IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RFA.No. 336 of 2009

O.S.NO.290 OF 2005 OF ADDITIONAL SUB COURT, KOTTAYAM

APPELLANT(S)/DEFENDANTS :
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1. T.K.PYARI ANUPPALLY, W/O.BALAKRISHNAN RAO,
ANAPALLY HOUSE, KUTTISSERIKADAVU ROAD,
VAZHAPPALLY WEST KARA, VAZHAPPALLY EAST VILLAGE,
CHANGANACHERRY.

2. A.N.BALAKRISNAN RAO, ALIAS SOMAN,
S/O. NARASIMHA PAI, ANAPALLY HOUSE,
VAZHAPPALLY P.O., CHANGANACHERRY TALUK.

BY ADV. SMT.MINI.R.MENON

RESPONDENT(S)/PLAINTIFF :

P.VASANTHA, W/O.LATE GOPALAKRISHNA SHENOY,
RESIDING AT THUZHATHETHIL HOUSE, KAKKAMTHODE,
VAZHAPPALLY EAST VILLAGE, CHANGANACHERRY TALUK.

BY ADV. SRI.S.R.DAYANANDA PRABHU

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:

Msd.

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

R.F.A.No.336 of 2009

DATED THIS THE 20th DAY OF MAY, 2015

JUDGMENT

ANIL K.NARENDRAN , J.

The appellants are the defendants in O.S.No.290 of 2005 on the file of the Court of the Additional Subordinate Judge of Kottayam. The said suit was filed by the respondent herein for realisation of a sum of ₹7,34,329/- together with interest at the rate of 12% per annum on the principal sum of ₹4,79,070/- from the date of suit till realisation. The court below by judgment dated 30.6.2008 decreed the suit with costs, allowing the respondent/ plaintiff to realise a sum of ₹7,34,329/- with future interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter with interest at the rate of 6% per annum till the date of realisation on the principal sum of ₹4,79,070/-, from the defendants and their assets. Aggrieved by the judgment and decree of the court below, the appellants/defendants are before us in this appeal.

2. Going by the averments in the plaint, the plaintiff's

husband late Balakrishna Shenoy and the first defendant were in very close relationship with each other in their paternal line. On the basis of that relationship and believing the defendants, the plaintiff had financial transactions with them. The defendants have been borrowing money from the plaintiff for paying off the business loss of the second defendant and their children and for meeting other expenses in their family. The defendants wilfully failed to repay the money as agreed upon. So the plaintiff requested the defendants to settle the account and finally they reached a consensus and agreed to settle their accounts as on 18.7.2002 and to repay and discharge the entire liability on that day. Accordingly, on 18.7.2002 the plaintiff and the defendants amicably settled the accounts between them at a balance of ₹8,76,570/- due to the plaintiff as on that day. Though the defendants paid a sum of ₹4,00,000/- on 18.7.2002, they requested for extension of time up to 5.8.2002 to repay the balance amount outstanding. The plaintiff granted time up to 5.8.2002 for making full and final payment, on payment of a sum of ₹2,500/- as compensation for the delay caused due to the extension of time sought for. On 5.8.2002, the defendants, after acknowledging the debt and liability due as on 18.7.2002 together with the compensation amount of ₹2,500/-, sought further extension of time and agreed to repay the same with 24% interest before 5.8.2003 on the demand of the plaintiff or her order. The defendants jointly executed and handed over to the plaintiff a written acknowledgement of debt and liability agreeing to repay the balance amount of ₹4,79,070/- due as on 5.8.2002 together with 24% interest and signed a supporting statement in favour of the plaintiff. In spite of repeated demands the defendants failed to repay the aforesaid amount. Though the defendants had agreed to settle the matter by sale of their house, they sold their house on 5.2.2005, with a fraudulent and dishonest intention to defeat the legal rights of the plaintiff, by not discharging their liability due towards her. Finally the plaintiff sent a lawyer's notice to the defendants demanding a sum of ₹7,30,676/- together with interest. But the defendants refused to accept the said lawyer's notice. The defendants are jointly and severally liable to pay the aforesaid amount to the plaintiffs. Hence the plaintiff filed the suit for realisation of money.

3. The defendants filed a written statement contending

that, they have not borrowed any money from the plaintiff for business purpose or for the education of their children. The defendants were not having any liability and the plaintiff never helped the defendants as alleged in the plaint. On 18.7.2002 they had no discussion with the plaintiff concerning any money transaction. According to the defendants, the first defendant was having money transactions with the plaintiff's husband 10 years ago and all those transactions were settled during the lifetime of the plaintiff's husband. So no amount is due to the plaintiff from the defendants and they never acknowledged the liability of ₹8,76,570/- as on 18.7.2002, as alleged in the plaint. The defendants further contended that, the second defendant never stood as a guarantor or surety for any money transaction between the plaintiff and the first defendant and that he has no connection with any transaction. Hence the defendants prayed for dismissal of the suit with costs.

4. On the side of the plaintiff PWs.1 and 2 were examined and Ext.s A1 and A2 were marked. On the side of the defendants Ext.s B1 and B2 were marked. The defendants have not chosen to adduce any oral evidence.

5. On an appreciation of the facts of the case and evidence on record, the court below held that, the suit is not barred by limitation as contended by the defendants and that the plaintiff is entitled to realise from the defendants the amount as stated in the plaint. In the result, the court below decreed the suit as prayed for.

