

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYASHTA, 1937

AS.No.212 of 1997 (C)

OS NO.319/1994 of PRL.SUB COURT,KOZHIKODE.

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APPELLANT/1ST DEFENDENT:

1. *V.PMOOTHORAN,AGED 74 YEARS,
S/O.KELAN,ELATHUR,KOZHIKODE.(DIED).

2. SAROJINI,W/O.MOOTHORAN,-DO-

*THE SECOND APPELLANT IS RECORDED AS ONE OF THE LEGAL HEIRS
OF THE DECEASED 1ST APPELLANT VIDE ORDER DATED 30.9.2008 ON
IA 3965/2008.

*APPL.A3 TO A7 IMPEADED

A3: MONOMOHANAN,S/O.DECEASED V.P.MOOTHORAN,
ERANHIKKAL,KOZHIKODE.

A4: MOHINI,D/O.DECEASED V.P.MOOTHORAN,
ERANHIKKAL,KOZHIKODE.

A5: SHYLAJA,-DO- -DO-

A6: SAJINI, -DO- -DO-

A7: SREEJA, -DO- -DO-

*ADDITIONAL APPELLANTS 3 TO 7 ARE IMPEADED AS LEGAL HEIRS OF
DECEASED 1ST APPELLANT AS PER ORDER DATED 26.5.2015 IN I.A
NO.3964/2008 IN A.S 212/1997.

BY ADV.SRI.K.P.BALASUBRAMANYAN.

RESPONDENT/PLAINTIFF:

1. SREEDHARAN,S/O.PONNAMPARAMBATH ANDI,
KUTTOOLI SHAJI NIVAS,ELATHUR,KOZHIKODE.

*ADDITIONAL R2 TO R4 IMPEADED

ADDL.R2:MAITHREYAN,VENGALIPARAMBATH,
ERANHIKKAL,KOZHIKODE.

ADDL.R3:SUMITHARANANDAN,-D/O- -DO- -DO-

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ADDL.R4:SUNILKUMAR S/O. -DO- -DO-

ADDITIONAL R2 TO R4 IMPEADED AS LEGAL HEIRS OF DECEASED 1ST APPELLANT AS PER ORDER IN I.A NO.3964/2008 IN A.S NO.212/1997.

*ADDITIONAL R5 TO R9 IMPEADED.

ADDL.R5:VIMALA,WIDOW OF 1ST RESPONDENT SREEDHARAN,
SHAJI NIVAS,KUTTOOLI,ELATHUR,KOZHIKODE.

ADDL.R6:SHAJI, S/O.DECEASED 1ST RESPONDENT -DO-

ADDL.R7:SAJEEVAN, -DO- -DO-

ADDL.R8:SHAHIL, -DO- -DO-

ADDL.R9:SHEJEENA, D/O. -DO- -DO-

*ADDITIONAL R5 TO R9 IMPEADED AS PER ORDER DATED 26.5.2015
IN I.A NO.3962/2008 IN A.S. NO.212/1997.

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 26-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

A.S.No.212 of 1997

Dated this the 26th day of May, 2015

JUDGMENT

The defeated defendants in a suit for realisation of money are the appellants in this appeal.

2. The case of the plaintiff is that on 14.8.1992, the defendants borrowed a sum of Rs.30,000/- from him against execution of a demand promissory note to enable their son to obtain an employment abroad. It is alleged by the plaintiff that the first defendant has issued a cheque bearing No.884243 also to the plaintiff by way of security for the borrowed amount. According to the plaintiff, the defendants did not return the amount borrowed as agreed and consequently he had to present the cheque for collection in the bank and the cheque when presented for collection was dishonoured for want of funds in the account. It is also

alleged by the plaintiff that criminal proceedings have already been initiated by him against the first defendant in connection with the dishonour of the cheque. The relief claimed in the suit was a decree permitting the plaintiff to recover the borrowed amount of Rs.30,000/- with interest and costs.

3. The defendants filed a written statement, contending among others, that they have not executed any promissory note in favour of the plaintiff on 14.8.1992 and that the cheque referred to in the plaint is not a cheque issued by the first defendant to plaintiff.

