

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.924 of 2013
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JUDGMENT:

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This second appeal by the unsuccessful defendant under Section 100 of the Code of Civil Procedure, 1908 is directed against the decree and judgment dated 22.08.2012 of the learned V Additional District Judge (Judge, Fast Track Court), Kurnool at Nandyal passed in AS.No.50 of 2009 whereby the learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 20.02.2009 of the learned II Additional Senior Civil Judge, Nandyal passed in OS.No.94 of 2008 filed by the sole plaintiff for recovery of Rs.1,20,900/- with further interest and costs on the foot of a promissory note dated 09.06.2006 for Rs.83,420/- under exhibit A1.

2. I have heard the submissions of the learned counsel for the appellant/defendant. I have perused the material record.

3. The cases of the parties and the basic facts leading to the filing of this appeal, in brief, are as follows:

3.1 The plaintiff had brought the aforementioned suit against the defendant for recovery of a sum of Rs.1,20,900/- being the principal and interest on the foot of exhibit A1 promissory note for Rs.83,400/- executed by the defendant agreeing to repay the said sum with interest at 24% per annum simple either to the plaintiff or her demand. The plaintiff inter alia pleaded that the defendant did not repay the debt in spite of oral and written demands and hence, she is constrained to file the suit.

3.2 The defendant having filed a written statement had resisted the suit

stating that the suit promissory note is not supported by cash consideration and that the defendant is having money dealings with the plaintiff since 1994 and that he had executed several promissory notes earlier and that the said promissory notes were being renewed periodically and that some amounts were being paid at the time of execution of the each of the renewal promissory notes from time to time and that the defendant had executed promissory notes on 09.06.2003 in favour of N. M Reddy and N. Saraswathi Reddy for Rs.40,000/- each and in favour of the plaintiff for Rs.48,500/- and that on the death of the said Saraswathi a renewal promissory note was executed for the sum of Rs.68,800/- in favour of C. K. Subbareddy and that the amount due to N.M. Reddy was discharged and that the defendant had executed renewal promissory note dated 09.06.2003 for Rs.83,420/- in favour of the plaintiff for the promissory note dated Rs.48,500/- and that the present suit promissory note is thus a renewal promissory note of the earlier promissory note and that the suit promissory note is not supported by consideration and that the interest ought to be claimed only @ 12% per annum from the renewal of the promissory note from 1994 and that in view of the reply notice got issued by the defendant the plaintiff had filed this suit to make a wrongful gain.

3.3 Based on the above pleadings, the trial Court had framed the following issues:

1. Whether the suit promissory note is not supported by the consideration?
2. Whether the plaintiff is entitled to suit claim?
3. To what relief?

3.4 At trial, the plaintiff was examined as PW1; and, apart from exhibit A1, the office copy of legal notice and postal acknowledgement were marked as exhibits A2 and A3. The defendant was examined as DW1

and exhibits B1 to B7 were marked.

3.5 On merits, the trial Court had decreed the suit of the plaintiff. The first appeal preferred by the unsuccessful defendant was dismissed. Therefore, the defendant is before this Court.

4. The learned counsel for the defendant had advanced arguments in line with the pleaded defence of the defendant and had further contended that the courts below did not properly appreciate the facts and the evidence on record and that the courts below ought to have believed the evidence of the defendant supported by exhibit B1 to B7 and that the Courts below ought to have seen that the defendant is an agriculturist and ought to have allowed interest @12% only on the amount due.

5. Now the question is as to whether or not any substantial question is involved in this second appeal. And, it is also to be examined as to whether the appeal deserves admission or dismissal at the stage of admission.

6. Since the execution of the promissory note is admitted and as the only contention of the defendant is that exhibit A1 is a renewal promissory note of the earlier promissory note debts, the initial onus of proof and the legal burden are on the defendant. Mere urging a plea of renewal and marking some earlier promissory notes stated to have been executed would be of no avail to the defendant. And, when a plea of renewal is taken it is for the defendant to plead and prove the earlier transaction of borrowal and the execution of the earlier promissory note and the payments, if any, made towards the amount due under the earlier promissory note and the balance amount due and the execution of the final promissory note for the balance amount as a renewal of the earlier promissory note/s; further, if the payments made towards the earlier promissory note debt are not proved and it is not established that the amount for which the renewal promissory notes were taken from time to

time included interest amounts also, the plea of renewal would be of no purpose to the defendant; and, unless the defendant is successful in establishing the chain of circumstances by cogent evidence, the plea of renewal cannot be accepted. The defendant having deposed as DW1 had exhibited exhibits B1 to B7 promissory notes dated 29.06.1994, 07.03.1995, 29.05.1996, 15.06.1997, 16.06.1998, 17.06.1999 and 09.06.2003 and re-iterated his defence. The Courts below having found that the revenue stamps on exhibits B1 to B7 were removed and that the defendant himself is the scribe of exhibit B7 and that there are no attestors to it and that, therefore, it is easy for the defendant to create a promissory note like exhibit B7 for the purpose of the defence in the suit had disbelieved the defence that the suit promissory note is renewal of the exhibit B7 promissory note. The trial court had framed a specific issue as to whether the suit promissory note is not supported by consideration and answered the issue having accurately considered the facts and the evidence. The court below also having analytically examined the evidence had held that no important points are gained in the cross examination of PW1 and that exhibit B7 cannot be believed to be genuine. The first appellate court also did not believe the other documents under exhibits B1 to B6 as revenue stamps were removed from the said promissory notes and they were not attested by any third party. Having considered the evidence in the proper perspective, the courts below had concurrently held that the defendant had failed to place any positive evidence in support of the defence and had accordingly disbelieved the defence of the defendant and recorded a finding that the defendant had failed to discharge the initial onus of proof as well as the legal burden, which was upon him. The courts below had also held that the evidence on the side of the plaintiff on an application of the test of preponderance of probabilities is acceptable to uphold the case of the plaintiff and, therefore, decreed the suit. Thus, the courts below have recorded concurrent and well reasoned findings based on proper

appreciation of the facts and the evidence.

7. The learned counsel for the appellant would also contend that the courts below have failed to take note of the fact that the appellant is an agriculturist and that he had admittedly paid some amounts; and, that the courts below ought to have granted interest only at 12% per annum. As could be seen from the defence, such a defence that the defendant was an agriculturist was not urged and no evidence was also adduced to show that the defendant is an agriculturist. The payments, if any, made towards the suit debt were not specifically pleaded and proved. This contention was also not advanced before the court below and, therefore, this contention in support of which there is neither foundation in the pleading nor evidence on record cannot be countenanced. On a careful examination of the pleadings and the evidence brought on record this court finds that there are no grounds calling for interference with the decree and judgment of the Court below.

8. Viewed thus, this court finds that all the contentions urged are contentions based on facts and there are no questions of law much less substantial questions of law involved in this appeal. The law is well settled that unless a substantial question of law is involved the second appeal cannot be admitted for disposal on merits.

9. In the result, the second appeal is dismissed at the admission stage. There shall be no order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

26th June,, 2015

Vjl