

STATE OF KERALA
IN THE SUBORDINATE JUDGE'S COURT, ERNAKULAM

Present:

Smt.Ancy T., Additional Sub Judge - I

Saturday, the 26th day of July, 2025/4th Shravana 1947

O.S No. 243/2016

Plaintiff:

Sajeena T.K., aged 36 years, W/o.P.M.Kamaludeen, Pathuppilli House, Ponekkara Kara, AIMS Ponekkara P.O., Edappally North Village, Kanayannur Taluk, Cochin Corporation, PIN - 682 041

By Advs.Eldho Cherian, M.A. Mohammed Siraj,
K.S. Sreejith, Hari P. Nair and Saju Wahab

Defendants:

1. Mrs. Sandra Thomas, aged 23 years, D/o.P.J. Thomas, Pallichamparambil House, Kannachanthode Road, Thrikanarvattom Desom, Pachalam P.O. Ernakulam Village, Kanayannur Taluk, Ernakulam District, Pin - 682 012
2. M/s. Reliant Credits (India) Ltd., XV/1B-5, K.J.K. Estate, A.M.Road, Kothamangalam Represented by its Assistant Manager and POA Holder, Sunil Kumar M.P., aged 39 years, S/o.Prabhakaran Nair, Mecherikudy House, Pindimana P.O., Kothamangalam - 686 691.

D1 by Advs. P. Rajesh Kottakkal, Varghese Varghese M., M.P. Ramnath, Bepin Paul, Sandhya S., Sebastian K.J., Shalu Varghese and Abul Hassan T.

D2 by Advs. George Mathew &
M.D. Sasikumar

This plaint filed under Order VII Rule 1 read with Section 26 of the Code of Civil Procedure, 1908.

This suit came up before me for hearing on 21.07.2025 and this Court on 26.07.2025 delivered the following:

J U D G M E N T

Suit for declaration and injunction.

2. Brief averments in the plaint are as follows:

The father-in-law of the plaintiff had 2.02 ares of land in Sy No.86/1/2/4 in Edapally Village. He executed Deed No. 997/2009 of Edapally SRO in favour of the plaintiff. Plaintiff mortgaged the said property with UCO Bank, Broadway branch by way of deposit of title deeds and availed a loan of Rs.25,00,000/- (Rupees twenty five lakhs only). The husband of the plaintiff is a business man and using the profits from their business they constructed 3 storied building in 2.02 ares. This property along with all improvements therein are mentioned in the plaint as plaint schedule property. The plaintiff has given the ground floor of the said building on rent for godown purpose. Plaintiff is residing with her family in the first floor of the building. The second floor is leased out for residence. Plaintiff has been repaying the loan from the rent she receives from these building. When the tenant on the ground floor vacated the premises, the plaintiff found it difficult to repay the loan amount. On 30-06-2014 the loan account with UCO Bank fell NPA. Plaintiff and her husband approached DRT and sought permission to conduct private sale of plaint schedule property. The first defendant is a business man known to the plaintiff. The plaintiff and her husband availed loan from the first defendant during 02-02-2016 to 02-06-2016 for their business purpose. Plaintiff received all the payments through RTGS transfer. Altogether, plaintiff received Rs.3,30,000/- (Rupees three lakhs and thirty thousand only) from the

