

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

SECOND APPEAL NO.329 OF 2015

Between:

Smt.Mandela Kanaka Bhavani
... Appellant

and

Smt.ManchamAndhrodaya Lakshmi
... Respondent

SUBMITTED FOR APPROVAL:

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DATE OF JUDGMENT PRONOUNCEMENT : 31st JULY,
2015

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THE HON’BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL NO.329 OF 2015

J U D G M E N T

O.S.No.No.218 of 2006 was filed by the respondent herein before the learned Senior Civil Judge, Narsapur, for a preliminary decree for recovering a sum of Rs.1,34,000/-, being the balance of the principal and interest due on a registered mortgage deed dated 12.10.1999 for a sum of Rs.50,000/-, with interest at 24% per annum. The suit was decreed by the trial Court by judgment dated 27.09.2010. Aggrieved thereby, the defendant in the suit, the appellant herein, filed A.S.No.21 of 2012 before the learned Additional District Judge, Narsapur. By judgment and decree dated 31.10.2014, the lower appellate Court dismissed the appeal. Aggrieved thereby, the defendant in the suit is before this Court by way of this second appeal.

Parties shall be referred to hereinafter as arrayed before the trial Court.

Considering the pleadings of the parties, the trial Court settled the following issues for consideration.

1. Whether the mortgage deed dated 12.10.1999 is true, valid and binding on the defendant?
2. Whether it is supported by consideration or not?
3. Whether the rate of interest is to be scaled down as per Act.4/38?
4. Whether the plaintiff is entitled for the suit amount as prayed

for?

5. To what relief?

P.Ws.1 to 3 were examined by the plaintiff and Exs.A1 to A5 were marked in evidence. The defendant examined her husband as D.W.1 but did not adduce any documentary evidence.

Having considered the material on record, the trial Court found that Ex.A1 registered mortgage deed was true, valid and binding on the defendant. The trial Court opined that it was supported by full consideration. The claim of the defendant that there were monetary transactions between her husband and the husband of the plaintiff and that the plaintiff's husband obtained her signatures on blank papers and printed pro-notes was disbelieved. Her denial of the execution of Ex.A1 registered mortgage deed was also rejected. The plaintiff established the execution of the said document by examining its scribe and one of the attestors. D.W.1, the husband of the defendant, was the other attesor of Ex.A1 registered mortgage deed. He did not deny that he had subscribed his signature in the said document before the Sub-Registrar. This evidence clinchingly proved Ex.A1. The trial Court accordingly held so and decreed the suit.

In appeal, the lower appellate Court framed the points arising for consideration and upon due analysis thereof, the lower appellate Court concurred with the findings of the trial Court and dismissed the appeal.

In this second appeal, the following substantial questions of law are sought to be raised:

- (A) Whether the Judgment and Decree passed by the Trial Court and Lower Appellate Court are justified in without considering the oral and documentary evidence available on record from proper perspective?
- (B) Whether the Judgments of the Trial Court and the Lower Appellate Court are in consonance with the mandatory requirements of Order 20 Rule 5 and Order 41 Rule 31 of the Code of Civil Procedure?
- (C) Whether the Courts below are justified in not considering the

oral evidence i.e., DW1 and the documentary evidence adduced by the appellant from proper perspective?

- (D) Whether the Judgments of the Courts below are sustainable in view of the contradictions in the evidence of PWs.1 to 3.
- (E) Whether the plaintiff could prove the execution of Ex.A1 regd.mortgage deed and the passing of consideration without there being any substantial evidence.

Learned counsel for the appellant contended that the approach of the Courts below in not pronouncing a decision on each of the issues/points framed for consideration renders the judgments unsustainable. However, learned counsel was unable to state as to which issue/point has been left unanswered. Merely because the issues/points were clubbed for consideration and the decision was rendered jointly thereon by the Courts below, it would not have the effect of rendering the judgments open to challenge on that ground. Further, errors in the body of the lower appellate court's judgment would not *per se* be sufficient to infer lack of application of mind. Though the learned counsel would contend that the Courts below failed to consider the evidence in the proper perspective, he could not substantiate the same with any particular discrepancy in that regard. Admittedly, the husband of the defendant, speaking as DW.1, categorically admitted that he had subscribed his signature on Ex.A1 registered mortgage deed as the first attester in the presence of the Sub-Registrar. This evidence went against the claim of the defendant that Ex.A1 was a fabricated document. There was no independent evidence to substantiate the claim of the defendant that blank papers signed by her were obtained by the plaintiff's husband and that the same were utilized for fabricating Ex.A1 registered mortgage deed. The Courts below considered these aspects of the matter in the proper perspective and held against the defendant. No grounds are made out to disagree with the said findings. This Court therefore finds no question of law, much less a substantial question of law, arising for consideration in this appeal.

The Second Appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed.
No order as to costs.

SANJAY KUMAR, J

31st JULY, 2015
PGS