

(2013) 11 KL CK 0094

In the High Court Of Kerala

Case No : O.P. (C) No. 1900 of 2012 (Arising against the Judgment in O.S. No. 18 of 2008 of Principal Sub Court, Attingal)

Radhakrishnan

APPELLANT

Vs

D. Sasidharan Nair

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 1 KHC 91

Hon'ble Judges : Mr. P.N. Ravindran, J.

Bench : Single Bench

Advocate : P.K. Muhammed, Advocate, for the Petitioner; Thyparambil Thomas Thomas, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. P.N. Ravindran, J. - The petitioner is the plaintiff in OS No. 18 of 2008 on the file of the Court of the Subordinate Judge of Attingal. The respondents are the defendants therein. The suit instituted by the petitioner is one for realisation of the sum of Rs. 8,40,000/- (Rupees Eight lakhs forty thousand only) with interest and costs. The suit is rested on the allegation that the cheque issued by the plaintiffs sister late Radhamani on 01/07/2007 towards, repayment of a loan availed by her was dishonoured when presented for payment on 10/07/2007. On receipt of summons the defendants entered appearance and filed a written statement dated 17/09/2008. They contended that the plaintiff has with the help and assistance of his younger brother-in-law Sri. B.R. Sudarsan Pillai fabricated the cheque and filed the suit. They also denied the averment that late Radhamani has issued a cheque in favour of the plaintiff. They further averred that late Radhamani was under treatment for cancer for a long period and was bed ridden from 15/05/2007 onwards and that she passed away on 20/07/2007. Notwithstanding the said plea the plaintiff did not take steps to sent the cheque to the hand writing expert along with the specimen signature of late Radhamani for comparison. Instead, after the trial of the suit commenced and the first

defendant was examined as DW 1, the plaintiff filed IA No. 2626 of 2011, to call for the specimen signature of late Radhamani from State Bank of Travancore, Attingal branch and forward it along with her signature in Ext.A1 cheque and a photostat copy of yet another cheque stated to have been issued by late Radhamani, to the handwriting expert for opinion. The Trial Court considered the application and dismissed it by Ext. P7 order passed on 10/02/2012. The said order is under challenge in this original petition filed under Article 227 of the Constitution of India.

2. It is evident from the pleadings and the materials on record that the defendants had filed their written statement on 17/10/2008 denying and disputing the issuance of the cheque. They had specifically contended that the plaintiff has fabricated the cheque with the assistance of his younger brother-in-law. The plaintiff did not for reasons best known to him take steps to have the disputed cheque sent to the hand writing expert for examination. It was only on 08/02/2012 that he came forward with the application to call for the specimen signature of late Radhamani from the State Bank of Travancore, Attingal branch and to forward it along with a copy of yet another cheque stated to have been issued by late Radhamani to the hand writing expert for comparison. The said application was in my opinion rightly dismissed by the Trial Court. The petitioner who did not take steps for nearly three years after the defendants filed a written statement contending that the cheque is a fabricated cheque cannot be heard to contend that the application is not belated. I accordingly hold that there is no merit in the instant original petition. It fails and is dismissed.