IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

RSA.No. 1264 of 2014 ()

AGAINST THE JUDGMENT IN AS 132/2010 of ADDITIONAL DISTRICT COURT - IV, KOTTAYAM DATED 30-06-2014

AGAINST THE JUDGMENT IN OS 110/2004 of ADDL.SUB COURT, KOTTAYAM DATED 05-03-2010

APPELLANT/APPELLANT/PLAINTIFF:

RADHAKRISHNAN NAIR AGED 43 YEARS
S/O.VASUDEVAN NAIR, KALAPURACKAL HOUSE
THALAYAZHAMKARA, THALAYAZHAM VILLAGE, VAIKKOM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT/RESPONDENT/DEFENDANT:

SUSEELAKUTTYAMMA @ SUSEELA, AGED 57 YEARS
W/O.UNNIKRISHNAN NAIR, NADUVATHU HOUSE, T V PURAM
KANNUKETTUSSERY MURI, VAIKKOM VILLAGE - 682 001

BY ADV. SMT.A.SREEKALA

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.S.A. No.1264 of 2014
--
Dated this the 26th day of November, 2015

JUDGMENT

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

2. The case of the plaintiff is that on 07.10.2002, the defendant borrowed a sum of Rs.1,00,000/- from him against execution of Ext.A1 agreement. According to the plaintiff, the defendant was bound to repay the amount borrowed with interest at the rate of 12% per annum within one year, as per the terms of Ext.A1 agreement. It is alleged that the defendant has not repaid the amount borrowed as agreed and hence the suit.

3. The defendant contested the suit. It was contended by the defendant that there was no money transaction between her and the plaintiff and that Ext.A1 is a false document. The plaintiff gave evidence as PW1. One witness was examined on his side as PW2. The defendant gave evidence as DW1 and one witness was examined on her side as DW2. On an appraisal of the evidence on record, the trial court found that the

plaintiff has failed to establish that there was a money transaction between the plaintiff and the defendant. The trial court also found that the case of the defendant that Ext.A1 is not a genuine document, cannot be ruled out. Consequently, the suit was dismissed. Though, the matter was taken up in appeal by the plaintiff, the appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions against him, has thus come up in this second appeal.

4. Heard the learned counsel appearing for the appellant.

5. As noticed above, the case of the plaintiff is that the defendant borrowed a sum of Rs.1,00,000/- from him on 07.10.2002. The contention of the defendant is that there was no money transaction between her and the plaintiff. Two courts have held, on an appraisal of the materials on record, that the plaintiff has failed to establish that there was money transaction between the plaintiff and the defendant. The question as to whether there was a money transaction between the parties is a pure question of fact. The decision rendered by the courts below on the said question of fact, cannot, therefore, be impugned in a

second appeal filed under Section 100 of the Code of Civil Procedure.

The second appeal, in the said circumstances, is devoid of merits and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

SD/-
P.B. SURESH KUMAR,
JUDGE

JV