6. We heard the arguments of the learned counsel for the appellants/defendants and also the learned counsel appearing for the respondent/plaintiff.

7. According to the respondent/plaintiff, there were monetary transactions between herself and the appellants/defendants for the last 10 years and that her husband late Gopalakrishna Shenoy and the first defendant were in very close relationship with each other, in their paternal line, and that on the basis of the said relationship and believing them, she had many financial transactions with them. The respondent/plaintiff, who was examined as PW1, filed a proof affidavit in terms of the averments in the plaint. PW1 has deposed that there were financial transactions between herself and the appellants/defendants for a very long period and that as per her

request they settled the accounts on 18.7.2002, at their house, and that the said settlement was arrived at after a full discussion between the parties about the prior monetary transactions and that they had agreed to pay her the entire balance amount of ₹8,76,570/- as per the settlement of accounts. PW1 further deposed that, on 18.7.2002 the appellants/defendants did not pay the entire balance amount, but paid only an amount of ₹4,00,000/- and requested her to grant time till 5.8.2002 for payment of the balance amount. According to PW1, for the delay in payment of the balance amount, they had agreed to pay an amount of ₹2,500/- as compensation. But, on 5.8.2002, they requested the plaintiff to grant further time up to 5.8.2003 for making full and final payment of the entire balance as agreed on 18.7.2002 and they also acknowledged the said debt and liability and jointly executed and handed over to her Ext.A1 acknowledgment and account dated 5.8.2002. PW1 further deposed that Ext.A1 was written in the handwriting of the first defendant and that the same was signed by the appellants/defendants. Ext.A2 is the office copy of a lawyer's notice dated 1.7.2005 issued on behalf of the respondent/plaintiff to the appellants/defendants. The above version of PW1 is supported by PW2, who has deposed that, he knows the respondent/plaintiff and the appellants/defendants and also the monetary transactions between them. PW2 has deposed that, on 18.7.2002, the matter had been discussed and the accounts settled between the parties and that on that date the appellants/defendants had paid certain amount to PW1. PW2 further deposed that, he knows that balance amount was due to PW1 from the appellants/defendants. Though PWs 1 and 2 were cross-examined at length, nothing could be brought out during cross-examination either to discredit their version or to discard the documentary evidence adduced on the side of the respondent/plaintiff.

8. On the other hand, the appellants/defendants would contend that there were no monetary transactions between them and the respondent/plaintiff. According to them, there were certain monetary transactions between the first defendant and the plaintiff's husband 10 years ago and the said transactions were settled at the time when the plaintiff's husband was alive. They had also contended that, the promissory note given to the

respondent/plaintiff in connection with the monetary transactions with her husband was not returned even after settling the entire transactions and that the respondent/plaintiff has used the aforesaid promissory note for settlement of accounts in the present case and therefore, Ext.A1 cannot be considered as a settlement of accounts. As we have already noticed, the specific case of PW1 is that, Ext.A1 is written in the handwriting of the first defendant and that it is signed by the appellants/defendants. For reasons best known to the appellants/defendants they have not chosen to enter the box. They have also not chosen to deny either the handwriting or signatures in Ext.A1 settlement of accounts. Further, the appellants/defendants have absolutely no case that the respondent/plaintiff had made any alterations in Ext. A1, with regard to the date or any of the other particulars mentioned therein.

9. Ext. B1 is a copy of a letter dated 22.1.2008 issued by the respondent/plaintiff to the appellants/defendants and Ext.B2 is a copy of letter dated 14/3/2005 issued by the first defendant to the respondent/plaintiff. Ext.B1 would show that there were monetary transactions between the respondent/plaintiff and the

appellants/defendants, which would cut at the very root of the case put forward by the appellants/defendants that they had absolutely no monetary transactions between the respondent/plaintiff. As we have already noticed, nothing could be brought out during the cross-examination of Pws.1 and 2 to discredit their version. Further, the appellants/defendants have not chosen to enter the box. On the other hand, Ext.A1 would prove that, the appellants/defendants have settled the accounts of their monetary transactions with the respondent/plaintiff and have also acknowledged their debt and liability due towards her. Ext.A1 fully supports the case put forward by the respondent/ plaintiff in the plaint, which is supported by the oral evidence adduced by the plaintiff as PW1 and also that of PW2, who was examined on her side.

10. The documents on record as well as the oral evidence adduced on the side of the plaintiff prove that, the appellants/defendants had monetary transactions with the respondent/plaintiff and that they have settled the accounts on 18.7.2002 and acknowledged their liability to her on 5.8.2002 by executing Ext.A1 settlement of accounts, as per which, the

amount mentioned in the plaint is due her. Therefore, the court below cannot be found fault with in concluding that, the respondent/plaintiff is legally entitled to realise the plaint amount from the appellants/defendants together with interest and costs and that the suit is not barred by limitation. The aforesaid findings of the court below are neither erroneous nor irregular, warranting any interference by this Court in exercise of its appellate jurisdiction. The reasoning of the court below in the impugned judgment is neither perverse nor patently illegal and the appellants/defendants, who have not even chosen to enter the box, have also not made out a case for interference with the judgment of the court below.

In the result, the appeal fails and is dismissed. The parties shall bear their respective costs in this Court.

Sd/-
P.N.RAVINDRAN,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

skj/dsn