

IN THE COURT OF THE MUNSIF, KODUNGALLUR.

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

Thursday, the 12<sup>th</sup> day of March, 2026/ 21<sup>st</sup> Phalgunam, 1947.

**O.S.727/2020**

**Plaintiffs:-**

Vidyarthadayini Sabha, Paliyam Thuruth Desom,  
Methala Village, Kodungallur Taluk The firm is rep. by

1. President, Vinayakumar, Aged 45 years, S/o.Mangattil Sukumaran, Paliyam Thuruth Desom, Methala Village, Kodungallur Taluk.
2. Secretary, Bhadran, Aged 69 years, S/o.Kozhiparambil Sreedharan, Paliyam Thuruth Desom, Methala Village, Kodungallur Taluk.
3. Treasurer, Dinamani, Aged 55 years, S/o.Ottaratt Mami, Paliyam Thuruth Desom, Methala Village, Kodungallur Taluk.

By Adv. K.G.Sajith & C.K.Mohandas

**Defendant:-**

Chandran, Aged 66 years, S/o.Ezhumala Veetil Madhavan Nair, Iranikulam Desom, Thirumukkulam Village, Mukundapuram Taluk.

By Adv.Suresh Muraleedharan

This suit having come up for final hearing before me on 21.02.2026 in the presence of the counsel for both sides and having stood over for consideration to this day the court on 12.03.2026 delivered the following:-

**JUDGMENT**

**Suit is one for money.**

2. **The plaint averments in brief as follows:-** The plaintiff institution is legally registered firm and the President, Secretary and Treasurer of the plaintiff Sabha are authorised to sue for and on behalf of plaintiff Sabha as per its constitution. Plaintiff institution

had started a kuri from its Jammu-Thavi branch with 300 lots @ Rs.5000/- per each lot with a total sala of Rs.15,00,000 with 100 lots, 3 divisions and 12 installments in an year starting from 23.2.2012. The defendant subscribed the kuri No.194/194. Defendant auctioned the kuri in its third installment and executed a kuri agreement on 7.7.2012 in the name of the plaintiff sabha. The defendant had paid five installments and defaulted the payment from 6<sup>th</sup> installment on 23.7.2012 to the 60<sup>th</sup> installment on 23.6.2017. The plaintiff sabha had filed O.S.1000/2017 to realise that amount. The defendant defaulted the payment from 66<sup>th</sup> installment on 23.7.2017 till the termination of kuri on 23.5.2020. The defendant is liable to repay the amount due from 66<sup>th</sup> installment onwards till termination of the kuri with and interest of 12% per annum. As per the terms of kuri agreement the plaintiff has every right to realise the entire amount with 12% interest from the plaintiff. There is also a stipulation in the kuri agreement to the effect that the plaintiff can realise the defaulted amount by creating a charge upon the property belongs to the defendant comprised in survey 31/1 of Thirumukkulam village. With the said intention of creating a charge over the plaintiff schedule property the defendant had deposited his title deed with the plaintiff's institution thereby creating an equitable mortgage over the same. Hence the suit is filed for realisation of the said amount by

creating a charge over the plaint schedule property. As a collateral security to the amount assured in the kuri agreement the defendant had created the equitable mortgage by depositing his title deed bearing No.432/2000 of Annamanada SRO with plaintiff institution by creating a mortgage over 5.568 cents of property in survey 31/1 of Thirumukkulam villlage. Even though the plaintiff institution made request to defendant to pay the defaulted installments directly and through advocate the defendant did not pay the defaulted installment. The plaintiff institution had sent a lawyer notice to the defendant on 11.7.2012 asking him to pay the amount. But the defendant did not respond to it. Hence the suit.

