

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.525 OF 2012

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 16.11.2011, passed in A.S.No.329 of 2010, by the Principal District Judge, West Godavari at Eluru, whereby and whereunder the learned Principal District Judge dismissed the appeal by confirming the judgment and decree dated 15.09.2010, passed in O.S.No.461 of 2007 by the Additional Senior Civil Judge, Eluru.

The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The brief facts of the case are that the respondent, who is the plaintiff, filed the suit O.S.No.461 of 2007 for recovery of Rs.1,55,559/- together with costs and subsequent interest based on a promissory note dated 22.05.2005. According to the plaintiff, on 22.05.2005 defendant borrowed an amount of Rs.1,05,000/- from his mother D. Lakshmikantam for his business needs and executed a demand promissory note and his mother assigned the said debt to him on 18.06.2005. After the assignment, the plaintiff demanded the defendant to pay the debt amount under the suit promissory note. The defendant failed to pay the same, as such, the plaintiff got issued a legal notice on 08.09.2007 and the defendant received the same and denied the suit transaction. According to the plaintiff, defendant is not entitled for the benefit of Act 4 of 1938 and Act 7 of 1977. Hence the suit.

The appellant, who is the defendant in the suit, filed the written statement and denied the execution of the promissory note dated 22.05.2005 in favour of plaintiff's mother. According to the

defendant, the suit promissory note is fabricated one and he did not borrow any amount from the plaintiff's mother and he did not see the plaintiff at any point of time. He specifically pleaded that the said promissory note is fabricated and manufactured by the plaintiff and finally prayed the Court to dismiss the suit.

Basing on the above pleadings, the trial Court framed four issues. To prove his case, the plaintiff himself got examined as PW.1 and also examined other witnesses as PWs.2 to 4. He further marked Exs.A1 to A4 on his behalf. On behalf of the defendant, DWs.1 to 4 were examined and no documentary evidence got marked. After perusing the evidence on record, the trial Court decreed the suit in favour of the respondent/plaintiff on 15.11.2010. Aggrieved by the judgment and decree of the trial Court, the defendant filed A.S.No.329 of 2010 on the file of the Principal District Judge, West Godavari at Eluru, contending that the trial Court went wrong in appreciating the oral and documentary evidence adduced by the parties. The appellate Court after considering the arguments and evidence on record, dismissed the appeal confirming the judgment and decree of the trial Court and held that Ex.A1-promissory note dated 22.05.2005 and Ex.A2-assignment letter dated 18.06.2005 are genuine and also held that there are no grounds to interfere into the judgment and decree passed by the trial Court.

Aggrieved by the findings of the trial Court as well as the first appellate Court, the defendant filed the present Second Appeal and raised the following substantial questions of law:

- (a) Whether the lower appellate Court is justified in decreeing the suit of the plaintiff, when the defendant specifically denied the execution and the alleged signature on the

promissory note and vakalat are entirely different?

- (b) Whether stamp is necessary or not for the alleged assignment deed dated 18.06.2005 executed by mother of the plaintiff in his favour when it is recited in it that plaintiff paid Rs.50,000/- as consideration?
- (c) Whether both the lower Courts are justified in decreeing the suit when Ex.A1 is dated 22.05.2005, Ex.A2 is dated 18.06.2005, Ex.A3 is dated 08.09.2007 and the evidence of plaintiff is silent with regard to the delay in demanding the defendant, particularly when the creditor died on 09.10.2005?
- (d) Whether the decree and judgment of both the lower Courts are liable to be set aside when they are silent about the demand by the original creditor in her lifetime and the present assignee after her death from 09.10.2005 to 08.09.2007?

The learned counsel for the appellant argued that the appellant has not executed the promissory note in favour of the plaintiff's mother under Ex.A1 and signatures on the pronote and vakalatnamaa are different and there is no proper appreciation of evidence produced by the defendant and prayed the Court to admit the appeal as there are substantial questions of law involved in the appeal and relied upon the case law reported in ***D. Lakshamma***

and others v. Kathi Chinna Narasappa alias @ Chinnudu^[1], wherein it is held at para 6 as follows:

