

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.318 of 2017

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree dt.17.01.2017 in AS.No.53 of 2012 of the IX Additional District Judge, West Godavari confirming the judgment and decree dt.24.06.2010 in OS.No.854 of 2008 of the Junior Civil Judge, Nidadavole.

2. The appellant is the defendant in the suit. The respondent filed the said suit for recovery of money against the appellant on the basis of a promissory note allegedly executed by the appellant in his favour for a sum of Rs.40,000/- on 27.06.2003 repayable with interest @ 24% per annum.

3. The respondent alleged that having executed the promissory note, appellant did not make payment, even though legal notice/Ex.A2 was issued by him on 18.06.2005.

4. The appellant denied that he borrowed any amount and contended that he did not execute the promissory note and that it is a forged one. Alternatively, he also pleaded that the respondent had no capacity to lend the amount and that there was a material alteration of the year in the second line in the suit promissory note.

5. The trial Court framed the following issues:

“1. Whether the suit promissory note is true, valid and binding on the defendant?

2. Whether plaintiff is entitled to recover the suit amount from defendant?
3. To what relief?"

6 The respondent examined PWs. 1 to 3 and marked Exs.A1 to A3. The appellant examined himself as DW1.

7. By judgment and decree dt.24.06.2010 the trial Court decreed the suit. It held that the suit promissory note was not a forged document and it was true, valid and binding on the appellant. It compared the signature of the appellant on the suit promissory note with his admitted signatures on the written statement and vakalat and held that the style of hand writing is similar. It also rejected the plea of material alteration.

8. Assailing the same, the appellant filed A.S.No.53 of 2012 before the IX Additional District Judge, West Godavari at Kovvur.

9. On 17.01.2017 the said appeal was dismissed. The lower Appellate Court held that the respondent had financial capacity to lend the amount since there were prior loan transactions between the appellant and the respondent; the evidence of the witnesses adduced by the respondent proved the execution of suit promissory note by the appellant; consequently the presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short 'the Act') would come into operation in favour of the respondent; and that the burden shifts to the appellant to show that he did not borrow the amount and that

he did not execute the suit promissory note. It held that the appellant failed to discharge his burden, since the appellant did not take steps to send Ex.A1 to a hand writing expert for opinion. It held that the plea about material alteration is not available to the appellant since the original plea was complete denial of execution of promissory note and that both the defences are mutually destructive. It also opined that there is in fact no material alteration on examination of the promissory note.

10. Assailing the same, this Second Appeal is filed.

11. Counsel for the appellant sought to contend that the lower Appellate Court did not note that the presumption under Section 118 of the Act is a rebuttable presumption and it also did not give any finding as to whether any consideration passed to the appellant under Ex.A1.

12. These contentions are without any merit, because the lower Appellate Court had dealt with the presumption under Section 118 of the Act in para 8(iii) of the judgment. Once the execution of the promissory note by the appellant was found to be proved, the presumption of passing consideration there under automatically arises. Though the said presumption is rebuttable, the appellant did not prove the plea of forgery or the plea of material alteration, which is inconsistent with the plea of forgery.

13. I therefore did not find any substantial question of law arising for consideration in this Second Appeal and it is accordingly dismissed. No costs.

14. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S.RAMACHANDRA RAO, J

18th August, 2017.

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