copy of lawyers notice.
A4	25.05.2015	Certified copy of written statement in OS.26/15 of Munsiff Court Ettumanoor.
A5	26.02.2026	Statement of account of Omana V.J./Jayakumar S. from 01.01.2007 to 31.03.2014. issued from SBI Sekharipuram.
A5(a)	26.02.2026	Cerificate u/s 2A(b) and 2A(c) of the Banker's Book of Evidence Act.

Exhibits marked for the Defendants:

B1	30.01.2015	Certified copy of Complaint in OS.26/2015 of Munsiff Court Ettumanoor.
B2	21.03.2016	Certified copy of Judgement in OS.26/2015 of Munsiff Court Ettumanoor.
B3	16.02.2016	Certified copy of statement of account No. 57011366722 of SBI Ettumanoor from 01.10.2013 to 21.12.2015.
B3(a)	28.03.2014	Entry in Ext.B3.
B3(b)	06.05.2014	Entry in Ext.B3.
B3(c)	04.06.2014	Entry in Ext.B3.
B3(d)	05.06.2014	Entry in Ext.B3.
B3(e)	27.06.2014	Entry in Ext.B3.
B3(f)	19.08.2014	Entry in Ext.B3.
B4	11.07.2011	Certified copy of sale agreement (Certified copy of Ext. B1 In OS.26/15)
B5	12.02.2016	Certified copy of PW1 in OS.26/15 of Munsiff Court Ettumanoor.

Third Party Exhibits: Nil

Court Exhibits: Nil.

Witness examined for the Plaintiff:

PW1	04.06.2018}	Omana V. J.
	21.03.2026}	
PW2	12.08.2018	T. A. Krishnan

Witness examined for the Defendants:

DW1 30.08.2018}
 05.09.2018} Jisso K Ananad
 10.12.2025}

Court Witness : Nil

**Id/-
Annu Mary Jose
Munsiff**

// True Copy //

Copied by : Anuja
Compared by : Shandini.

**Sd/-
Annu Mary Jose
Munsiff**