4. The evidence in the case consists of the testimony of plaintiff as PW1 and Exts.A1 to A4 documents on the side of plaintiff and the testimonies of defendants as DWs.1 and 2 and Ext.B1 on the side of the defendants.

5. The trial court, on an elaborate consideration of the materials on record, found that the plaintiff has not established that Ext.A1 is a promissory note executed by the

defendants as claimed by the plaintiff. However, the trial court found that the cheque referred to in the plaint is a cheque issued by the first defendant to the plaintiff and consequently decreed the suit, permitting the plaintiff to recover Rs.30,000/- from the first defendant with interest at the rate of 6% per annum. The defendants are aggrieved by the said decision of the trial court.

6. Heard the learned counsel for the appellants and the learned counsel for respondent Nos.5 to 9, the legal representatives of the plaintiff.

7. The learned counsel for the appellants contended that the suit in the instant case is one instituted on a promissory note claimed to have been executed by the defendants on 14.8.1992 and since the court below found that the plaintiff has not established the execution of the promissory note as pleaded by him, the decree impugned is illegal and unsustainable. The learned counsel for the appellants also contended, relying on paragraph 5 of the

plaint dealing with the cause of action for the suit, that the suit being one instituted on a promissory note, the decree passed by the trial court on the basis of the cheque is unsustainable. He further contended that at any rate, in so far as the original cheque was not produced before the trial court, a decree for realisation of money should not have been passed on the said cheque.

8. Per contra, the learned counsel for the legal representatives of the plaintiff contended that the first defendant was convicted in the proceedings initiated by the plaintiff for dishonour of the cheque referred to in the plaint. He also pointed out that having regard to the fact that the plaintiff has obtained the decree impugned in this appeal, the appellate court modified the sentence imposed on the first defendant to a meagre fine of Rs.1,000/-, indicating that the prosecution of the first defendant did not result in any material benefit to the plaintiff. The learned counsel has also made available to me a certified copy of the

decision in Crl.Appeal No.177 of 1995 preferred by the first defendant against the decision in S.T.No.560 of 1992.

9. The facts that the cheque bearing No.884243 as referred to in the plaint is one issued to the first defendant by the bank in the account maintained by him and that the same contains the signature of the first defendant are not in dispute. The contention of the first defendant concerning the said cheque was that it was a cheque issued by him to one Ramakrishnan and the plaintiff has obtained the same from him. The first defendant has not adduced any evidence to establish the said contention. Further, it is seen that the very same contention was though raised by the first defendant in the criminal proceedings initiated by the plaintiff, it was rejected. The facts that the first defendant was convicted in the criminal proceedings referred to above and the sentence imposed on him by the trial court was modified by the appellate court as indicated by the learned counsel for respondents 5 to 9 are not disputed by the

learned counsel for the appellants. The fact that the decision in Crl.Appeal No.177 of 1995 has become final is also not disputed. In the said circumstances, I have no hesitation to hold that the contention raised as regards the issuance of the cheque by the first defendant is unsustainable.

10. True, the pleadings in paragraph 5 of the plaint dealing with the cause of action of the suit give an impression that the suit is one instituted on the basis of the promissory note dated 14.8.1992. But, a close reading of the entire averments in the plaint would indicate that the suit was one for realisation of money borrowed by the defendants on 14.8.1992. The contention that the original cheque has not been produced before the court below is also liable to be rejected as it is not disputed that the original cheque has been produced by the plaintiff before the criminal court.

11. It is seen that a sum of Rs.30,000/- has been

deposited by the second appellant before the court below in the course of the proceedings by way of security to release the attachment obtained by the plaintiff over a property owned by her. Since it is found that the second defendant is not liable to pay any amount to the plaintiff, it is clarified that the second defendant is entitled to get the said amount released.

In the result, there is no merit in the appeal and the same is, accordingly, dismissed with the above clarification. All the interlocutory applications in this appeal are closed.

P.B.SURESH KUMAR, JUDGE.

Smm