

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.404 of 2013

JUDGMENT :

Heard learned counsel appearing for appellant and having perused the judgment, this court is of the view that the Second Appeal can be disposed of at the stage of admission as apparently there are no substantial questions of law involved in this appeal.

2. Respondent/plaintiff filed suit O.S.No.114 of 2006 on the file of Junior Civil Judge, Tiruvuru against appellant/defendant for money decree. His case was that the defendant borrowed Rs. 50,000/- from him and executed pro-note dated 28.3.2003 agreeing to repay the loan with interest at the rate of 18% per annum. Later the defendant failed to repay the loan and hence he filed the suit. The defendant contested the suit on the plea that Ex. A1 promissory note was executed by him in a different context. His case was that she sold the land to plaintiff under Ex. B-1 sale deed dated 3.3.2003. There was a crop loan in respect of the said land extended by Andhra Bank, as such, the defendant as a security for the said loan executed pro-note in favour of the plaintiff but he has not executed the same by receiving the amount of Rs. 50,000/- as stated therein. During trial, plaintiff was examined as PW-1 and Exs. A1 to A3

were marked. Defendant was examined as DW-1 and one M. Kesava Rao was examined as DW-2 and marked Ex.B1- certified copy of sale deed dated 3.3.2003.

3. Perusal of the decree and judgment of the trial Court would show that the trial Court opined that the burden is on the defendant to establish that the pro-note was executed by him only as a security for crop loan in respect of land sold by him to the plaintiff and not received any loan amount from the plaintiff. The trial Court further observed that to discharge the said burden, no doubt, the defendant examined DW-2, who deposed that the suit promissory note was executed only as a security to discharge the bank loan. The trial Court further noticed that DW-2 during the cross-examination admitted that he was not present at the time of execution of Ex.A1 promissory note. The trial Court then entertained a doubt as to when he was not present at the crucial time of execution of the pro-note, the question of his knowing about the background and the purpose of its execution does not arise. Hence, the trial Court discarded the evidence of DW-2 and ultimately decreed the suit in favour of plaintiff. The defendant having been aggrieved filed A.S.No. 17 of 2011 on the file of Senior Civil Judge, Nuzvid. The judgment of the first appellate Court would show that the said Court also agreed with the

findings arrived at by the trial Court and accordingly dismissed the appeal. Hence the Second Appeal.

4. Perusal of the grounds of appeal would show that the appellant tried to project one substantial question of law to the effect that the lower appellate Court failed to see that Section 118 of Negotiable Instruments Act was a rebuttable presumption. Another question is also framed to the effect whether any consideration was passed to the appellant/defendant under Ex. A1 and whether the Court below erred in not framing the issue that Ex. A1 is supported by consideration or not.

5. It must be said that though these questions are apparently cited as substantial questions of law, but do not constitute as such, having regard to the factual background of the case. It can be seen that the defendant admitted the execution of the suit pro-note but his case was that it was executed only as a security for crop loan extended by Andhra Bank in respect of the land sold to the plaintiff. Therefore, burden was on him to establish that the loan amount indeed, was not received by him and it was executed only for the sake of security. Though DW-2 was examined by him, the trial Court and the first appellate Court rightly rejected the said evidence in view of ineffectiveness of the said evidence. As such, there is no case for the defendant to establish that the suit pro-note was only for

security. As having been failed to discharge his burden, now appellant/defendant cannot raise the same question under the guise of a substantial question of law.

6. Having found no merits in the appeal, the Second Appeal is dismissed at the admission stage. No costs. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 04.09.2017
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