first defendant. She has repaid this amount to the first defendant in cash. The plaintiff repaid the amount on mutual understanding without any written document. When the bank was proceeding against plaintiff schedule property under SARFAESI Act, the first defendant approached the plaintiff with financial aid and negotiated to purchase plaintiff schedule property. It was agreed to sell plaintiff schedule property for Rs. 1,75,00,000/- (Rupees One Crore seventy Five Lakh only). The first defendant paid Rs.20,00,000/-(Rupees twenty lakhs only) to the plaintiff to discharge the mortgage over plaintiff schedule property. On 30-05-2016 the first defendant transferred Rs.10,00,000/- (Rupees ten lakhs only) to the loan account of the plaintiff with UCO Bank. On the same day, she transferred another amount of Rs.10,00,000/- (Rupees ten lakhs only) to the SB account of the plaintiff maintained with UCO Bank. Thus, the plaintiff could close her loan account and get back the title deeds. The first defendant was of the opinion that she will purchase plaintiff schedule property for Rs.1,75,00,000/- (Rupees One Crore seventy Five Lakh only) by pledging the same. So, she requested the plaintiff to execute a sale deed in her favour. The plaintiff who had reposed good faith in the first defendant executed Sale Deed No. 2383/2016 in her favour. But the first defendant betrayed her. On 16-08-2016 the first defendant transferred Rs.10,00,000/-(Rupees ten lakhs only) to the SB Account of the plaintiff maintained with Andhra Bank. Thereafter, when the first defendant did not pay the sale consideration she agreed to execute an agreement in this regard.

Thus, on 24-08-2016 the first defendant executed an agreement in favour of the plaintiff in the presence of 2 witnesses, viz., Sabin C.C and Mahesh K.S that she will pay Rs.1,75,00,000/- (Rupees One Crore seventy Five Lakh only) within 15 days from the date of agreement or re-convey the property to the plaintiff. After the expiry of those 15 days, the plaintiff and her husband approached the first defendant. But she evaded from payment. Thereafter, the first defendant registered a false case before the Central Police Station against the plaintiff, her husband and few others. The husband of the plaintiff and certain others were arrested by the police. Though the plaintiff had executed sale deed in favour of the first defendant, she retained the possession of plaint schedule property. The first defendant mortgaged plaint schedule property with the second defendant for Rs.72,91,666/-. (Rupees seventy two lakhs ninety one thousand six hundred and sixty six only) As per the order in OP (Arb) 959/2016 of the District Court, Ernakulam the plaint schedule property is attached. The first defendant managed to get a sale deed executed in her favour and thereafter mortgaged it. The mortgage by the first defendant is not binding on the plaintiff. The sale deed is perse null and void. Hence, the Sale Deed No. 2383/2016 of Edapally SRO is to be declared void and a decree for mandatory injunction be passed against the first defendant or in alternative allow the plaintiff to realise Rs.1,65,00,000/- (Rupees one crore sixty five lakhs only) from the first

defendant from the date of the suit till realisation by charging on the plaint schedule property. Hence, the suit.

3. The case was listed for trial on 16.7.2025. On that day the case was adjourned to 18.07.2025. On 18.7.2025 the case again adjourned to 21.7.2025. On that day there was no representation from the side of defendants and hence they were called absent and set *exparte*.

4. Evidence in this suit consists of the oral testimony of plaintiff who was examined as PW1 and Exts A1 to A21 and Ext C1 were marked as documentary evidence on the side of plaintiff. Plaintiff has admitted that she has executed sale deed in favour of the first defendant with respect to the plaint schedule property. It is understood from the plaint averments and the affidavit and the exhibits produced by the plaintiff that the first defendant has to pay the balance sale consideration of Rs. 1,65,00,000/- (Rupees One Crore Sixty Five Lakh only). In cases where the buyer has to pay consideration to the seller, the remedy is under Section 55 (4)(b) of the Transfer of Property Act. So, the alternate remedy is sought for by the plaintiff.

5. Heard the counsel for the plaintiff.

6. From the unrebutted testimony of PW1 coupled with Exts. A1 to A21 and Ext.C1, it is satisfied that the plaintiff is entitled for the reliefs as prayed for. The evidence adduced by PW1 stands unchallenged and the plaint claim stands proved. In the light of above

discussions, the plaintiff is entitled to a decree for permanent prohibitory injunction as prayed for.

In the result, the suit is decreed as follows:

1. The plaintiff is allowed to realise Rs.1,65,00,000/- (Rupees One Crore Sixty Five Lakh only) with 6% interest from the date of the suit till the date of realisation from the first defendant and her assets.
2. Plaint schedule property which now stands in the name of the first defendant is charged with the decree as per Section 55(4) (b) of the Transfer of Property Act, 1881.
3. Plaintiff is allowed to realise the cost of the suit from the first defendant and her assets.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in the open court, on this the 26th day of July, 2025).

