

IN THE COURT OF THE MUNSIFF, CHALAKUDY

Present : Parvathy Vijayan, Munsiff, Chalakudy.
Monday, the 30th day of March, 2026/16th Chaithra ,1947

O.S.523/2018

Plaintiff:-

Divine Venchers., Chalakudy Desom, East Chalakudy Village,
Chalakudy Taluk rep. by Biju C.A, Aged 48,
S/o Chenginimattam Antony ,Chalakudy Desom,
East Chalakudy Village, Chalakudy Taluk

By Adv. Laya M A.

Defendants:-

1. Minimol Pauly, Aged 48, W/o Thommanveettil Pauly,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
2. Pauly, Aged 49, S/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
3. Mary Lonappan, Aged 50, W/o Vithayathil Lonappan,
Konoor Desom, Nalukettu P.O, Muringoor Thekkumuri Village,
Chalakudy Taluk.
- 4.Addl. Mary, W/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
- 5.Addl. Raju, S/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
- 6.Addl. Moly, D/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
- 7.Addl. Pouly, D/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.
- 8.Addl. Sr.Seleena, D/o Thommanveettil Ouseph,
Konoor Desom, Muringoor Thekkumuri Village,
Chalakudy Taluk.

Impleded as per order in I.A.16/24 dt.23/10/24

By Adv. D1 & 2 - A.G.Unnikrishnan D3 - M.P.Antony
D4 to D8 - Sojan K.Varghese

This suit having come up for final hearing before me on 19.03.2026 in the presence of the counsel for both sides and having stood over for consideration to this day the court on 30.03.2026 delivered the following:

J U D G M E N T

Suit for realisation of money due on account of a Kuri agreement.

1. Plaintiff's case in brief is as follows: The plaintiff is an institution registered as per the Indian Partnership Act. The plaintiff is conducting chitty business. The 1st defendant demanded for advance of Rs.1,40,000/- from the kuri no.FM 16 subscribed by her as per kaipada no.A79(B19) which the plaintiff had started on 15.03.2012 from its Faridabad branch having a total sala of Rs.6,00,000/-. On 02.05.2012 the plaintiff sanctioned the amount and the defendant had received the amount of Rs.1,60,000/- as per cheque no.20145 of Union Bank, Chalakudy Branch. The 1st defendant priced the kuri on its 4th installment and received the entire kuri amount of Rs.6,00,000/-. After deducting the advance amount of Rs.1,40,000/- the plaintiff is entitled to Rs.2,20,000/- from the plaintiff and towards the same the plaintiff had issued cheque for Rs.1,00,000/- drawn on Union Bank ,Chalakudy Branch and cheque for Rs.59,000/- drawn on Syndicate Bank, Chalakudy Branch. On receipt of the kuri amount, the defendants executed a kuri agreement dated 25.06.2012 agreeing to repay the future 56 installments without any default. The defendants paid the kuri up to the 32nd instalment dated 12.02.2015. Thereafter the defendants defaulted the payment of the kuri installments from the 33rd installment dated 15.09.2014 onwards and a total amount of Rs.2,80,000/- with interest is due to the plaintiff from the defendants. The kuri terminated on 15.02.2017. The defendants being the subscriber as well as the guarantors failed to pay the amount. Hence the suit for realization of Rs.2,80,000/- with interest from the defendants.

2. Defendant nos 1 and 2 filed written statement contending as follows: The defendants deny all the averments in the plaint except those which are specifically admitted. The suit is not maintainable either on law or on facts and liable to be dismissed with costs of these defendants. The averment that the plaintiff institution is registered as per Indian Partnership Act is false and hence denied. The averment that Sri. Biju C.A. is authorised to file suits for the plaintiff is false and hence denied as he has not produced any documents regarding the same. The plaintiff institution has no right to conduct chitty. It is clear from the plaint itself that the plaintiff institution is functioning without any authorisation letter and against public policy, orders of the Supreme Court and Reserve Bank of India. The plaintiff has approached the court with unclean hands. The averments that plaintiff is conducting chitty business that the 1st defendant is a subscriber to the kuri no. FM 16 as per kaipada no. A79(B19) which the plaintiff had started on 15.03.2012 from its Faridabad branch having a total sala of Rs.6,00,000/-, that the defendant demanded for advance of Rs.1,40,000/- from the chitty amount and on 02.05.2012 the plaintiff sanctioned the amount and the defendant had received the amount of Rs.1,60,000/- as per cheque no.20145 of Union Bank, Chalakudy Branch etc. are false and hence denied. The 1st defendant had not received any amount as aforesaid. The averment that the defendant priced the kuri and received the entire kuri amount of Rs.6,00,000/- after deducting the amount of Rs.2,40,000/- towards interest and commission and the amount of Rs.2,20,000/- received by the plaintiff is false and hence denied. The averment that towards the balance payment of Rs.1,00,000/- the plaintiff had issued cheque for Rs.1,00,000/- drawn on Union Bank, Chalakudy Branch and cheque for Rs.59,000/- drawn on Syndicate Bank, Chalakudy Branch etc. are also false and hence denied. These defendants had not received any amount from the plaintiff. The averment that the defendant had signed in the kuri agreement on 25.06.2012 at the office of the plaintiff at Chalakudy is also false. The

defendants had not executed any such kuri agreement. The defendants denies the averment that defendants paid the kuri up to the 32nd instalment dated 12.12.2015, thereafter the defendants defaulted the payment of the kuri installments from the 33rd installment dated 15.09.2014 onwards is false and hence denied. The defendants had not executed and issued any kuri karar on 25.06.2012 and given to the plaintiff institution. The defendants are not entitle to pay any amount towards the plaintiff company. The defendants had not subscribed to the kuri,had not entered into any kuri agreement and defaulted the installments. The plaintiff has no right to sue against these defendants. The plaintiff is not entitled to any reliefs as per the plaint. The plaintiff has filed OS 38/2017 and the same was dismissed with costs of the defendants. In that case the plaintiff had not the plaintiff had not mentioned about such a kuri and had not raised any allegations with respect to the kuri. The defendants had not received any amount from the plaintiff. The suit is barred by Limitation and hence the plaintiff is not entitled to any of the reliefs claimed in the plaint. In fact the defendants had resided in the house of Sri.V.M.Lonappan on rent. The defendants are working in UP and they returned to their native place for the treatment of the 1st defendant who was suffering from cancer. During that period the 2nd defendant started a small scale unit and the 1st defendant started her treatment at Amala Hospital, Thrissur. Lonappan is engaged in the business of money lending and the defendants had borrowed Rs.50,000/- from said Lonappan for the treatment of the 1st defendant. The defendants had been paying Rs.2,500/- monthly towards interest. During that period, Lonappan told the defendants that he is the partner of a chitty company, that he cannot subscribe the kuri in his name and so he has subscribed in the kuri in the name of the 1st defendant and priced the kuri. He demanded the defendants that the kuri amount is received by way of cheque and that the same should be given as money. Meanwhile the disease of the 1st defendant had worsened and they were in great financial difficulties and the business of the 1st defendant

collapsed. The defendants cannot repay the loan or interest . They cannot pay the rent of the house and they have to vacate from the rented house. Lonappan had threatened the defendants that he will get back the amount by any means. The suit is filed on an experimental basis on th basis of the relationship between the said Loanappan and the plaintiff. No cause of action against the defendants. The plaintiff is not entitled to any of the reliefs sought in the plaint.

3. The defendant nos.1 and 2 filed additional written statement. The contentions in brief are as follows: The suit is not maintainable either on law or on facts and liable to be dismissed. The suit is barred by limitation and the issue regarding maintainability is to be framed as an additional issue. The defendant has not kuri transactions with the plaintiff company. Hence the defendants had not paid any amount to the plaintiff institution and the averments in contrary to the same are denied by the defendants. Hence prays for dismissal of the suit as the suit is not maintainable.
4. Defendant no.3 entered appearance and filed written statement. The contentions in brief are as follows: The suit is not maintainable either on law or on facts and liable to be dismissed. The defendant denies all the averments in the plaint except those which are specifically admitted. The plaintiff has to prove the averments in para 1 of the plaint. The averment that the 1st defendant priced the kur is true and this defendant was demanded to sign as guarantor. The defendant nos.1 and 2 had resided in the house of this defendant on rent and they were in acquaintance with each other. This defendant had stood as guarantor for other kuries also and the defendant nos.1 and 2 had told that they had paid the kuri installments without any default. At the time when her husband was admitted in Little Flower Hospital Angamali, the defendant nos.1 and 2 had approached this defendant and demanded to stood as guarantor to the kuri with the plaintiff institution which was priced by them other wise the agreement for sale with Kannampuzha Varghese will be canceled if the

amount as per the karar is not given. This defendant signed as guarantor and the defendant nos.1 and 2 had received the kuri amount from the plaintiff institution. . This defendant is not liable to pay the amount which the defendant nos.1 and 2 had received from the plaintiff institution. This defendant had not received any amount from defendant nos.1 and 2. No relief can be sought against this defendant. The suit is not maintainable and liable to be dismissed. Hence prays for a decree excluding this defendant from the liabilities.

