

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

SA.No. 345 of 2002 ()

**IN AS 512/1998 of I-ADDL. DISTRICT COURT, THRISSUR DATED 06-11-2001
IN OS 709/1996 of PRL. MUNSIFF COURT,THRISSUR DATED 31-03-1998**

APPELLANT(S)/APPELLANT/PLAINTIFF::

**MAR APPRAEM KURI COMPANY LTD.,
M.O. ROAD, THRISSUR.**

**BY ADVS.SRI.S.V.BALAKRISHNA IYER (SENIOR)
SRI.K.JAYAKUMAR (SENIOR)**

RESPONDENT(S)/RESPONDENTS 2 TO 10/DEFENDANTS 2 TO 11::

- 1. P.A.VELAPPAN, S/O. PADOOR AYYAPPAN,
MANAKODY VILLAGE & DESOM, THRISSUR TALUK.**
- 2. K.A.KARTHIKEYAN,
CHIEF ACCOUNTANT, TODDY WORKERS MULTI PURPOSE
CO-OPERATIVE SOCIETY, ANTHIKKAD, THRISSUR TALUK
S/O. KOKKANTHRA AYYAPPAKUTTY, CHAZHOOR VILLAGE AND
DESOM, THRISSUR TALUK.**
- 3. K.A.DHARMAPALAN,
LAB ATTENDER, S.N.COLLEGE, NATTIKA
S/O. KOTTAKKAL AYYAPPAKUTTY, KARAMUKKU VILLAGE
THRISSUR TALUK.**
- 4. M.K.BALAN, S/O.MANNAMTHINDI KUTTAN,
KOLAZHI VILLAGE & DESOM, THRISSUR TALUK.**
- 5. KUTTAPPAN, F/O. DECEASED GIRIJAN,
KOKKANTHRA HOUSE, MANAKODY VILLAGE & DESOM
THRISSUR TALUK.**
- 6. KAMALAKSHY, M/O. DECEASED GIRIJAN &
W/O. KUTTAPPAN IN -DO- -DO-.**
- 7. SHEELA, W/O. -DO- &
D/O. PALLIYIL ACHUTHAN, ANTHIKKAD VILLAGE &, DESOM
THRISSUR TALUK.**
- 8. SNEHA, D/O. -DO- & SHEELA IN -DO- -DO-.**
- 9. NIDHI, D/O. -DO- RESIDING IN -DO- -DO-.**

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.BHAVADASAN, J.

S.A. No. 345 of 2002

Dated this the 10th day of June, 2015

J U D G M E N T

Aggrieved by the denial of his portion of the claim made in the plaint, the plaintiff has come up in appeal.

2. The suit was one for recovery of money based on a kuri transaction. The first defendant had subscribed to a Kuri which he bid in auction and the amount furnished as security. Defendants 2 to 5 were the secured sureties. Later, the first defendant died and defendants 6 to 10 were impleaded. Since the defendants defaulted the payment of instalments, the suit was laid claiming future interest for the defaulted amount.

3. Defendants 2, 3 and 5 resisted the suit and pointed out that the suit was filed after the three years of death of the first defendant and that action is suspicious. To their knowledge, the first defendant was paying instalments regularly and also they also contended that they had paid

certain amounts in 1994 and 1995 which is liable to be accounted towards the amount due to the plaintiff. They therefore prayed for a dismissal of the suit.

4. In the written statement filed by defendants 6 and 10, they denied that they are liable to pay any amount to the plaintiff and also that the first defendant had no property of his own so that they are not liable to pay any amount.

5. The trial court raised necessary issues for consideration. The evidence consists of the testimony of PW1 and documents marked as Exts. A1 to A5. The defendants examined DW1 and had Ext. B1 marked.

6. On an appreciation of the evidence, the trial court came to the conclusion that an amount of ₹27,580/- was due to the plaintiff and a decree was passed for the said amount with interest from the date of suit till realization.

7. The aggrieved plaintiff carried the matter in appeal as A.S.No.512/1998. The appellate court concurred with the trial court regarding the principle amount, but found

that the interest of certain delayed payment has not been granted and accordingly modified the decree as follows:

“12. In the result, the appeal is allowed in part and a decree is passed allowing the plaintiff to realise interest at 12% on Rs.27,500/- since 12-11-1993 till the date of suit and 12% interest on Rs.2000/- upto 5--1--1994, on Rs.1000/- upto 13-1-1994, on Rs.2000/- upto 3-4-1994, on Rs. 500/- upto 19-4-1994, on Rs.500/- upto 16-3-1995 and Rs.2000/- upto 20-3-1995 - all since 12-11-1993; in addition to the decree awarded by the trial court. The appellant also will be entitled to have proportionate costs of the appeal from the contesting defendants 2, 3 and 5.”

8. Claiming that an amount of ₹19,000/- and odd is still due, the plaintiff has come up in the second appeal.

9. Notice was issued on the following substantial questions of law:

“(A) Is not the decision of the lower appellate court vitiated by improper and perverse reading of the evidence in the case to deny the plaintiffs' suit claim?

(B) Is not the finding of the lower appellate

court that the amounts paid under Ext.B1 series were towards instalments after the 36th perverse since there is no evidence in the case establishing the same?

(C) Is not the decision of the lower appellate court declining the interest as claimed in the plaint vitiated by a substantial error of law, in the teeth of its own finding that the plaintiff is entitled to interest on balance after 36th instalment from 12.10.1993?

(D) Has not the lower appellate court acted illegally in holding that merely because there is no evidence to establish the case as pleaded by the defendants, the plaintiff has to suffer?

(E) Has not the lower appellate court committed a grievous and substantial error of law in approaching the case from an entirely wrong angle and casting the burden of proof erroneously?

(F) On the facts and in the circumstances established in the case, is not the plaintiff entitled to a decree as prayed for in the plaint?"

10. After having heard the learned counsel for the appellant and after having gone through the judgment and decree of the courts below, this Court finds no ground to

interfere with the judgment and decree of the courts below. The court below, for cogent and convincing reasons, held that plaintiff is entitled to an amount of ₹27,580/- with 12% interest. The error committed by the trial court has been rectified by the appellate court by awarding interest for the delayed payments.

Finding of the court below are based essentially on appreciation of the evidence and on pure questions of law. No question of law arises for consideration in this second appeal. This appeal is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge