
(2024) 02 KL CK 0055

In the High Court Of Kerala

Case No : Regular First Appeal No.346 of 2007

Angamaly Chitty Fund (P) Ltd

APPELLANT

Vs

M.J.Saji

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Citation : (2024) 02 KL CK 0055

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : Dinesh R.Shenoy, V.V.Unnikrishnan, K.C.Eldho

Final Decision : Dismissed

Judgement

Sathish Ninan, J

1. The suit for money under a chitty transaction was dismissed by the trial court. The plaintiff is in appeal.
2. The first defendant was s subscriber to the Chitty conducted by the plaintiff. He bid the chitty. The repayment was secured by defendants 2 and 3, and also by creation of equitable mortgage. Alleging default on the part of the defendants to pay the amount, the suit was filed.
3. The defendants raised a plea of discharge.
4. The trial court upheld the plea of discharge and dismissed the suit.
5. Heard learned counsel Sri.Dinesh R.Shenoy on behalf of the appellant and Sri. K.C.Eldho the learned counsel for the 1st respondent.
6. The point that arises for determination is,
"Is the finding of the trial court on the plea of discharge sustainable on the evidence?"
7. The plaintiff had filed two suits for recovery of money due from the

defendants. One was before the Munsiff's Court, Aluva as OS 121/2003, and the present suit as OS 128/2003 before the Sub Court, North Paravur. According to the plaintiff, in pursuance of the notice issued by the plaintiff, the defendant approached him on 01.03.2004 and settled the suit claim pending before the Munsiff's Court, Aluva, and part payment was made with regard to the dues in the present suit. However, due to a mistake on the part of the staff in the office, he made an endorsement that both the accounts are closed. The suit claim in OS 128/2003 remains unsettled, is the contention.

8. Exts.B1 and B3 are receipts evidencing payment of amounts by the first defendant. Ext.B1 is for an amount of ` 2,80,000/-. It contains an endorsement "claim satisfied". It is endorsed therein that the payment thereunder is towards OS 128/2003 before the Sub Court, North Paravur, that is the present suit. Ext.B3 is the receipt for payment of ` 51,000/-. The same is indicated as towards OS 121/2003 before the Munsiff's Court Aluva. Therein also it is endorsed, "claim satisfied". Ext.B2 is the pass book relating to the chitty. The endorsements therein are also to the effect that the dues have been paid.

9. Claiming that the endorsements made was a mistake, the person who made the endorsement was examined as PW1. To corroborate the oral evidence, Ext.A7 ledger account was produced. On a perusal of the same the trial court noticed that it is not a properly maintained account. The original ledger was returned to the counsel for the plaintiff on 30.10.2006, on an undertaking to present it back. When the lower court records including Ext.A7 were called for from this Court, an affidavit has been filed by the plaintiff on 09.12.2023 that Ext.A7 ledger is irrecoverably lost due to termite bite. No material is produced before this Court to dislodge the finding of the trial court. Though the plaintiff would contend that the endorsements in Exts.B1 to B3 regarding settlement of the claim is a mistake, it is to be noticed that the original title deed which was mortgaged with the plaintiff was also released. Unless the entire liability was settled, the title deed would not have been released. Therefore, the release of the mortgage coupled with Exts.B1 to B3 indicates that the liability of the defendants with the plaintiff were settled. There is no material to find that there is any outstanding liability.

10. The conclusions arrived at by the trial court on the plea of discharge is based on materials. I concur with the finding of the trial court. There is no merit in the appeal.

The appeal fails and is dismissed.