3. **Written statement filed by defendant is briefly stated as follows:-** The defendant denied the entire allegations in the plaint. The suit has legal defect. The kuri agreement is unilateral and fraudulently created document. The plaintiff has no right to file a suit by invoking the said kuri agreement. The plaintiff sabha is not entitled to get any decree as prayed. The plaintiff is not entitled to get any relief based on the kuri agreement as suit claim since there is a finding in O.S.1000/2017 that plaintiff sabha is not entitled to get a decree based on the kuri agreement. The alleged agreement was executed after 30.4.2012. Therefore the plaintiff institution has legal impediment to continue the kuri as per Indian Chitties Act. The suit

is barred by limitation. There is a legal bar to file a suit for realising the amount due from 23.7.2017. The agreement upon which the entire suit claim is based is not executed duly or promptly. The kuri agreement is a concocted one. O.S.1000/2017 was dismissed by this court. The plaintiff institution is not entitled to get a charge decree in their favour. The memorandum by which the mortgage is created is a compulsorily registrable document. The cause of action stated in the suit is not correct. The suit is filed with mala fide intention. Hence it is liable to be dismissed.

4. On the basis of the above said pleadings the following issues were raised:-

1. Is the suit barred by limitation?
2. Is the suit maintainable?
3. Is the kuri agreement dated 7.7.2012 is valid and genuine?
4. Is the plaintiff entitled to get Rs.1,21,600/- from the defendants?
5. What shall be the rate of interest payable by defendants?
6. Reliefs and Order as to costs?

5. The Treasurer of the plaintiff institution was examined as PW1 and Exts.A1 to A5 documents were marked from the side of

the plaintiff. The defendant was examined as DW1 and Exts.B1 & B2 documents were marked from the side of the defendant.

6. Heard both sides.

7. **Issue No.1 to 5:-** The Treasurer of the plaintiff sabha was examined as PW1 and Exts. A1 to A5 documents were marked from the side of the plaintiff. Marking of Exts. A2, A3 documents were objected by the defendants, stating that they are compulsorily registrable documents. Hence, these documents were marked subject to further proof. The main contentions taken by the defendants were that the suit is barred by limitation and the suit is not maintainable for the reason that there is no valid kuri agreement and legally enforceable mortgage between the parties. PW1 is the Treasurer of the plaintiff sabha and the plaintiff sabha had given authorization to PW1 for deposing before this court on behalf of the plaintiff sabha. But no written authorization is produced by PW1 before this court. Instead he stated that the person in whose name the defendant executed kuri agreement includes PW1 also. It is evident from Ext.A2 dated 7.7.2012 that the 3<sup>rd</sup> person in Ext.A2 is PW1, Dinamani representing the plaintiff sabha as its treasurer. Therefore it is evident that PW1 is entitled to give evidence on behalf of the plaintiff company.

8. The case of the plaintiff is that on 20.3.2012, DW1

subscribed a kuri bearing No.194/194 with the plaintiff's institution. Since DW1 defaulted payment of installment from 6<sup>th</sup> installment onwards O.S.1000/2017 filed to realise the kuri amount from 6<sup>th</sup> installment to 60<sup>th</sup> installment. But that suit was dismissed. The plaintiff had produced the original of Ext. A2 kuri agreement and Ext. A3 confirmation letter in the above suit. The certified Exts. A2 and A3 documents produced in this case are the certified copies obtained from O.S.1000/2017. PW1 deposed that DW1 auctioned the kuri in the third auction and he is personally aware of the fact that the defendant had auctioned the kuri. PW1 did not admit the suggestion of defendant that Ext. A2 kuri agreement and Ext. A3 confirmation letter is not acceptable in evidence.

9. The certified copy of the judgment in O.S.1000/2017 was put to PW1. PW1 admitted it and it was marked as Ext. B1. In Ext.B1 the court has found that the Ext.A4 document in that case which is the Ext.A3 document in this case is a compulsorily registrable document. Since Ext.A4 was not registered it cannot be accepted in evidence. The defendant also challenged that the plaintiff sabha did not get any authorization either from the Government of Kerala or from the Central Government to conduct kuri. But PW1 asserted that his institution has legal right to conduct the kuri. The defendant challenged that the plaintiff omitted to produce day book, ledger etc.

before this court since the defendant did not subscribe any kuri or executed any kuri agreement or confirmation letter. But PW1 did not produce copy of that document even after the defendant challenged the same.

