

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A.No.6 of 2000

JUDGMENT :

This appeal, under Section 96 of C.P.C., is preferred by the plaintiff against the judgment and decree dated 03.09.1999, passed in O.S.No.1480 of 1996 by the II Senior Civil Judge, City Civil Court, Hyderabad, dismissing the suit filed by him for the relief of enforcement of Ex.A.1 - Agreement directing the defendant to transfer 10% of the share in the Rice Mill towards adjustment of the loan amount.

2. The appellant herein is plaintiff and the respondent herein is defendant in the suit in O.S.No.1480 of 1996. For the sake of convenience, the parties are referred to as they are arrayed in the suit before the Court below.

3. The basic facts needed for disposal of the present appeal are, that the plaintiff lent a sum of Rs.22,000/- to the defendant. Except Ex.A.2, which is a conditional Sale Agreement, whereunder the defendant acknowledged receipt of the said amount from the plaintiff on 16.03.1994 and, in case of default, the plaintiff was entitled to be in possession of 35% of the defendant's share in M/s. Venkateshwara Rice Mill, situated at Usirikapally Village, Shivampet Mandal, Medak District. Ex.A.1 was in the nature of a bond, which was also impounded and penalty was collected, treating it as

a bond, and it was shown as a receipt dated 13.08.1995 written on a plain paper mentioning therein that the defendant received money for sale of 10% of share in the said Rice Mill and that the defendant would execute the registered Sale Deed in favour of the plaintiff on or before 21.08.1995. The other communication between the plaintiff and the defendant has been in the form of Exs.A.4, A.5 and A.6, the Postal acknowledgements are Exs.A.7 to A.10, and Exs.A.11 and A.12 are letter and reply given by the plaintiff and defendant, respectively, and under Ex.A.12, the defendant admitted that Rs.55,000/- was given as a handloan.

4. The Court below, while advertng to Ex.A.1, recorded a finding that the same cannot be construed as a valid contract between the parties to enforce transfer of 10% of the defendant's share in the Rice Mill and thus, did not agree with the stand of the plaintiff and opined that the remedy available for the plaintiff is only to sue the defendant for recovery of money with agreed rate of interest.

5. That has been one of the reasons for dismissal of the suit, holding that the documents under Exs.A.1 and A.2, on which the plaintiff mainly relied, are not valid under law to enforce any specific obligation on the part of the defendant.

6. The second reason mentioned by the Court below was that the property is situated in Medak District, in which the share of the defendant, to the extent of 10%, was sought by the plaintiff to be specifically enforced and in that view of the matter, Section 16 of C.P.C., would govern the situation and thus, opined that it has no jurisdiction to entertain the suit.

7. It appears that the defendant has not participated in the suit proceedings and, in fact, learned counsel for the respondent – defendant would state that the defendant was set *ex parte* as he did not enter appearance before the Court below.

8. Heard Sri T.V. Rajeevan, learned counsel for the appellant – plaintiff, and Sri A. Satya Prasad, learned counsel for the respondent – defendant.

9. Learned counsel for the plaintiff would submit that the Court below was not right in holding that it has no jurisdiction to entertain the suit, since the suit transaction has taken place at Hyderabad and, therefore, cause of action arises at Hyderabad only.

10. So far as the view expressed by the Court below on Exs.A.1 and A.2 is concerned, learned counsel for the appellant – plaintiff would submit that the Court below was

not right in opining that Exs.A.1 and A.2 cannot be construed as agreement to enforce the obligation cast on the defendant and, in fact, the terms of the agreement would clearly indicate that it can specifically be enforced.

11. A perusal of the judgment of the Court below would show that the Court below, while dismissing the suit, granted liberty to the plaintiff to file a suit against the defendant, if the claim of the plaintiff was found to be in time, holding that the relief for specific performance to enforce Exs.A.1 and A.2 and, as such, it cannot be performed in true spirit and nature of document.

12. When the lower Court records are called for, the Court below has sent a Note-Sheet and the original judgment, indicating in the Index that the documentary evidence under Exs.A.1 to A.12 were destroyed after the period for retention was over.

13. Learned counsel for the appellant – plaintiff expressed his inability to produce Exs.A.1 and A.2 before this Court, on the ground that though, he attempted to secure certified copies, his attempts proved futile. So is the case with the learned counsel for the respondent – defendant. Thus, the documentary evidence is not available for perusal and re-appraisal, in view of the own act of the plaintiff in not

taking back the documents under Exs.A.1 and A.12, despite the decree containing an endorsement stating that, in case the documents were not taken back within the stipulated time for destruction, the documents would be destroyed.

14. What is now available on record is only the judgment and decree rendered by the Court below in the suit. It is clear from the observations made by the Court below that Exs.A.1 and A.2 are treated as bonds, on which penalty was paid, when impounded. The plaintiff, at that point of time, did not raise any objection and kept quiet. In such an event, certainly, the finding recorded by the Court below that Exs.A.1 and A.2 are not valid to enforce any obligation, cannot be faulted.

15. For the aforesaid reasons, there are no merits in the present appeal and the same is liable to be dismissed.

16. Accordingly, the Appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE A. SHANKAR NARAYANA

14.09.2016.

Msr

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