THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1403 of 2010

JUDGMENT:-

This Second Appeal, under Section 100 the Code of Civil Procedure, 1908 by the unsuccessful defendant is directed against the decree and judgment, dated 28.11.2006 of the learned Senior Civil Judge, Nuzvid, passed in A.S.No.32 of 2000, whereby, the learned Senior Civil Judge, while dismissing the said appeal, had confirmed the decree and judgment dated 31.07.2000 of the learned Junior Civil Judge, Tiruvurru, passed in O.S.No.636 of 1996 filed by the sole plaintiff for recovery of money on the foot of a promissory note, which he was said to have obtained by negotiation under exhibit A2 endorsement of 'transfer for consideration' from the original promisee-Chittaluru Sarojini from whom the defendant was said to have borrowed the amount of Rs.20,800/- on 26.10.1993 under the said promissory note exhibit A1.

2. The defendant had resisted the suit. At trial the plaintiff, who is the transferee for consideration of the exhibit A1-suit promissory note, was examined as PW1 and the scribe of exhibit A2-endorsement of transfer for consideration was examined as PW2; and, apart from exhibits A1 and A2, the office copy of notice got issued by the plaintiff to the defendant and the postal acknowledgment received from the defendant were marked as exhibits A3 and A4. The sole defendant was examined as DW1 and exhibits B1 to B4 viz., receipt, pronote, calculation memo and another receipt were marked on the side of the defendant.

3. On merits, the trial Court decreed the suit as prayed for and the decree and judgment of the trial Court were confirmed in the first appeal preferred by the defendant. Therefore, the sole defendant is before this Court.

4. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant' for brevity) and I have perused the material record. I have perused the memorandum of grounds wherein the substantial questions of law, which are stated to be involved in this Second Appeal, are stated. The said questions read as under:

> (i) **Whether in the facts and circumstances of the case, Respondent/plaintiff is a bona fide holder in the due course as defined under section 9 of the Negotiable Instruments Act, without proving the transfer endorsement and without examining the transferor of the suit promissory note?**
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> **(ii) Whether in the facts and circumstances of the case, the Courts below should have drawn adverse inference under Section 118 of the Indian Evidence Act for non-examination of the original promise of the suit promissory note since she is the crucial witness to speak about the transaction under the suit promissory note and the transfer endorsement and since the plaintiff has nothing to do with the original transaction under the suit promissory note?**

5. The learned counsel for the defendant would contend that the plaintiff is not a *bona fide* holder in due course of the exhibit A1 promissory note and that the transfer endorsement for consideration under exhibit A2 is not proved by examining the transferor and that the Courts below in the facts and circumstances of the case ought to have drawn an inference that exhibit A2 transfer endorsement is not true and is not supported by consideration and that the Court below ought to have held that the plaintiff is not entitled to recover the suit amount or any part thereof and that the Courts below had misread and misinterpreted the evidence and also ignored material evidence.

6. The case of the plaintiff as per material averments and the evidence adduced is that the defendant borrowed an amount of Rs.20,800/- on 26.10.1993 from the original promisee- Sarojini and had executed the suit promissory note under exhibit A1 on the said date for the said sum agreeing to repay the same with interest at 24% per annum simple either to the said promissee or her order on demand and that the said promissee having received the consideration of Rs.20,800/- transferred the suit promissory note to the plaintiff under exhibit A2-transfer endorsement dated 17.10.1996 and that later the plaintiff had got issued a notice to the defendant calling upon the defendant to repay the debt due to him and that the defendant having acknowledged the receipt of the said notice had neither complied with the demand in the notice nor issued any reply and that, therefore, the suit is filed. The defendant in his defence had contended that he has never seen the said Sarojini-the original promissee under exhibit A1 and that he had never borrowed any amount from her and that the plaintiff and three others did business jointly under the name and style of Srichakdradhara Manures and General Merchants in Gampalagudem and that the father of the defendant had a khata (account) in the said shop and that when the account was settled in January 1991 a sum of Rs.8,000/- and odd was found due and that at that time when a receipt was issued by the shop for the said sum without payment, the plaintiff and his partners had insisted to execute a promissory note and that accordingly by adding excess amount as security for future, the defendant had executed the pronote for Rs.13,000/- on 10.01.1991 in favour of the wife one of the said four persons i.e., Lakshmi Kumari, w/o Ajay Gupta and that subsequently the business was divided among those four persons and that at that time a calculation was made in regard to the amount due under the above promissory note and that as per the calculation arrived at, the defendant had executed the fresh promissory note for the amount of Rs.20,805/- and that due to financial troubles the promissory note was executed in the name of the promisee/transferee who is no other than the relative of the plaintiff and that the suit is not maintainable.

