IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

RFA.No. 145 of 2014 ()

AGAINST THE JUDGMENT AND DECREE IN OS 47/2011 of SUB COURT,THODUPUZHA
DATED 17-12-2013

APPELLANT/PLAINTIFF:

BABY M PURACKAL, AGED 68 YEARS,
S/O VARGHESE MATHAI, RESIDING AT PURACKAL HOUSE
CHEERANCHIRA PO 686 106, CHEERANCHIRA KARA
CHETHIPUZHA VILLAGE, CHANGANACHERRY TALUK
KOTTAYAM DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS/DEFENDANTS:

1. RASUDHA M.R. @ TINTU, AGED 27 YEARS
D/O REGHU, MULATHUPARAMBIL, MARIYAPURAM KARA
THANKAMONY VILLAGE
UDUMBANCHOLA TALUK NOW RESIDING AT HOUSE NO.667 IN WARD
NO.IV OF ARAKUNNAM PANCHAYAT NEAR AUDIT JUNCTION
MOOLAMATTOM KARA, ARAKKULAM VILLAGE, THODUPUZHA TALUK
IDUKKI DISTRICT, PIN:685591.

2. SUSEELA REGHU, AGED 51 YEARS
W/O REGHU, MULATHUPARAMBIL, MARIYAPURAM KARA
THANKAMONY VILLAGE
UDUMBANCHOLA TALUK NOW RESIDING AT HOUSE NO.667 IN WARD
NO.IV OF ARAKUNNAM PANCHAYAT NEAR AUDIT JUNCTION
MOOLAMATTOM KARA, ARAKKULAM VILLAGE, THODUPUZHA TALUK
IDUKKI DISTRICT, PIN:685591.

R1,R2 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28.09.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

ANTONY DOMINIC &
P.V.ASHA, JJ.

R.F.A.No.145 of 2014

Dated this the 28th day of September, 2015

JUDGMENT

Antony Dominic, J.

The plaintiff in O.S.No.47 of 2011 on the file of the Sub Court, Thodupuzha has filed this appeal, calling in question the judgment and decree dated 17.12.2013 dismissing the suit.

2. We heard the learned counsel for the appellant and the learned counsel for the respondents.

3. The plaintiff filed the suit seeking a decree for ₹12,95,525/- (Rupees Twelve lakh ninety five thousand five hundred and twenty five only) with simple interest at the rate of 12% per annum on the principal amount of ₹12,85,000/- (Rupees Twelve lakh eighty five thousand only) from the date of suit till the date of decree and thereafter at the rate of 6% per annum till date of realisation. According to the plaintiff the second defendant was employed as a housemaid at his residence for several years and her husband was also employed by the plaintiff as an agricultural worker. The first defendant is the daughter of

the second defendant and is employed as Staff Nurse in Malasia. It was alleged that in October 2010, the second defendant contracted with one Benoy Augustine and his wife Kuttiamma to purchase 10 cents of their property at Arakulam in the name of the first defendant. It was alleged that thereupon the defendants approached the plaintiff for financial assistance by way of loan and demanded an amount of ₹12,85,000/- (Rupees Twelve lakh eighty five thousand only), which was agreed to be repaid immediately after the execution of the sale deed by mortgaging the property and obtaining a bank loan from Federal Bank Limited in the name of the first defendan. According to the plaintiff, he agreed to help the defendants on condition that the amount would be repaid on or before 31.3.2011, which was agreed by the defendants also. It was alleged that believing the representation thus made by the defendants, the plaintiff paid ₹85,000/- (Rupees Eighty five thousand only) to the defendants on 1.10.2010 for payment to the vendor as advance. It was also alleged that on 6.1.2011 an amount of ₹9,50,000/- (Rupees Nine lakh fifty thousand only) was transferred from the plaintiff's account in the Federal Bank, Changanacherry branch to the defendant's account in the Idukki branch of the Federal Bank. He also claimed that ₹2,50,000/- (Rupees Two lakh fifty thousand only) withdrawn from his bank was paid to the defendants on 6.1.2011 which was received by the defendants at the plaintiff's residence at Cheeranchira at Changanacherry. The plaintiff pleaded that utilising the amount received from him, the defendants purchased the property and paid the sale consideration to the vendor and got the sale deed executed in their favour on 28.1.2011 vide sale deed No.119/2011 of SRO, Arakulam. It is alleged that thereafter the amount was not repaid as agreed and inspite of various demands made, the defendants refused to pay the amount. Therefore the plaintiff filed the suit for recovery of the amount paid.

4. The defendants filed their written statement denying the allegations in the plaint. Defendants admitted that the second defendant and her husband were employed in the house of the plaintiff during the period from 12.8.2007 to 18.1.2011. It was their case that the first defendant was employed in Malaysia as a

Nurse. According to the defendants, the plaintiff had agreed to pay ₹250/- (Rupees Two hundred and fifty only) per day to the second defendant and ₹500/- (Rupees Five hundred only) per day to her husband as wages. It is stated that it was their dream to purchase a property and a residential building and therefore in order to save amounts, both second defendant and her husband had not received any amount as salary from the plaintiff on the agreement that the plaintiff would pay the entire amounts due to them as and when a property is purchased. It is stated that in October 2010 the second defendant entered into an agreement to purchase 10 cents of property.

