

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No. 1400 of 2010

JUDGMENT:-

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 by the sole appellant/unsuccessful defendant, is directed against the decree and judgment dated 24.08.2010 of the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, passed in A.S.No.214 of 2006, whereby, the learned Principal District Judge, while dismissing the said appeal, has confirmed the decree and judgment dated 28.11.2005 of the learned IV Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar passed in O.S.No.453 of 2001 filed by the sole respondent/plaintiff for recovery of money in a sum of Rs.1,68,000/- based on a receipt.

2. I have heard, at the stage of admission, the submissions of the learned counsel for the sole appellant/defendant. I have perused the material record.

3. The learned counsel for the sole appellant/defendant ('the defendant', for brevity) would contend as follows: 'The defendant had filed an elaborate written statement stating that he had never borrowed the amount from the plaintiff and that he had never executed the receipt dated 31.12.2000 and that he did not give the two post-dated cheques mentioned by the plaintiff in connection with the alleged suit loan transaction. The defence of the defendant is that he had purchased a Maruti Car from the plaintiff for a price of Rs.1,30,000/- and that he had paid Rs.39,000/- in cash as part of sale consideration and further gave a bank draft for Rs.91,000/- towards the balance sale price of the car and that at that time, the plaintiff had taken a blank

cheque as a security for the payment of the balance of sale consideration and that even after payment of the balance of sale consideration for the car, the plaintiff did not return the said blank cheque and had misused the same for the purpose of filing of the present suit. The Courts below have not properly appreciated the defence of the defendant and had arrived at incorrect conclusions and had erroneously decreed the suit of the plaintiff.'

4. On the other hand, the case of the plaintiff is that the defendant is known to him since several years and that out of the said acquaintance, when the defendant had approached him for a hand loan to meet his domestic needs, the plaintiff had advanced the loan amount to the defendant and had obtained a receipt dated 31.12.2000 under exhibit A1 from the defendant and that the defendant had also agreed to pay interest at the rate of 12% per annum simple on the amount advanced to him and that the defendant had also given two post-dated cheques viz., one for Rs.35,000/- drawn on Syndicate Bank, Afzalgunj Branch and the other for Rs.15,000/- drawn on Syndicate Bank, Shah-ali-banda Branch, and had promised to repay the remaining amount of Rs.1,18,000/- within a short period and that the defendant is an employee of Syndicate Bank at Hyderabad; and, that said post-dated cheques bear the date 01.04.2000 and that despite several requests, the amount lent with interest was not repaid and the two post-dated cheques, which were presented in the Bank for collection, were dishonoured and that therefore, the plaintiff was constrained to bring the suit.

5. At trial, the plaintiff and an attester were examined as PWs1 and 2 and got exhibited exhibit A1, the receipt dated 31.12.2000; exhibit A2, the office copy of the legal notice dated 25.04.2001; exhibit A3, the postal acknowledgment. And, the defendant was examined as DW1 and exhibit B1, the reply notice dated 20.05.2001, was marked.

6. On merits, the trial Court had decreed the suit. As already noted, the first appellate Court, which is the last Court of fact, had dismissed the appeal of the defendant. Hence, the defendant is before this Court.

7. A careful perusal of the pleadings and the evidence on record would show that in the written statement, the defendant had mentioned only about a single cheque and from his defence, it is not clear as to whether he gave two cheques or one cheque. The further defence of the defendant is that though he had paid the entire sale consideration payable in respect of the Car purchased from the plaintiff, the plaintiff had mischievously retained the possession of the cheques and also the registration book with him and that the plaintiff had failed to return the cheques which were obtained as security. Having regard to the facts and the defence, which are not consistent, the Court below had framed the following points:-

1. Whether Ex.A.1 receipt dated 31.12.2000 is true, valid and supported by consideration and is binding on the defendant?
2. Whether Ex.A.1 and the two cheques mentioned in it pertain to Maruti Car transaction mentioned by the defendant?

8. The evidence of the plaintiff, which is in-line with his pleadings, was well corroborated by the evidence of PW2, the attester, and also the documentary evidence. The said evidence on the side of the plaintiff discharged the initial onus of proof which is on the plaintiff. When the onus to introduce evidence has shifted to the defendant, the defendant could not adduce any reliable evidence to dislodge the case established by the plaintiff. Exhibit A1 is a receipt admittedly written

on a white ruled paper and is stamped with two adhesive stamps of Rs.1/- denomination each and the defendant had purported to have signed on the said receipt twice on the stamps and once below the stamps affixed to the receipt. The defendant did not plead either in his reply notice or in the written statement that his signatures were obtained on a blank paper but, had come up with this defence only during the course of trial. The trial Court had relied upon the opinion of the expert though the Court below had not placed reliance on the said report as the expert was not examined. The defendant, ought to have taken back the blank signed paper, when the car price was fully paid, if his theory of giving a blank paper with signature in connection with the car sale transaction is true. Even if the plaintiff had stated that such a paper was then not available with him for any reason, the defendant ought to have taken an acknowledgement stating that the signed blank paper would be returned as and when traced. It is borne out by record that the defendant did not take possession of the car and that there are other loan transactions between the parties under which the defendant owed money to the plaintiff. The defendant admittedly did not take any action for obtaining possession of the car. The defendant had deposed that he gave two cheques for Rs.35,000/- and Rs.15,000/- in connection with the Maruti Car transaction between the parties which had admittedly taken place in December 1999 even according to the defendant; and he had also testified that he had paid the sale price of the car by 04.01.2000. The present exhibit A1 receipt is dated 31.12.2000 which according to the plaintiff was executed in connection with the borrowal of the amount from the plaintiff by the defendant. The admission regarding issuance of cheques by the defendant is the best form of proof on which the plaintiff can rely. Therefore, the exhibit A1 receipt and the two post dated cheques, which were admittedly given by the defendant and the vain attempt of the defendant in contending that his signatures were obtained on a blank paper which defence

does not have a foundation in the pleading and the absence of any explanation for giving the post dated cheques with two different dates and on two different branches and the entire evidence on a harmonious consideration cumulatively lead to the conclusion that the plaintiff had established his case. Thus, on a careful evaluation of the evidence in juxtaposition with the pleadings and on the application of the test of preponderance of probabilities, this court finds that the courts below are justified in holding that the plaintiff is entitled to a decree for recovery of money with interest and costs.

10. In the second appeal, the defendant is not entitled to raise questions which are a blend of fact and law. There is neither misreading nor mis-appreciation of evidence by the Courts below. The courts below have assigned cogent and valid reasons in support of the findings. Therefore, the concurrent findings of fact do not call for interference in view of the provision of Section 100 of the Code. Therefore, the submission that substantial questions of law are involved in the matter is *de void* of merit. This Court accordingly finds that there are no substantial questions of law involved and that the contentions raised are only pure questions of fact and not even pure questions of law. The law is well settled that when substantial questions are not involved, the second appeal is not eligible for admission.

11. Hence, this Court finds that the second appeal lacks merit and is liable to be dismissed. Accordingly, the second appeal is dismissed at the admission stage. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murthi, J

19th June, 2015

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