

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

RFA.No. 48 of 2015 ()

AGAINST THE JUDGMENT IN OS 428/2009 of SUB COURT, OTTAPPALAM DATED 17-09-2014

APPELLANT/PLAINTIFF:

RADHAKRISHNAN
S/O.LATE SANKARA GUPTHAN, AGED 52 YEARS
RESIDING AT VADAKKEKARA HOUSE, KADAMPAZHIPURAM
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENT/DEFENDANT:

PREMALATHA,
D/O.RADHAKRISHNA GUPTHAN, AGED 43 YEARS
RESIDING AT KUNIPPARA HOUSE, AZHIYANNUR DESOM
PULLUNDASSERY AMSOM, OTTAPALAM TALUK
PALAKKAD DISTRICT-678633.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

R.F.A. No.48 of 2015

Dated this the 3rd day of February, 2015

J U D G M E N T

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.428 of 2009 on the file of the Court of the Subordinate Judge of Ottapalam. The sole respondent is the defendant therein. The suit instituted by the appellant for realisation of the sum of Rs.1,56,000/- with interest at 12% per annum from 30.1.2007 and costs was dismissed after trial by judgment delivered on 17.9.2014. The appellant has aggrieved thereby filed this appeal. The brief facts of the case are as follows:

2. The appellant, who is none other than the brother-in-law of the respondent, instituted the suit contending that his brother (husband of the respondent) had executed Ext.A1 demand promissory note dated 30.1.2007 undertaking to repay the sum of Rs.1,56,000/- with interest at 12% per annum as and when demanded. It was averred that the amount was borrowed to meet the expenses for treatment and other expenses, without specifying the person who had borrowed the amount. Whether the borrowal was by the brother of the plaintiff or by the respondent/defendant was not stated. The appellant contended that though he had demanded repayment of the

amount and had also caused Ext.A2(a) notice dated 18.12.2009 to be issued, the amount borrowed was not repaid.

3. Upon receipt of summons, the defendant entered appearance and filed a written statement denying Ext.A1 promissory note. She contended that her husband has not executed the promissory note, that it is a fabricated document, that neither she nor her husband had borrowed any amount from the appellant and are not liable to pay any amount to him. She also contended that the plaintiff is on an inimical term with her for the reason that she had declined to assign her share in the property, which devolved on her on the death of her husband, for a paltry sum as demanded by the plaintiff. In the trial court, the plaintiff was examined as PW1 and his uncle as PW2 and Exts.A1 to A4 were produced and marked on his side. The defendant was examined as DW2 and another witness as DW1 and Exts.B1(a) to B2 were produced and marked on her side. On application filed by the defendant, a fixed deposit receipt in the name of her husband and a cheque issued by him were summoned from the Peringode Service Co-operative Bank Ltd., and produced and marked as Exts.X1 and X2. The trial court on an analysis of the pleadings and the evidence oral and documentary available in the case held that the plaintiff has not proved that late Unnikrishnan had executed Ext.A1 promissory note.

The suit was accordingly dismissed. Hence this appeal.

4. We heard Sri.P.S.Appu, learned counsel appearing for the appellant. We have also gone through the pleadings and the materials on record as also Ext.A1 promissory note and Exts.X1 and X2, which are a fixed deposit receipt in the name of late Unnikrishnan (appellant's brother) and a cheque issued by him respectively. Exts.X1 and X2 conclusively establish the fact that late Unnikrishnan was in the habit of writing his name in English and signing in English. Ext.A1 promissory note on the other hand discloses that the name of late Unnikrishnan alone was written in Malayalam across the revenue stamp affixed on the document. A mere look at the document would disclose that the handwriting in which the name of Unnikrishnan was written across the revenue stamp is the same as the handwriting of the scribe of the promissory note. Though the plaintiff had deposed when examined as PW1 that the promissory note was written by his brother, PW2 who is none other than the uncle of the appellant and the former employer of late Unnikrishnan had admitted in cross-examination that it was written by a scribe. On a comparison of the signature occurring in Ext.A1 promissory note and admitted signatures of Unnikrishnan in Exts.X1 and X2 and after analysing the evidence, the trial court came to the conclusion that the plaintiff has not proved

due execution of Ext.A1 promissory note by late Unnikrishnan. The trial court also noticed that there is no evidence regarding the point of time at which money was lend and advanced to Unnikrishnan. The trial court also took note of the fact that though according to PW1 the amount covered by the promissory note was paid in 15 instalments, according to PW2 it was paid in 4 or 5 instalments. The trial court also took note of the fact that according to PW1 the first payment was made in the year 1996, and the last payment was on 30.1.2007, that the source of the funds for the last payment of Rs.50,000/- was the money realised by sale of trees in the year 2000. The trial court, which had the opportunity to watch the demeanor of the witness held that PW1 is deposing utter falsehood. The trial court held that the evidence in the case on hand is contrary to the pleadings and the contents of Ext.A2(a) notice and no reliance can be placed on Ext.A1 promissory note. After going through the pleadings and the materials on record and Ext.A1 promissory note and Exts.X1 and X2, we are in agreement with the court below that the plaintiff has not proved that Ext.A1 promissory note was duly executed by the defendant's husband. As rightly noticed by the trial court, the plaintiff has not proved that his brother Unnikrishnan was in the habit of affixing his signature by writing his name in Malayalam. On the other hand

Exts.X1 and X2, which are documents containing the admitted signature of Unnikrishnan, show that late Unnikrishnan was in the habit of writing his name in English and affixing his signature in English. That apart, we also notice that the word Unnikrishnan occurring across the revenue stamp affixed on Ext.A1 promissory note and the word Unnikrishnan occurring in the body of the promissory note are written in the same handwriting. This coupled with the fact that PW2, who is none other than the uncle of the plaintiff, had deposed that the promissory note was prepared by a scribe leads to the irresistible conclusion that the signature in the promissory note purporting to that of late Unnikrishnan was put by the scribe and not by Unnikrishnan. Apart from the ipse dixit of the plaintiff that Ext.A1 promissory note was written by late Unnikrishnan in his handwriting, the plaintiff has not produced any evidence to show that the handwriting in the promissory note is that of late Unnikrishnan. That apart, we find from the records that the suit was instituted on 22.12.2009 after the defendant filed a complaint in respect of an incident which took place on 17.12.2009 and the Sreekrishnapuram Police had registered Crime No.318 of 2009, which later ended in acquittal of the accused including the appellant. From the materials on record, we are persuaded to hold that the plaintiff has not proved that

Ext.A1 promissory note is one executed by his brother late Unnikrishnan (the defendant's husband).

We accordingly hold that there is no merit in the instant appeal. The appeal fails and it is dismissed in limine.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps