

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.836 of 2014
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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 20.08.2014 of the learned Principal District Judge, Khammam passed in AS.No.63 of 2012. The learned District Judge had partly allowed the said appeal and had modified the decree and judgment dated 27.01.2012 of the learned Senior Civil Judge, Khammam passed in OS.No.348 of 2008 filed by the sole plaintiff for recovery of Rs.2,24,922/- on the foot of a promissory note executed by the defendant with subsequent interest and costs.

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

3. The learned counsel for the defendant would contend that the defendant had raised a defence that the suit promissory note is not true and valid and that it is a rank forgery and that the Court at Khammam has no jurisdiction since no transaction of borrowal had at all taken place within the jurisdiction of the said Court and that the courts below have not accurately considered the facts and properly appreciated the oral and documentary evidence and that, therefore, a substantial question of law in regard to the truth and validity of the suit promissory note is involved in this second appeal.

4. On the other hand, the learned counsel for the plaintiff while

supporting the decrees and judgments of the Courts below had contended that the Courts below having properly appreciated the facts and the evidence had recorded concurrent findings of fact and that the question sought to be raised is not at all a substantial question of law much less a pure question of law and that, therefore, there is no merit in the second appeal and the second appeal is devoid of merit and is liable to be dismissed at the stage of admission.

5. I have carefully perused the material record. The case of the plaintiff is that the defendant had borrowed Rs.1,31,000/- from the plaintiff on 06.10.2005 to meet his family necessities and had executed the suit promissory note agreeing to repay the said sum with interest at 24% per annum simple either to the plaintiff or her order on demand and that despite repeated demands, the defendant had failed to make repayment and that, therefore, the suit is instituted. As already noted, the only defence of the defendant is that the suit promissory note is a rank forgery and that no amount was borrowed and that the suit promissory note was not executed by him and that the husband of the plaintiff, who is the co-brother of the defendant had a land dispute and in the said circumstances, the suit pronote was brought into existence.

6. Admittedly, the plaintiff, the scribe of the promissory note, who is no other than the husband of the plaintiff, and an attester were examined as PWs1 to 3. The suit promissory note, the office copy of notice and the postal receipt were exhibited as exhibits A1 to A3. With this evidence, the onus which is initially upon the plaintiff stood discharged. When the onus to introduce evidence had shifted to the defendant, he had examined himself as DW1 and marked exhibit B1, the attested copy of form V Registrar of Establishment issued on 0811.2011 by A.L.O Khammam I Town. The evidence of the plaintiff is sufficiently corroborated by the evidence of PW3, an independent witness, who had no reason to speak against the defendant or in support of the plaintiff.

There are no reasons to disbelieve their testimonies. On apposite appreciation of the facts and the evidence, the Courts below had rightly decreed the suit of the plaintiff. In the first appeal, while confirming the decree and judgment of the trial Court, the first appellate Court had modified the decree of the trial Court holding that the plaintiff is not entitled to recover Rs.300/- towards legal notice charges and had confirmed the decree and judgment of the trial Court in all other respects. Thus, though it is sought to be contended that the trial Court did not properly appreciate the evidence, there are no circumstances to accept the said contention or the other contention that there was either mis-appreciation of evidence or non consideration of material evidence. A careful perusal of the evidence on record would show that there was no perversity in appreciation of the evidence and that on the other hand, the evidence was appreciated in the right perspective.

7. Viewed thus, this Court finds that there is no reason calling for interference with the concurrent findings of fact recorded by the Courts below, which are supported by cogent reasons. Having regard to the reasons this court holds that there is no substantial question of law involved and that the second appeal is liable to be dismissed at the stage of admission.

8. In the result, the Second Appeal is dismissed at the admission stage. No costs.

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

M. SEETHARAMA MURTI, J

22nd July, 2015

Vjl