HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No. 831 of 2003

ORDER:

This is an appeal filed against the judgment and decree dated 24.07.2002 passed by the learned Senior Civil Judge, Tenali in O.S.No. 66 of 1997.

As this is a first appeal, the parties are referred to as plaintiff and defendant.

The unsuccessful defendant in the suit is the appellant before this Court. The brief facts of the case are that:

a) The suit is for recovery of Rs.1,50,201/- being the amount of a principal and interest due on a pronote for Rs.1,00,000/- executed by the defendant in favour of plaintiff on 19.04.95, for subsequent interest at 24% p.a and for costs.

b) The averments of the plaint are as follows: On 19.4.95 the defendant borrowed an amount of Rs.1,00,000/- from the plaintiff for the purpose of his business and executed a promissory note on the even date in favour of the plaintiff with a stipulation to repay the same with interest at 24% p.a. either to the plaintiff or to his order on demand. Inspite of repeated demands made by the plaintiff personally and through mediators the defendant postponed to pay the amount on some pretext or other. The plaintiff reliably came to know that the defendant is trying to alienate his property to Suguna Veeraiah or other with the malicious intention of defeating the creditors. The plaintiff therefore got issued legal notice to the defendant and also Sugana Veeriah on 1.5.1997. The registered notice is issued by the defendant returned with an endorsement that the defendant is not in village. The registered notice issued to Suguna Veeriah served upon him 6.5.1997 and he did not to choose to give any reply. If the defendant succeeds in his attempts to alienate the property or to conceal the property the plaintiff will be put to great loss and hardship. Hence this suit.

c) The defendant filed a written statement denying the allegations in the plaint and submitted that the suit promissory note is a forged one. There is no necessity to the defendant to borrow the suit amount from the plaintiff and the plaintiff has no capacity to lend the amount. Due to difference between the plaintiff and defendant, the suit pronote was brought into existence by the plaintiff with the assistance of attestOrs or his friends. The defendant is a never trying to alienate the property and never concealing any property and there is no necessity at all for him to do so. The plaintiff is not entitled for the suit amount as the suit pronote is a rank forgery and the suit is not maintainable at law. Hence he prays the Court to dismiss the suit with exemplary costs.

d) For the above pleadings, the following issues have been settled for trial:

(1) Whether the suit pronote is true, valid and binding on the defendant?

(2) Whether the plaintiff is entitled for the suit claim as prayed for?

(3) To what relief?”

On the basis of the issues framed, the parties went to trial. To prove his case, plaintiff examined himself as P.W.1 and also examined the attestor of the promissory note and marked Ex.A.1-promissory note and Ex.A.2-lawyer’s notice issued to the defendant. The suit was decreed in favour of the plaintiff. The defendant has therefore filed the present appeal.

Heard Sri N. Sriram Murthy for appellant and Sri M. Jeevan Reddy for respondent.

The evidence in the suit is to the following effect: - the plaintiff, in his deposition as PW.1, speaks about the execution of the promissory note and states that the defendant himself is the scribe of the promissory note. He states that R.Satyanarayana and G.Sambasiva Rao are the attestors of Ex.A1-promissory note. In the cross-examination, the plaintiff deposed that he knew the defendants since 20 years and the defendant runs Sri Lakshmi Ganapathi Finance and Pan Brokers. Suggestions were put to the plaintiff that the promissory note was not executed by D.1 etc., but nothing much is elicited in the cross-examination.

P.W.2 is the attestor of Ex.A.1-promissory note. He speaks of the fact that himself and R.Satyanarayana are the two attestors and he also states that the defendant borrowed an amount of Rs.1,00,000/- from the plaintiff. He clearly states that defendants scribed Ex.A.1-pronote and thereafter he and other attestors signed. It is elicited in the cross-examination that the plaintiff is the elder brother of the witness PW.2. Suggestions are put about the execution, but nothing substantial is elicited in the cross- examination.

The defendant examined himself as DW.1. He states that in Laxmi Finance Company, he was a partner along with the plaintiff and because of the closure of the said finance company certain disputes arose between the parties. In his chief-examination, he states that he is an income tax assessee and that he is entitled to scale down of interest. In the cross-examination, he denies that he borrowed Rs.1,00,000/-, but at the same time, he says in his cross-examination that on 17.7.2002, he agreed to repay the amount of Rs.1,00,000/- with subsequent interest @ 24% p.a. and again he denies that he executed Ex.A.1 and that he received the sale consideration.