5. Defendant nos.4,5 and 6 filed written statement. The contentions in brief are as follows:The defendants denies all the averments in the plaint except those which are specifically admitted. The suit is not maintainable either on law or on facts and liable to be dismissed with costs of these defendants. The averment that the plaintiff institution is registered as per the Indian Partnership Act is false and hence denied. No such institution is in existence. The plaintiff has not produced any documents showing the existence of the plaintiff institution. The averment that Biju C.A, tax practitioner is entrusted to file suits and to realize amount on behalf of the plaintiff institution is false and hence denied by the defendants. Said Biju has no authority to represent the plaintiff firm and to file suits and the plaintiff denies the averments in contrary to the same. No documents entitling him to represent the plaintiff company is produced. These defendants had no knowledge regarding the starting of kuri from the Faridabad branch of the plaintiff company. The plaintiff has no authority to start such a kuri. The plaintiff institution is functioning against law and public policy,without the permission of the Reserve Bank of India, unlawfully and without any documents. The plaintiff has approached the court with unclean hands. The 1st defendant had not subscribed to the kuri numbered FM 16 started on 15.03.2012 from the Faridabad branch of the plaintiff institution as per kaipada no.A79(B19) and had not received advance amount of Rs.1,40,000/- as per cheque no.20145 of Union Bank, Chalakudy

branch on 02.05.2012. The defendants have no transactions with the plaintiff company. The defendants had not executed and signed any kuri security agreement and hence there is no liabilities among the plaintiff and defendants. The defendants denies the averments that the defendants paid the kuri installments up to the 32nd installment dated 15.09.2014 and thereafter defaulted the payment of installments. The defendants had not defaulted any kuri installments, had not paid any amount towards the kuri, had not subscribed to any kuri and had not executed any kuri security agreement. The plaintiff has no right to sue against the defendants. The defendants has no liability and the suit is to be dismissed. The plaintiff institution or the person who represented the plaintiff institution has not identity and the plaintiff has not produced any documents along with the plaint regarding the same. Suit is not maintainable against the defendants. Defendant nos.1 and 2 were working at U.P. The 5th defendant with his family is residing at Koratty Opanchayath in the house constructed by his father in the road puramboke. Defendant nos.6 and 7 are married and they are residing at their matrimonial houses and the 8th defendant is a nun and residing in convent. As the 1st defendant was not well, they returned from UP and came to their native place and started a sap manufacturing unit in their own properties. They had taken on rent the house of their neighbour V.M.Lonappan,. The defendants had borrowed Rs.50,000/- from the plaintiff for the cancer treatment of 1st defendant. A board named "Divine Ventures" was there in front of the house of Loanappan but no institution was functioning there. He used to subscribe chitties in the name of several persons. As demanded t by Lonappan that the kuri amount which is received by way of cheque was given as money by the 1st defendant. The disease of the 1st defendant worsened which leads to huge financial liabilities and hence the 2nd defendant could not concentrate in his business and the business was in loss. He cannot return the amount borrowed from Loanappan and could not pay the rent also Meanwhile the 2nd defendant

suffered liver disease and they could not pay the loan amount interest and rent, and they had to vacate from the rented house. There were business relationships between the plaintiff and Lonappan and this suit is filed falsely on the basis of that. The 2nd defendant died on 23.11.2021. His entire properties except the puramboke house and old house were sold in continuation of the liabilities in connection with the disease. There was no other property except the house constructed under Life Mission Scheme in the property obtained by the 2nd defendant as his family share. There is no cause of action for the suit. The plaintiff is not entitled to any of the reliefs sought in the plaint. Hence prays for dismissal of the suit with compensatory costs.

6. Additional defendant no.7 and 8 had not filed written statement and called absent and set ex parte on 22.11.2024.

7. On the basis of the aforesaid pleadings, the following issues were raised for consideration:

1. Whether the defendants have been subscribers in any kuri conducted by the plaintiff ?

2. Whether the plaintiff is entitled to realize any amount from the defendants ?

3. Reliefs and costs.

Addl.Issue No.1: Whether the suit is barred by Law of Limitation or not ?

8. On the side of the plaintiff, PW1 to PW4 were examined and Ext.A1 to A8 marked. Exts.A9 to A11 marked subject to proof. Ext.A12 to A14 marked subject to objection of counsel of defendant. Exts.A14 to A18 marked . Ext.A19 marked subject to proof. On the side of the defendants DW1 and DW2 were examined and Exts.B1 to B4 marked. Ext.B5 marked subject to proof. Ext.B6 marked.

9. Heard both sides.

10. Issue no.1: The learned counsel of the plaintiff had submitted that defendant nos.1 and 2 had participated in a kuri FM 16 and had borrowed Rs.1,40,000/- as advance. Thereafter 1st defendant had priced the kuri on its 4th installment

and had paid Rs.2,40,000/-- in different installments. The total amount of the kuri was Rs.6,00,000/-. Defendant had agreed to pay Rs.10,000/- in installments and pay of the kuri amount and if in case of default would pay the rest of the amount with 1% interest. The said agreement was also signed by the sureties. The defendant had paid 32 installments and thereafter committed default. The learned counsel of the plaintiff had submitted that as per the written statement of the defendant nos.1 and 2, they had agreed that they had borrowed the amount. The learned counsel of the plaintiff had submitted that even though defendant had challenged the existence of the kuri company but defendant had categorically admitted that she had borrowed the amount. The only allegation raised by the defendant is that the said kuri was taken by one Lonappan, Managing Partner of plaintiff company in the name of defendant no.1 and had misused the same.

