

IN THE COURT OF THE MUNSIFF, CHALAKUDY

Present : Parvathy Vijayan, Munsiff, Chalakudy.

Wednesday, the 27th day of August, 2025/11th Badra, 1947

O.S. 94/2020

Plaintiff :-

Murali, aged 55 years, S/o. Elatt Kumaran,
Kathikkudam Desom, Kadukutty Village, Chalakudy Taluk.
By Adv. I. A. Muhammed Abdul Nazar

Defendants:-

1. Peethambaran, Aged about 70 years, S/o. Elatt Nanu,
Kathikkudam Desom, Kadukutty Village, Chalakudy Taluk.
- Addl. 2 Rajeswary, Aged about 65 years, W/o. Elatt Peethambaran(Late),
Kathikkudam Desom, Kadukutty Village, Chalakudy Taluk.
- Addl. 3 Chithra, Aged 25 years, D/o. Elatt Peethambaran(Late),
Kathikkudam Desom, Kadukutty Village, Chalakudy Taluk.

Impleaded as per order in IA 5/2020 dated 13.11.2020

Exparte

This suit is having come up before me for hearing on this day the court passed the following:-

J U D G M E N T

Suit for declaration and permanent prohibitory injunction.

2. The plaintiff's case in brief are as follows: The defendant is the brother of plaintiff's father. The plaintiff had taken on rent the building numbered X/5 of Kadukutty Panchayath which belongs to the defendant and is conducting workshop in the name and style "Anjaly Engineering Works" therein. While so, the plaintiff as Managing Partner and the defendant as partner formed a partnership deed on 03.03.2004 by name "M/s.EMMTECH INDUSTRIES" and started a partnership firm which is scheduled as plaint schedule and had taken on lease the 16 A plot from Koratty Kinfra Small Industries for a period of 90 years. Thereafter they had constructed a building having area of 1500 square meter with Aluminium sheet roof by spending Rs.4,60,000/- equally by them. The said plot and building is scheduled as plaint

schedule. The partnership deed is in the possession of the defendant. One Chartered Accountant, C.V Sebastian was entrusted to register the partnership deed. Later the plaintiff as Managing Partner had sent the deed on 18.03.2004 to the Registrar of Firms for registration. The plaintiff and defendant had taken on rent two tube making machine from one P.K.Kutty in April,2005 and is paying the rent regularly. Rs.5,00,000/- is taken as loan from South Indian Bank, Kathikudam Branch for purchasing machinery. The firm was functioning in well and the loan was paid regularly. At that time the plaintiff went to Coimbatore and started a machinery manufacturing unit there entrusting the business with the defendant. But the defendant spent all the profits for his personal use and had constructed a new commercial building on the rear side of the workshop. On getting information regarding these facts, the plaintiff started to involve in the plaint schedule firm and hence the defendant has enmity towards the plaintiff. The plaintiff together with the defendant had conducted the unit till 2012. The defendant had maintained proper accounts of the firm till that time. But thereafter the defendant had not paid salary to the employees and had not given the price of the materials purchased. He also refused to sign the cheques. The plaintiff had given signed blank cheques, seal, signed blank papers etc. to the defendant. The defendant had received the his share of profit till 2009. Thereafter it was not possible to continue the business transactions due to the obstinacy and compulsion of the defendant. The plaintiff firm was closed in the year 2012 as it was not possible to continue the business since it was not possible purchase raw materials, operate the bank account and pay the wages of the employees and sales tax registration was cancelled. Thereafter machinery were returned to one P.R.Kutty and 3 machinery were sold for Rs.2,50,000/- and cleared the liability. Employees Subith and Sujith had filed case before the Labour Court and half the compensation was given by the plaintiff. The plaintiff had deposited Rs.40,385/- in the case filed by Manojkumar and had spent Rs.53,000/- towards the legal fee and the plaintiff is entitled to get the half of the amount from the defendant. The defendant had sold the paper tune machine worth

Rs.5,00,000/- before 2009 without the knowledge of the defendant and the plaintiff is entitled to get an amount of Rs.2,50,000/- from the defendant. Besides this the defendant had received the amount of the cheque bearing no188243 of Kathikudam Branch executed by the plaintiff and had used the same for his personal purposes and the plaintiff is entitled for the half amount of Rs.30,000/- from the defendant on that account. As per the partnership deed both the plaintiff and defendant is entitled to bear the profit and loss and investments of the plaintiff schedule firm equally. After closing the firm in the year 2012, the plaintiff is paying the electricity charges @ Rs.140/- per month and service charge of Rs.1,600/- per month from 2014 onwards and a total amount of Rs.1,07,000/- was paid by the plaintiff and hence the plaintiff is entitled to the half amount of Rs.53,500/-. Besides this the plaintiff had sent a total amount of Rs.50,000/- towards maintenance and the purchase of raw-materials and the plaintiff is entitled to receive the half amount of Rs.25,000/-. The defendant is evading from conducting the business of the firm stating one or other reasons. Hence the suit to settle the income and expenses of the partnership firm and to dissolve the partnership firm by avoiding the defendant as the plaintiff is interested in continuing the business. The plaintiff also prays for a permanent prohibitory injunction restraining the defendants from obstructing the defendant from conducting the business in the plaintiff schedule unit.

3. The defendant entered appearance and filed written statement. The contentions in brief are as follows: The suit is not maintainable in law and liable to be dismissed. The plaintiff had conducted "Anjali Engineering Works" till the end of November 2007 and there after the firm is conducted by Peethambaran. The averment that the plaintiff had spent Rs.4,60,000/- is false. The plaintiff had not spent any amount. The Partnership deed original is in the possession of the plaintiff. Four paper tube making machine were purchased by the firm. The price of one machine would come to Rs.5,00,000/-. Two machines were taken on rent. From the averment that the firm is not keeping the correct accounts is also false. The averment that the defendant without keeping proper accounts had taken the entire profits for his personal use and

had started a commercial building on the rear side of Anjali Engineering works is false. The commercial building is constructed using the funds of the defendant. The firm has accountant and auditor of its own for keeping the accounts and the supervision of the same is entrusted with the plaintiff. From 2009 onwards the plaintiff and his wife were supervising the firm and hence the averment that the defendant is not submitting the true accounts, that the plaintiff involved in the business of the plaintiff institution and hence the defendant is in enemical terms with the defendant etc. are false. The plaintiff and his wife had not convinced the accounts to the 1st defendant after undertaking the functioning of the firm and is not keeping the accounts. The averment that the plaintiff had entrusted blank cheques and signed blank papers with the 1st defendant is false. The firm was under the supervision of the defendant till 2009 and till then proper accounts were maintained. Rs.60,000/- and the amount as per the cheque was used for giving salary to the employees. The plaintiff is having the intention to evict the plaintiff from the firm and to possess the same. The 1st defendant had not refused to sign in the cheque. The averment that the firm was closed as in the last of the year 2012 it was not possible to purchase raw materials, open the bank account and to give salary to the employees, that the defendant cancelled the sales tax registration etc. are false. The averment that the plaintiff and defendant together sold three machineries for Rs.2,50,000/- for giving the amount of material purchased and giving compensation to the employees and that the machinery taken on rent was returned to P.K.Kutty etc. are false. Four machinery were sold @ Rs.2,50,000/- per machinery and the amount was received by the plaintiff himself and had not given any amount to the 1st defendant. Out of the amount paid to Subith, Sujith and Manoj, the plaintiff had paid half of the amount. The averment that the plaintiff had deposited Rs.40,355, that he had paid Rs.53,000/- towards legal fees and that the plaintiff is entitled to get half of the amount, i.e., Rs.20,192/- from the defendant etc are false. The averment that 5 machines were purchased is true. The averment that the defendant had sole the paper tube machine without the knowledge of the plaintiff even before 2009 is false. The

