IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

RSA.No. 682 of 2015
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AS 61/2007 OF IIIRD ADDITIONAL DISTRICT COURT, KOZHIKODE DATED 31-01-2015.
OS 46/2006 OF IIND ADDITIONAL SUB COURT,KOZHIKODE DATED 22-11-2006.
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APPELLANT/APPELLANT/DEFENDANT:
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P.M.BHARGAVI, D/O.APPU,
AGED 53 YEARS, RESIDING AT
CHANDRAKANTHAM, MULIMBALIL,
MANAKKADAVU, KODALAMSOM,
PANTHEERANKAVU DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENT/RESPONDENT/PLAINTFF:
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BALAKRISHNAN.K.K.,
S/O.APPU, AGED 65 YEARS,
RESIDING AT MULIMBALIL IN KODAL
AMSOM AND PANTHEERANKAV DESOM,
KOZHIKODE TALUK - 673 001.

R1 BY ADVS. SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 19-10-2015, THE COURT ON 13-11-2015 DELIVERED THE FOLLOWING:

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**P.B.SURESH KUMAR, J.**

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**R.S.A.No.682 of 2015.**

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Dated this the 13th day of November, 2015.

**J U D G M E N T**

The defendant in a suit for realisation of money is the appellant in this Second Appeal.

2. The defendant is the younger sister of the plaintiff. The case of the plaintiff is that he has constructed a residential building for the defendant on an undertstanding that the defendant will reimburse the expenses required for the construction of the building before the completion of the construction. According to the plaintiff, in the course of the construction of the building, there arose some disputes between the plaintiff and the defendant as to the amount expended by the plaintiff for the construction of the building and the said disputes were resolved on 30.9.2001. Ext.A2 is the settlement entered between the parties on 30.9.2001 as per which the defendant agreed to pay to the plaintiff5 a sum of Rs.70,000/- and also the

cost of the construction of the well constructed by the plaintiff for the defendant, within a period of three and a half years. According to the plaintiff, the defendant has not paid any amount agreed as per the terms of Ext.A2 settlement and consequently he lodged a complaint to the police. It is alleged that when the police complaint was lodged, there arose yet another settlement between the parties on 10.5.2005 as per which the defendant agreed to pay to the plaintiff a sum of Rs.95,000/-. According to the plaintiff, on 10.5.2005, the defendant had also executed Ext.A4 promissory note agreeing to pay the said sum of Rs.95,000/-. It is alleged that the defendant had not paid any amount to the plaintiff even thereafter and hence the suit for realisation of the said sum of Rs.95,000/- with interest at the rate of 12%. The defendant contested the suit. She denied all the allegations in the plaint. According to her, she has not exeucted any document in favour of the plaintiff and that the documents relied on by the plaintiff are false and fabricated. The trial court accepted the case of the plaintiff and decreed the suit permitting the plaintiff to realise a sum of Rs.95,000/- from the defendant with interest at the rate of 6% per annum. The defendant has taken up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. Hence this Second Appeal by the defendant.

3. Heard the learned counsel for the appellant.

4. Ext.A2 settlement was not executed on a stamp paper. Since the marking of the said document was objected by the defendant on that ground, the plaintiff has paid the stamp duty and penalty on the same treating it as an agreement. In addition to the evidence tendered by the plaintiff, the witness examined on the side of the plaintiff as PW2 also deposed categorically that Ext.A2 is a document executed by the defendant herself as suggested by the mediators. The trial court on a comparison of the signature of the defendant on Ext.A2 with her admitted signatures found that Ext.A2 is a document executed by the defendant. Coming to Ext.A4 promissory note, in addition to the evidence tendered by the plaintiff, a witness examined on the side of the plaintiff as PW3 has deposed that the said document has been executed by the defendant. The courts below on an appraisal of the materials on record found that

Exts.A2 and A4 documents are executed by the defendant. Once it is found that Exts.A2 and A4 documents are executed by the defendant, it is for the defendant to establish that she has discharged the liability created as per the said documents. The defendant has no case that she has discharged the liability created as per the said documents. In the said view of the matter, the conclusions arrived at the by the courts below in the impugned decisions are perfectly in order.

5. The learned counsel for the appellant contended that the amount covered by Ext.A2 agreement is only Rs.70,000/- whereas the amount covered by Ext.A4 promissory note is Rs.95,000/- and that there is no explanation from the plaintiff as to the said difference. He also contended that the revenue stamp affixed on Ext.A4 promissory note has not been cancelled and as such, the same cannot be treated as a promissory note.

6. There is no substance in the contentions raised by the learned counsel for the appellant. First of all, in so far as the execution of Ext.A4 promissory note has been proved, the defendant is not entitled to raise any contention concerning the

difference in the amount as raised by the learned counsel. That apart, as per Ext.A2, the defendant had agreed to pay a sum of Rs.70,000/- and the cost of construction of the well to the plaintiff. It is also stated in Ext.A2 that the well will be valued for the purpose of working out the amounts due to the plaintiff in six months time. The case of the plaintiff is that the amount covered by Ext.A2 agreement has not been paid by the defendant and that when he filed a complaint to the police concerning the non payment of the amount covered by Ext.A2 agreement, the defendant agreed to pay a sum of Rs.95,000/- and Ext.A4 promissory note has been executed. It is thus clear that the difference in the amount is the cost of construction of the well. Coming to the contention regarding the cancellation of the revenue stamp affixed on Ext.A4, according to me, when it has been established that Ext.A4 is a promissory note executed by the defendant, the same will not become invalid merely for the reason that the revenue stamp affixed on the same has not been cancelled. Even otherwise, the suit is not on Ext.A4 promissory note. The suit is on the amount agreed to be paid as per the terms of Ext.A2 agreement. As such, the effect of non cancellation, if any, of the revenue stamp affixed on Ext.A4 document is immaterial. The Second Appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed. All the interlocutory applications in this case are closed.

***Sd/-***
**P.B.SURESH KUMAR,**
**JUDGE.**

***Kvs/-***

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***PA TO JUDGE.***