

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

RSA.No. 225 of 2008 ()

**(AS.NO. 136/2002 OF PRINCIPAL SUB COURT, THIRUVANANTHAPURAM
DATED 20-12-2006)**

**(OS.NO.705/1999 OF PRINCIPAL MUNSIF COURT, THIRUVANANTHAPURAM
DATED 31-10-2001)**

APPELLANT/RESPONDENT/DEFENDANT:

**RADHA DEVI, AGED 43 YEARS,
D/O. PARUKUTTY AMMA, RESIDING AT T.C 36/346,
PALKULANGARA, PETTAH VILLAGE,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.V.N.GOPALAKRISHNAN NAIR
SRI.G.SURARSHAN**

RESPONDENT/APPELLANT/PLAINTIFF:

**RAMACHANDRAN PILLAI, AGED 60 YEARS,
S/O. CHELLAPPAN PILLAI, RESIDING AT T.C NO.36/384,
DECENT JUNCTION, PALKULANGARA, PETTAH VILLAGE,
THIRUVANANTHAPURAM.**

BY ADV. SMT.M.HEMALATHA

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.BHAVADASAN, J.

R.S.A. No. 225 of 2008

Dated this the 15th day of June, 2015

J U D G M E N T

The first defendant, who was successful in having the suit dismissed before the trial court but who suffered a decree at the hands of lower appellate court is the appellant.

2. The suit was based on Ext.A1 promissory note which, according to the plaintiff, was executed by the defendant on receipt of ₹ 45,000/- on 17.06.1998. According to the plaintiff, she required the amount for repairing of her house. In spite of repeated demands, the amount was not paid and hence the suit was laid.

3. The defendant resisted the suit. She denied borrowing of amount. She claimed that she was not in Trivandrum on 16.06.1998 and she was far away at Malappuram. It is also contended that the plaintiff was incapable of raising a sum of ₹ 45000/-. She came forward with a story that on an earlier occasion, he had come to her

house when she was all alone and tried to molest her and she had poured boiled water on his body and therefore, he nursed a grudge against her. She came forward with yet another story that she had a tenant by name Viju, who was running a tailoring shop and while paying the rent to her by the said Viju, she used to issue receipts in a notebook kept by Viju and she used to put her signature on the revenue stamp affixed. According to her, one of such receipts were clandestinely obtained by the plaintiff and made use of it to fabricate a promissory note. On the basis of these contentions, she prayed for a dismissal of the suit.

4. The trial court raised necessary issues and evidence was adduced by the parties. The evidence consists of the testimony of PWs 1 and 2 and the documents marked as Exts. A1 to A6 from the side of the plaintiff. The defendant had DWs 1 to 4 examined and Exts. B1 to B6 marked.

5. The trial court, greatly impressed by the defence version of the case, dismissed the suit. The lower appellate court, on appeal by the plaintiff, found that none of the contentions raised by the defendant is capable of acceptance in view of the absence of any of the material defence set up by the defendant at the time of Ext.A3 reply notice and felt that, that should clinch the issue. Accordingly, the trial court decree was reversed and the suit was decreed.

6. Notice was issued on the following substantial question of law:

“Whether the lower appellate court is justified in considering the details of other cases and the evidence given by the appellant in other cases to conclude that the suit transaction alleged is true and that execution of Ext.A1 pronote is practically admitted by the defendant when on preponderance of probabilities, the trial court has come to the conclusion that Ext.A1 pronote is not executed by the

appellant? ”

7. The learned counsel appearing for the appellant contended that the court below was not justified in reversing the decree of the trial court. Ext.B6 has not been properly appreciated and that should clinch the issue. Further, it is contended that the evidence of DWs 3 and 4 taken along with Ext.B5 would clearly show that on the alleged date of borrowal, she was not in Trivandrum and she was far away at Malappuram. Even assuming that there is some infirmities in the evidence furnished by the defence, it is contended that, that is not a ground to grant a decree in favour of plaintiff who has to succeed on his own evidence. True, the learned counsel went on to point out that the signature on the promissory note is admitted. But an explanation has been offered as to how it happened to occur. When execution is specifically denied, the burden is on the plaintiff to prove the due execution of the promissory note. The trial court, rightly appreciating the evidence,

found that there was no evidence regarding the execution and had dismissed the suit. The lower appellate court, according to the learned counsel, misdirected itself both on facts and in law and failed in properly appreciating the evidence. It is contended that the lower appellate court was not justified in placing undue importance and significance on Ext.A3, reply notice ignoring the other vital items of evidence in the case. It is therefore contended that the judgment and decree of the court below are unsustainable in law.

8. Smt.Hemalatha, the learned counsel appearing for the respondent pointed out that while the trial court misdirected itself both on facts and in law, the lower appellate court considered the matter in proper perspective and rightly came to the conclusion that many of the defences put forward by the defendant was clear after thought in order to get over the liability to pay the amount covered by the promissory note. The learned counsel went

on to point out that Ext.A3 should clinch the matter. If as a matter of fact, any of the claims put forward by the defendant was true, they would have surely and certainly found a place in Ext.A3. The contentions relating to the alibi and also having clandestinely obtained the receipts from the so called Biju, are conspicuously absent in Ext.A3 and this, according to the learned counsel, is significant enough to show that the claim now put forward is totally unfounded. Referring to the oral evidence adduced by the defendant, it is pointed out that the story of going to Malappuram is also not proved. The evidence of DW4 cannot be relied on this score for the reason that he has not produced the trip sheet. The attention was also drawn to the fact that she had been an accused and defendant in several cases relating to borrowal of money, most of which she settled. The learned counsel therefore went on to point out that no grounds are made out to interfere with the findings of the lower appellate court and the appeal is only to be dismissed.

