

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

SECOND APPEAL.No.493 OF 2017

ORDER:

Plaintiff in O.S.No.144 of 2004 on the file of the Court of the Junior Civil Judge, Tadipatri, is appellant in the present Second Appeal filed under Section 100 of the Code of Civil Procedure.

2. This Second Appeal assails the judgment and decree dated 09.09.2010 passed by the Court of the Senior Civil Judge, Gooty allowing the Appeal Suit No.5 of 2009 whereby and where under, the learned Senior Civil Judge had set aside the judgment and decree passed by the Court of the Junior Civil Judge, Tadipatri in O.S.No.144 of 2004.

3. Heard the learned counsel for the petitioner, Sri K.Maheswar Rao and Sri Resu Mahender Reddy, learned counsel for the respondents.

4. The appellant herein instituted O.S.No.144 of 2004 for recovery of a sum of Rs.54,764/- on the foot of a promissory note, against the respondents, said to have been executed by one late Sri G.Narayan Reddy, father of the respondents 2 to 4 herein. The case of the plaintiff/appellant herein is that the father of defendants/respondents 2 to 4 borrowed a sum of Rs.42,000/- by executing a promissory note, agreeing to repay the same with interest @ 24%. It is his further case that the 1st defendant paid Rs.50/- on 15.06.2000 and Rs.17,000/- on

23.04.2001 vide Exs.A2 and A3 and endorsements on the reverse side of Ex.A1-promissory note.

5. The case of the respondents/defendants is that the father of the defendants 2 to 4 neither borrowed the said amount nor he made any such endorsements (Exs.A2 and A3) on the reverse side of Ex.A1-promissory note.

6. In support of his case, the plaintiff examined himself as P.W1 and also examined P.W2 and marked Exs.A1 to A3 whereas on defendants' side, the 4th defendant was examined as D.W1.

7. The trial Court framed the following issues:

- (1) Whether the plaintiff is entitled to recover the suit amount?
- (2) Whether the 2nd endorsement made on the reverse of the promissory note belongs to the defendant?
- (3) Whether there are any material alterations in respect of date on the reverse of the pronote?
- (4) To what relief?

8. The learned Junior Civil Judge, Tadipatri decreed the suit on 12.12.2008, obviously believing Ex.A3 endorsement said to have made by father of the defendants 2 to 4 on 23.04.2001.

9. The defendants/respondents herein preferred the Appeal Suit No.5 of 2009 on the file of the Court of Senior Civil Judge, Gooty.

10. The learned Senior Civil Judge framed the following points for consideration:

- (1) Whether the plaintiff is entitled to recover the suit claim from the defendants, who are legal heirs of Late Narayana Reddy?
- (2) Whether the appellants/defendants are entitled for setting aside the judgment and decree made in O.S.No.144/04 on the file of J.C.J Court, Tadipatri, dated 12.12.2008?

11. The lower Appellate Court by way of judgment and decree dated 09.09.2010 allowed the appeal suit, dismissing O.S.No.144 of 2004 filed by the plaintiff/appellant herein.

12. Challenging the same, the present Second Appeal is filed.

13. According to the learned counsel for the petitioner, the judgment rendered by the lower appellate Court, reversing the well considered judgment of the trial Court, is erroneous and contrary to law and evidence available on record. It is the further submission of the learned counsel that the lower appellate Court did not properly consider the effect of Section 87 of the Negotiable Instruments Act, 1881 (for short 'the Act'). It is the further submission of the learned counsel that the learned Senior Civil Judge ought not to have reversed the findings of the trial Court without assigning any cogent and convincing reasons.

14. Per contra, it is contended by the learned counsel for the respondents that there is no error in the judgment rendered by

the lower Appellate Court and that there is absolutely no question of law much less substantial question of law in the case of the appellant herein and in the absence of the same, invocation of jurisdiction of this Court under Section 100 of Code of Civil Procedure is impermissible. It is also the submission of the learned counsel for the respondents that since the lower Appellate Court elaborately and extensively considered the entire material available on record, the present Second Appeal is liable to be dismissed.

15. In the above background, now the issues for consideration under Section 100 of Code of Civil Procedure are:

- (1) Whether there are any substantial questions of law in the present Second Appeal, warranting interference of this Court under Section 100 of the Code of Civil Procedure?
- (2) Whether the judgment of the lower appellate Court is in accordance with provisions of Section 87 of the Negotiable Instruments Act, 1881?
- (3) Whether the judgment rendered by the lower appellate Court, warrants any interference of this Court under Section 100 of the Code of Civil Procedure?

16. The information available before this Court reveals that the entire case revolves round Ex.A3 Endorsement dated 23.04.2001 said to have been made by the father of the defendants 2 to 4/respondents herein. The trial Court, while dealing with Ex.A3 Endorsement, recorded the finding that the

same was made by the deceased 1st defendant by putting the date and the deceased defendant himself altered the year 2000 as 2001. While holding so in favour of the plaintiff, the trial Court decreed the suit. The learned appellate Judge at para 10 of the judgment in the Appeal Suit categorically dealt with the said Ex.A3 endorsement, obviously, keeping in view the provisions of Section 87 of the Negotiable Instruments Act, 1881. The copy of Ex.A1-promisory note, containing Ex.A2 and A3 endorsement on its reverse side has been placed on record during the course of hearing. Admittedly, Ex.A3 endorsement contains material alterations in respect of the year and it is also clear from the said endorsement that the pen used for making the rest of the endorsement was different from the pen used for putting the date and month also. Obviously, keeping in view of the same, the learned appellate Judge declined to believe Ex.A3 endorsement.

17. In the considered opinion of this Court, the said finding of the lower appellate Judge, is a reasoned one and it does not warrant any interference under Section 100 of the Code of Civil Procedure. It is also required to be noted that as per Section 87 of the Negotiable Instruments Act, 1881 any material alteration of a Negotiable Instrument renders the same void as against any one who is a party there to at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

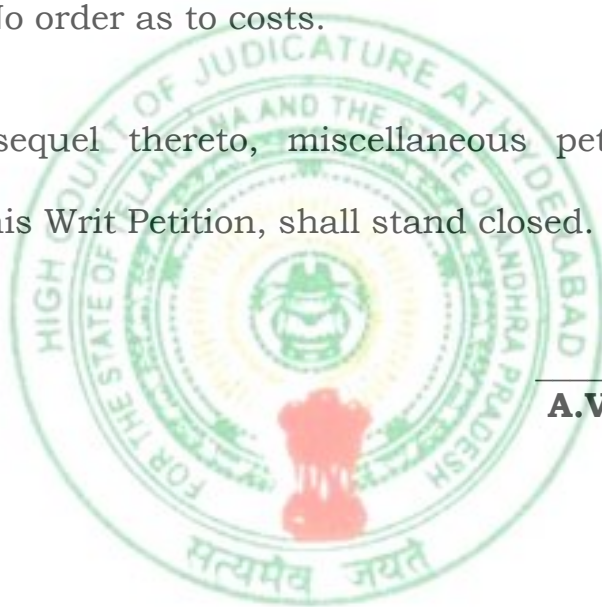
Therefore, the case of the plaintiff also falls to the ground in view of the material alterations to Ex.A3.

18. In view of the above reasons, this Court has no scintilla of hesitation nor any shadow of doubt to hold that there is no question of law, much less substantial question of law, involved in the Second Appeal, warranting interference of this Court under Section 100 of the Code of Civil Procedure.

19. For the reasons stated above, the Second Appeal is dismissed. No order as to costs.

20. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

03.11.2017
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A.V.SESHA SAI, J

