

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

SECOND APPEAL No.396 of 2015

Between:

Y.V.Pullu Reddy

... Petitioner/Appellant (s)

and

G.Ramalingeswaramma

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... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 10.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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| <u>1</u> | <u>Whether Reporters of Local newspapers may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
| - | | |
| <u>2</u> | <u>Whether the copies of judgment may be marked to Law Reports/Journals</u> | <u>Yes/No</u> |
| - | | |
| <u>3</u> | <u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

SECOND APPEAL No.396 OF 2015

JUDGMENT:

This second appeal is filed against the Judgment dated 18.02.2015, passed by the III Additional District Judge, Kurnool at Nandyal in AS.No.15 of 2013 wherein the Decree and Judgment dated 09.11.2012 passed by the Prl.Senior Civil Judge, Nandyal, in OS.No.185 of 2010, which was decreed for recovery of money for a sum of Rs.4,55,290/-, was confirmed.

The facts necessary for disposal of the second appeal are that the respondent/plaintiff filed suit for recovery of money to a sum of

Rs.5,21,500/- basing on a promissory note dated 24.06.2007 executed by the appellant/defendant herein agreeing to repay the amount with interest @ 18% p.a.. In spite of repeated demands made by the plaintiff, the defendant made part payment of Rs.1,80,000/- and Rs.1,00,000/- on two occasions i.e. on 30.07.2008 and 15.04.2010 respectively. As the defendant was not coming forward for payment of the balance promissory note amount, the plaintiff filed suit for recovery of Rs.4,55,290/- along with interest after deducting part payments made by the defendant.

The defendant filed written statement denying the plaintiff's averments but admitted the execution of promissory note and also stated that promissory note was executed basing on the settlement of the partnership account. The case of the defendant is that he paid an amount of Rs.1,80,000/- on 03.07.2008 and Rs.1,00,000/- on 15.04.2010 towards part payment; that he also paid a sum of Rs.45,000/- by way of cheques on 29.06.2008 and Rs.45,000/- on 30.06.2008 through Axis Bank, Nandyal; that again the defendant paid a sum of Rs.50,000/- by way of cheques on 30.03.2010 and Rs.50,000/- on 15.04.2010; and that the plaintiff promised to return the suit promissory note, but not returned and cheated the defendant by filing the suit for wrongful gain. As such the defendant prayed to dismiss the suit.

The trial Court framed the following four issues:

1. Whether the suit promissory note is supported by consideration or not?
2. Whether the suit promissory note is executed by the defendant under pressure or coercion by the husband of the plaintiff towards security?
3. Whether the defendant discharged the suit promissory note debt?
4. To what relief?

Ultimately, the suit was decreed holding that the defendant failed to prove the part payments made by him on different dates and also held that there are no valid reasons to say that the promissory note was executed by the defendant under pressure or coercion.

In the appeal in AS.No.15/2013, filed by the appellant/defendant the appellate Court also after considering the evidence of PW1 as well as DWs1 & 2 and also Exs.A1 to A3 and B1 to 3, came to a conclusion that the defendant has failed to prove that he paid the amount due under suit promissory note and dismissed the appeal confirming the Judgment and decree passed in OS.No.185 of 2010. Aggrieved by the same, the defendant filed the present second appeal.

Heard both sides.

Learned counsel for the appellant submits that evidence adduced by the defendant and also Exs.B1 to B3 produced by the appellant/defendant regarding discharge of the due amount under promissory note were not properly appreciated by the Courts below.

It is to be seen that the trial Court after considering Exs.A1 to A3, clearly held that the defendant executed Promissory Note in favour of the plaintiff under Ex.A1 and thereafter he made payment endorsement under Exs.A2 and A3 in respect of Rs.1,80,000/- and also for Rs.1,00,000/-. Except that there is no material evidence to say that the defendant paid and discharged the remaining promissory note amount and the same is clearly proved and supported by the evidence of PW1. PW1 clearly deposed supporting the pleadings of the plaint without any ambiguity under Exs.A1 to A3. To prove the contention of the appellant/defendant, two witnesses were examined

as DWs.1 and 2. Both the witnesses simply deposed supporting the pleadings in the written statement but the same is not supported by any documentary evidence. Even Ex.B2 cannot be believed since the defendant has taken a plea that he paid an amount of Rs.45,000/- on 29.06.2008, and also a sum of Rs.45,000/- on 30.06.2008 by way of chques and also paid a sum of Rs.50,000/- on 30.03.2010 and a sum of Rs.50,000/- on 15.04.2010 by way of cheques. The amount paid under Exs.B1 and B3 is clearly deducted in the promissory note amount as shown in Exs.A2 and A3 and that the defendant is unable to prove the amount of Rs.1,90,000/- paid by him under Ex.B2 and that a sum of Rs.2,80,000/- paid by the defendant already was deducted from the promissory note amount with interest. As such, the Court below found that the evidence of DWs.1 and 2 will not support the case of the defendants.

Similarly, the Appellate Court in the first appeal also re-appreciated the evidence and came to same conclusion and held that the defendant has miserably failed to prove that he has paid the entire due amount.

The substantial questions of law raised under Ground No.7 reads as follows:

- a. Whether the Courts below have not committed an error by allowing the suit when the further payments made by the defendant as evidenced under Ex.B2 were not taken into account, especially which payments were made by way of cheques?
- b. Whether the Courts below have not committed an error in decreeing the suit for not considering the evidence of DW.1 and 2?

A perusal of the Judgments rendered by the trial Court as well as Appellate Court shows that the evidence of PW1 coupled with the evidence of DWs.1 and 2 and documents Exs.A1 to A3 and B1 to B3

were properly considered by both the Courts and that after considering the oral as well as documentary evidence of both the parties, both the Courts came to a conclusion that the suit promissory note is executed by the defendant and that the plea of the defendant that he has paid the entire amount due under promissory note is also not believed.

In view of the concurrent findings of fact on this issue, this Court will not go into the aspect again and re-appreciate the evidence under Section 100 of Civil Procedure Code. The so called substantial questions of law raised only relate to questions of fact. Further, no substantial question of law arises as claimed by the appellant in the second appeal.

Accordingly, the second appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the second appeal, shall stand closed.

A.RAJASHEKER REDDY, J

10.07.2015

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