10. The defendant was examined as DW1. Ext. B2 document was marked through DW1. Ext.B2 document in another case filed by plaintiff sabha against DW1 with respect to another kuri transaction as O.S.717/2020. During cross-examination DW1 admitted that he had some kuri transactions with the plaintiff's institution but that kuri transaction was in the year 2010. DW1 deposed that he gave his title deed as a security for the said kuri in the year 2010 along with tax receipt to the plaintiff institution. He further deposed that other than OS 1000/2017 he had no other case with the plaintiff institution. The defendant also denied the receipt of lawyer notice in this case. He deposed that he had never accepted any amount in this case. But when the certified copy of his title deed is shown to DW1 he accepted that it is his title deed. Even though the lawyer notice is shown to the witnesses he denied Ext. A4 notice, stating that he did not receive any such notice. When Ext. A2 was put to witness, he denied the signature in Ext. A2 document and he also denied the signature in Ext. A3 confirmation letter. When Ext.A5 AD card was shown to witness, DW1 denied that he never received such a document, but

admitted that the address shown Ext. A5 AD card is that of him. Even though DW1 admitted that there was a case as O.S.717/2000 with respect to a kuri between the plaintiff sabha and the defendant, DW1 stated that he did not pay any amount towards that case also.

11. When the written statement was put to DW1 he admitted his signature in the written statement. But when vakkalath is put to him, he denied his signature in the vakkalath. This demeanor of DW1 shows that he is not sure about the documents he signed. Therefore he blatantly denying the signatures in all the documents of which he is not sure about. Ext. A1 is the certified copy of document No. 432/2000 dated 09.02.2000 which is the title deed of the plaintiff. Ext. A2 is the certified copy of kuri agreement dated 07.07.2012 obtained from O.S.1000/2017 seen to have executed by the defendant in the name of plaintiff institution. The defendants contention is that Ext.A2 kuri agreement is a false document. During the time of examination DW1 denied his signature in the kuri agreement as well as the confirmation letter. The contention of the defendants is that since the defendants denied his signatures in this document the burden of proof shifted to the plaintiff and it is the plaintiff's duty to prove that the signature in Ext.A2 kuri agreement is that of the defendant. But I don't agree with this contention of the defendant. The defendant has no specific pleadings as to how did the

plaintiff became aware of the signature of the defendant. It is not pleaded that in what manner the signature of the defendant differs in Ext.A2 kuri agreement. The conjoint consideration of Exts. A1 to A4 documents as well as the comparison of the signatures in the vakkalath as well as the written statement show no visible variation in the execution of the signature. Simple denial will not be sufficient to take a conclusion that the signature in the document is not that of the defendant. The defendant must put up a strong case to believe that the signatures in these documents is in no way belongs to the defendant. But other than the simple denial no pleadings are there to the effect that the plaintiff ha forged the signature of the defendant. It is the duty of the defendant to establish that he has not signed in the document. Since no evidence is adduced to raise suspicious of the signature the court can only presume that the signature in Ext.A2 document is that of the defendant. It is the certified copy obtained from OS 1000/2017. Ext. A4 is the office copy of lawyer notice dated 10.07.2020 issued to the defendant. Ext. A5 is the AD card, which shows that the defendant received the notice.

12. Ext. B1 is the judgment in OS No. 1000/2017 filed by the plaintiff against the defendant. This case is also dealing with the same kuri transaction in the kuri bearing No. 194/194 subscribed by the defendant from the plaintiff's sabha. This case is based on the

kuri agreement dated 7.7.2012. Ext.B1 is a judgment in O.S.1000/2017 passed by this court on 22.1.2022. In O.S.1000/2017 the plaintiff claimed the realisation of kuri installment from 6<sup>th</sup> installment to 60<sup>th</sup> installment starting from 23.7.2012 to 23.6.2017.

