

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA

Present:- Lekshmi K Thampi, Additional Sub Judge

Monday, the 16<sup>th</sup> day of March 2026,/25<sup>th</sup> Phalgunam1947 SE

**AS 68/2020**

**( OS 478/2018 of Munsiff Court, Chalakudy)**

Appellant:-

Central Kerala Kuries Private Limited, Aloor village, desom,  
Chalakudy Taluk, Rep by Managing Director Babu Varghese

By. Adv. Pauly J Aricatt

Respondents:-

1. Shaju, Aged 45, S/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.
2. Rosy, Aged 76, W/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.
3. Jiji, Aged 41, D/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.
4. Jims, S/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.
5. Jiju, S/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.
6. Shibu, S/o. Kalathinkal Late Thomas, Aloor village, desom, Chalakudy Taluk.

By. Adv. Jayathi R

This appeal having come up before me for final hearing on 29.02.2026 in the presence of counsel for both sides and stood over for consideration till this date and the court delivered the following:-

### **JUDGMENT**

Appellant is the plaintiff in the suit. Aggrieved by the judgment in OS 478/2018 of Munsiff Court, Chalakudy has filed this appeal to set aside the judgment and decree.

2. The plaint averments in brief are that:- The suit was for realization of money due on a kuri agreement. The case of the plaintiff is that the defendant joined a kuri conducted by the plaintiff as subscriber with ticket No.77 having sala of Rs.2,40,000/-, that he prized the kuri on its 3<sup>rd</sup> installment which fell due on 11.07.2005, that he availed the kuri amount after executing a kuri agreement on 26.08.2005 whereby it was agreed that the future installments would be paid without default. For securing the said debt, the late Thomas had executed a mortgage in favour of the plaintiff company by depositing his title deeds on 27.08.2005. The 1<sup>st</sup> defendant thereafter failed to make payment of subscription from the 8<sup>th</sup> installment till 13<sup>th</sup> installment for which the plaintiff filed a suit as O.S: 425/2010 which was decreed on 31.08.2011, that subsequently the mortgagor Thomas died and his legal heirs are arrayed as defendants 2 to 6. The 1<sup>st</sup> defendant subsequently failed to make payment of the 14<sup>th</sup> to 20<sup>th</sup> installments also and therefore the defendants are liable for making payment of the said sum and hence the suit.

3. Before the trial court, the defendants entered appearance and filed written statement raising various contentions. Subsequently when the suit was listed for trial, the defendants remained absent and were set ex parte. The plaintiff filed affidavit and marked documents Exts. A1 to A6.

4. The point to be decided is whether the plaintiff is entitled to realize any amount from the defendants.

5. After analyzing the evidence, the trial court dismissed the suit on the ground that the suit is barred by limitation. Aggrieved by the judgment of the trial court the plaintiff has preferred the appeal.

6. The appellant challenges the judgment mainly on the following grounds: The trial court dismissed the suit without properly appreciating the pleadings and evidence on record. The appellant contends that the trial court committed an error in holding that the suit is barred by limitation. It is further contended that earlier the plaintiff had filed O.S. No.425/2010 based on the security agreement and memorandum of deposit of title deeds for recovery of certain instalments and the said suit was decreed. The defendants had preferred A.S. No.149/2012 before the appellate court challenging the decree and the same was dismissed. According to the appellant, the period spent in prosecuting the said appeal is liable to be excluded under Section 14 of the Limitation Act. However, the trial court failed to consider the said aspect.

7. The appellant also contended that the original liability is secured by deposit of title deeds and therefore an equitable mortgage has been created. Hence the period of limitation applicable is twelve years and not three years. It is therefore argued that the trial court erred in applying Article 55 of the Limitation Act and in holding that the claim is barred by limitation.

8. It is further contended that the defendants were set ex parte and the documents produced by the plaintiff were marked and proved without objection. In spite of the same, the trial court dismissed the suit without properly appreciating the evidence on record.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents. Both sides were represented and written argument notes were also filed.

10. The following points arise for consideration in this appeal:

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is entitled to realise the amount from the defendants?
3. Whether the judgment and decree of the trial court suffer from any illegality or irregularity?
4. Whether the judgment of the trial court is liable to be interfered with?
5. What shall be the order?

11. Point No. 1:- The suit was filed by the plaintiff for realization of money due under a kuri transaction. According to the plaintiff, the 1st defendant subscribed to a kuri conducted by the plaintiff and prized the kuri on the 3rd instalment. After receiving the kuri amount, the defendant executed a kuri agreement dated 26.08.2005 agreeing to pay the future instalments without default. For securing the said liability, Thomas, who stood as guarantor, deposited his title deeds with the plaintiff and executed a memorandum of deposit of title deeds, thereby creating an equitable mortgage in favour of the plaintiff. It is the further case of the plaintiff that the defendant committed default in payment of instalments from the 8th instalment to the 13th instalment. Consequently, the plaintiff filed O.S. No.425/2010 for realization of the said amount and the suit was decreed. Thereafter the defendant again committed default in payment of instalments from the 14th instalment onwards. Hence the present suit was filed for realization of the remaining instalments.

