

OTHE HON'BLE SRI JUSTICE A.V.SESHA SAI

APPEAL SUIT No.366 of 2005

JUDGMENT:

The defendant in O.S.No.52 of 2001 on the file of the Senior Civil Judge, Karimnagar is the appellant in the present Appeal Suit preferred under Section 96 of the Code of Civil Procedure (for brevity, 'CPC').

This Appeal Suit challenges the judgment and decree, dated 23.11.2004, passed by the learned Senior Civil Judge, Karimnagar in the said suit instituted by the respondent herein for recovery of a sum of Rs.3,10,000/- on the foot of Exs.A1 to A3-promissory notes, dated 19.02.1999, with subsequent interest and costs. As mentioned supra, on the foot of Exs.A1 to A3-promissory notes, the respondent-plaintiff instituted the suit contending, *inter alia*, that the defendant-appellant herein borrowed an amount of Rs.2,50,000/- for construction of a house at Seetharampur village, while agreeing to repay the same with interest @ 12% p.a. Exs.A1 to A3, dated 19.02.1999, are for Rs.1,50,000/-, Rs.50,000/- and Rs.50,000/- respectively. According to the plaintiff-respondent herein, despite legal notice got issued by him, the appellant-defendant herein failed to pay the amount covered by the promissory notes. In the above background, the respondent herein instituted the said suit.

The appellant herein filed written statement denying the very execution of Exs.A1 to A3-promissory notes while pleading that the plaintiff advanced a sum of Rs.50,000/- on 12.04.1996 by obtaining signature of the defendant on blank non-judicial stamp

paper worth Rs.50/- and that, after ten to twelve months thereafter, plaintiff again came to the defendant and asked to put his signatures on three non-judicial stamp papers worth Rs.50/- each by stating that earlier non-judicial stamp papers were lost. The defendant further pleaded that without suspecting the *bonafides* of the plaintiff, the defendant affixed his signatures on three non-judicial stamp papers and subsequently he came to know that the said non-judicial stamp papers were converted into as loan bonds and simple mortgage bonds for different amounts.

The defendant further averred in the written statement that he filed a civil suit on 18.02.1999 and obtained injunction restraining the plaintiff in the present suit from interfering with his possession and enjoyment in respect of his house property, as such, the question of approaching the plaintiff on 19.02.1999 and obtaining loan of Rs.2,50,000/- would never arise. Eventually, the defendant prayed for dismissal of the suit.

On the basis of the pleadings available, the learned Senior Civil Judge framed the following issues for trial:

1. Whether the blank papers theory set up by the defendant is true?
2. Whether the defendant borrowed Rs.50,000/- only?
3. Whether the plaintiff is entitled to the suit claim?
4. To what relief?

During the course of trial, apart from examining himself as P.W.1, the plaintiff-respondent herein examined P.Ws.2 and 3-attestors of Exs.A1 to A3-promissory notes and marked Exs.A1 to A7. The defendant examined himself as D.W.1 and got marked Exs.B1 to B4-documents.

The learned Senior Civil Judge decreed the suit on 23.11.2004 for a sum of Rs.3,10,000/- with costs and subsequent interest @ 12% p.a. from the date of the suit till the date of decree and, thereafter, at the rate of 6% p.a. till the date of realisation on the principal amount of Rs.2,50,000/-.

The present Appeal Suit assails the validity and the legal sustainability of the said judgment and decree.

Heard Sri N.Ashok Kumar, learned counsel for the defendant-appellant, and Sri D.Bhaskar Reddy, learned counsel for the plaintiff-respondent, apart from perusing the material available before this Court.

It is contended by the learned counsel for the appellant that the judgment rendered by the learned Senior Civil Judge is erroneous, contrary to law and in total ignorance of the material available on record. It is the further submission of the learned counsel that, though the defendant-appellant herein categorically deposed in his evidence that he had no acquaintance with P.Ws.2 and 3 and, though the defendant denied the very execution of Exs.A1 to A3, the plaintiff did not make any endeavour to file an application under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act') to prove the said document, as such, the Court below ought not to have decreed the suit. It is the further contention of the learned counsel for the appellant that on 18.02.1999 the defendant-appellant herein instituted O.S.No.67 of 1999, praying for injunction against the plaintiff in the present suit when he was interfering with the possession and enjoyment in respect of the house property and in I.A.No.279 of 1999 an order of

injunction was passed on 18.02.1999, as such, the question of approaching the plaintiff in the present suit and execution of Exs.A1 to A3 on 19.02.1999 would not arise.

Per contra, it is submitted by the learned counsel for the respondent-plaintiff that there is no infirmity in the impugned judgment and, only after elaborately considering the oral and documentary evidence available on record, the learned Senior Civil Judge decreed the suit. It is the further submission of the learned counsel that the institution of O.S.No.67 of 1999 by the defendant and the injunction granted therein would not have any effect on the adjudication of the present issue on hand. It is further contended that, by examining P.Ws.2 and 3, the plaintiff-respondent herein proved the execution of the said documents and having kept quiet and having failed to file any application under Section 45 of the Act, it is not open for the defendant-appellant herein to advance the contention that burden lies on the plaintiff in the suit to prove the document by sending the same to the expert.

In the above background, now the points that arise for consideration of this Court in the present Appeal Suit are as under:

1. Whether the plaintiff-respondent herein proved the execution of Exs.A1 to 3 by the defendant-appellant herein?
2. Whether the learned Senior Civil Judge correctly appreciated the oral and documentary evidence available on record?
3. Whether the judgment rendered by the learned Senior Civil Judge warrants any interference of this Court under Section 96 CPC?

Issue Nos.1 to 3:

The case of the plaintiff-respondent herein is that by executing Exs.A1 to A3-promissory notes, dated 19.02.1999, the defendant-appellant herein borrowed a sum of Rs.2,50,000/- agreeing to repay the same with interest @ 12% p.a. Prior to the institution of the suit, the plaintiff got issued Exs.A4 and A5- notices and, in response to the same, the defendant got issued a reply denying the entire loan transaction and the very execution of Exs.A1 to A3-promissory notes. The fact remains that the defendant admitted the receipt of Rs.50,000/- from the plaintiff on 12.04.1996. The defendant also contended, as mentioned supra, that the plaintiff obtained blank non-judicial stamp papers from him. In the written statement also, the defendant categorically denied the very execution of Exs.A1 to A3-promissory notes on 19.02.1999.

In order to substantiate his case, the plaintiff-respondent herein, apart from examining himself as P.W.1, also examined P.Ws.2 and 3-attestors of Exs.A1 to A3-promissory notes. The evidence of P.Ws.2 and 3 demonstrates the execution of Exs.A1 to A3-promissory notes by the defendant in their presence, but nothing could be elicited from P.Ws.2 and 3 to discredit their evidence. When the plaintiff examined P.Ws.2 and 3-attestors of the subject documents, who deposed categorically in favour of the plaintiff, in the considered opinion of this Court, the burden shifts on to the defendant to disprove the same. Admittedly, no steps were taken by the defendant in the direction of sending Exs.A1 to A3-promissory notes to the expert for comparison which is fatal to the case of the defendant. Admittedly, except the personal testimony of

the defendant as D.W.1, no other witness was examined by the defendant to substantiate his case. Therefore, it can be safely concluded that the plaintiff could prove the due execution of Exs.A1 to A3-promissory notes by the defendant.

Yet another contention raised by the learned counsel for the appellant-defendant is that, in view of the institution of O.S.No.67 of 1999 on 18.02.1999 and the temporary injunction granted, the question of approaching the plaintiff for borrowing the amounts and execution of Exs.A1 to A3 would not arise. As rightly observed by the Court below no evidence is available on record to show that the interim injunction granted on 18.02.1999 in I.A.No.279 of 1999 in O.S.No.67 of 1999 was received by the plaintiff in the present suit. The non-mentioning of the presence of Exs.A1 to A3-promissory notes in the written statement filed on behalf of the defendant in O.S.No.67 of 1999 (plaintiff in the present case), in the considered opinion of this Court, would not be fatal to the case of the plaintiff, since he proved the execution of Exs.A1 to A3-promissory notes by examining P.Ws.2 and 3.

A perusal of the impugned judgment reveals, in clear and vivid terms, that the learned Senior Civil Judge thoroughly and meticulously considered the oral and documentary evidence available on record and arrived at the conclusions in favour of the plaintiff and decreed the suit as prayed for. In the definite opinion of this Court, the said well-articulated judgment, rendered by the learned Senior Civil Judge, does not warrant any interference of this Court under Section 96 CPC. Accordingly, all the three issues

are answered in favour of the plaintiff-respondent herein and against the defendant-appellant herein.

For the aforesaid reasons, the Appeal Suit is dismissed. As a sequel thereto, miscellaneous Petitions pending, if any, in this Appeal Suit, shall stand closed. There shall be no order as to costs.

28th November, 2017
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A.V.SESHA SAI,J

