

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

RFA.No. 726 of 2013 ()

AGAINST THE JUDGMENT IN OS 151/2010 of ADDL.SUB COURT, KOTTAYAM
DATED 31-03-2012

APPELLANTS/DEFENDANTS 1 AND 3:

1. CHACKO JOSEPH AGED 63 YEARS
S/O. CHACKO, RESIDING AT KORATHARA HOUSE
KURUSHUMMODU P.O., CHANGANACHERRY VILLAGE
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.

2. JOHN JACOB AGED 48 YEARS
S/O. CHACKO, RESIDING AT KORATHARA HOUSE
KURUSHUMMODU P.O., CHANGANACHERRY VILLAGE
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.

BY ADVS. SRI. R. SUDHISH
SMT. M. MANJU
SRI. K. R. RANJITH

RESPONDENTS/PLAINTIFFS:

1. KALARIPARAMBIL KURIES
ALPHONSA HOSPITAL BUILDINGS, MARKET ROAD
CHANGANACHERRY, NOW AT P.M.J. COMPLEX
OPPOSITE P.M.J. COMPLEX
OPPOSITE TO K.S.R.T.C BUS STAND, CHANGANACHERRY
KOTTAYAM-686101
REPRESENTED BY ITS MANAGING PARTNER TOM JOSEPH.

2. TOM JOSEPH, AGED 49 YEARS
S/O. JOSEPH, MANAGING PARTNER, KALARIPARAMBIL KURIES
RESIDING AT KALARIPARAMBIL HOUSE, KOTTAMURI P.O.
THRIKKODITHANAM VILLAGE, CHANGANACHERRY
KOTTAYAM-686101.

R1-R2 BY ADV. SRI. P. R. VENKETESH
R1-R2 BY ADV. SMT. ASHA P. KURIAKOSE

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

=====

R.F.A.No.726 of 2013

=====

Dated this the 02nd day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is filed by defendants 1 and 3 in a suit instituted by a chitty firm for payments outstanding on a subscribed chit. The claim is also supported by demand promissory note and other documents executed by the three defendants, who are brothers.

2. Pending suit, the second defendant died. In the written statement, the surviving defendants denied the execution of the documents and contested the suit.

3. At trial, plaintiffs tendered evidence through PWs.1 to 3 and first defendant tendered evidence as DW1. The first defendant consistently denied the signatures in the suit documents. In cross examination, plaintiffs' counsel confronted him with the signature in his written statement. He denied that as well. The learned trial Judge has recorded the fact that the written statement was shown to DW1 not by folding up any part of the written statement, but by handing over the entire written

statement to the witness in court. Yet, DW1 denied having signed even the written statement. The court below took a view that DW1 is not a trustworthy witness and as a consequence, the denial of the transaction by the defendants cannot be upheld. The evidence of PWs.1 to 3 corroborated the documentary evidence which is Exts.A1 to A6. Added to that, we also see that in spite of a suit notice having been issued prior to the institution of the suit, no reply was tendered in answer thereto. The appreciation of evidence by the court below is in strict conformity with the law. Learned Judge has drawn all available and reasonable inferences based on the material evidence on record and the available probabilities and presumptions during the course of trial and in appreciation of the entire materials on record. We, therefore, do not find any ground to interfere with the principal amount fixed by the trial court as per the decree.

4. On the question of interest granted by the court below, we see that from the date of suit till date of decree, interest has been awarded @ 12% per annum. Post decree interest @ 6% has been awarded. Having given our anxious consideration to this issue on the basis of submissions made on either side, we are of

the view that rate of interest from the date of suit till date of decree also can be trimmed down to 6%. This appeal can be allowed in part to that extent.

In the result, this appeal is allowed in part modifying the rate of interest granted by the trial court to be at 6% per annum from the date of suit till date of decree. No costs.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna