

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

S.A.No.567 of 2016

ORDER

This Second Appeal is directed against the decree and judgment dated 28.3.2016 passed in A.S.No.81 of 2014 by the Family Court-cum-VIII Additional District Judge, Ongole, whereby and whereunder the learned Judge dismissed the appeal confirming the decree and judgment dated 1.8.2013 passed in O.S.No.252 of 2010 by the Principal Junior Civil Judge, Ongole.

The said suit was filed for recovery of an amount of Rs.95,030/- with subsequent interest at 24% p.a. The case of the plaintiff is that he was doing fertilizer business and the defendant was having a running khatha with him. By the end of March, 2007, the defendant settled his account with the plaintiff and became due to a tune of Rs.55,250/- and executed promissory note on 31.3.2007 for the said amount agreeing to repay the same with interest at 24% p.a. with yearly compoundable interest. In spite of repeated demands, the defendant did not repay the same. Hence, the plaintiff got issued a notice through counsel on 20.02.2008. The said notice was returned as refused. Hence, the suit.

The defendant filed written statement denying the said averments.

The trial Court framed the following issues:

1. Whether the suit pronote is true, valid and binding on the defendant?
2. Whether the plaintiff firm is entitled for the suit amount?
3. To what relief?

4. Whether the valuation para is correct?

5. Whether the rate of interest claimed by the plaintiff is excessive and abnormal?

During the trial, PWs.1 to 3 were examined and Exs.A1 to A9 were marked on behalf of the plaintiff. The defendant examined himself as DW1 and no documents were marked.

The trial Court held that Ex.A2 promissory note is proved to be true, valid and binding on the defendant and accordingly, decreed the suit for an amount of Rs.95,030/- with subsequent interest at 24% p.a. from the date of suit till the date of decree and thereafter @ 6% p.a. from the date of decree till the date of realization on the principal amount of Rs.55,250/-, vide judgment dated 1.8.2013. Against the said judgment, the defendant preferred A.S.No.81 of 2014 before the lower appellate Court, which framed the following points.

1. Whether the plaintiff/respondent proved the business transaction between himself and the defendant/appellant and whether the promissory note executed by the defendant/appellant in favour of the plaintiff/respondent is true, valid and binding and whether the plaintiff/respondent proved the acknowledgement of the appellant/defendant on Ex.A1 true copy of account register?

2. Whether the defendant/appellant is entitled to seek the relief of setting aside the judgment and decree passed by the learned Principal Junior Civil Judge at Ongole, decreeing the suit in O.S.No.252 of 2010?

3. Whether the plaintiff/respondent is entitled to recover the suit claim as prayed for? and

4. To what relief?

The lower appellate Court came to the conclusion that the defendant was having a running khata with the plaintiff and that there was business transaction between the plaintiff and the

defendant and accordingly, it confirmed the judgment of the trial Court vide judgment and decree dated 28.3.2016 by dismissing the appeal preferred by the defendant.

In view of the concurrent findings of fact recorded by the trial Court as well as by the lower appellate Court, this Court finds no substantial question of law arising in the second appeal warranting interference of this Court.

Accordingly, the Second Appeal is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

11th November, 2016
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