11. Manager of the plaintiff firm is examined as PW1 and filed proof affidavit in lieu of examination in chief in tune with the averments in the plaint. PW1 deposed in cross examination that he is a tax practitioner and deposed that plaintiff is a partnership firm. He deposed in cross examination that he was authorized to file the suit on 15.08.2013. He admitted that OS 38/2017 is dismissed as per Ext.B1. Ext.B2 is the decree of the said suit. He deposed in cross examination that appeal is filed. He deposed in cross examination that the kuri karar is not signed by the witness but by guarantors. He also deposed in cross examination that Rs.1,40,000/- was given as advance to the defendant. He deposed in cross examination that as per Ext.A4 Rs.1,40,000/- was given to the husband of the defendant. As per his deposition, defendant had asked to give money through the account of her husband. He deposed in cross examination that in Ext.A5 series in page no.1 defendant had signed as received the amount. He also deposed in cross examination that husband of the defendant had also signed in it. He also deposed in cross examination that 32 installments were paid by the defendant till 15.09.2014 and thereafter

committed default. Then they had paid on 12.02.2015.

12. PW1 had filed additional proof affidavit and Exts.A9, A10series and A11 were marked subject to proof. PW1 further deposed in cross examination that the Managing Partner is the custodian of the document. He denied that Ext.A1 is a fabricated document. He deposed in cross examination that the entries in Ext.A3 and A7 are tallied. PW1 deposed in cross examination that 1st defendant's signature is in the document where the amount paid is shown recorded. He has also identified Ext.B2, certified copy of decree in O.S.38/2017.
13. PW2 is a staff in the plaintiff firm. She filed proof affidavit in lieu of examination in chief . She had stated that she had done job relating to day book, ledger etc. from 2011 June till October 2014. She deposed that kuri amount is given by the Managing Partner. She deposed that all the documents signed by the subscribers to the kuri are handed over to her. She also deposed that defendant had signed in the document in front of her. She also deposed that advance amount of Rs.1,40,000/- was transferred to the account of husband of 1st defendant and rest of the amount was given to the first defendant.
14. PW2 deposed in cross examination that she is not a registered staff in the firm. She deposed that there is voucher to show that she had been staff in the company and also had given resignation letter to the company. She also deposed in cross examination that when kuri amount is given receipt would be provided. She also deposed in cross examination that sometimes people would be joined under the partners and then the partners was given receipt. She admitted in cross examination that entries in Ext.A5 is done by V.N.Lonappan and not by her. She also admitted in cross examination that there is ledger to the firm and when the amount is paid it will be in the day Book. She admitted in cross examination that there is no name in Ext.A5 but sign is present. She deposed in cross examination that it is signed by the husband of the 1st

defendant but name is not entered. She admitted in cross examination that Ext.A6 is not prepared in stamp paper. She deposed in cross examination that application would be given by the subscribers who called for kuri and would be given after passing order by the Board. She admitted that board decision is not there in Ext.A6. She admitted in cross examination that there is no signature of witnesses in Ext.A6. She admitted in cross examination that amount which is received and paid would be seen in the day Book of the firm on 25.06.2012 and on 02.05.2012. She further deposed in cross examination that daily transactions are shown in Ext.A5 series. When she was specifically asked about the signatures in Ext.A6 is not of 1st and 2nd defendant, she replied that she does not know.

15. Managing Partner of the plaintiff firm was examined as PW3. PW3 filed affidavit in tune with the averments in the plaint. He admitted in cross examination that 3rd defendant is his wife. He admitted in cross examination that he is also a partner of Divine Ventures. He deposed in cross examination that the building stated in Ext.A8 is not in his ownership. He deposed in cross examination that he does not remember the number of the building which was given on rent to the defendant. He denied that he has money lending business. He deposed in cross examination that entries in Ext.A3 is done by him. He admitted in cross examination that there were other kuries also in the name of the defendants. He deposed in cross examination that his wife was also guarantor in other kuries. He deposed in cross examination that there were chitty in the name of his wife and relatives. He denied that he had included the defendants in the chitty transactions. He denied that he had received the amount from the chitty of the defendant. He denied that he had given money to the defendants. He admitted in cross examination that defendants were in good terms with his family. He deposed in re-examination that there is no complaint filed by the kuri company against him.