5. According to the defendants by the time they left the employment of the plaintiff, an amount of ₹3,07,500/- (Rupees Three lakh seven thousand five hundred only) was due to the second defendant and her husband was entitled to get ₹4,50,000/- (Rupees Four lakhs fifty thousand only). It was also their claim that the plaintiff owed them a further amount of ₹2,00,000/- (Rupees Two lakhs only) which was transferred by the first respondent from Malaysia to the account of the plaintiff.

Therefore according to the defendants they were entitled to get an amount of ₹9,57,500/- (Rupees Nine lakh fifty seven thousand five hundred only) from the plaintiff. Thus though they admitted of having purchased the property as claimed in the plaint, they denied of having availed any loan from the plaintiff. On this basis, they sought dismissal of the suit.

6. Before the trial court, the plaintiff and the Bank Manager were examined as PW1 and PW2. Exts.A1 to A3 and Ext.X1 were also marked. The second defendant was examined as DW1 and she also got marked Exts.B1 and B2. On conclusion of the trial, the court held that the plaintiff did not succeed in proving his case. On that basis the suit was dismissed. It is this judgment and decree which is under challenge before us.

7. Having heard the counsel for the parties and also on going through the evidence, both oral and documentary, we found that the payments alleged by the plaintiff were made in 3 instalments. The first payment of ₹85,000/- (Rupees Eighty five thousand only) was allegedly made on 1.10.2010, the second payment of ₹9,50,000/- (Rupees Nine lakh fifty thousand only)

was allegedly made by bank transfer made on 6.1.2011 and the third instalment is of ₹2,50,000/- (Rupees Two lakh fifty thousand only) allegedly paid in cash again on 6.1.2011. Insofar as the payment of ₹85,000/- (Rupees Eighty five thousand only) is concerned apart from the assertion made in the plaint and in evidence, there is absolutely no documentary evidence to substantiate this payment. We also find that when the plaintiff was examined as PW1, he has given a version different from what is pleaded in the plaint insofar as this payment is concerned. In view of the absence of any documentary evidence, substantiating such payment and in the light of the denial by defendants regarding receipt of this amount, we do not find any illegality in the conclusion of the trial court negativing this claim of the plaintiff. Similar is the case with regard to cash payment of ₹2,50,000/- (Rupees Two lakh fifty thousand only) allegedly made by the plaintiff on 6.1.2011. Though the pass book of the plaintiff and Ext.X1 produced by PW2 indicate that such an amount was withdrawn from his account in the Federal Bank, Changanassery, there is nothing substantiating that the amount was paid to the defendants as claimed by the plaintiff. When such is the case and when the receipt of any such amount has been denied by the defendants, we cannot find any illegality in the finding of the trial court disbelieving the version of the plaintiff.

8. That leaves us with the claim of the plaintiff regarding ₹ 9.5 lakhs. As we have already stated, in the plaint the case of the plaintiff is that he had transferred ₹9.5 lakhs on 6.1.2011 from his account in the Federal Bank, Changanassery to the account number mentioned in the plaint of the second defendant in the Federal Bank, Idukki branch. This assertion in the plaint is also substantiated as per Exts.A1 to A3 and Ext.X1. The relevant averments in the plaint are to the effect that this amount was paid to the defendants as loan to be repaid by them by 31.3.2011 and that the loan was given for the purpose of enabling the defendants to pay the sale consideration payable for the property. First of all nothing on record indicates the involvement of the first defendant in the whole transaction. Secondly if as claimed by the plaintiff, the amount received by the defendants was for acquiring the property, they would have

certainly made use of the money advanced by the plaintiff for payment to their vendor. The evidence produced by the defendants show that this money was not made use of them and was available in their bank even after the property was acquired by them. Evidence also proved that the defendants had availed loan of ₹10,00,000/- (Rupees Ten lakh only) from the Federal Bank, Idukki branch which was utilised by them for payment of consideration to their vendor. This therefore shows that the case pleaded by the plaintiff that he had advanced the amount as loan to the defendants to help them to acquire the property is totally untrue. Therefore although it may be true that the second defendant did not establish her assertion that amounts were due from the plaintiff towards unpaid wages and that the amount paid by the plaintiff was in discharge of that liability, the court below was justified in negativing the claim of the plaintiff. If that be so, finding of the court below on the claim of the plaintiff in regard to ₹9.5 lakhs allegedly paid as loan to the defendants, also does not call for any interference.

From the above reasons, we are satisfied that the judgment and decree passed by the trial court do not merit interference.

The appeal fails and is dismissed.

Sd/-

ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc

//true copy//

PA to Judge.