

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.

Present:- Smt.Karthika.K., Munsiff.

Tuesday, the 24th day of March, 2026/ 03rd Chaithram, 1948.

O.S.1021/2021

Plaintiff:-

Unnikrishnan, Aged 53 years, S/o.Valiyara Kannan,
Pullut Village and Desom, Kodungallur Taluk.

By Adv.K.Gopakumar & C.G.Shisheer

Defendant:-

Kalesh, Aged 44 years, S/o.Marekkadan Kuttappan, Velloor
Desom, Puthenchira Village, Mukundapuram Taluk.

By Adv.P.R.Anandan, V.P.Rajeesh and Binfi Joseph

This suit having come up for final hearing before me on 04.03.2026 in the presence of the counsel for both sides and having stood over for consideration to this day the court on 24.03.2026 delivered the following:-

JUDGMENT

Suit is one for realisation of money.

2. **The plaint averments in brief is as follows:-** The plaint schedule property is situated in survey 49/2 of Pullutt village and has an extent of 2.02 Ares of land along with a concrete roof house obtained by the defendant vide sale deed No.832/2013 of Kodungallur SRO. The plaintiff agreed to purchase the plaint schedule property and the defendant agreed to sell the plaint schedule property by the defendant for a total sale consideration of Rs.8,25,000/- . The period of agreement was 6 months from 14.10.2017. On 14.10.2017 the plaintiff paid Rs.2,00,000/- to the defendant towards the advance

amount and the said payment is mentioned in the agreement. The stipulation in the agreement states that the period of the agreement will be for 6 months from 14.10.2017 and within that time the defendant should measure the plaint schedule property and convince the plaintiff regarding the original documents, prior documents, certificate showing encumbrance for 30 years, tax receipt and certificate showing that no revenue recovery is pending over the property, possession certificate etc. The parties mutually agreed that once all the formalities are complied by the defendant, the plaintiff will pay balance sale amount and the defendant will execute sale deed in the name of the plaintiff. The plaintiff was ever ready and willing to perform his part of the contract. Other than the 2,00,000/- rupees paid on 14.10.2017, as per the requisition of the defendant, on 22.01.2018 the plaintiff again paid Rs.2,00,000/- towards the advance amount and the said fact is endorsed over the sale agreement. Due to the failure occurred from the part of the defendant, the agreement could not be performed. Even though the plaintiff informed the defendant about his willingness to purchase the plaint schedule property, the defendant delayed the execution of sale deed by stating one reason or other. The plaintiff had prepared the balance sale consideration and informed the defendant, but the defendant approached plaintiff and requested for more time for

clearing the encumbrance over the plaint schedule property. Defendant again demanded some advance amount from the plaintiff. On 04.06.2018, the plaintiff further paid Rs. 1,50,000/- to the defendant and the payment made is endorsed over the sale agreement. The period of performance of the agreement was extended up to 04.09.2018. Later the plaintiff came to know that the defendant is attempting to sell the plaint schedule property to another person. The plaintiff is entitled to realize Rs. 5,50,000/- paid as advance to the defendant along with damages amounting to Rs. 2,00,000/-. But for the purpose of litigation the plaintiff has restricted his claim for return of advance amount with interest. The plaintiff has got a charge over the plaint schedule property for the amount paid as advance as per Section 55 of the Transfer of Property Act. Therefore, there is no limitation to the suit.

3. **The written statement filed by the defendant is as follows:-** The defendant denied almost all the allegations and averments in the plaint except those which are admitted by him in the written statement. The defendant admitted the execution of the sale agreement on 14.10.2017. The defendant contended that he had convinced the plaintiff by measuring the plaint schedule property and by handing over the encumbrance certificate, property sketch etc. to him. The defendant was ever ready and willing to assign the plaint

schedule property to the plaintiff. But it is upon request made by plaintiff the date of performance was extended. Even though the defendant was ready to assign the property on time the plaintiff failed to accumulate the balance sale consideration of Rs.6,25,000/- . The defendant was forced to take loan of Rs.2,80,000/- for exorbitant interest and he suffered huge loss. The advance amount is liable to be set off with the loan of Rs. 2,80,000/- . The plaintiff is not entitled to get any amount from the defendant. If the plaintiff had informed the defendant that he cancelled the agreement, the defendant could have applied for the benefits available to him from the government during the flood time. By the said amount the defendant might have changed flood affected house into a suitable residence by using the government fund or with the help of Non Governmental Organisation. The defendant had suffered a loss of another four lakhs in the above head. The defendant had handed over the documents to the plaintiff and measured and convinced the extent of land to the plaintiff. The plaintiff did not pay Rs.2,00,000/- on 22.01.2018. The plaintiff did not pay Rs.1,50,000/- to the defendant on 4.6.2018. The defendant is entitled to appropriate Rs. 2,00,000/- received by him on 14.10.2017 as damages for loan transaction. The contract was never extended to 04.09.2018. The suit is barred by limitation. The sale could not take place due to the failure occurred from the part of the plaintiff. Other

than Rs. 2,00,000/- received on 14.10.2017, no other amount is received by the defendant. The plaintiff is not entitled to get any amount from the defendant.

4. The following issues were framed in this case:-

1. Is the plaintiff entitled to realise the amount from the defendant?
2. What is the amount if any to which the plaintiff is entitled to realise from defendant?
3. What is the rate of interest if any to which the plaintiff is entitled?
4. Reliefs and Order as to costs?

5. The plaintiff was examined as PW1. Two witnesses were examined as PW2 and PW3 and Exts.A1, A2, A1(a), A1(b), A2 & A3 documents were marked from the side of the plaintiff. Exts. A2 & A3 marked subject to further proof. Defendant was examined as DW1. Exts.B1 to B3 documents were marked from the side of the defendant. Ext.B2 marked subject to further proof.

6. Heard both sides.

7. **Issue No.1 to 3:-** The plaintiff in this case was examined as PW1. Exts. A1, A1(b) and A2 documents were marked. During cross-examination, PW1 testified that he was working abroad from 2008 onwards. PW1 worked abroad for about 17 years. He usually

comes home once in every two years. The plaintiff testified that he was present at the time of execution of Ext. A1 agreement dated 14.10.2017. Thereafter he came back home on 2018 August. The defendant is the friend of plaintiff's brother and through his brother the plaintiff had learnt that the defendant was attempting to sell his property. The plaintiff admitted that Ext. A1(b) endorsement was not made in his presence. He deposed that Rs. 1,50,000/- received by the defendant after the date of performance of the agreement. The plaintiff transferred Rs.2,00,000/- to defendant from the bank account of his wife on 22.01.2018. The plaintiff had approached the defendant for purchasing the property on 2018 September. But the defendant refused to assign the properties to plaintiff stating the reason that the title documents of the property is mortgaged with the bank. The plaintiff also deposed that he paid Rs. 1,50,000/- to defendant on 04.06.2018 through his wife at their house. As per PW1's testimony he collected Rs. 2,75,000/- during 2018 October in his account. The plaintiff further deposed that in total he gave Rs. 5,50,000/- to the defendant towards the advance amount. Even though the defendant suggested that the sale could not take place due to the fault from the part of the plaintiff, he stoutly denied the suggestion.

8. During cross-examination, the defendant denied Ext. A1(b) endorsement and stated that he did not make such an endorsement over Ext. A1 agreement. PW1 admitted that he was not at home during the time when the endorsement was made and he did not see the defendant making such an endorsement. But he stated that this endorsement was made in the handwriting of the defendant. Even though the defendant contended that time was the essence of contract, even after the period of performance, the defendant had seen to have received money from the plaintiff towards the sale amount.

9. During cross-examination, plaintiff stated that Rs. 2,00,000 was given to defendant from his wife's account on 22.01.2018. But the said fact is not averred in the plaint. PW1 had testified that during the year 2018 September he approached the defendant to assign the plaint schedule property. But the defendant replied that since the document was mortgaged in the bank he could not assign the property at that time and only after taking back the document from the bank. He would be able to sell the property. It is deposed by plaintiff that even before filing the suit plaintiff approached the defendant and asked him to assign the property. But even at that time the defendant requested one week period for executing the sale deed. It is also come out in evidence that on 4.6.2018 the defendant

came to the plaintiff's house and obtained Rs.1,50,000/- from the plaintiff's wife. Even at the time of cross-examination, the plaintiff expressed his willingness to purchase the property.

10. Plaintiff examined two witnesses from his side. PW2, Harshan is a witness in Ext. A1 agreement. In his chief examination affidavit PW2 stated that he had signed in Ext. A1 sale agreement as a witness. According to him the period of agreement was 6 months and the time for sale of the property was extended as per the requisition made by the defendant. PW2 testified that the defendant had obtained Rs. 1,50,000 as advance from the wife of plaintiff and it is the defendant who wrote the endorsement over Ext. A1 agreement and signed in Ext. A1 agreement after the endorsement. PW2 and one Pradeep Kumar, the brother of plaintiff, Unnikrishnan signed as witness in Ext.A1. PW2 also identified his signature put on the rear page of Ext. A1 agreement and writing next to Ext. A1(b) endorsement. PW2 deposed that the agreement was signed in the rented house of Unnikrishnan. It is the defendant who wrote the endorsement and signed in that. PW2 also deposed that the time was extended as per the request made by defendant. PW3 Manesh was a lessee in the house of the defendant during the period of 2017 October. PW3 resided in DW1's house up to 2018 till the time of flood.