7. Both the parties adduced evidence in line with their respective pleadings. The execution of the promissory note-exhibit A1 and the passing of consideration to the extent of Rs.20,805/- is admitted as even according to the defence, after a calculation was made the defendant was found due in a sum of Rs.20,805/- and that, therefore, exhibit A1 has come to be executed. The plaintiff had examined himself and also PW2, who is the scribe of exhibit A2-the endorsement of transfer for consideration and thus, discharged the initial onus of proof which is upon him. The law is well settled that in a suit by the transferee for consideration, who is a *bona fide* holder in due course, a plea or defence that the promissory note was not supported by consideration or that the debt was repaid to the original promissee is not open to the defendant. It is trite to note the difference between a holder for collection and a holder in due course, which is well established in law. A holder in due course will be entitled to claim better rights than the transferor and any defect in title of the transferor will not affect the rights of the holder in due course. The defendant's contention before this Court is that no consideration had passed under exhibit A2 transfer endorsement and that the said transfer endorsement is a created one and the exhibit A2-endorsement is not proved by examining the original promise-Chittaluru Sarojini. However, a perusal of the record shows that the plaintiff, apart from examining himself, had also examined the scribe of exhibit A2 to corroborate his version and that PW2 had categorically deposed about the transferor executing exhibit A2 transfer endorsement and the passing of consideration there under in his presence from PW1 to the original promisee. He had withstood the test of cross-examination and had maintained his stand that exhibit A2 transfer endorsement is true and it is supported by consideration. In the absence of any motive, much less a strong a motive, for PW2 to speak against the defendant and in the light of the entire evidence on record, the defence and the self serving statement of the defendant that the transfer is not supported by consideration cannot be countenanced. The holder of a negotiable instrument, like the plaintiff herein, shall be presumed to be a holder in due course unless any circumstances like fraud etcetera are established; and, there is no material in the case on hand to show that the transfer for consideration was obtained in any unlawful manner or for unlawful consideration. Be that as it may. The non examination of the original promisee is essential in the facts and circumstances of this case cannot be accepted in the light of the evidence of PW2, who is an independent witness and, therefore, the non examination of the said Sarojini does not advance the case of the defendant any further. Therefore, the contention that for non examination of the original promise-Sarojini, it must be held that the exhibit A2 transfer endorsement is not proved and that the transfer is not for consideration is devoid of merit and cannot be accepted. The contentions of the appellants based on the provisions dealing with presumptions pale into insignificance as it is well established that after both sides adduced evidence the purpose of any presumption would be over as any presumption deals with the rule concerning evidence and is not in itself evidence. The question as to whether the transfer for consideration under exhibitA2 is supported by consideration or not is a question turning on appreciation of evidence; and, the courts below on proper appreciation of evidence held against the defendant and in favour of the plaintiff on all questions of fact involved in the suit. Except contending that the original promisee is not examined to prove the transfer for consideration, the appellant could not specifically point out any portions of evidence and show either any infirmities in the evidence brought on record to establish the case of the plaintiff or specific instances of either mis-appreciation of evidence or non-consideration of material evidence. A mere bald assertion that the evidence is not properly appreciated by the Courts below does not help the cause of the defendant. This Court having given earnest consideration finds that the well reasoned findings recorded by the Courts below while decreeing the suit of the plaintiff and dismissing the appeal of the defendant are justified in the facts and circumstances of the case and the evidence brought on record and that, therefore, the decree and judgment of the Court below do not call for any interference.

Thus, on a careful examination of the material record this Court finds that the plaintiff is a *bona fide* holder in due course and is entitled to a decree as granted by the Courts below and that the questions now being sought to be raised as substantial questions are not involved in the appeal.

8. In the facts and circumstances of the case, the questions of law sought to be raised in this second appeal are not pure questions of law, much less substantial questions of law and that there is no substance in the questions raised.

9. For the reasons aforementioned, this Court finds that the Second Appeal lacks merit and the same is liable to be dismissed as there are no valid and sufficient grounds to either admit or allow the appeal. Accordingly, the Second Appeal is dismissed at the admission stage without any order as to costs.

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

M. Seetharama Murti, J

12th June, 2015
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