

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

RSA.No. 1122 of 2014 ()

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 94/2010 OF SUB COURT,
OTTAPPALAM DATED 20/06/2014)**

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 109/2008 OF MUNSIFF
MAGISTRATE COURT,MANNARKKAD DATED 31/08/2010)**

APPELLANT/APPELLANT/PLAINTIFF:

**MURALI PRAKASH, AGED 41 YEARS,
S/O.KUTTAGUPTHAN, KUNIYANGATTIL,
CHETHALLUR POST, MANNARKKAD TALUK.**

BY ADV. SRI.R.SREEHARI

RESPONDENT/RESPONDENT/DEFENDANT:

**SUBEESH, AGED 38 YEARS,
S/O.SHANMUGHAN, KANAKKAN VEETIL, VALAPPAD,
TRIPRAYAR POST, CHAVAKKAD TALUK, TRISSUR DISTRICT,
PIN: 680 567**

BY ADV. SMT.S.A.SHERLY

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

R.S.A.No.1122 of 2014

Dated this the 8th day of October, 2015

JUDGMENT

The defeated plaintiff in a suit for realization of money is the appellant in this second appeal.

2. The defendant was the mahout of the elephant owned by the plaintiff. Though the defendant was directed to exhibit the elephant of the plaintiff in connection with the festival of Sree Subramanya Temple, Chakkamadam on 23.1.2008, he did not make arrangements for the same. According to the plaintiff, since the defendant failed to make arrangements for the exhibition of the elephant for the said festival, he had to

make alternate arrangements to bring another elephant for the said festival, incurring substantial amounts, as he has already committed to provide his elephant for the said festival. It is also the case of the plaintiff that though the defendant has later agreed to reimburse the expenses incurred by him to make alternate arrangements for exhibition of the elephant for the festival at the temple referred to above, the defendant has not paid the amount agreed to be reimbursed and hence the suit for realization of the said amount. Ext.A1 produced by the plaintiff along with the suit is the agreement alleged to have been executed by the defendant, agreeing to pay a sum of Rs.20,000/- to the plaintiff. The defendant contended that the elephant could not be exhibited for the festival on 23.1.2008 as

he was admitted in a hospital at Valappad on the said day for treatment of the injuries caused to him by the elephant, while exhibiting the elephant in connection with the festival of another temple at Kechery. It was also contended by the defendant that on 23.1.2008 the plaintiff came to the hospital where he was admitted, forced him to get discharge from the hospital, took him to the residence of the plaintiff along with the elephant, brutally assaulted him and obtained a few blank signed papers from him. According to the defendant, Ext.A1 is a document prepared making use of one of the blank papers obtained by the plaintiff from him on 23.1.2008. It was further contended by the defendant that the matter was informed by him to the police on the same day itself and a crime has been registered against the

plaintiff by the police in connection with the incident.

3. The trial court accepted the version of the defendant and dismissed the suit. The plaintiff challenged the decision of the trial court in appeal. The appellate court, on a re-appraisal of the materials on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions of the courts below has thus come up in this second appeal.

4. Heard the learned counsel for the appellant.

5. It is beyond dispute that the defendant was the mahout of the elephant of the plaintiff. The fact that the defendant was directed to exhibit the elephant of the plaintiff in connection with the festival of Sree Subramanya Temple, Chakkamadam on 23.1.2008 is

not disputed by the defendant. The case of the defendant is that while the elephant was being exhibited in connection with the festival of another temple at Kechery, the elephant caused injuries to him and consequently, he was admitted in the hospital and it is on account of the said reason that he could not exhibit the elephant for the festival at Sree Subramanya temple on 23.1.2008. As noticed above, it is also the case of the defendant that he did not execute Ext.A1 agreement relied on by the plaintiff. Going by the pleadings, the suit is one for realisation of money due under Ext.A1 agreement. The courts below noticed that the plaintiff himself has admitted in Ext.B4 reply that the defendant was admitted in the hospital on 23.1.2008. The courts below also noticed that a crime has been registered

against the plaintiff at the instance of the defendant on 25.1.2008 alleging that the plaintiff assaulted the defendant on 23.1.2008. In the said circumstances, having regard to the relationship between the parties, the courts below inferred that Ext.A1 agreement may not be an agreement executed by the defendant voluntarily. It is based on the said inference, the courts below have non-suited the plaintiff.

6. The learned counsel for the appellant contended that the defendant has no consistent version as regards the execution of Ext.A1 agreement. The consistency of the version of the defendant as regards the execution of Ext.A1 agreement is a matter arising in the realm of appreciation of evidence. Both the courts below, on an evaluation of the pleadings and evidence on record, took

the view that Ext.A1 cannot be accepted as a document executed by the defendant voluntarily. I do not find any reason to interfere with the said findings on facts in exercise of my powers under Section 100 of Code of Civil Procedure. There is no substantial question of law, much less any substantial question of law involved in the second appeal. The second appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

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