

N.P.Rasheed Vs. C.H.Ashraf

N.P.Rasheed Vs. C.H.Ashraf

SooperKanoon Citation : sooperkanoon.com/1133737

Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : N.P.Rasheed

Respondent : C.H.Ashraf

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 26^H DAY OF
FEBRUARY 2014 7TH PHALGUNA, 1935 RSA.No. 452 of 2013
----- AGAINST THE

JUDGMENT

IN AS1002010 of ADL.SUB COURT, THALASSERY DATED 26-07-2012 AGAINST
THE

JUDGMENT

IN OS3361998 of MUNSIF COURT, KUTHUPARAMBA DATED 24-02-2010

----- APPELLANT(S)/APPELLANT/PLAINTIFF:

----- N.P.RASHEED S/O. LATE MEMI,
AGED 50 YEARS, SALESMAN NOW RESIDING AT BAHARAIN P.B. NO. 2648,
MANAMA ARABIAN GULF, BAHARAIN REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER * (K.P. ABOOTTY, S/O. LATE SOOPY, AGED 78 YEARS

BUSINESS RESIDING AT KAYANADATH HOUSE KANDAMKUNNU AMSOM, NEERVELI DESOM, P.O. NEERVELI (VIA) NIRMALAGIRI, THALASSERY TALUK.) DELETED AND NEW POWER OF ATTORNEY HOLDER SUBSTITUTED. THE NAME OF POWER OF ATTORNEY HOLDER REPRESENTING THE APPELLANT IS DELETED AND THE FOLLOWING NAME IS SUBSTITUTED N.P.SHADULI, S/O.MAMI, 59 YEARS, KAYANADATH HOUSE, NEERVELI P.O., THALASSERI TALUK, KANNUR DISTRICT, KERAL STATE AS PER

ORDER

DATED 71/14 IN IA.9/2014. BY ADVS.SRI.SATHEESHAN ALAKKADAN SRI.A.ARUNKUMAR RESPONDENT(S)/RESPONDENT/DEFENDANT:

----- C.H.ASHRAF, S/O. ALIKKUTTY, AGED 39 YEARS, BUSINESS, RESIDING AT CHERATTYADANTAKATH, IRIKKU AMSOM, DESOM P.O. IRIKKUR, THALASSERY TALUK-670703. BY ADV. SRI.ABDUL RAOOF PALLIPATH THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 2602-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ P.BHAVADASAN, J.

----- Regular Second Appeal No.452 OF 2013----- Dated this the 26th day of February, 2014.

JUDGMENT

In a suit for money, the plaintiff alleged that the defendant had borrowed 545 Baharain Dinar while he was in middle east equivalent to Rs.45,000/- and in order to discharge the said debt, he had issued Ext.A1 cheque dated 01.07.1995 to the power of attorney holder of plaintiff. Since the cheque bounced and since the amount remained unpaid, suit was laid.

2. The defendant resisted the suit pointing out that he had not issued any cheque as alleged and it has been stealthily taken away from his possession.

3. On the above pleadings, the parties went to trial. The evidence consists of the testimony of PW1 and the documents marked as Exts.A1 to A5 on the side of the plaintiff. The defendant examined DW1 and had Exts.B1 to B3 marked. Ext.C1 is the forensic report. Exts.X1 and X2 are third party exhibits. R.S.A No.452/2013 2

4. The trial court, mainly relying on the entry in the passport, found that on the alleged date, the defendant could not have been in the place as alleged by the plaintiff and therefore, cheque would not have been issued by him. On finding also that there was no evidence regarding the alleged transaction between the parties except the cheque, dismissed the suit. In appeal, the finding of the trial court was confirmed.

5. It is well settled by now that a power of attorney cannot give evidence on behalf of the plaintiff regarding personal matters within the exclusive knowledge of the plaintiff. In the case on hand, the power of attorney admits that he had no personal knowledge about the transaction between the plaintiff and the defendant. If that be so, he was incompetent to give evidence on behalf of plaintiff regarding the transaction. If any authority is required in this regard, that is furnished by the supreme court in S. Kesari Hanuman Goud vs. Anjum Jehan & ors. (AIR 2014 SC (Civil) 153).

6. As rightly noticed by the courts below, except for the solitary cheque, there is nothing to show that the transaction as R.S.A No.452/2013 3 alleged by the plaintiff is true. PW1, in his evidence, admitted that the plaintiff had never gone abroad. Both the courts below have found that the claim made by the plaintiff cannot be true. Being essentially a question of fact, since there is nothing to show that the findings are either perverse or are contrary to the evidence on record, no grounds are made out interfere with the judgment and decree passed by the courts below exercising the jurisdiction under Section 100 of the Code of Civil Procedure. In the result, the R.S.A is without merits and it is accordingly dismissed. Sd/- P.BHAVADASAN JUDGE smp // True Copy // P.A. to Judge.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com