16. PW4 is the present Managing Partner of the plaintiff firm. PW4 had filed

affidavit in lieu of examination in chief in tune with the averments in the plaint. She had produced Exts.A12 to A14 which is marked but objected by counsel of defendant. She deposed in cross examination that plaintiff firm is running lawfully and is run by the Managing Partners. She deposed in cross examination that she was the managing partner when the chitty was started from Faridabad. She deposed in cross examination that there were two staff at Faridabad. She deposed in cross examination that Subscription Register, Payment receipt and Auction Register are produced before the court. She deposed in cross examination that defendant had given application for the kuri. She deposed in cross examination that PW1 was entrusted to conduct the case. She had identified Ext.A8. She deposed in cross examination that she cannot say who has signed it in Ext.A5. Thereafter she deposed that DW1 had signed in Ext.A5 in front of her. She deposed in cross examination that it is not PW3 who had entered in the chitty as per the document. She denied that Ext.A6 is a fabricated document. She deposed in cross examination that Board decision will not be shown in the application. She deposed in cross examination that signature in Ext.A6 and A12 is of the same person and is signed in front of him. She also deposed in cross examination that voucher is given before the software is introduced.

17. The learned counsel of the 1st defendant had denied the transaction. The learned counsel of the defendant had challenged the existence of the plaintiff company and its licence to conduct the business. The learned counsel of the defendant also had submitted that there is no such transactions happened as alleged by the plaintiff. The learned counsel of the defendant had challenged the legal sanctity of plaintiff who has filed this suit. The learned counsel of the defendants had also submitted that the documents produced by the plaintiff are concocted documents and the signature was specifically denied. The learned counsel of the defendants also had submitted that one of the partners of the plaintiff company had participated in the kuri in the name of defendant no.1 as

he is a landlord of defendant nos.1 and 2. The learned counsel of defendants had submitted that defendant nos.1 and 2 had borrowed money from said Managing Partner named Lonappan for treatment purposes. After entering into the chitty transaction, the said amount was given to defendant nos.1 and 2 which was paid back to Lonappan. The said Lonappan had not paid the said amount in the company and thus committed default. There is no such kuri transaction as alleged by the plaintiff with defendant by the plaintiff company. The learned counsel of the defendant had also challenged all the ledger accounts and documents produced by the plaintiff.

18. The learned counsel of the 1st defendant submitted that the name of both the plaintiff firm as per Ext.A3 and registered firm as per Ext.A2 are one and the same. The learned counsel of the defendant had submitted that plaintiff is not authorised person to represent the plaintiff firm by virtue of Ext.A1 minutes. Ext.A1 shows that either C.T.George or Baiju C.A. are authorized to represent the firm. But no evidence is brought out as who has been appointed. There is no power of attorney or any other document produced delegating the power of Managing Partner to the plaintiff. Ext.A1 is a decision taken on 15.08.2013. The subscriber of the plaint chitty is not a defaulter on that date. By virtue of Ext.A1, plaintiff cannot proceed against this defendant. Ext.A3 does not accompany the signature of the subscriber which is a prerequisite in Ext.A3. The learned counsel of the defendant also had submitted that their representative had signed the application to join in the kuri which is not produced before the court. The entries in Ext.A3 is made by Sri.V.M.Lonappan and signature in Ext.A5 and Ext.A12 are not of the subscriber. There is no evidence adduced to prove that the amount is paid to the subscriber. Ext.A4 would show that money is transferred to one T.O.Pauly and not to the 1st defendant. The learned counsel of the defendant had also challenged the signature in Ext.A5 and A12 which are not of the subscriber of plaint chitty. The learned counsel of the defendant also had submitted that the best evidence

to show that the subscriber to a chitty is subscribers registered deeds not produced before the court by the plaintiff even though they are in possession of the same. Thus section 119 of BSA would be applicable. Another important aspect why the subscriber has not auctioned the chitty is that the subscriber is a defaulter on the alleged installments of auction. From the evidence adduced by plaintiff it was brought out in evidence that the subscriber is a defaulter in the 3rd and 4th installment. The 3rd and 4th installment which is to be paid is on 15.05.2012 and 15.06.2012 but only paid on 25.06.2012. Hence the pleading of the plaintiff that the chitty is auctioned on its 4th installment is proved against the pleading of the plaintiff. Clause 7 of Ext.A3 Pass book Page 8 clearly state that a defaulter cannot participate in the auction. Hence the subscriber should not be a defaulter is a pre-condition to participate in the auction. The specific case of the plaintiff is that plaintiff has auctioned on the 4th installment but no auction register is produced to prove the same.

19. The learned counsel of defendant 5 to 6 had supported the arguments of 1st defendant and is sailing along with the contention of the first defendant. The learned counsel of defendant no.3 had supported the arguments of plaintiff. The learned counsel of defendant no.3 had submitted that defendant no.1 had borrowed money from plaintiff firm and is not repaid.
20. 1st defendant is examined as DW1. DW1 filed affidavit in lieu of examination in chief in tune with the written statement. She had stated that 2nd defendant is her husband and no more. The defendant nos.4 to 8 are the legal heirs of the 2nd defendant. As per her affidavit she along with her husband came from U.P. due to her cancer. As there are other family members in the family house, she along with her husband had resided in the rented house of husband of 3rd defendant. She had stated that they had purchased 1 Acre 6 cents of property at Munnurpilli and had a small scale unit there. She had stated that husband of the 3rd defendant had introduced himself as the partner of the chitty company. He had also stated that as the partner cannot start kuri, he had made her to take

a ticket in the kuri. The husband of the 3rd defendant had also started kuri in the name of his father.