13. The plaintiff produced Exts. A1 to A10 documents in O.S.1000/2017. The defendants challenged the validity of Exts. A3 and A4 documents. The court has found that Ext.A4 document created with a purpose to create an equitable mortgage. Since it is a compulsorily registrable document it cannot be taken into evidence. The plaintiff produced the certified copy of the document before this court and is marked as Ext.A3. The plaintiff challenged the marking of Exts. A2 and A3 documents stating that both documents are compulsorily registrable document. But in O.S.1000/2017 the court has found that Ext.A3 is a compulsorily registrable document and it cannot be taken into evidence, therefore that document cannot be taken into evidence in this case also. The finding of the court in O.S.1000/2017 with respect to A3 will operate as a resjudicata in this case. But there is no adverse finding regarding Ext.A2 kuri agreement. It is already found in earlier discussion that Ext.A2 is a valid and genuine document. Therefore the plaintiff is entitled to realise the kuri amount from DW1 prior to three years from the date of institution of suit.

14. The plaintiff claimed that since there is an equitable mortgage with respect to the plaint schedule property and that there is a charge created upon the plaint schedule property by Ext.A1 document there is no limitation for claiming the defaulted installments in this case. The suit is filed in the year 2020. The defaulted installments claimed is from 23.7.2017 to 23.5.2020 which consists of 35 installments. Since the suit is filed on 10.8.2020 the plaintiff is entitled to realise the installments prior to 3 years from 10.8.2020. Therefore the plaintiff is only entitled to realise the installments starting from 10.8.2017 which is only 34 installments. Therefore the plaintiff is entitled to get the amount for 34 installments from 10.8.2017 till 23.5.2020 ie the date of termination of the kuri which is only 34 installments. The plaintiff could not ascertain the equitable mortgage in their favour. The plaintiff is not entitled to get a charge over the plaint schedule property . Based on the discussions made above the issues 1 to 5 are answered in favour of the plaintiff.

15. **Issue No.6:-**

**In the result the suit is decreed in part as follows:-**

**a) The defendants shall pay an amount of Rs.1,13,448/- (One Lakh Thirteen Thousand Four Hundred and Forty Eight) 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 from the date of decree till realisation.**

**b) The defendants 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 12<sup>th</sup> day of March, 2026)

Sd/-  
KARTHIKA.K.,  
MUNSIFF.

APPENDIX

Plaintiff's Exhibits:

- |    |   |            |   |   |
|----|---|------------|---|---|
| A1 | - | 09.02.2000 | - | Certified Copy of Sale Deed<br>No.432/2000 of Annamanada S.R.O. |
| A2 | - | 07.07.2012 | - | Certified Copy of Kuri Agreement                                |
| A3 | - | 07.07.2012 | - | Certified Copy of Confirmation Letter                           |
| A4 | - | 10.07.2020 | - | Copy of Lawyer Notice   |
| A5 | - |            | - | Acknowledgment Card   |

Defendant's Exhibits:

- |    |   |            |   |  |
|----|---|------------|---|--|
| B1 | - | 22.01.2022 | - | Certified Copy of Judgment in<br>O.S.1000/2017 of Munsiff Court,<br>Kodungallur. |
|----|---|------------|---|--|

- |    |   |  |   |                                   |
|----|---|--|---|-----------------------------------|
| B2 | - |  | - | Copy of Complaint in O.S.717/2020 |
|----|---|--|---|-----------------------------------|

Court Exhibits :

Plaintiff's Witness:

- |     |   |            |   |          |
|-----|---|------------|---|----------|
| PW1 | - | 02.02.2026 | - | Dinamani |
|-----|---|------------|---|----------|

Court Witness:

Defendant's Witness:

- |     |   |            |   |          |
|-----|---|------------|---|----------|
| DW1 | - | 04.02.2026 | - | Chandran |
|-----|---|------------|---|----------|

Copied by: pn

Compared by:

/True Copy/

Id/-  
MUNSIFF.