

THE HON'BLE SRI JUSTICE K.C.BHANU

SECOND APPEAL NO.15 OF 2015

JUDGMENT:

This appeal is directed against the judgment and decree, dated 09-09-2014 in A.S.No.86 of 2012 on the file of the IV Additional District Judge, Guntur.

2. Appellants herein are the defendants, whereas the respondent herein is the plaintiff in the suit.

3. Respondent herein (plaintiff) filed O.S.No.615 of 2009 before the Principal Junior Civil Judge, Guntur, for recovery of an amount of Rs.1,00,000/- with subsequent interest and costs stating that the appellants (defendants) jointly borrowed an amount of Rs.60,000/- on 10-06-2006 from the plaintiff for the purpose of their family expenses and executed a promissory note on the even date in favour of the plaintiff agreeing to repay the same with interest at 24% p.a.. When the plaintiff made several demands to discharge the amount, the defendants did not choose to pay the amount. Thereafter, the plaintiff got issued a legal notice demanding the defendants to discharge the amount. The defendants acknowledged the same and kept quiet. Hence, the suit.

4. Appellants herein (defendants) filed written statement stating that they never borrowed any amount and executed promissory note in favour of the plaintiff. The suit pronote is a rank forged one. There is no necessity for the defendants to borrow the amount. The attestors and scribe are strangers and they are no way connected with the pronote. Hence, they pray to dismiss the suit.

5. Basing on the above pleadings, the trial Court settled the following issues for trial:

1. Whether the suit promissory note is true, valid and supported by consideration?

2. Whether the plaintiff is entitled to recovery the suit amount from the defendant along with suit costs as prayed for?

3. To what relief?

6. On behalf of the plaintiff, P.Ws. 1 to 4 were examined and Exs.A1 to A4 were marked. On behalf of the defendants, D.Ws. 1 and 2 were examined, but no documents were marked. Exs.X1 to X3 were marked through Court.

7. The trial Court after considering both oral and documentary evidence available on record , decreed the suit. On appeal, the said judgment and decree were confirmed. Aggrieved thereby, this Second Appeal is preferred by the appellants (defendants).

8. Learned counsel for the appellants sought to admit this appeal on the following suggested substantial questions of law:

1.Whether the Courts below were justified in rejecting the plea of the appellants herein that though they are illiterates and are not signatories, but the respondent herein brought into existence Ex.A1 promissory note to gain wrongfully due to their ignorance?

2. Whether the Courts below were justified in taking into consideration the single signature of the 2nd appellants on Ex.X1-Ration card without considering the two thumb impression marks on Ex.X2 and holding Ex.A1 as genuine?

3.Whether the Courts below were justified in considering the evidence of the respondent herein on record holding that the signatures on Ex.A1 are the signatures of the appellants herein?

4.Whether the Courts below were justified in taking into considering the signature on Ex.X1 to compare the signatures of the appellants herein on Ex.A1?

9. The above points are not substantial questions of law, but they relate to questions of fact. Whether the defendants are signatories or illiterates and they have to put the thumb impression on the documents or not have been rightly discussed by the Courts below. Both the Courts below basing on the evidence on record including the documents, came to the conclusion that the defendants executed the suit pronote under Ex.A1. The burden placed on the defendants has not been discharged in terms of

Section 118 of the Negotiable Instruments Act, 1881. Once the initial burden has been discharged, the presumption is that the negotiable instrument has been executed and it is supported by consideration. So that burden has not been discharged by the defendants. Therefore, both the Courts below rightly decreed the suit and the same needs no interference by this Court.

10 However, learned counsel for the appellants seeks time for payment of the amount by way of instalments. Since the appellants are agriculturists and they have no source of income, the appellants are directed to pay 50% of the decretal amount together with interest and costs within a period of 6 weeks from the date of receipt of a copy of this judgment and remaining 50% of the amount within 6 weeks thereafter. If the appellants (defendants) failed to fulfill anyone of the conditions, liberty is given to the respondent (plaintiff) to execute the decree. Since no adverse order is passed against the respondent (plaintiff), notice to the respondent is not necessary.

11. With the above direction, the Second Appeal is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this second appeal shall stand closed.

K.C.BHANU, J

DATED: 30-01-2015

Hsd