In K. Stibramaniyam v. S. Nagappa, 1986 (1) ALT 32, it is held that where the reasons given by the appellate Judge are perverse and there is no consideration at all in the appeal, it constitutes a substantial question of law within the meaning of Section 100 CPC. Thus, where the first appellate Court had considered the evidence on record by applying its mind independently and considered the reasoning of the trial Court and gave its findings on facts, the same does not deserve to be interfered with by the High Court in second appeal. But if a finding of fact has been recorded by the first appellate Court without considering the entire evidence on record, that finding can be successfully challenged in second appeal because a finding of

fact which is not supported by any evidence can be questioned under Section 100. of the Civil Procedure Code and in that connection it may be said that a decree proceeding on such a finding discloses a substantial defect or error in procedure. This, however, does not mean that wherever the High Court thinks that the evidence accepted by the lower appellate Court would not have been reasonably accepted, the High Court would be justified in interfering with the decision of the lower appellate Court. All that it means is that it should be a case where the evidence, which is accepted by the lower appellate Court, no reasonable person could have accepted and that really amounts to saying that there is no evidence at all. The High Court is also justified in interfering when it is made out that the findings given by the lower appellate Court are vitiated by the non-consideration of the relevant evidence or failed to meet the points raised by the trial Court in appreciating the evidence on record or the approach to decide the case is quite erroneous. The High Court can also interfere when there is perversity in finding of fact or deliberate mistake either in collection or evaluation of evidence or when it is the result of surmises and conjectures.

Notice was ordered before admission. The learned counsel for the respondent/plaintiff argued that by producing the oral evidence of PWs.1 to 4 and documentary proof Exs.A1 & A2, the plaintiff discharged his burden of proving his case. But, the defendant has not placed any cogent material before the trial Court as well as the first appellate Court to prove his case. Further, Exs.A1 & A2 were proved through the evidence of PWs.1 to 4 and burden shifted against the defendant to send Ex.A1 to any hand writing or finger print expert to show that he did not sign Ex.A1 on 22.05.2005 in favour of the plaintiff's mother and the trial Court as well as the first appellate Court carefully examined the evidence on record and decreed the suit of the plaintiff/respondent and the appellant has not made out any substantial question of law in the present case and prayed the Court to dismiss the second appeal at the stage of admission.

Now the point that arose for consideration is whether there is any substantial question of law involved in this appeal?

A perusal of the evidence on record shows that the defendant borrowed an amount of Rs.1,05,000/- on 22.05.2005 and executed a promissory note for his business needs. On 18.06.2005, the plaintiff's mother D.Lakshmikantam assigned the said promissory note in favour of the plaintiff and after that, the plaintiff got issued a legal notice to the defendant demanding the suit claim. But, the defendant denied the execution of the documents and also denied the suit claim. Plaintiff himself examined as PW.1 and got marked Exs.A1 & A2. Ex.A1 is the demand promissory note dated 22.05.2005 and Ex.A2 is the assignment letter dated 18.06.2005 executed by the mother of the plaintiff. As the defendant denied the execution of Exs.A1 & A2, plaintiff got examined the attesor of Ex.A1 as PW.2. PW.2 in his evidence clearly stated that defendant scribed Ex.A1 and attested the same in his presence. The evidence of PWs.1 & 2 proved that Ex.A1 was executed by the defendant in favour of the plaintiff's mother. To prove Ex.A2, plaintiff got examined PWs.3 & 4, who categorically supported the execution of Ex.A2 in favour of plaintiff. Thus, the plaintiff by examining PWs.2 to 4 proved Ex.A1 & A2. The entire case of the defendant is total denial. The evidence of DWs.2 & 3 is not helpful to discard the evidence of PWs.1 to 4 and Exs.A1 & A2. According to the defendant, ExA1 is a fabricated document. The trial Court as well as the appellate Court clearly held that the defendant has not taken any steps to send Ex.A1 promissory note to the hand writing and finger print expert along with admitted signatures for comparison. Thus, both the Courts categorically dealt with the oral and documentary evidence. Further, the case law in ***D.Lakshamma's Case*** (cited supra) relied upon by the appellant/defendant has no application to the present facts of the case. It is the settled principle that the

jurisdiction of the High Court to entertain a Second Appeal under Section 100 of the Civil Procedure Code after the 1976 Amendment is confined only to such appeals as involved a substantial question of law. The existence of a substantial question of law and not a mere question of law is the *sine qua non* for the exercise of the jurisdiction under Section 100 of the Civil Procedure Code. In the present case, both the trial Court as well as the first appellate Court discussed the evidence at length and gave a reasonable finding that the appellant failed to prove his case.

Thus, the findings of both the Courts are completely based on evidence on record and there is no non-application of mind by either Courts in evaluating the evidence adduced by both the parties and both the Courts rightly appreciated the evidence on record and came to a right conclusion that defendant executed Ex.A1 and he is liable to pay the suit claim amount along with interest and costs to the plaintiff. Therefore, I do not find any wrong appreciation of evidence IN the findings given by the trial Court as well as the first appellate Court in their judgments. For these reasons, the substantial questions of law urged on behalf of the appellant/defendant are not tenable and in fact there is no substantial question of law and all the submissions made by the appellant are based on the factual aspects and hence, the Second appeal is liable to be dismissed as devoid of merits at the stage of admission.

Accordingly, the second appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this second appeal shall stand closed.

ANIS, J

Date: 18.04.2016

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[\[1\]](#) 1998 (6) ALD 700