

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.1375 of 2010

JUDGMENT:

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This second appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful defendant is directed against the decree and judgment dated 29.11.2004 of the learned Principal Senior Civil Judge, Vijayawada passed in As.No.1 of 2003 whereby the learned Senior Civil Judge while dismissing the said appeal had confirmed the decree and judgment dated 23.09.2002 of the learned III Additional Junior Civil Judge, Vijayawada passed in OS.No.586 of 2000 filed by the sole plaintiff for recovery of Rs.58,800/- with further interest and costs on the foot of a promissory note for Rs.40,000/- said to have been executed by the defendant.

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

3. The learned counsel for the defendant would contend that after the evidence on the side of the plaintiff at trial is completed, the defendant had filed an interlocutory application in IA.No.1039 of 2001 with a request to send exhibit A1-promissory note, the execution of which was denied, to a forensic expert for comparing the thumb impression on the suit promissory note with the admitted thumb impressions of the defendant on his written statement and vakalat and that the non consideration of the request of the defendant in the above regard raises a substantial question of law in this appeal.

4. Now this Court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the

appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

5. The case of the plaintiff is that the defendant had borrowed, for her business purposes, Rs.40,000/- from the plaintiff on 23.04.1998 and had executed the demand promissory note agreeing to repay the said sum with interest @ 24% per annum simple either to the plaintiff or his order on demand and that the defendant did not repay the said debt inspite of repeated demands and that the plaintiff had therefore got issued a noticed dated 27.03.200 and that the said notice was received by the defendant on 29.03.2000.

6. The defence of the defendant is that the suit promissory note is a forged document and it was brought into existence on account of rivalry between the plaintiff and her deceased son Ajay Babu in connection with their joint finance venture and that the plaintiff has not given sufficient time to the defendant to issue a reply notice and that she had received the Court notices and the legal notice within a gap of one day and that the suit is filed by the plaintiff with a dishonest intention to grab her family properties.

7. Based on the above pleadings, the trial Court had framed the following issues.

1. Whether the suit promissory note is true, valid and supported by consideration?
2. Whether the plaintiff is entitled to recover the suit claim?
3. To what relief?

8. On merits, the trial Court had decreed the suit of the plaintiff. The first appeal preferred by the defendant was dismissed.

9. It is undisputed that the plaintiff, apart from examining himself had also examined the attestor and the scribe and had proved the due execution of the promissory note and the passing of consideration there

under. The plaintiff had also exhibited exhibit A2-office copy of legal notice dated 27.03.2000 and exhibit A3-postal acknowledgment. On the adduction of the said evidence on the side of the plaintiff, the onus of proof, which is initially on the plaintiff, stood discharged. When the onus to introduce evidence shifted to the defendant, as already noticed, she had filed a petition to send the document to an expert. The said petition was dismissed by the trial Court. It is pertinent to note that the revision petition filed before this Court by the defendant, assailing the said orders, was also dismissed by this Court confirming the order of the trial Court. The defendant re-iterated her defence and denied the execution of exhibit A1 promissory note in her evidence. Her son, DW2, had stated that DW1 has no necessity to borrow money from the plaintiff. The Courts below had concurrently held that the defendant could not adduce any convincing evidence to show that there was rivalry between the plaintiff and her deceased son in connection with any joint finance ventures. No motive for the PWs 2 and 3, who are independent witnesses for deposing against the defendant are brought on record to disbelieve their evidence which is consistent and cogent and which had remained unshaken despite lengthy cross examinations, as noted in the judgment of the trial Court. Since this Court had earlier considered the request of the defendant to send the document-exhibit A1 to an expert and rejected the said request while dismissing the civil revision petition and confirming the orders of the trial Court, it is not open to the defendant to raise the self same question stating that it is a substantial question.

10. Having thus analytically examined the facts and the evidence brought on record, this Court is satisfied that there is neither misappreciation of evidence nor non consideration of the material evidence by the Court below and that the Courts below have not committed any grave error in relying upon the evidence of PWs2 and 3, who are the

independent witnesses, in the absence of any other contrary evidence and circumstances brought on record to discredit them on any ground. In the well considered view of this Court, the Courts below have accurately considered the facts and properly appreciated the evidence while recording findings which are supported by cogent and valid reasons. Viewed thus, this Court holds that no substantial question of law is involved and therefore, the second appeal does not merit admission.

11. Accordingly, the Second Appeal is dismissed at the stage of admission. No costs. Miscellaneous petitions, pending if any, in this second appeal shall stand closed.

M. SEETHARAMA MURTI, J

21st July,, 2015
Vj/