

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

S.A. No. 715 of 2016

JUDGMENT:-

The appellant herein, who is the unsuccessful plaintiff in the suit, has preferred this Second Appeal against the judgment dated 03.11.2015 delivered in A.S. No. 86 of 2014 by XI Additional District and Sessions Judge, Tenali, whereby the Appeal Suit filed by the plaintiff was dismissed confirming the judgment dated 11.10.2012 delivered in O.S.No. 433 of 2011 by the Principal Junior Civil Judge, Tenali.

This Second Appeal is filed raising the following substantial question of law:

“In the absence of any specific plea in the written statement as to the discrepancy with respect to the signatures made by the 1st defendant and the language in which it was signed and in the absence of any plea of forgery whether the Court can itself go into the question when it is admitted that promissory note was prepared by the defendants itself and his signature is not disputed.”

The brief facts of the case are that the appellant herein is the plaintiff and the respondents herein are the defendants. The 2nd defendant is the wife of the 1st defendant. Both the defendants borrowed an amount of Rs.30,000/- from the plaintiff on 15.10.2005 to meet their family expenses and jointly executed suit promissory note in favour of the plaintiff agreeing to repay the same with interest @ 24% per annum

either to the plaintiff or to his order on demand. The promissory note was scribed by the 1st defendant himself with his own handwriting at Tsundur village and he made part payment of Rs.200/- on 14.10.2008 on his behalf and on behalf of his wife – 2nd defendant, and endorsed the same on the back of the promissory note.

Based on the pleadings and the material available on record, the trial Court framed the following issues:

- i) Whether suit promissory note dated 15.10.2005 and part payment endorsement, dated 14.10.2008, are true, valid and binding on the defendants?
- ii) Whether the plaintiff is entitled to any relief as prayed for?
- iii) To what relief?

After considering the oral and documentary evidence, the trial Court opined that the evidence of PWs.1 and 2 is totally inconsistent as to the place of execution and held that they approached the police in connection with some disputes, which creates any amount of doubt that Ex.A1 was executed by the defendants for consideration. The trial Court further held that the signature purportedly signed by the 1st defendant is inconsistent with his signature purportedly signed by the 2nd defendant on Ex.A2 – part payment endorsement and there is no explanation for such discrepancy which itself creates doubt whether it was executed by the 1st defendant. The trial Court relied upon a judgment of this Court reported in 1998(1) ALD 712.

The case of the appellant-plaintiff before the trial Court was that on 15.11.2005, defendant Nos.1 and 2 jointly borrowed an amount of Rs.30,000/- from the plaintiff and executed the suit promissory note on the even date, agreeing to repay the same with interest @ 24% per annum. The appellant himself examined as PW1 and the Court examined one of the attestors of the promissory note as PW2. As per the pleadings, the promissory note was executed at Tsundur. Even in chief-examination of PW1, he deposed that the defendants executed the promissory note in the handwriting of the 1st defendant at Tsundur. Similar is the evidence of PW2 that the defendants jointly executed promissory note – Ex.A1 in favour of the plaintiff in the hand-writing of the 1st defendant at Tsundur agreeing to repay the borrowed amount. However, during the cross-examination, the plaintiff deposed that both the defendants came together for taking the amount, and at the time of execution of Ex.A1, he was residing at Nandulapet, Tenali, and at that time, himself, his wife, both the defendants and his friend V.Srinivas Rao, who is examined as PW2, were present. Similar is the evidence of PW2 that Ex.A1 was executed at the house of the plaintiff on the even date mentioned on it.

The lower appellate Court observed that it is very curious to note that the plaintiff and the defendants went to

the police station in connection with some disputes. It is the evidence of PW1 that since the date of execution of Ex.A1, he has got acquaintance with the Sub-Inspector of Police, Tsundururu namely Nagamalleswara Rao, who retired from service. Accordingly, he denied the suggestion that Ex.A1 was executed at the police station in the presence of the Sub-Inspector of Police. He further deposed that he never called the defendants to the police station.

It is an admitted case that PW2 is not an eye-witness to the part payment endorsement – Ex.A2. He deposed that he was not present when the amount was paid.

Accordingly, the lower appellate Court opined that the evidence of the defendants appears to be inconsistent. The fact that they approached the police station in connection with some disputes is apparent on the face of the record. When the defendants take such specific plea, they should specify the reasons for such dispute. Duty is also cast on the plaintiff to explain the context of approaching the police. The evidence of PW2 is totally inconsistent. In other words, his cross-examination shows that he has not attested either the execution of the promissory note by the defendants or payment of consideration. On the other hand, the pleadings and evidence of PWs.1 and 2 in the chief-examination shows that the promissory note was executed at Tsundururu. The

inconsistency with regard to the place of execution goes to the very root of the case of the plaintiff. No explanation was offered for such discrepancy. Therefore, both the Courts below have rightly dismissed the case of the appellant.

In regard to that the defendants specifically denied the plaint, therefore, the trial Court gave its opinion on assumptions and presumptions. A perusal of the written statement filed by the defendants clearly reveals that they never borrowed any amount much less promissory amount of Rs.30,000/- from the appellant-plaintiff either on 15.10.2005 or any other date. It is further stated that they never executed any promissory note much less the alleged suit promissory note either on 15.10.2005 or on any other date in favour of the plaintiff. Also, it is stated that the 1st defendant never made any part payment of Rs.200/- either on 14.10.2008 or any other date as alleged in the suit. It further specifies that the 1st defendant never signed on the back of the suit promissory note either on his behalf or on behalf of his wife.

For the foregoing reasons, I find no ground whatsoever to interfere with the concurrent findings of fact recorded by the Courts below in its judgments under appeal, nor is there any question of law, much less substantial question of law

involved in the Second Appeal, warranting interference by this Court, in exercise of the jurisdiction under Section 100 C.P.C.

In the result, the second appeal is dismissed. No costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

16.12.2016

bcj

