

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.520 OF 2015

DATED:14-8-2015

Between:

Posani Radha Krishma Murthy

... Appellant

And

Tatikonda Madhavi

... Respondent

... Respondents

COUNSEL FOR THE APPELLANT: Mr. Gogineni Vijaya Babu

COUNSEL FOR THE RESPONDENT: None appeared

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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This second appeal is filed against the judgment and decree, dt.27.9.2012, in A.S. No.473 of 2010, on the file of the V Additional District Judge (FTC), Guntur, confirming the judgment and decree, dt.12.7.2010, in O.S. No.315 of 2007, on the file of the V Additional Senior Civil Judge, Guntur.

I have heard Mr. Gogineni Vijaya Babu, learned counsel for the appellant, and perused the record. None appears for the respondent.

The respondent has filed the above mentioned suit based on a promissory note for recovery of money from the appellant. The appellant while admitting his signature on the promissory note, however, took the plea that in view of several business transactions between himself and the husband of the respondent – plaintiff, signatures on a blank promissory note were obtained by the latter and that therefore there was no execution of promissory note and passing of consideration.

In order to prove execution of the promissory note, the respondent has examined herself as P.W.1 and also examined P.Ws.2 and 3. On behalf of the appellant, he has examined himself as D.W.1 and also examined another person, as D.W.2. The respondent has got Exs.A.1 to A.3 marked while the appellant has got Exs.B.1 to B.22 marked.

Having regard to the respective pleadings of the parties, the trial Court has framed the following issues.

1. *Whether the plaintiff is entitled for the suit amount as prayed for?*
2. *Whether the plaintiff's brother is liable to pay Rs.15,000/- to the defendant, if so facto, whether the defendant can claim the suit amount to that effect?*
3. *To what relief?*

On appreciation of oral and documentary evidence, the trial Court has decreed the suit. The lower appellate Court has confirmed the said decree in appeal.

At the hearing, Mr. Gogineni Vijaya Babu, learned counsel for the appellant, submitted that both the Courts below have failed to appreciate the evidence of P.W.3, who is purported to be one of the attestors to Ex.A.1, and have erroneously rendered the findings that the respondent has discharged the initial burden of proving the execution of the promissory note by the appellant.

I have carefully perused the judgments of both the Courts below and I am satisfied that they have assigned reasons in support of their conclusions. It is trite that while exercising jurisdiction of this Court under Section 100 of the Code of Civil Procedure, it will not reappreciate the evidence on record, unless the findings rendered by the Courts below are not based on any evidence. Even if the Courts have not properly appreciated the evidence, the same does not constitute substantial question of law warranting interference in the second appeal. Admittedly, this is not a case where the appellant has denied the signatures on the promissory note. On the contrary, it is his own case that he has signed on blank promissory note. With the admission of the signature on promissory note, the respondent has discharged her initial burden of proving execution of the promissory note, and there upon the onus is shifted to the appellant to prove his plea that he has merely signed on a blank promissory note without executing the same. Both the Courts below on appreciation of evidence held that the respondent has proved execution of promissory note by examining P.Ws.2 and 3.

In the light of the above facts, I do not find any substantial question of law in this second appeal.

The second appeal is accordingly dismissed.

As a sequel to dismissal of the appeal, S.A.M.P. No.1219 of 2015 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

14-8-2015

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