

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Second Appeal No. 522 OF 2015

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Between:

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Rupanagudi Venkateswara. ...Petitioner

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And

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Smt. M.Seethalakshmi. ... Respondent

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Date of Judgment pronounced: 24.07.2015

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Submitted for Approval:

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The Hon'ble Sri Justice A.Rajasheker Reddy

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

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2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No

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3. Whether His Lordship wish to see the fair
copy of the Judgment? Yes/No

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Second Appeal No. 522 OF 2015

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Judgment:

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This Second Appeal is filed against judgment and decree passed by the First Additional District Judge, Kurnool in A.S.No.126 of 2012 dated 28.10.2014, confirming the judgment and decree dated 27.09.2011 in O.S.No.40 of 2009 passed by the Senior Civil Judge, Atmakur, Kurnool, in which the Court below decreed the suit of recovery of money.

2. The facts in a nutshell which are essential for the disposal of the

Second Appeal are that the respondent/plaintiff filed the suit for recovery of Rs.1,72,000/- basing on pro-note dated 02.10.2006 for Rs.1,00,000/-. The appellant/defendant admitted the execution of the suit pro-note, but defended the suit on the ground that there is material alteration regarding the date of execution of the suit pro-note and that the respondent/plaintiff made material alteration so as to bring the suit within the period of limitation and also stated that no consideration was paid in pursuance of the alleged suit pro-note.

3. Heard Smt. K.Udaya Sri, learned counsel for the appellant as well as Sri C.Prakash Reddy, learned counsel for the respondent.

4. Learned counsel for the appellant submits that unless the attester of the alleged suit pro-note is examined execution of suit pro-note is not proved, as such, the question of decreeing the suit in favour of the respondent/plaintiff does not arise.

5. As the material alteration has been alleged by the appellant/defendant, the burden of proof lies on him to prove that there is an alteration and that no consideration has been passed thereon, as required under Section 118 of the Negotiable Instruments Act, 1881.

Section 118 of the Negotiable Instruments Act, 1881 reads as follows:

118. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Both the Courts below, basing on the evidence of P.W.1 and D.Ws.1 and 2, came to the conclusion that there is no material alteration regarding the date of suit pro-note. Both the Courts below also observed that they have examined the suit pro-note and found that no material alteration is detected. With regard to consideration in respect of the suit pro-note, it is observed that when once the execution of suit pro-note is admitted, it is presumed that the consideration has been passed as required under Section 118 of the Negotiable Instruments Act and the same has not been rebutted by the appellant/defendant by way of evidence. When once the execution of pro-note is admitted, the question of further examination of attesting witness will not arise. Moreover, the facts admitted need not be proved as per Section 58 of the Indian Evidence Act, 1872, which reads as under:

“58. Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

6. The substantial questions of law raised in the Second Appeal are:

a) Whether the Court below justified in decreeing the suit of the plaintiff for recovery of Rs.1,00,000/- basing on the Exhibit A-1 which suffers from material alterations made by the husband of the plaintiff in view of jealousy and enmity between them on account of professional rivalry.

b) Whether the Court below justified in decreeing the suit basing on the Exhibit A-1 pro-note dated 02.01.2006 which is altered as 02.10.2006, thereby the suit is barred by limitation and that the suit pro-note is tampered with by filling the amount on top of the pro-note and altered the date in pro-note and in the middle of the pro-note.

c) Whether the Court below justified in considering the Exhibit A-1, i.e., suit pro-note which is brought into existence in the circumstances stated in the written statement by the defendant.

d) Whether the plaintiff is entitled to recovery of the suit amount together with interest as prayed for and whether the judgment of the Court below suffer from perverse finding of the facts.

e) Whether the judgment of Court below suffer from all established judicial discipline in adjudicating the lis involved in the suit.”

In view of the above, the so called substantial questions of law raised in the grounds of appeal in the Second Appeal are based on questions of facts. In view of the concurrent findings of the Courts below, this Court cannot re-appreciate the evidence and came to a different conclusion warranting interference under Section 100 of Code of Civil Procedure and that the Second Appeal can only be admitted on substantial question of law.

Accordingly, the Second Appeal is dismissed at the stage of admission itself. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

A.RAJASHEKER REDDY, J

24.07.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

SA No.522 OF 2015

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Date: 24-07-2015

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