12. Before the trial court, the defendants did not contest the matter and were set ex parte. On the side of the plaintiff, PW1 was examined and Exts.A1 to A6 were marked. Since the defendants did not choose to contest the suit, the evidence adduced by the plaintiff remained unchallenged.

13. However, the trial court dismissed the suit holding that the claim is barred by limitation. The trial court observed that the last instalment became due on 09.04.2014 and that the suit ought to have been filed within three years therefrom. The trial court further held

that each instalment gives rise to a separate cause of action and since the suit was filed beyond the period of limitation, the claim is time barred.

14. Before this court, the learned counsel for the appellant contended that the trial court erred in holding that the suit is barred by limitation. According to the appellant, the liability was secured by deposit of title deeds and therefore an equitable mortgage was created. In such circumstances, the period of limitation applicable would be twelve years and not three years.

15. On the other hand, the learned counsel for the respondents contended that the alleged memorandum of deposit of title deeds produced by the plaintiff is not a registered document. According to the respondents, the said document requires compulsory registration under Section 17 of the Registration Act and since the same is not registered, the plaintiff cannot rely upon the same to claim the benefit of the twelve year limitation applicable to mortgage suits. The learned counsel for the respondents also relied on a decision of the Hon'ble High Court reported in 2010 (1) KHC 624 in support of the above contention.

16. The appellant further contended that since the earlier suit filed by the plaintiff was decreed and an appeal was preferred against the said decree, the period spent in prosecuting the said proceedings is liable to be excluded under Section 14 of the Limitation Act.

However, the trial court failed to consider the said aspect while deciding the question of limitation.

17. The principal question that arises for consideration in this appeal is whether the trial court was justified in holding that the suit is barred by limitation. The suit is one instituted for realization of the defaulted kuri instalments. It is pertinent to note that the court fee in the suit has been paid under Section 33 of the Kerala Court Fees and Suits Valuation Act, which relates to suits for recovery of money due on a mortgage. The specific case of the plaintiff is that the 1st defendant had created an equitable mortgage by deposit of title deeds in favour of the plaintiff as security for the liability arising out of the kuri transaction.

18. The cause of action pleaded in the plaint is also the date on which the mortgage was created. The payment of court fee under Section 33 of the Kerala Court Fees and Suits Valuation Act further indicates that the plaintiff intended to institute the suit not as a simple money suit but as a suit for recovery of money secured by a mortgage and relief sought is to create charge over property and to sell the property to realise the amount. In such circumstances, the limitation applicable cannot be the limitation prescribed for a simple money suit. When the claim is based on a mortgage created by deposit of title deeds, the governing provision is Section 58(f) of the Transfer of Property Act, which deals with mortgages by deposit of title deeds. Consequently, the relevant provision under the Limitation

Act is Article 62, which prescribes a period of twelve years for a suit to enforce payment of money secured by a mortgage. Therefore, when the suit is treated as one for enforcement of a mortgage, the period of limitation available to the plaintiff is twelve years from the date when the money sued for becomes due. Here the chitty terminated on 09.07.2014 and hence the amount became due on 09.07.2014. So as per Article 62 of Limitation Act the amount became due on 09.07.2014 and period of limitation starts from 09.07.2014. In that view of the matter, the contention raised by the appellant that the suit is within the period of limitation is sustainable. Accordingly, the finding of the trial court that the suit is barred by limitation is legally unsustainable and cannot be upheld.

19. Another contention raised by the defendant is that Ext. A2 cannot be admitted in evidence as it is not a registered document. In order to examine this contention, the nature of Ext. A2 requires consideration. On perusal of Ext. A2, it is seen that the document is a memorandum evidencing the deposit of title deeds. The Hon'ble Supreme Court in *Cosmos Co-operative Bank Ltd. v. Central Bank of India* in 2025 KHC online 6164 held that: "Deposit of title deeds is one of the many forms of mortgages whereunder there is transfer of interest in specific immovable property for the purpose of securing payment of money advanced by way of loan. The three requisites of a valid mortgage are debt, deposit of title deeds, and an intention that the deeds shall operate as security for the debt. In other words, when the depositor deposits with the creditor title deeds of his property

with intent to create a mortgage, no registered instrument is required under Section 59 of the Transfer of Property Act, 1882, as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that the deeds shall be security, which will enable the creditor to recover the money lent.”

20. Similarly, in *A.B. Govardhan v. P. Ragothaman*, 2024 INSC 640 the Apex Court held that:“Under the Transfer of Property Act, a mortgage by deposit of title deeds is one of the forms of mortgages whereunder there is a transfer of interest in specific immovable property to secure payment of money advanced or to be advanced by way of loan. A mortgage by deposit of title deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. When the depositor deposits with the creditor title deeds of the property for the purpose of surety, it becomes a mortgage in terms of Section 58(f) of the Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. A document merely recording the transaction which is already concluded and which does not create any rights or liabilities does not require registration.”

