HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.1416 OF 2007

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 06.09.2007, passed in A.S.No.30 of 2004, by the District Judge, Chittoor, whereby and whereunder the District Judge has allowed the appeal setting aside the judgment and decree dated 07.01.2004, passed in O.S.No.796 of 1999, by the II Additional Junior Civil Judge, Chittoor.

The appellant herein is the defendant and respondent herein is the plaintiff in O.S.No.796 of 1999. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The plaintiff filed the suit for recovery of an amount of Rs.78,870/- together with interest and costs.

The brief averments made in the plaint are that the defendant borrowed a sum of Rs.33,500/- on 13.12.1993 and executed a promissory note in favour of the plaintiff, promising to repay the same with interest at 24% p.a for the purpose of her family necessities; that on 08.12.1996, defendant paid Rs.100/- to the plaintiff towards part payment of the debt and the same was endorsed on the backside of the promissory note; that inspite of repeated demands made by the plaintiff, the defendant has not paid the amount and hence, the plaintiff issued a notice to the defendant on 19.02.1999; and that the defendant failed to give any reply or to make any payment and therefore, the plaintiff filed the suit for recovery of the said amount.

The defendant filed the written statement and admitted that there is a distant relationship between her family and the plaintiff's family; that and about 6 or 7 years back her husband obtained her signatures on a blank non-judicial stamp paper worth Rs.5/- or Rs.10/- representing that he would borrow the amount by creating an agreement in respect of her house property; that due to mis-understanding between the plaintiff's husband and the defendant's husband, plaintiff filed the suit with the created promissory note with the forged signature of the defendant; and that there is no cause of action for the suit and prayed the Court to dismiss the suit.

Basing on the pleadings, the trial Court framed three issues. To prove her case, the plaintiff herself is examined as PW.1 and got examined another two witnesses as PWs.2 & 3, and also got marked Ex.A1 to A4 on her behalf. To prove the case of defendant, she herself examined as DW.1 and got examined another three witnesses as DWs.2 to 4, and also got marked Exs.B1, B2 & X1 on her behalf.

The trial Court after considering the oral and documentary evidence available on record believed the execution of Ex.A1 promissory note by the defendant, but failed to believe Ex.A2 endorsement on the backside of the promissory note and dismissed the suit holding that the promissory note is barred by limitation.

Aggrieved by the dismissal of the suit passed by the trial Court, the plaintiff filed the first appeal on the file of the District Court, Chittoor in A.S.No.30 of 2004. The first appellate Court confirmed the findings of the trial Court with regard to the execution of Ex.A1 and held that the plaintiff has established the execution of Ex.A1 promissory note, and it is supported by valid consideration and the same was not questioned by filing any cross appeal by the defendant. Therefore, the findings of the trial Court holds good with regard to the execution of Ex.A1 promissory note. Thereafter, the first appellate Court held that the execution of Ex.A2 endorsement was proved by the plaintiff as there is no corroborative evidence in support of the evidence of DW.3 and it is not safe to rely upon the sole evidence of handwriting expert to disprove the execution of Ex.A2 and allowed the appeal by decreeing the suit along with interest at 6% p.a from the date of filing of the suit on the principal amount. Aggrieved by the reversal judgment passed in A.S.No.30 of 2004, the defendant filed the present second appeal.

On 27.12.2007, this Court admitted the appeal on the following substantial questions of law:-

1. Whether the finding of the first appellate Court contrary to the report, Ex.X1 of DW.3 who is handwriting expert is beyond scope of Section 45 of Evidence Act?

2. Whether when the attesting witness of Exs.A1 and A2 denying the execution thereof is required to be proved by other evidence as per Section 71 of the Evidence Act?

3. Whether the first appellate Court followed procedure prescribed under Section 73 of Evidence Act while formulating finding on its own against expert opinion?

The learned counsel for the appellant argued that the plaintiff failed to establish the execution of Ex.A1 promissory note and also Ex.A2 endorsement and further, the first appellate Court erred in holding Ex.A2 as an acknowledgment of debt and also not considered the evidence of handwriting expert properly. He also argued that the plaintiff filed the suit six years after the execution of the promissory note and therefore, the trial Court rightly held that the suit is barred by limitation and that the opinion of the handwriting expert DW.3 was not considered properly and Ex.A2 is a created endorsement made by the plaintiff. It is also argued that the plaintiff's husband was not examined, Ex.A2 was not proved and though the burden lies on the plaintiff, she failed to prove that defendant paid Rs.100/- and executed Ex.A2 endorsement on the backside of Ex.A1 promissory note and prayed the Court to allow the appeal.

On the other hand, the learned counsel for the respondent/plaintiff argued that the suit is not barred by limitation as it was filed within three years from the date of Ex.A2 endorsement and the attester of Ex.A2 i.e., PW.2 clearly held that the defendant executed Ex.A2 and that after considering the evidence on record, the first appellate Court rightly allowed the appeal filed by the plaintiff and relied upon the case law reported in ***Sallepalli Narasimha Reddy v. Yerram Pedda Subba Reddy***[1], wherein it is held at para 19 as follows:

> *"The rule of prudence requires the court to send the admitted and contemporary signatures of the person to the expert to compare the same with his disputed signatures on the document. According to Cambridge Advanced Learner's Dictionary "Contemporary" means belonging to the same or a stated period in the past. It is needless to say that admitted signatures means the signatures on the documents maintained by any authority in course of its business such as signatures on a passport, income-tax returns, bank passbook or registered sale deed."*

The learned counsel also relied upon the case law reported in ***S. Gopal Reddy v. State of Andhra Pradesh***[2], wherein it is held at para 27 as follows:

> *"27. Thus, the evidence of PW-3, is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. <u>The evidence of an expert is a rather weak type of evidence and the Courts do not generally consider it as offering</u>*

'conclusive' proof and, therefore safe to rely upon the same without seeking independent and reliable corroboration."

Further, he also relied upon a case law reported in ***Vandavasi Karthikeya alias Krishna Murthy v. S. Kamalamma and others***[3], wherein it is held as follows:

"The science of hand-writing is not an exact science unlike the science of fingerprints. Even experts tend to commit errors in giving their opinions on the genuineness of the signatures and hand-writing. Even in genuine writing, at times, the pen hesitates or even stops especially when the author is under great physical or mental strain. Sometimes, it would be difficult for an expert to examine even the genuineness of different writings, each having its own individuality, but all by the same author. It requires intelligent comparison to differentiate the genuine signature from the forged one. Great care and caution should be exercised especially when the court is not assisted by the evidence of an expert in determining the genuineness of a signature of hand-writing. Even while calling experts, it is now admitted by all authorities that if one cannot get a competent man, it is better not to adduce any expert evidence at all. (Para 29)"

Now, the points that arise for consideration before this Court are:

1. Whether the finding of the appellate Court that suit is not barred by limitation is in accordance with the principles laidown by law?

2. Whether there is any substantial question of law involved in this appeal?

P O I N T S:

A perusal of the oral and documentary evidence shows that plaintiff filed the suit for recovery of Rs.78,870/- along with interest from the defendant basing on a promissory note said to have been executed by the defendant on 13.12.1993. The trial Court after considering the evidence of both sides held that Ex.A1 promissory note is proved. The defendant in the suit has not agitated about the findings of the trial Court regarding the execution of Ex.A1. This aspect of the finding of the trial court was rightly upheld by the first appellate Court holding that the defendant has not filed any cross appeal regarding the finding of Ex.A1 and it is proved by the plaintiff. The only dispute is regarding Ex.A2 that is the endorsement on the backside of Ex.A1 promissory note dated 08.12.1996 for a sum of Rs.100/-. The defendant totally denied the endorsement and pleaded that the signature under Ex.A2 is a forged one. During the trial, admitted and disputed signatures were sent to handwriting expert, who gave his report under Ex.X1. The disputed signatures in the promissory note were marked as Q1 to Q3, whereas, the admitted signatures found in Vakalat, written statement and signatures taken in the Court were marked as S1 to S8. The expert held in his report Ex.X1 that the signatures Q1 to Q3 are not signed by the person, who signed S1 to S8. The expert was examined as DW.3. Basing on the settled principles of law, the lower appellate Court held that the evidence of handwriting expert is not a conclusive evidence; that it cannot be relied upon without any independent reliable corroboration; that there is no corroborative evidence in respect of the evidence of DW.3; and that the plaintiff proved the execution of Ex.A2 endorsement on the backside of Ex.A1 promissory note and allowed the appeal.

The learned counsel for the appellant/defendant argued that the trial Court after considering the evidence of DW.3 rightly held that Ex.A2 was not executed by the defendant and the suit is barred by limitation. The learned counsel for the respondent on the other hand contended that rule of prudence requires the Court to send the admitted and contemporary signatures of the person to the expert to compare the same with his disputed signatures on the documents and also argued that in the present case, the trial

Court sent only the signatures on Vakalat, written statement and signatures taken in the Court hall to the handwriting expert along with the disputed signatures and the first appellate Court has rightly applied the principles of law and held that opinion of experts cannot outweigh the direct evidence if the direct evidence available on record is convincing and relied upon the ***Sallepalli Narasimha Reddy's case*** (first cited supra). It is also specifically contended that in the reply notice, the defendant has not taken the plea of forgery at the initial stage, but only in the written statement the said plea has been taken. Therefore, to deprive the plaintiff from recovering the amount, the defendant has setup such plea of forgery and failed to prove the same by sending the disputed signatures along with the contemporary signatures of the defendant such as signatures on income tax returns, passport, bank passbook or any registered sale deed.

PW.1 is the plaintiff, PW.2 is the attesting witness to Exs.A1 & A2 and PW.3 is the husband of the plaintiff. In their evidence they clearly stated the execution of Exs.A1 & A2. DW.2-husband of the defendant is also one of the attestor to Ex.A2 along with PW.2, but he denied about the payment of Rs.100/- by the defendant and also denied the endorsement Ex.A2. There is no dispute that the plaintiff and the defendant are known to each other. The evidence of plaintiff and evidence of PW.3 shows that defendant paid Rs.100/- under Ex.A2 on 08.12.1996 and made an endorsement on the back side of pronote Ex.A1. Therefore, the evidence of expert being opinion evidence cannot falsify the convincing direct evidence of PWs.1 & 3. Further, the contemporary signatures of the defendants were not sent to the expert along with the admitted signatures on Exs.A1 & A2 and when there is a conflict between the direct evidence and expert opinion, the court ought to have placed reliance on the direct evidence. Therefore, the first appellate Court has rightly applied the principles of law while giving a finding that Ex.A2 was executed by the defendant on the backside of the promissory note. Therefore, I am unable to agree with the finding recorded by the trial Court as the same was not based on the sound principles of law.

In the light of the foregoing reasons, there is no question of law much less substantial question of law in this case which warrants interference of this Court to set aside the decree and judgment of the first appellate Court.

The second appeal is, therefore, dismissed. No costs.

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

ANIS, J

Date: 05.08.2016
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[1] 2014 (2) ALD 195

[2] AIR 1996 Supreme Court 2184(1)

[3] AIR 1994 ANDHRA PRADESH 102