

IN THE COURT OF THE MUNSIFF, ADOOR

Present: Sri. Amal.S.R, Munsiff.

Tuesday the 7th day of June, 2022
17th day of Jaishtha, 1944 (S.E)O.S. No.443/2016

Between:-

Sheeja Rajan, aged 45 years,	}	
W/o. Rajan	}	
Nisha Manzil, Mangaram,	}	Plaintiff
MSM.P.O Pandalam,	}	
Pandalam Village, Adoor Taluk.	}	

(By Adv.K.Radhakrishnan, Adv. B.Binny and Adv.
Biju.M.Thankachan)

And:-

1.	Fazal Khan, aged 49 years,	}	
	S/o. Kassim Rawther,	}	
	Fazal Manzil, Chayamkandathil,	}	Defendants
	Thamarakulam.P.O and Village ,	}	
	Mavelikara Taluk.(died)	}	

Addl.	2.	Ushaiba, aged 42 years,	}	
		W/o. Fazal Khan,	}	
		Fazal Manzil, Chayamkandathil,	}	
		Thamarakulam.P.O	}	
		Thamarakulam Village ,	}	
		Mavelikara Taluk.	}	

Addl.	3.	Fathima Fzal, (Minor),	}	
		aged 16 years	}	
		D/o. Ushaiba, Fazal Manzil,	}	
		Chayamkandathil,	}	
		Thamarakulam.P.O	}	
		Thamarakulam Village ,	}	
		Mavelikara Taluk.	}	

Addl.	4	Fiya, aged 10 years (minor),	} Defendants
		D/o. Ushaiba, Fazal Manzil,	}
		Chayamkandathil,	}
		Thamarakulam.P.O,	}
		Thamarakulam Village ,	}
		Mavelikara Taluk	}

(Defendants were set exparte)

(3rd and 4th additional defendants are minors)

(Additional Defendants 2 to 4 are impleaded as per order in IA No. 2206/2017 dated 07.06.2018)

This suit having been finally heard on 07.06.2022 in the presence of Adv.K.Radhakrishnan, Adv. B.Binny and Biju.M.Thankachan, counsels for the plaintiffs and defendants were set exparte and on the same day the court delivered the following:

JUDGMENT

Suit is filed for realization of money.

2. The averments in the plaint in brief are as follows: The defendant make plaintiff belief that if she invest ₹6,00,000/- he would make it double and 50% of the doubled amount should be given to her. Based on the promise she has handed over ₹6,00,000/- on July 2015. Thereafter based on a mediation postdated cheque No.216971 was handed over to her. Till now the said amount was not repaid. Hence the suit.

3. Defendant entered appearance and when the case was posted for written statement he expired and thereafter as per Order in IA 2206/17 dated 07.06.2018 his legal heirs were impleaded as additional defendant. The 2nd additional defendant was called absent was set exparte. But 3rd and 4th

additional defendants are minors, and plaintiff was directed to file petition to appoint a guardian for them. But no petition was filed to that effect. Hence, proceedings could not be ordered against them as *ex parte*. The plaintiff is therefore precluded from claiming any relief at present from the additional 3rd and 4th defendant.

4. In order to stake the plaint claim plaintiff entered into the witness box and examined herself as PW1. Exts.A1 and A2 marked. Ext.A1 is the cheque dated 04.10.2016. Ext.A2 is the dishonour memo. From the evidence tendered it is evident that deceased 1st defendant owed an amount of Rs.6,00,000/- to the plaintiff. Additional 2nd defendant being his legal heir is liable to pay the debts incurred by her husband. In the meantime she can recover the proportionate amount from the property inherited by other legal heirs if she is paying the full plaint amount. The unchallenged testimony of PW1 established the cause of action pleaded by the plaintiff. In the absence of any countervailing evidence to contradict this proof of plaint claim I deem that same remains uncontroverted and accordingly admitted. Here the rate of interest claimed by the plaintiff is 18% p.a and I find it unreasonable and fit it reasonable to allow 12% p.a. as the interest. Thus plaintiff is entitled to realise an amount of ₹6,06,498/- with future interest at 12% p.a from the 2nd defendant and her assets.

In the result, I decreed the suit against the 2nd defendant. It is ordered that 2nd defendant do pay to the plaintiff a sum of ₹6,06,498/- with interest

@ 12% p.a from the date of suit till the date of realization. The 2nd defendant do also pay the cost of the suit to the plaintiff.

Dictated to the Confidential Assistant, transcribed, and typed by her corrected and pronounced by me in open court on this the 7th day of June 2022.

AMAL.S.R,
MUNSIFF.

Appendix

Exhibits marked for the Plaintiff:-

A1 04.10.2016 Cehque No. 216971 drawn on S.B.I, Pallickal Branch.

A2 05.10.2016 Dishonour memo executed by canara Bank, Pandalam.

Exhibits marked for the Defendants:- Nil

Court Exhibits marked : - Nil

Witness Examined for the Plaintiff :-

PW1 04.06.2022 Sheeja Rajan

Witness Examined for the Defendants :- Nil

MUNSIFF.

Typed by: Saji.K
Compared by:

Fair/Copy of Judgment in
O.S No.443/2016
Dated: 07..06..2022.