21. She had stated that Rs.50,000/- was borrowed for her cancer treatment from said Lonappan and had given Rs.2,500/- monthly towards repayment. She had stated that disease had become worse and her husband cannot concentrate in the business which lead to the attachment of the property in which loan was taken from the Bank. Meanwhile they could not pay rent and the repayment to said Lonappan. Due to these they were thrown out of the rented house. Thereafter plaintiff has filed OS 38/2017 alleging false allegations which was dismissed with costs. Thereafter AS 65/2018 Appeal was filed which was also dismissed. She had stated that said Lonappan had taken other kuries in their name which is not in their knowledge. She had deposed that they were not in a state to start kuries as they had financial problems. She had stated that she is residing in a house which was built as part of Life Mission at Kannampuzha where property is given by her family. The said property is purchased by her father and brother due to the worst situation of the 1st defendant. The property attached in the loan which was taken for the business of husband from Koratty SBT was also attached by this court. After the death of the husband properties were sold and attachment was lifted. She had stated that her husband or herself had not directly participated in the kuri and had used the amount or received any amount from the plaintiff company. She deposed that she had not taken any kuri in FM 16 as pr kaipada no.A79(B19) and had formed agreement with the plaintiff company.

22. DW1 deposed in cross examination that she had stated the facts in the affidavit and had signed in the affidavit. She deposed in cross examination that when she had applied for Life Mission, she does not remember whether she had property at Munnoorpilli which is owned by her husband. She deposed in cross examination that she does not remember when her property at Munnoorppilli was attached by the bank. DW1 deposed in cross examination

that there is a small scale business unit at Munnoorpilli which was attached by the bank.

23. Relying on the decision of Hon'ble High Court of Kerala in ***Sasikala v. Anzil [2025(4) KHC 444]*** where the Hon'ble High Court held that "burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. If the defendant admits the plaintiff's claim and raises a plea of discharge, it is the burden of the defendant to prove the same by adducing evidence." Even though learned counsel of defendant had challenged the transaction and the existence of plaintiff company, first defendant had admitted that she does not challenge the existence of the plaintiff firm. DW1 had categorically admitted in cross examination that she does not have any objection with regard to the administration of plaintiff firm. She also deposed in cross examination that she had not given complaint as the plaintiff firm is running in manipulation. She deposed that when the notice came from the court, she had given the complaint. Then after she admitted in cross examination that she does not remember whether she had given any complaint before any authority against the plaintiff firm. She deposed in cross examination that she had not enquired about the plaintiff firm and its head Office. She had identified her vakalath as Ext.A15 but she denied the signature in Ext.A15. She had also denied the signature in Ext.A16, certified copy of the vakalath. She admitted in cross examination that as per the deposition in Ext.A7, attached property at Munnoorpilli was decided to be sold to her family to clear her debts. She admitted in cross examination that it was admitted by her that all the dues to the plaintiff firm would be paid off and so attachment was allowed to be lifted. She admitted in cross examination that they had two kuries and the amount was deposited in her account. She deposed in cross examination that they lived in the house of Lonappan on rent

during this period. She also deposed that signatures in Ext.A15 and A16 are similar to her signatures. She further admitted in cross examination that there was a soap powder unit in the name "Miss Mary".

24.The third defendant is examined as DW2. DW2 had filed affidavit in lieu of examination in chief in tune with the averments in the written statement. She had stated that she knows the first defendant and 2nd defendant. They had kuri in the plaintiff firm and was called which was signed by her as guarantor. She deposed that 1st and 2nd defendant had resided in their house on rent. She also deposed that she was a guarantor in another kuri joined by them with the same plaintiff firm and told her that that kuri was paid without any default. She deposed that her husband was under surgery at Little Flower Hospital, Angamali and at that time the first and 2nd defendant approached her and intimated that they had entered into a sale agreement and had to give the amount and if otherwise the agreement would be cancelled. So they had called the kuri and had signed in the kuri as guarantor. 1st defendant had borrowed money from the plaintiff firm. DW3 had identified the signature in Ext.A6 and the signature of DW1.

25.DW2 deposed in cross examination that her husband is also partner of the plaintiff firm. She also deposed that there was firm named Divine Ventures which was carried on by her husband. She also deposed that 1st and 2nd defendant had lived on rent in their house. She deposed in cross examination that she does not know the time and date of signing in the kuri. She also deposed that she does not know whether any kuri is joined in her name and her children. She deposed in cross examination that she does not know whether her husband had joined the kuri in the name of D1 and D2. DW2 had categorically deposed in cross examination that her husband had not borrowed any money from DW1. She deposed that her husband was in hospital at that time. She further admitted in cross examination that she was taken by DW1 to sign in the kuri agreement. Her husband did not know about this as he was

hospitalized. She deposed that she had not read over the kuri agreement. She deposed that DW1 and her husband was there when she signed in the kuri agreement. She deposed in cross examination that she knows DW1 and her husband had property at Munnoorpilli. She deposed in cross examination that she does not know whether she was defendant in O.S.38/2017 and was dismissed. She deposed that she had received the notice from the plaintiff firm and shown to DW1 which was shown to Mini. Thereafter she corrects that notice was not received by her and notice was received with regard to the case. She deposed in cross examination that she does not know whether father and brother of DW1 had given payment for the purchase of the property.