9. Before one goes into the discussion on the materials before this Court in this case, it is to be remembered that this Court is exercising jurisdiction under Section 100 of the Code of Civil Procedure. Unless there is a substantial question of law arising for consideration, it may not be possible for this Court to consider the issue at all. Merely because, the lower appellate court might have appreciated the evidence in a particular manner does not mean that this Court should interfere unless it is shown that the appreciation of evidence is totally perverse or conclusion drawn is contrary to the material on record.

10. The signature on Ext.A1 is admitted. The explanation offered is that that was clandestinely obtained by the plaintiff from DW2 who was the tenant of the defendant who examined herself as DW1. The case put forward is that the plaintiff managed to obtain the receipts from Biju pointing out that he wants to draw up a rent deed and for that purpose, he wanted a model and obtained the

receipts. Further contention is that on the alleged date of borrowal, she was not in Trivandrum and she was far away at Malappuram and that would also belie the case of the plaintiff. In other words, there were twin pleas ; one of alibi and the other of fabrication.

11. It is true that even though the signature on Ext.A1 is admitted, the burden is on the plaintiff to prove the due execution. For the said purpose, he has examined PW2.

12. The evidence of PWs 1 and 2 were attacked on the ground that there is considerable inconsistency in their evidence. The point highlighted is the time at which the promissory note was drawn up. One would say it is in the morning while the other would say it is in the evening.

13. The mere fact that there is some inconsistency in that regard by itself is not a ground to doubt their version in the light of other items of evidence available in the case. One cannot omit to note that the signature on Ext.A1 is an admitted one.

14. It is extremely difficult to believe the version given by DW1 that the stamp receipt found on Ext.A1 was clandestinely obtained by PW1 from DW2. This Court is not forgetting the fact that DW2 had filed an affidavit attested by a notary marked as Ext.B6, wherein, he narrates the story as spoken to by DW1. But at the time of evidence, he disowns the contents of the document.

15. The learned counsel appearing for the respondent at this juncture, pointed out that Ext.A3 notice was received on 17.03.1999. Drawing attention to the so called Ext.B6 drawn up by the second defendant, the learned counsel pointed out that, that is also dated 17.03.1999. If that be so, according to the learned counsel, at the time of replying to the notice, she was fully aware of what had transpired.

16. There is much substance in the contentions raised by the learned counsel appearing for the respondent. The above facts being so, if as a matter of fact, what is now claimed by DW1 or the defendant is true, obviously and

certainly that fact could have found a place in Ext.A3. Ext.A3 neither contains the plea of alibi nor fabrication of deed in the sense that a receipt fraudulently obtained had been utilized to concoct a document. In Ext.A3 reply notice, there is only a bare denial of receipt of amount and denial of any creditor-debtor relationship between the parties.

17. One should remember that Ext.A3 is the earliest opportunity for the defendant to put forward her case. In that, she has no case of any alibi or any fraudulently obtained deed be used for drawing up a promissory note.

18. But the plea of alibi even otherwise stands unestablished. DW4 is the taxi driver who is alleged to have taken DW1 to Malappuram. In his summons, he was specifically asked to bring the trip sheet. He did not do so and he had no explanation for its non production. A reading of DW1's evidence itself would show that claim of being in Malappuram is open to serious doubt.

19. The above facts would clearly show that the defendant was prone to developing the case stage by stage and she would go to the extent of adopting any contention the suit was convenient.

20. It is here that the conduct of DW1, which is brought out from her evidence, assumes importance. She had to admit that there were several cases against her relating to drawing up amount both by her and her husband. She admitted that she had settled most of them by paying the amount.

21. It is not strange to her to borrow amounts from persons. In the light of the fact that in Ext.A3, none of the contentions now raised is available. The conclusion drawn by the lower appellate court that the contentions now put forward are clear after thoughts cannot be said to be without basis and foundation.

22. Even otherwise, it is extremely difficult to believe the story put forward by the defendant. True, Ext.B6 has

been admitted by DW2. But he disowns the contents therein. He has also stated the circumstance under which he was forced to execute that document. Whatever that be, even assuming that it was written by him, the facts remains that it was a clear after thought and it was predated. That would be evident from the fact that such a contention is conspicuously absent in Ext.A3 reply notice.

23. The above facts and circumstances are sufficient to show that the case put forward by the defence is open to serious doubt. At any rate, it could not be said that the findings of the lower appellate court, based on appreciation of evidence, is so perverse that no person in his senses would have come to such a conclusion. It certainly is a possible view. The mere fact that a different view could have been taken is not a ground for this Court to interfere under Section 100 of the C.P.C.

For the above reasons, this Court finds that there is no substantial question of law arising for consideration in this

appeal. This appeal is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge