

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.597 of 2009

JUDGMENT:

This second appeal is preferred challenging judgment and decree dated 10.02.2009 in A.S.No.325 of 2006 on the file of

II Additional District Judge, Vijaywada, whereunder judgment and decree dated 31.10.2006 in O.S.No.73 of 2005 on the file of

I Additional Senior Civil Judge, Vijaywada, is confirmed.

2. Appellant herein is defendant in O.S.No.73 of 2005. The suit is filed for recovery of money based on a promissory note dated 16.01.1998 and appellant herein disputed the claim. Trial Court on a consideration of oral and documentary evidence held that plaintiff is entitled for the suit amount with interest and costs and first appellate Court on a reappraisal of oral and documentary evidence confirmed the findings of trial Court. Aggrieved by the concurrent findings of trial Court and first appellate Court, present second appeal is filed.

3. Heard arguments.

4. Advocate for appellant submitted when defendant denied execution of promissory note, trial Court and first appellate Court have decreed the suit only on the ground that defendant did not give any reply to the legal notice. It is submitted that plaintiff has not examined attestor or scribe of promissory note to prove execution of

promissory note, but both the Courts accepted plaintiff's case, therefore, the substantial question of law involved in this second appeal is

Whether plaintiff is entitled for a decree without proving execution of the promissory note?

5. I have perused the material papers including judgments of trial Court and first appellate Court. As seen from the material, plaintiff in his evidence clearly deposed about execution of promissory note and passing of consideration and to rebut the evidence of plaintiff, DW.1 did not whisper anything even in his chief-examination about execution of promissory note and his signature on promissory note. He only deposed saying that he never borrowed any amount from plaintiff. Considering the same, both trial Court and first appellate Court decreed the suit holding that claim is duly proved, I do not find any law involved in this case. When defendant has not rebutted the evidence of PW.1 with regard to execution of promissory note and passing of consideration the contention of appellant with regard to non-examination of attester and scribe cannot be sustained. On a scrutiny of the material, I am of the view that no question of law is involved in this second appeal, much less substantial question of law and that there are no grounds to admit the second appeal.

6. For these reasons, second appeal is dismissed at admission stage.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

19th January 2016.

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