10. The defendant in this case denied that he ever received Rs. 2,00,000 on 22.01.2018 vide bank transfer from the plaintiff. But DW1 admitted Ext. A1(b) endorsement in Ext. A1 agreement. The defendant has no case that he never made any endorsement as Ext. A1(a). On perusal of Ext. A1(b) and Ext. A1(a), it is evident that the same has been written by the one and same person and the handwriting and signatures of both endorsements are similar. There are no serious differences in the signatures put in Ext. A1(a) endorsement and Ext. A1(b) endorsement. The defendant even though denied Ext. A1(b) endorsement he did not take any steps to prove that the handwriting and signature in Ext. A1 agreement is not that of himself. Therefore, it can only be concluded that both Ext. A1(a) and Ext. A1(b) endorsement are made by the defendant himself.

11. The defendant contended that the sale could not be affected since the plaintiff refused to purchase the property from the defendant. The defendant was ever ready and willing to perform his part of the contract. It is also come out during the cross-examination that the defendant did not measure the property or he did not produce the encumbrance certificate and original documents before the plaintiff. During cross examination DW1 stated that he has collected all the necessary documents from the Village Office. But he

failed to produce the documents before court since the documents found missing from his possession. But in the affidavit filed by the defendant, he averred that he had produced all the necessary documents before the plaintiff. During cross-examination DW1 denied that he made Ext. A1(a) and Ext. A1(b) endorsement over Ext. A1 sale agreement. But from the testimony of PW2, it is proved that Ext. A1(b) endorsement was made by the defendant in his presence. Since Ext. A1(a) and Ext. A1(b) are very much identical, it is evident that both the endorsements are made by the one and same person. DW1 also admitted that the signatures in Ext. A1 agreement is that of his. The defendant denied that there was any encumbrance over his property. But he did not produce any document to show that his property was free from any encumbrance. DW1 might have produced an encumbrance certificate to show that no encumbrance existed during the time of contract. In this case neither the plaintiff send any notice to the defendant asking performance nor did the defendant sent any notice asking plaintiff to perform his part of contract. Therefore it is evident that both the parties did not initiate their part of performance of the contract.

12. Therefore from the analysis of the evidence and circumstances of the case, it can be seen that both parties failed to perform their part of the contract. But there no evidence that the

plaintiff has improperly declined to purchase the property from the defendant.. As per **Section 55(6)(B) of Transfer of Property Act** “ *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.*” It is evident that in this case the plaintiff is entitled to get charge over the property. Even though DW1 had denied the endorsement made on the rear side of first page of Ext. A1 agreement marked as Ext. A1(a) and Ext. A1(b), the oral testimony of PW2 proved Ext.A1(b) endorsement. The defendant did not take any steps to disprove the evidence adduced by the plaintiff. Therefore, it is proved that the defendant has obtained an advance amount of Rs. 5,50,000 towards the purchase money. Therefore, the defendant is liable to pay the advance amount of Rs.5,50,000 along with interest to the plaintiff. Hence for the reasons stated above the issues 1 to 3 are answered in favour of the plaintiff.

13. **Issue No.4.**

a) The defendants shall pay an amount of Rs.5,50,000/- (Five Lakh Fifty Thousand) to the plaintiff with an interest @ 12% per annum from the date of suit till the date of decree

and thereafter with an interest @ 6% per annum on the decree amount till realization.

b) There shall be a charge over the plaint schedule property for the aforesaid amount.

c) The defendant shall pay entire costs of the suit to the plaintiff.

(Dictated to the Confdl.Asst., transcribed by her corrected by me and pronounced in open court on this the 24th day of March, 2026)

Sd/-
KARTHIKA.K.,
MUNSIFF.

APPENDIX

Plaintiff's Exhibits:

A1	-	14.10.2017	-	Agreement
A1(a)	-	22.01.2018	-	Endorsement on Agreement
A1(b)	-	04.06.2018	-	Endorsement on Agreement
A2	-	08.03.2013	-	Photocopy of Theer Deed No.832/2013 Kodungallur S.R.O.
A3	-		-	Account Statement

Defendant's Exhibits:

B1	-	07.03.2014	-	Original Location Sketch
B2	-		-	Photocopy of Complaint (Subject to further proof)
B3	-	25.06.2019	-	Receipt

Court Exhibits :

Plaintiff's Witness:

PW1	-	12.01.2026	-	Unnikrishnan
PW2	-	20.01.2026	-	Harshan
PW3	-	20.01.2026	-	Manesh.K.M.

Court Witness:

Defendant's Witness:

DW1	-	09.02.2026	-	Kalesh
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Compared by:

/True Copy/

Id/-
MUNSIFF.