

(1999) 12 KL CK 0036

High Court Of Kerala

Case No: S.A. No. 696 of 1990

Kuriachan

APPELLANT

Vs

Krishna Menon

RESPONDENT

Date of Decision: Dec. 15, 1999

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 118(a)
- Penal Code, 1860 (IPC) - Section 420

Citation: (2000) 1 KLJ 346

Hon'ble Judges: K.A. Abdul Gafoor, J

Bench: Single Bench

Advocate: Jaiji Ittan, for the Appellant; M. Ravi Kumar, for the Respondent

Final Decision: Dismissed

Judgement

1. The plaintiff was non suited at the lower appellate stage. His suit was for recovery of money. He is issued two cheques Exts. A1 and A2. The contention of the defendant that those were not supported by consideration was found in favour of the defendant by the lower appellate court. Therefore this second appeal mainly raising a question of law with regard to the presumption available in Section 118(a) of the Negotiable Instruments Act, with regard to consideration of a negotiable instrument. It is contended by the appellant that the defendant had admitted issuance of cheques Exts. A1 and A2. When there is such admission, the presumption available u/s 118(a) with respect to consideration shall follow and the plaintiff is not cast upon with further burden to prove anything more. Whether there was any transaction between the parties was irrelevant in the light of such statutory presumption available. Therefore, the reason stated by the lower appellate court in paragraph 9 of its judgment to reverse the judgment and decree of the trial court was totally irrelevant and baseless. Therefore, the decree of the trial court has to be restored, setting aside that of the lower appellate court, the appellant contends. The statutory presumption in respect of the consideration attached to Exts. A1 and A2,

the cheques admittedly drawn by the defendant, in terms of Section 118(a) of the Negotiable Instruments Act shall necessarily be presumed in favour of the plaintiff-appellant to decree the suit.

2. At the same time it is contended by the defendant that the presumption available in terms of section 118 (a) of the Negotiable Instruments Act is rebuttable presumption as the statute commences with the words "until the contrary is proved". Therefore, the defendant can prove the contrary to escape from the statutory presumption in terms of the said provision.

3. It is contended by the respondent that he had specifically denied the consideration in support of Exts. A1 and A2. He had given those cheques to help the plaintiff in his business. The cheques were drawn on 15-6-1983 and 30-6-1983 by the defendant. As P.W.I the plaintiff had deposed that cheques were issued in return towards the earlier loan advanced to the defendant. As P.W.1 he had specifically mentioned during cross-examination that,

(It was on 28th March 1983 that a loan of Rs. 10,000/- was given to the defendant.)

It is in evidence that the same is the date of Ext. B3, a document executed by the defendant in favour of the son of the plaintiff. It is also in evidence that the defendant had executed Ext. B2 sale deed in favour of the plaintiff on 26-3-1983. The payment of consideration for assignment effected in terms of such documents, to the defendant had been paid by the plaintiff himself. This was admitted by him again during his cross-examination and he said that,

(I had purchased a plot in Thripunithura during March, 1983 from the defendant. That was as per documents executed in an interval of three days. That was my recollection...Purchases were for Rs. 40,000/- and Rs. 43,000/- I sold those properties later.)

4. The original transaction which is said to be discharged by issuing the cheques, is, admittedly by the plaintiff, on 28-3-1983. That is the self same date. of Ext. B3, a document of course executed by the defendant in favour of the plaintiff's son to which the plaintiff acknowledges that he had paid the consideration amount. When the plaintiff has thus given on 28-3-1983 a fabulous amount as sale consideration and had also given another fabulous amount as sale consideration in respect of Ext. B2 document on two days before that, there arises no situation for any further transaction on 28-3-1983 itself, as alleged forming part of the consideration of the cheque. Thus it is easy to conclude that the cheques were not supported by consideration. In such circumstances, the suit cannot be decreed solely based on the presumption alone. That presumption is the rule of evidence and it is rebuttable in terms of statutory provision. The lower appellate court has rightly dismissed the suit pointing out several reasons in paragraph 9 of its judgment.

5. Added to these is the earlier proceedings between the same parties. That is covered by Ext. B12. That was a criminal proceeding initiated by the plaintiff against the defendant alleging offence u/s 420 of the Indian Penal Code. There, the case set up by the plaintiff was that the amount, in respect of the alleged original transaction was paid to the defendant at the office of the scribe of the documents executed by the defendant. This is clear from Ext. B1. But the case spoken to by him as P.W.I in this case is that the amount had been paid at the residence. Therefore, there is telling discrepancies with regard to the original transaction itself. This adds to the improbability of the case pleaded by the plaintiff. This is the aspect touching point No. 6 in paragraph 9 of the impugned judgment. In the aforesaid circumstances, the substantial question of law raised in the appeal centered around presumption available in favour of the negotiable instruments Exts. A1 and A2, in terms of Section 118 (a) is answered against the plaintiff and it necessarily results in the dismissal of the Second Appeal. There will be no order as to costs.