

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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SECOND APPEAL No.695 OF 2015

JUDGMENT:

Heard the learned counsel for appellants and the learned counsel for respondents.

2. The appellants herein are the defendants in O.S.No.41 of 2008 on the file of the Senior Civil Judge, Nagarkurnool (for short, trial Court). One Uri Gunthaiah, first respondent herein, originally filed O.S.No.41 of 2008 for recovery of an amount of Rs.1,21,500/- against the appellants on the basis of a promissory note dated 10.09.2005. He died during the pendency of the first appeal and his legal heirs were brought on record, who are respondents 2 to 5 herein.

3. For the sake of convenience, the parties shall be referred to as they are arrayed before the trial Court.

4. The plea taken by the defendants was that suit promissory note was materially altered and the entire amount borrowed from the father of the plaintiff was discharged. The trial Court framed the following issues.

“(i) Whether the suit promissory note is materially altered?

(ii) Whether the plaintiff is clear the debt on the suit promissory note?

(iii) To what relief?”

5. In support of the contention of the defendants, apart from the first defendant and his wife, DWs.3 and 4 were examined and Ex.B.3 receipt dated 04.06.2006 was produced before the trial Court. Ex.B.3 receipt was sent to the fingerprint expert for comparison of thumb impression of executant on Ex.B.3 along with admitted thumb impression of the father of the plaintiff. The fingerprint expert, who was examined as C.W.1, in his report, marked as Exs.X.1 and X.2, opined

that the thumb impression of the father of the plaintiff on Ex.B.3 was not identical to his admitted thumb impression on the registered sale deed dated 12.05.1981. Thus, the repayment of the loan amount was disbelieved. In view of the admission of the first defendant of his signature on the suit promissory note, it was held that the suit promissory note was true. The trial Court, accordingly, decreed the suit by its judgment and decree dated 21.10.2013 by holding the above issues against the defendants and in favour of the plaintiff. Challenging the said judgment and decree, the defendants filed A.S.No.10 of 2014 before the Court of IX Additional District Judge, Wanaparthi (for short, lower appellate Court), which framed the following points for consideration.

“1. Whether defendants have executed suit promissory note in favour of the father of plaintiff and it was duly discharged?

2. Whether the suit pronote is materially altered and unenforceable?

3. Whether the Decree and Judgment passed by the trial Court is sustainable?”

6. The other contentions with regard to the capacity of the plaintiff to lend the amount and the point of limitation were also negatived. Accordingly, the lower appellate Court, by its judgment and decree dated 27.08.2015, confirmed the judgment and decree of the trial Court in O.S.No.41 of 2008 dated 21.10.2013. Challenging the concurrent judgments, the present Second Appeal is filed.

7. The learned counsel for the appellants/defendants submitted that the amount was borrowed from the father of the plaintiff, but not from the plaintiff and the first defendant discharged the entire loan amount. He relied on the xerox copy of the promissory note and Ex.A.1 filed by the plaintiff. He also relied on decisions of this Court in **Allampati Subba Reddy v. Neelapareddi Ramanareddi** and **Jayantilal Goel v. Smt.Zubeda Khanum**. They relate to insertion of a date later on the instrument, wherein it was held that it amounts to material alteration. In the instant case, the material alteration is alleged in

respect of the name of the lender as the printed words were struck off and “S/o.” was inserted coupled with Ex.B.3 receipt advanced to show the discharge of the amount to the original lender. Ex.B.3 receipt was disbelieved in view of the opinion of the expert and the striking of printed words was held to be natural, as they were irrelevant, by the lower appellate Court.

8. The Courts below concurrently held that there was no material alternation with regard to promissory note dated 10.09.2005. Though the first defendant took the plea of discharge under Ex.B.3 receipt with regard to repayment of loan amount to the father of the plaintiff, who was no more, in view of the report of the fingerprint expert, both the Courts below held that the alleged thumb impression of the father of the plaintiff on Ex.B.3 receipt did not tally with his admitted thumb impression on the registered sale deed dated 12.05.1981. It is pertinent to notice that the first defendant did not dispute his signature on the suit promissory note. Both the Courts below had properly applied their mind to the facts of the case and examined the case in a proper perspective.

9. In view of the same, I do not see any substantial question of law involved in the present Second Appeal and it is accordingly dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 03.11.2015

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