

THE HONOURABLE SRI JUSTICE RAJA ELANGO

SECOND APPEAL No.635 of 2016

JUDGMENT:

The second appeal, under Section 100 of CPC, is directed against the Judgment and Decree, dated 17.11.2015, passed in A.S.No.200 of 2012, on the file of the learned III Additional District Judge, East Godavari at Kakinada, whereunder and whereby, the Judgment and Decree, dated 01.10.2012, in O.S.No.162 of 2011, on the file of the learned Senior Civil Judge at Peddapuram, was confirmed.

2. For better appreciation of facts, the parties are referred to as arrayed in the trial Court.

3. Brief facts that are necessary for disposal of the present second appeal may be stated as follows:

The case of the plaintiff in brief is that on 03.03.2003, defendants borrowed an amount of Rs.40,000/- for their business investment with an agreement to repay the same with interest at 24% p.a. and executed suit pronote/Ex.A-1. Subsequently, on demand, the defendants jointly paid Rs.1,000/- on 10.02.2006 and Rs.1,000/- on 10.01.2009 towards part payment and made endorsements/Exs.A-2 and A-3 on the back of Ex.A-1-Pronote. Thereafter neglected repayment and even after repeated demands, as there was no response, he got issued legal notice on 04.07.2011/Ex.A-4, for which, the defendants got issued reply on 07.07.2011/Ex.A-5 with false allegations. Further, the defendants are not entitled for any Debt Relief Laws. Thus, the suit.

4. The 2nd defendant filed the written statement which was adopted by 1st defendant wherein denied plaint allegations and insisted for strict proof. Further submitted that the defendants did not borrow any amount from the plaintiff and never executed any promissory note

and never made any part payment endorsements in favour of the plaintiff. At the instance of their enemies in the village, the plaintiff might have filed this false suit. The 2nd defendant always used to sign in English only and the signatures on the suit pronote and part payment endorsements does not belong to them and they are rank forgery and fabricated by the plaintiff to have wrongful gain. Thus, prayed to dismiss the suit with costs.

5. Basing on the above pleadings, the following issues were settled by the lower Court.

1. Whether the suit promissory note and part payment endorsements on the pronote are true and correct?
2. Whether the plaintiff is entitled to recover the suit amount?
3. To what relief?

6. During trial, the plaintiff got examined himself as P.W.1 and got marked Exs.A-1 to A-5 and one Koyyala Ramakrishna/attester of pronote is examined as P.W.2. On behalf of the defendants, the 2nd defendant got himself examined as D.W.1 and no documents were marked.

7. The trial Court, after considering the evidence on record, decreed the suit with costs and subsequent interest at 6% p.a., on principal sum. Challenging the same, the appeal was filed by the defendants. In the appeal, the judgment of the trial Court was confirmed. Aggrieved by the same, the second appeal is filed by the appellants/defendants.

8. Heard both sides and perused the material available on record.

9. In the second appeal, the learned counsel for the appellants raised the following substantial questions of law:

- “a) Whether the Respondent-plaintiff has proved about passing of the alleged debt covered under Ex.A1 to the appellants since the respondent was got examined as PW.1 and the close associate to the PW.1 i.e., PW.2 who has been examined as PW.2 to support the version of PW.1 but the PW.2 is not an independent witness?
- b) Whether the evidence of PW2 who is interest witness is liable under law which is also contrary to the evidence of PW1?
- c) Whether the suit claim under the suit promissory note is barred by limitation in absence of proof of part payments allegedly made by the appellants-defendants?
- d) Whether non-framing of issue on the ground of limitation in spite of specific that the suit promissory note is barred by limitation vitiates the judgment and decree of the courts below?
- e) Whether the judgment and decree is valid in the surmises and conjectures in the facts and circumstances of the case?”

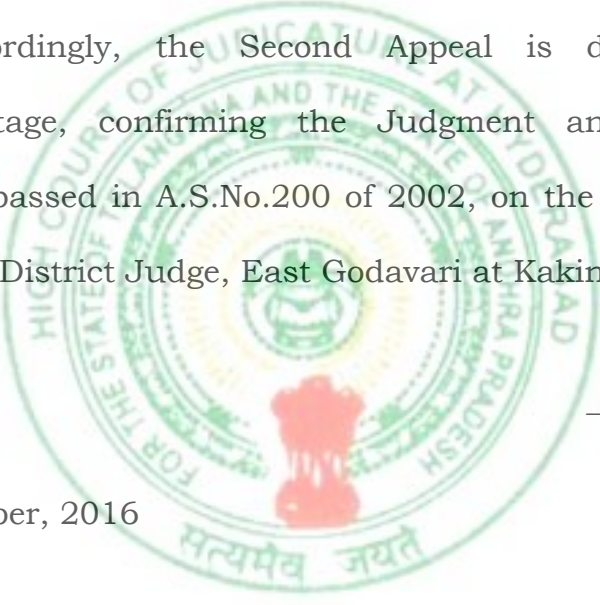
10. As far as the factual aspects are concerned, unless there is a substantial question of law involved in the second appeal, which necessitate the Court to interfere with the orders passed by the lower Court and the first appellate Court, the question of admitting the second appeal does not arise. If both the Courts gave a perverse finding, or the findings which are not based upon any admissible evidence, or inadmissible evidence was taken into consideration, are some of the aspects which come within the meaning of substantial question of law.

11. One of the issues raised by the learned counsel for the appellants is that the trial Court has not framed the issue regarding the limitation of the institution of the suit concerned, but on the perusal of the order passed by the trial Court, as far as the first issue

framed by the trial Court is concerned, the said issue is in the nature of deciding the limitation in view of the part payments paid by the appellants/defendant.

12. Therefore, the trial Court, after elaborate consideration of evidence on record, rightly decreed the suit. The said findings have been rightly confirmed by the first appellate Court. None of the findings is shown to be perverse, or contrary to law. There is no substantial question of law involved in the second appeal. In the absence of any substantial question of law, the second appeal cannot be admitted.

13. Accordingly, the Second Appeal is dismissed at the admission stage, confirming the Judgment and Decree, dated 17.11.2015, passed in A.S.No.200 of 2002, on the file of the learned III Additional District Judge, East Godavari at Kakinada.



RAJA ELANGO, J

Date: 5th December, 2016

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