The first point urged by the learned counsel for the appellant is that the defendant has taken a plea that the demand promissory note is forged. He states that the defendant filed an application to send the signatures to an expert and that the promissory note was in fact send to an expert who clearly came to a conclusion that the signature on Ex.A.1 belongs to the defendant. He argued that although the expert was not examined in open Court and the said report was not marked as exhibit; the lower Court wrongly relied upon the said report of the expert in page 9 of the judgment to come to a conclusion that the signature of Ex.A-1 belongs to the defendant.

On the contrary, learned counsel for the respondent argued that the said report can be considered since it is a part of Court record and it clearly proves that Ex.A1-pronote was executed by the defendant himself.

Learned counsel for the appellant is right in his contention. Unless and until the report of the handwriting expert is marked in evidence, it cannot be considered as a piece of evidence. As rightly pointed out by the learned counsel, it is just an opinion, which needs to be proved as required by law by examining the author of the report. In this case, admittedly the expert was not examined nor was the report marked. Therefore, the same cannot be considered as a piece of evidence or as a part of the evidence in this suit. Hence, the lower Court was wrong in relying on the said report. Even if the said report is not a part of the record, the fact remains that the burden to prove the forgery of the signature etc., lies upon the defendant, who has denied his signature. The defendant has not introduced any evidence to show that the signature on the said document is a forgery. Therefore, in the absence of any evidence either oral or documentary, the plea that the signature of the defendant on the demand promissory note is a forgery is not proved.

The plaintiff on the other hand discharged his burden and proved the execution of Ex.A.1 and the payment under the promissory note. The same is also supported by the evidence of PW.2- the attestor.

Learned counsel for the appellant argued that PW.2 is not a reliable witness, because admittedly he is brother of PW.1. That is by itself cannot be a ground to reject the testimony of PW.2. It is common place when documents are being executed often relatives and the near and dear are called to attest the same. This is the normal course of human behaviour. Therefore, the mere fact that PW.2 is the brother of plaintiff-PW.1 is not by itself a ground to reject his testimony in toto. Nothing was also elicited in the cross-examination of PW.2 so as to discredit his testimony.

For both these reasons, this Court holds that the execution of the promissory note, the transfer of the payment of Rs.1,00,000/- etc., are proved.

The learned counsel for the appellant argued that the lower Court ought to have scaled down the interest as the appellant is a small farmer and that the Court erred in stating in paragraph 11 that no document is marked to prove that DW.1/defendant is an agriculturist. The defendant filed and marked Ex.B.1, which is a pattadar passbook. This pattadar pass book shows that the defendant holds Ac.3.53 cents of land in his village. He states that therefore, he is entitled to the scaling down of the interest.

On the contrary, the learned counsel for the respondent submits that (a) the defendant was carrying on business in finance and pawnbroker and the same is admitted by the defendant also. (b) that from a reading of the promissory note, it is clear that the defendant borrowed the money for his business purpose only. (c) that the defendant admits in his cross-examination that he is an income tax assessee in his chief-examination itself. (d) in his cross-examination, he admitted that he agreed to repay the amount of Rs.1,00,000/- with subsequent interest at 24% per annum.

For all these reasons, the learned counsel for the respondent submits that the plaintiff is not entitled to scaling down of interest.

Learned counsel for the appellant also relied upon judgment reported in ***Sattaru Narayanappalanaidu v. Tadela Latchanna***[1], which is under the Madras Agriculturists' Debt Relief Act, 1938. The applicability of the said Act to the present suit and the facts herein are not clearly established. Even otherwise, the learned counsel for the respondent submits that mere holding of land is not enough and the person claiming of benefit of relief under Debt Relief Law should prove that he was actually carrying on agricultural operations in the said land. He points out that even a rich industrialist living in a city can own agricultural land and mere fact that agricultural land is owned would not make an industrialist an agriculturist. He also points out

[1] AIR 1971 (AP) 174

that the entries in pages 2 and 3 of Ex.B.1 are not signed by anybody and all the columns in the said book are blank.

There is considerable force in the submissions of the learned counsel for the respondent on this issue and therefore, this Court holds that the mere fact that there are certain lands standing in the name of the defendant as per the pattadars passbook will not make him an "agriculturist", *per se,* enabling him to seek scaling down of interest. In this case, the defendant as DW.1 admitted that he is an income tax assessee and he also admitted that he agreed to repay the amount with subsequent interest of 24% p.a. This Court is of the opinion that the defendant has not proved that he is an agriculturist and is dependent upon agriculture.

Scaling down of interest is not a matter of right but is dependent upon pleading and adequate evidence, the same is lacking in this case. This Court is, therefore, of the opinion that the decree and judgment of the lower Court need not be set aside and no infirmity is pointed out either from the evidence or by due to any law on the subject.

Hence, the appeal is dismissed. In the circumstances, no costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date:09.11.2017
KLP