26. Relying on decision of Hon'ble High Court of Kerala in *Pathu v, Katheesa Umma*, **1990 (2) KLT SN 51**, where the Hon'ble High Court of Kerala held that "*Normally, when execution of a document is either admitted or proved and when no disabling factor or vitiating circumstance is alleged or proved, admission of proof of signature with the necessary formalities, if any, will be proof of execution with knowledge of the contents atleast, prima facie, for the purpose of shifting the burden. If a person denies the execution of a document which contains his signature, he must first explain how the signature happened to be there without actual execution. That may be by getting the signature in a blank paper or under other circumstances which disclose that there was no conscious or voluntary execution. When a person's signature appears at the place where the executant would normally sign, the signature may be accepted prima facie as having been put in token of execution. There is the presumption under S.114 of the Evidence Act that a person only put signature in a document in token of execution. Ordinarily, persons do not sign documents without intending to execute them*". DW1 had categorically admitted in cross examination that she had not filed any complaints against Lonappan before any authorities. She deposed in cross examination that the passbook was not given to her and that when they were kicked out of the

rented house, then she was given the passbook. She deposed in cross examination that Lonappan had intimated them that he could not join the kuri. She deposed in cross examination that she had not enquired about the plaintiff firm after receiving the passbook and had no reasons for that.

27. DW1 had categorically admitted in cross examination that she had not given any complaint against the plaintiff firm before the Police authorities. She deposed in cross examination that if any document is formed without her knowledge, complaints would be given against them. She deposed in cross examination that she does not know whether anyone in her family had given complaint against Lonappan. She deposed in cross examination that she had orally told about the transfer of money to said Lonappan and she also admitted that at that time said Lonappan was in the hospital after surgery. She had identified her signature in Ext.A12 and Ext.A18 written statement in OS 38/2017. She deposed in cross examination that she signed as Minimol and thereafter admitted that she also signed as Mini Pauly. She deposed in cross examination that there is difference in both the signature in the document.

28. DW1 identified the signature in Ext.A17, A1 and A5(a). She deposed in cross examination by counsel D3 that she was in good terms with 3rd defendant. DW1 deposed that her husband asked her to sign in the document and she used to sign in the documents. DW1 deposed that she is a B.A. graduate in English. She denied that 3rd defendant had signed as a guarantor in the document. She deposed in cross examination that 3rd defendant had borrowed money and as she had borrowed money from the 3rd defendant and could not pay the interest, they were trapped in this transaction. She admitted in cross examination that she had not given complaint against the 3rd defendant for borrowing money from them. DW1 admitted in cross examination of D3 to D6 that there was a board in front of the house of Lonappan as Divine Ventures. She admitted in cross examination that wife of 5th defendant had borrowed money from Lonappan and as they could not pay interest, the said Lonappan

had threatened her at her house. DW1 was re-examined and denied her signature in Ext.A5(c), Ext.A11 and A12. She further deposed in re-examination that there is nothing in the affidavit that amount would be repaid to the plaintiff firm. She further admitted her signatures in Ext.A15 and A16 but the question was objected by the counsel of the defendant. She further deposed that Lonappan had given passbook in her hand. The above evidence of DW1 would show that even though allegations are raised against plaintiff firm challenging that the plaintiff firm had manipulated the transactions but there is no specific denial with regard to the signatures of her and her husband .She had categorically admitted that there was kuri which was participated in her by said Lonappan .But there is no suit or police complaint filed against plaintiff firm or said person till now. Even though DW1 had put forward a case that the money is given to said Lonappan but there is no evidence produced to prove the same. Moreover DW2 had supported the plaintiff case as DW2 had signed in the kuri as guarantor. There is nothing brought out in cross examination of DW2 to discredit her. Ext A1 would prove that PW1 was authorized as per minutes to file the suit against defaulters. The first defendant had challenged signatures in Ext A3 ,Ext A5 and Ext A12.But there is no evidence for rebutting the same .There are no complaints filed against plaintiff firm or against VM Lonappan for manipulation of her signatures before any authorities . DW3 had identified the signature in Ext.A6 and the signature of DW1.Ext A6 is the application for kuri amount which is seen to be signed by DW1. DW2 deposed in cross examination that after signing in the agreement, money was given to DW1. It is pertinent to note that as per deposition of DW1 in Ext A17 had admitted that they had borrowed money from the plaintiff firm .Thus from the above discussion as it has come out in evidence that DW1 had borrowed money from plaintiff firm and is witnessed by DW2.The specific case of defendant is that the said amount is given to PW3.But there is no evidence adduced to prove the fact. Even though

signature is denied by DW1, it is evasive and no steps are taken from the side of defendant to disprove the same. Thus from the above discussion the depositions of PW1 to PW3 clearly explains the cause of transactions and execution. The depositions of PW1 to PW3 are clear and consistent. Hence I am of the view that the plaintiff has established his case. Hence issue is found in favour of the plaintiff.

