

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A. No.81 of 2015

JUDGMENT :

The appeal is filed by 3rd defendant to the suit O.S. No.24 of 2007. The suit O.S. No.24 of 2007 was filed by G.Vinayak Reddy against seven defendants originally i.e., M/s.Anjana Marketing & Commercial Agencies, a partnership firm represented by its Managing Partner K.Ramesh Reddy, also impleading him personally as defendant No.2 since died, his daughter and son brought on record as LRS as D6 and D7 and D3—Smt.K.Rajani, no other than wife of K.Ramesh Reddy though claimed as if she is also a partner to the firm even the registration certificate as Ex.A13 filed by plaintiff show that the defendant No.3 is not at all a partner of 1st defendant firm. The mother of D3 is later impleaded as defendant No.4 as partner of D1 entity supra and D5 is also impleaded as subsequently inducted partner of D1 entity.

2) Impugning the personal decree passed by the trial Court against D3, 6 and 7 practically the appeal is filed.

3) Heard learned counsel for appellant—D3 and learned counsel for plaintiff—R1. D6 and 7 are supporting the appeal grounds and impugning the lower Court judgment. Perused the material on record.

4) The suit is filed for recovery of Rs.8,50,000/- with interest at 12% per annum by showing the suit claim of

Rs.15,31,500/- with subsequent interest against the defendants supra i.e., originally sought against defendants 1 to 3, subsequently defendants 4 & 5 impleaded for the reasons supra by order in I.A. No.647 of 2010 dated 25.11.2010 and I.A. No.1118 of 2010 dated 31.01.2011. Defendants 6 & 7 were impleaded as LR's of D2 as stated supra by order in I.A. No.4919 of 2008, dated 25.10.2010 and I.A. No.1118 of 2010 dated 31.01.2011. The trial Court decreed the suit as prayed for against all defendants with personal liberty. The suit claim is based on Ex.A1—pro note and receipt dated 05.09.2003 and Exs.A2 and A3 i.e., two cheques i.e., 1) 775932 dated 15.06.2006 for Rs.5,00,000/- and 2) 77206 dated 01.06.2006 for Rs.3,50,000/- issued by said K.Ramesh Reddy as Managing Partner of the entity supra. Undisputedly, Ex.A1—pro note was earlier executed by defendant No.2 only in his individual capacity as per Sections 91 and 92 of the Evidence Act no oral evidence and plea contrary to or inconsistent with the recitals made in the document is permissible to be raised. From the very Ex.A13, the 3rd defendant is not partner of the 1st defendant firm to claim contra to it, there is no basis at all. The other evidence adduced by plaintiff is even contradictory among testimonies of PWs.1 and 2 as to whom the money is paid. As per PW.1, it was as if paid to both defendants 2 and 3, but the pro-note was executed undisputedly by K.Ramesh Reddy (D2) and not his wife (D3). As per PW.2, the

amount was as if paid to Smt.Rajani (D3) and pronote was executed by K.Ramesh Reddy. Had it been so true of both approached for lending, there is nothing in the pro note as joint execution. It was executed only by Ramesh Reddy (D2) and not obtained jointly from D2 and D3, if she was really present and money paid to her. The trial Court from said evidence wrongly concluded in passing the personal decree against D3 (Rajani) also, without assigning any valid reasons. She is no doubt on record along with her son and daughter (D6 & D7) as LR's of deceased K.Ramesh Reddy (D2), at best to pass decree on the estate of said Ramesh Reddy in the hands of D3, 6 and 7, it at all to be made liable. The trial Court even ignored the scope of Sections 50 and 52 of C.P.C. No doubt, so far as liability of D4 and D5 claimed as other partners with K.Ramesh Reddy. That apart the suit is not agitated by D4 and D5 and even they are not participated in the appeal. Even some portion is attacked by some of the unsuccessful parties including any defendant, the entire appeal is at large before the 1st appellate Court under Order 41 Rule 33 C.P.C being a final fact finding Court for re-appreciation.

5) Having regard to the above, the judgment and decree passed by the trial Court in fixing personal liability so far as defendants 3, 6 and 7 is unsustainable and it is liable to be set aside and required to be modified as liable to the extent of estate of the deceased i.e., K.Ramesh Reddy in their hands to them be liable to make good, for nothing to

make them personally liable.

6) Accordingly and in the result, the appeal is partly allowed, by modifying the personal decree against defendants 3, 6 and 7 into a decree against them to make liable to the extent of estate of D2 late Ramesh Reddy in their hands. Whatever the amount, the appellant/ defendant No.3 is compelled to deposit is entitled to restoration as it is not the amount representing the estate of the deceased. There shall be no order as to costs.

7) Miscellaneous Petitions pending, if any, in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23.11.2015
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