

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Second Appeal No.763 of 2017

Date: 04.08.2017

Between:

Surla Narayana Rao and 3 others

... Appellants

and

M/s.Kapil Chit Fund (P) Ltd.,
Visakhapatnam

...Respondent

Counsel for the Appellants: Mr.Taddi Nageswara Rao

The Court made the following:



Judgment:

This Second Appeal arises out of Judgment and Decree, dated 19.03.2014, in AS.No.77 of 2010 on the file of the I Additional District Judge, Visakhapatnam, whereby he has confirmed the Judgment and Decree, dated 10-11-2009, in OS.No.1181 of 2007 on the file of the VI Additional Senior Civil Judge, Visakhapatnam.

I have heard Mr.Taddi Nageswara Rao, learned Counsel for the appellants, and perused the record.

The respondent filed the aforementioned suit against the appellants for recovery of a sum of Rs.1,72,414/- along with interest. The respondent pleaded that it is a Company carrying on business in chit fund; that in the course of its business, it conducts chits; that appellant No.1 has joined in chit No.VNL02G/30 of Rs.2 lakhs payable @ Rs.5,000/- per month in 40 installments; that after payment of certain installments, appellant No.1 has participated in the bid, got the same knocked down in his favour by forgoing Rs.80,000/- and received the chit amount by furnishing guarantees of appellant Nos.2 to 4; that thereafter, appellant

No.1 has committed default in payment of the installments; and that the appellants failed to repay the dues despite legal notice issued by the respondent. Therefore, the respondent filed the aforementioned suit for recovery of money.

The appellants have filed separate written statements. In the written statement filed by appellant No.1, he has averred that he has paid a sum of Rs.30,544/- by adjusting the same from another chit and that the same was not deducted from the suit amount. All the appellants have, accordingly, pleaded that as the claim for Rs.1,72,414/- made by the respondent was incorrect, the notice issued by the respondent itself is defective and hence, the suit is liable to be dismissed.

Considering the respective pleadings of the parties, the trial Court has framed the following issues:

- “1. Whether plaintiff is entitled to claim the suit amount as prayed for ?
2. To what relief ?”

In support of the case of the respondent/plaintiff, it's foreman *viz.*, M.Kumarraju was examined as PW.1 and

Exs.A.1 to A.15 were marked. Appellant No.1 was examined as DW.1 and got Exs.B.1 and B.2 marked.

In its judgment, the trial Court has reframed the following points:

- “1. Whether the amount of Rs.30,544/- which was claimed by the plaintiff in the suit is liable to be deducted from the suit amount or not ?
2. Whether the suit as framed is defective and liable to be dismissed or not ?”

On point No.1, the trial Court has held in favour of the appellants. However, it has further held that even if the suit was filed for a sum, which was found to be incorrect, the same does not constitute defect in the suit. Accordingly, the trial Court after deducting the sum of Rs.30,544/- from the suit claim partly decreed the suit for a sum of Rs.1,41,870/- with proportionate costs and subsequent interest @ 12% p.a., from the date of the suit till the date of realization. This order was challenged in AS.No.77 of 2010, which, as noted above, was dismissed by the lower appellate Court.

At the hearing, the only submission advanced by the learned Counsel for the appellants is that as the suit claim

was found partly incorrect, the suit itself must be considered as defective.

I am afraid I cannot accept the above submission. As rightly held by both the Courts below concurrently, mere claim for an incorrect sum does not make the suit defective. It is quite common that the party may claim higher amount than what he may be duly entitled to recover. But, however, the suit to the extent the claim is proved will be decreed. This is what the trial Court has precisely done. For a suit to be defective, it must suffer from legal or procedural defects such as jurisdiction, cause of action, improper valuation, payment of deficit court fee *etc.* A suit filed with a claim for inaccurate sum would not fall in the category of defective suits.

For the afore-mentioned reasons, I do not find any merit in this Second Appeal and the same is, accordingly, dismissed.

Dt: 4th August, 2017
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(C.V.Nagarjuna Reddy, J)