29. Additional issue No1

The learned counsel of defendant had submitted that suit is barred by limitation and Article 37 of the Limitation Act 1963, is applicable in chitty transaction. It provides a three year limitation period for suits filed on a bond or promise payable in installment, where a default occurs. The time starts from the date of the first default, unless the creditor waives it, in which case it starts from the new default date. Hence no claim can be made for the defaulted installments which are not in the limitation period. According to the plaintiff kuri was terminated on 15-02-2017 but no documentary evidence is brought in record about the conduction and about the termination of the chitty etc. The exhibits produced and marked are concocted and many are photocopies and computer print outs have no sec 65 certification provided under the evidence act. plaintiff is the partner of the firm and he is authorised to file this suit is also not proved.

30. The learned counsel of plaintiff had submitted that suit is not barred by limitation. The learned counsel of plaintiff relied on decision of Hon'ble Madras High court in *Dhanam v. Sreenivasan and others*, 2006 KHC 1648 and submitted that limitation starts from the date of completion and maturity of chitty transaction. The plaint has specifically pleaded as when the chitty is attained the date of maturity. The chitty has terminated on 15-7-2017 and so limitation starts from that date.

31. Relying on decision of Hon'ble High Court of Kerala in *Madhavan T.S v. Mundalan Chitties* 2009(3) KHC 364, where Hon'ble High Court of Kerala held that starting point of limitation would be the date of termination of chitty period and not the date of default. The cause of action would be the date of conclusion of the chitty period . Article 37 of the Limitation Act, 1963, deals with suits filed on a promissory note or bond payable in instalments. The suit is based on the termination of chitty period and not on the basis of promissory note or bond and so Article 113 would be applicable .In the instant case the loan period is over on 15-2-2017 and is not disputed by the defendant. Thus the limitation starts from that date and case if filed on 3-8-2018 and is within the period of limitation. Additional issue found in favour of plaintiff.

32. Issue no.2: In the light of my findings on the above issue, suit is decreed.

In the result, the suit is decreed as follows:

1. The plaintiff is permitted to realize a sum of Rs.3,79,780/- with interest at the rate of 12% per annum on the principal outstanding sum of Rs.2,80,000/- from 12-2-2015 till the date of decree and thereafter, at the rate of 6% till realization from the defendants and their assets.
2. The plaintiff is also permitted to recover the costs of the suit from the defendants and their assets.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 30th day of March, 2026.)

Parvathy Vijayan,
Munsiff

APPENDIX

Plaintiffs Witness:-

- A1 - 18/08/13 - Copy of Minutes
- A2 - 12/10/09 - Acknowledgment of Registration
- A3 - Kuri Pass Book

- A4 - 03/12/19 - Account Statement
- A5 - Copy of Day Book
- A6 - 25/06/12 - Kuri Karar
- A7 - Account Statement from 15/03/12 to 30/03/12
- A8 - 30/07/09 - Deed Partnership
- A9 - 08/08/08 - Rent Agreement Original
- A10 - Rent Receipt
- A11 - 27/09/22 - Certified Copy of I.A.10/22
in O.S.523/18
- A12 - 02/05/13 - Voucher
- A13 - Receipt No.FM O3
- A14 - Receipt No.FM 5650
- A15 - 18/02/21 - Copy of Vakkalath
- A16 - Copy of Vakkalath
- A17 - 18/01/22 - Copy of Deposition
- A18 - 25/03/17 - Copy of Written Statement
- A19 - 16/04/18 - Copy of Application Form

Defendants Exhibits:-

- B1 - 02/02/18 - Judgment in O.S.38/17(Copy)
- B2 - 02/02/18 - Decree in O.S.38/17 (Copy)
- B3 - 21/05/18 - Copy of A.S.65/18
- B4 - 01/01/17 - Copy of Complaint in O.S.38/17
- B5 - 07/06/18 - Sanction Order of Life Mission
- B6 - 23/04/12 - Copy of Deed

Plaintiffs Witness:-

PW1 - 11/08/25 - Biju C.A.

PW2 - 21/08/25 - Rathi

PW3 - 08/09/25 - V.M.Lonappan

PW4 - 10/10/25 - Mini Jose

Defendants Witness:-

DW1 - 12/11/25 - Minimol Paul

DW2 - 05/01/26 - Mary

Munsiff