Sd/-
Ancy.T
Additional Sub Judge - I

Appendix:

Exhibits marked on the side of plaintiffs:

A1	06.05.2009	Certified copy of document No.977/2009 of Edappally SRO executed in favour of plaintiff.
A2	17.09.2014	Possession notice issued by UCO Bank under SARFAESI Act to the plaintiff.
A3	07.10.2024	Sale notice issued by UCO Bank to the plaintiff.
A4	From 24.09.2009	Original passbook issued by UCO Bank, Broadway Branch.
A5	From 29.09.2009	Original passbook of SB account of plaintiff, issued by UCO Bank, Broadway Branch.

A6	17.06.2016	Order in S.A. 38/2015 of Debts Recovery Tribunal – I, Ernakulam.
A7	17.03.2016	Statement of Income for the period of 2015-2016 given by the first defendant to the plaintiff.
A8	12.07.2016	Certified copy of Sale Deed No.2383/2016 of Edappally, SRO executed by the plaintiff in favour of 1 st defendant.
A9	08.07.2016	Original of Passbook issued by Andra Bank, Edappally Branch.
A10	24.08.2016	Description of property in agreement executed by plaintiff and defendant.
A10(a)	24.08.2016	Agreement executed between plaintiff and defendant.
A11	18.11.2016.	Order in B.A. No.7993/2016.
A11(a)	24.11.2016	High Court order in Bail application No.7993/2016.
A12	26.11.2016	Attachment before judgment with order to call for security for fulfillment of decree.
A13	11.03.2019	Certificate of encumbrance on property.
A14	18.01.2018	Certified copy of Final report in Crime No.1659/2017 of Ernakulam Town North Police Station filed before Additional Chief Judicial Magistrate Court, Ernakulam.
A15	16.01.2017	Certified copy of Complaint filed by plaintiff as CMP No.118/2017 before Judicial First Class Magistrate Court – II, Aluva pending take C.C. No.811/2017.
A16	12.10.2017	Certified copy of order taking cognizance in C.C. No.811/2017 of Judicial First Class Magistrate Court – II, Aluva.
A17(a)	04.12.2017	Demand notice issued to plaintiff by Kerala Water Authority in respect of Consumer No.E49/4485 IN to the plaintiff.
A17(b)	02.02.2018	Demand notice issued to plaintiff by Kerala Wate Authority in respect of Consumer No. E49/4488/N to the plaintiff.

A17(c)	03.04.2018	Demand notice issued to plaintiff by Kerala Water Authority in respect of Consumer No.E49/4486/N to the plaintiff.
A17(d)	01.08.2018	Demand notice issued to plaintiff by Kerala Water Authority in respect of Consumer No.E49/4486/N to the plaintiff.
A17(e)	01.10.2018	Demand notice issued to plaintiff by Kerala Water Authority in respect of Consumer No.E49/4486/N to the plaintiff.
A18	25.01.2019	Receipt of Kerala Water Authority.
A19 Series	14.01.2019	Kerala State Electricity Board Limited receipts.
A20	18.03.2019	Kerala State Electricity Board Limited receipt.
A21	02.03.2019	Original receipt Land Tax Receipt issued by Village Officer Edappally North.

Exhibits marked on the side of defendant: Nil

Exhibits marked on the side of Court:

C1	30.11.2016	Commission report filed by Advocate Commissioner.
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Witnesses examined on the side of plaintiff:

PW1	21.07.2025	Sajeena T.K.
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Witness examined on the side of defendants: Nil

Court Witnesses: Nil

Id/-

Additional Sub Judge - I

Typed by : ms
Comp.by : sm

**JUDGMENT in
OS No. 243/2016
Dated: 26.07.2025**