

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.625 of 1998

Date:05.06.2015

Between:

Mandipati Subba Rao

...Appellant.

AND

Katuri Venkateswara Rao

...Respondent.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.625 of 1998

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JUDGMENT:

This appeal is preferred against judgment dated 12-03-1998 in A.S.No.27/1992 on the file of Senior Civil Judge, Bapatla whereunder judgment dated 23-01-1992 in O.S.No.419/1988 on the file of Principal District Munsiff (presently Principal Junior Civil Judge), Bapatla is confirmed so far as D2 is concerned. D2 died during the pendency of appeal and D1 is declared as L.R of deceased- D2 by the first appellate Court.

2. D1 preferred this appeal. So appellant herein is D1 and respondent herein is plaintiff in O.S.No.419/1988, which was filed for recovery of money. Parties are hereinafter referred to as plaintiff and defendant as arrayed in the suit for convenience and better understanding.

3. Brief facts leading to this appeal are as follows:-

Plaintiff filed the suit alleging that on 17-09-1979, D1 & D2 borrowed Rs.2,000/- from him and executed a promissory note undertaking to repay the said amount with interest at 24% per annum and on 01-04-1992, D1 on his behalf of and on behalf of D2, paid Rs.50/- as part payment and endorsed on the promissory note. It is further contended that on 29-08-1985, D2 on his behalf and on behalf of D1, paid Rs.10/- and endorsed on the promissory note, but in spite of demands, defendants failed to repay the said amount.

4. D1 filed written statement which is adopted by D2 contending that D1 & D2 never paid any part payment as contended in the plaint. It is further pleaded that there is no agency between D1 & D2 and that the suit claim is barred by time. It is further contended that defendants are entitled for the benefits of Act, 45/87 as they are small farmers. On these contentions, trial Court conducted trial during which, three

witnesses are examined and three documents are marked on behalf of plaintiff and two witnesses are examined on behalf of defendants. On a over all consideration of oral and documentary evidence, trial Court decreed the suit as prayed for against both the defendants and in the appeal, appellate Court dismissed the suit against D1, but confirmed the decree against D2 and aggrieved by the same, D1 who is treated as L.R of D2 preferred the present appeal.

5. Heard both sides.

6. The main contention of the Advocate for appellant is that when the acknowledgement made by D2 was held as not binding on D1, the same principle has to be applied with regard to acknowledgement made by D1.

He submitted that unless the first acknowledgement is accepted, the second acknowledgement made by D2 has no bearing. He further submitted that Ex.A3 said to have been made by D2 cannot save limitation, as the suit is based on promissory note dated 17-09-1979. He further submitted that this Ex.A3-endorsement was not within three years, therefore, the suit is hopelessly barred by limitation.

7. The following are the substantial questions of law raised in the grounds of appeal:-

“(a) Whether the lower Court erred in decreeing the suit against deceased D2 having held that the acknowledgment made under Exs.A2 & A3 are independent and the same will not save limitation against D1 and having dismissed the suit against D1 as the suit is barred by limitation.

(b) Whether the endorsement Ex.A3 on 29-08-1985 made by D2 an save limitation of a suit filed on the basis of Ex.A1 dated 17-09-1979

when the acknowledgment made by co-debtor does not extend the period of limitation according to Limitation Act (vide 1998 (1) APLJ 99).

(c) Whether the 2nd defendant is not entitled to the benefit of Act 45/1987 when he only Ac.0-60 cents of Agricultural land in the absence of any evidence let in by plaintiff in this regard and hence the suit is barred by Act 45/1987.”

8. This Court admitted the appeal treating grounds (a) & (b) as substantial questions of law.

9. Now the point that would arise for my consideration in this appeal is whether Ex.A3-acknowledgment would save the limitation?

10. **Point:-** From the evidence, it is clear that both the defendants borrowed Rs.2,000/- on 17-09-1979 and executed Ex.A1-promissory note. It is also clear from evidence that D1 paid Rs.50/- as part payment on 14-09-1982 and made endorsement on the reverse of the promissory note under Ex.A2. It is further clear from the evidence that D2 paid Rs.10/- on 29-08-1985 as part payment and endorsed on the pronote under Ex.A3. It is also clear from Exs.A2 & A3 that there is no specific recital to the effect that the acknowledgment made is on behalf of the other executant also. Learned appellate Judge, after examining the entire evidence, came to conclusion that a co-promissor, who made second endorsement though after expiry of three years period, but as the endorsement made by other co-promissor under Ex.A2 was within three years, the subsequent endorsement be treated as ratification of the first payment and thereby limitation will be saved against the executant of second endorsement. As seen from the evidence and the endorsements under Exs.A2 & A3 by the time, D2 made part payment of Rs.10/- on 29-08-1985, the earlier endorsement was already available on the

promissory note and unless it is proved that D2 without knowing about endorsement made by D1, paid part payment of Rs.10/- under Ex.A3, the objection with regard to period of limitation pleaded on behalf of D2 cannot be accepted. As rightly observed by the first appellate Court, the endorsement under Ex.A3 made by D2 would amount to ratification of the earlier acknowledgment made by the other executant of the promissory note. Here both the defendants are brothers and according to plaintiff, both of them borrowed the amount for the needs of joint family. Advocate for appellant contended that the lower appellate Court has not properly appreciated the decision cited before him, which was also one of the ground urged in the grounds of appeal, but as seen from the material, the lower appellate Judge distinguished the decision relied on by appellant and held that Ex.A3 endorsement would amount to ratification of Ex.A2 and on that ground, decreed the suit against D2.

I do not find any wrong appreciation of law by the lower appellate Court, because D2 is well aware at the time of making Ex.A3-endorsement about the part payment made by the other executant under Ex.A2, therefore, it has to be presumed that D2 ratified the action of the other executant in making part payment, which was within three years period.

11. For these reasons, I am of the view that the objection pointed out by the appellant is not at all tenable and that the substantial question of law urged is not in favour of the appellant.

12. Accordingly, Second Appeal is dismissed without costs.

13. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:05.06.2015

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