21. In 2017 (2) KLJ 746 South Indian Bank Ltd., v. K.P. Ramachandran and another, the Hon'ble High Court has held that if the document merely refers to the handing over of the title deeds or acknowledges that title deeds are deposited with the creditor, without inclusion of any further term or condition, it is not a document that requires registration. A memorandum merely acknowledging the deposit of title deed, by itself, does not create a mortgage if any terms and conditions relating to the mortgage are incorporated therein, then the position would be different if the document merely refers to the handing over of the title deeds or acknowledges that the title deeds are deposited with the creditor, without inclusion of any further term or conditions, it is not a document requires registration. The mortgage is created by the mere handing over of the title deeds as security. No registered instrument is necessary for the said purpose. However, if a memorandum evidencing the terms and conditions with regard to deposit is executed, then it shall require registration in terms of Section 17(1)(c) of the Registration Act. In other words, it is not the time of execution of the memorandum of acknowledgment that is decisive but whether the memorandum incorporates any term or condition, is the benchmark. If the memorandum is prepared merely to confirm the deposit of title deeds, registration is not required irrespective of the point of time at which it is executed. However, if the memorandum creates any rights and liabilities, it requires registration.

22. Thus, the legal position is well settled that a mortgage by deposit of title deeds under Section 58(f) of the Transfer of Property Act can be created without a registered instrument, provided the title deeds are deposited with the intention of creating security for the debt. A document which merely records or evidences such deposit, without itself creating or extinguishing rights, does not require compulsory registration.

23. In the present case, Ext. A2 only records the fact of deposit of title deeds made by the defendant as security for the debt and does not by itself create or extinguish any right in immovable property. Therefore, the absence of registration does not render Ext. A2 inadmissible in evidence. Moreover, the respondent has not taken such a defence or contention before the trial court. So it cannot be taken in appeal.

24. In the present case, the plaintiff's case is that the defendant, after receiving the kuri amount, deposited the title deeds of his property as security for the due payment of the kuri instalments. Ext. A2 is relied upon only as a memorandum evidencing such deposit. Therefore, the transaction clearly constitutes a mortgage by deposit of title deeds. When the liability is secured by mortgage, the remedy available to the plaintiff is to institute a suit for realization of the mortgage money. Accordingly, the present suit has been valued and court fee has been paid under Section 33 of the Kerala Court Fees and Suit Valuation Act, which deals with suits for recovery of money

secured by mortgage. Therefore, in the light of the admissibility of Ext. A2 and the nature of the transaction evidenced therein, the contention that the suit is not maintainable as barred by limitation or that Ext. A2 is inadmissible for want of registration cannot be sustained. Accordingly, the contention raised by the defendant that Ext. A2 is inadmissible for want of registration is without merit.

25. In the light of the above discussion, this Court finds that the trial court erred in treating the suit as a simple money suit and in applying the period of limitation applicable to such suits. The materials on record clearly show that the liability arising out of the kuri transaction was secured by deposit of title deeds, thereby creating an equitable mortgage in favour of the plaintiff. Ext.A2, which is a memorandum evidencing such deposit of title deeds, does not require compulsory registration and is admissible in evidence. When the transaction amounts to a mortgage by deposit of title deeds within the meaning of Section 58(f) of the Transfer of Property Act, the limitation applicable is that prescribed for enforcement of a mortgage. Under Article 62 of the Limitation Act, the period of limitation for a suit to enforce payment of money secured by a mortgage is twelve years from the date when the money sued for becomes due. Therefore, the present suit, which has been instituted for recovery of money secured by an equitable mortgage, is governed by the said provision. The finding of the trial court that the suit is barred by limitation by applying the period of three years applicable to a simple money claim is therefore legally unsustainable.

26. For the reasons stated above, the judgment and decree passed by the trial court dismissing the suit on the ground of limitation cannot be sustained. The impugned judgment is therefore liable to be set aside. Since the evidence adduced by the plaintiff remained unchallenged and the trial court has dismissed the suit solely on the ground of limitation, the plaintiff is entitled to succeed in the suit.

27. In the result, the appeal is allowed. The judgment and decree of the trial court dismissing the suit are set aside and the suit is decreed. The plaintiff is entitled to realise Rs.84,000/- from the defendants with interest @ 12 % from the date of suit till realisation from the defendants and their assets. The defendants are directed to pay the above amount with interest and costs. There shall be a charge over the property for the above said sum.

(Dictated to confidential assistant, typed by her, corrected and pronounced by me in open court on this the 16<sup>th</sup> day of March, 2026.)

Sd/-

Lekshmi K. Thampi  
Additional Sub Judge

Appendix:- Nil

Id/-

Additional Sub Judge

copied by:vdm  
compared by:

// True Copy// B/o.

Sheristadar.