plaintiff had sold the entire machinery except the two machines taken on rent and had received Rs.12,50,000/- and used it for his personal purposes and no amount was given to the 1st defendant. The suit is barred by limitation and is not maintainable. The averment that plaintiff had paid electricity charges @ Rs.140/- per month and service charge of Rs.1,600/- per month from 2014 onwards and a total amount of Rs.1,07,000/- was paid by the plaintiff and hence the plaintiff is entitled to the half amount of Rs.53,500/- from the defendants etc. are false. The amount of Rs.12,50,000/- received by sale of machinery is still in the possession of the plaintiff and the electricity bill is paying out of the same. Maintenance of the firm is doing out of the amount received by sale of the machinery. The averment that the plaintiff had paid Rs.5,000/- for periodical maintenance and f Rs.45,000/- towards the purchase of raw materials is false. The plaintiff is attempting to evade the 1st defendant from the firm and tried to conduct the business by himself and O.S.357/2017 was filed. The cause of action stated in the plaint is false. The plaintiff is not entitled to any of the reliefs claimed in the plaint. After the death of 1st defendant, the defendant nos.2 and 3 had requested the plaintiff to reconstitute and register the deed by including them in the partnership but the plaintiff was not amenable for the same and O.S.501/2023 is filed before this court for the said relief and the same is pending. Hence prays for dismissal of the suit with costs and compensatory costs.

4. The following issues are raised for consideration.

1. Whether the plaintiff entitled for settlement of account and plaint amount as prayed for ?
2. Whether the plaintiff entitled for permanent prohibitory injunction as prayed for ?
3. Reliefs and costs.

5. The plaintiff was ready for evidence. Defendant represented but not ready to cross examination. So defendant is set exparte.

6. Plaintiff was examined as PW1. Exts.A1 to A32 marked. Exts.C1, C1(a) also marked. No evidence from the side of the defendant.
7. Heard the learned counsel for the plaintiff and perused the documents. The defendant has not adduced any evidence and the documents filed by the plaintiff remains unchallenged.
8. On perusing the documents and considering the evidence adduced by PW1, I am satisfied that the plaintiff is entitled for the relief sought in the plaint. Hence the suit is partly decreed as follows:
 1. The defendant is directed to settle the income and expenses of the partnership firm and to deposit Rs.3,78,692/ in the court which is to be paid to the plaintiff.
 2. The defendant is also directed to allow the plaintiff to dissolve the partnership firm.
 3. The defendant is also directed to allow the plaintiff to conduct the business alone and shall not restrain the plaintiff from conducting the business.
 4. The plaintiff is entitled to costs of the suit.

(Pronounced in open court, this the 27th day of August, 2025)

Parvathy Vijayan,
Munsiff

APPENDIX

Plaintiffs Exhibits:-

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| A1 | Partnership Deed Certificate |
| A2 | Certified Copy of of license agreement |
| A3 | Plaint in OS. 357/2017 |
| A4 | Certified copy of written statement in OS. 357/2017 |
| A5 | Certified copy of Judgment in OS. 357/2017 |
| A6 | Commission report in OS. 357/2017 |
| A7 | Original petition in gratuity case No. 3/2016 filed before Deputy Labour Commission, Thrissur. |
| A8 | Certified copy of application submitted before Kinfra |

- A9 Letter given to plaintiff by defendant No. 1
- A10 Receipt of rent particulars
- A11 Receipt of accounts submitted by plaintiff
- A12 Original document(received as per right to Information Act) - Dated 20.01.2018
- A13 Original letter send to respondent by 1st defendant Dt.15/04/2016
- A14 Photocopy of letter - 29.06.2018
- A15 Original statement from South Indian Bank Kathikudam Branch
- A16 Receipts of payment in the name of M/s Emmtech Industries.
- A17 Original receipt of allowances given to employees from M/s Emmtech.
- A18 Original registered A/D of Deputy Labour Commissioner, Thrissur.
- A19 Photocopy of letter Dt. 24.06.2015
- A20 Photocopy of receipts of allowance given to employees from M/s. Emmtech
- A21 Minutes book of M/s Emmtech Industries
- A22 2007-2008 Day book of Emmtech Industries
- A23 2008-2009 Day book of Emmtech Industries
- A24 2009-2010 Day book of Emmtech Industries
- A25 2010-2011 Day book of Emmtech Industries
- A26 2011-2012 Day book of Emmtech Industries
- A27 2007-2008 Ledger of Emmtech Industries
- A28 2008-2009 Ledger of Emmtech Industries
- A29 2009-2010 Ledger of Emmtech Industries
- A30 2010-2011 Ledger of Emmtech Industries
- A31 2011-2012 Ledger of Emmtech Industries
- A32 Account passbook of Emmtech Industries

Court Exhibits:-

C1 Commission Report

C1(a) Audit Report

Plaintiff's Witness:-

PW1 Murali

Munsiff