

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1408 of 2012

27.11.2017

Between:

Madamanchi Subba Rao

... Appellant/
Appellant/Defendant

And

Smt.Madamanchi Seshu Kumari

... Respondent/
Respondent/Plaintiff



THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**SECOND APPEAL No.1408 of 2012****JUDGMENT:**

This appeal is filed by the defendant assailing the decree and judgment dated 16.08.2012 in A.S.No.123 of 2011 on the file of the Court of V Additional District Judge (Fast Track Court), Guntur, wherein whereby the decree and judgment dated 17.04.2009 in O.S.No.149 of 2004 on the file of the Court of Senior Civil Judge, Bapatla, decreeing the suit filed by the plaintiff for recovery of money, was confirmed.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the suit.

3. The facts leading to filing of the present second appeal are briefly as follows:

On 28.09.2001 the defendant borrowed an amount of Rs.1,50,000/- from the plaintiff and executed two promissory notes on even date agreeing to repay the same with interest @ 24% per annum either to the plaintiff or to her order. The plaintiff got issued a registered notice dated 17.09.2004 to the defendant directing him to pay the amount. The defendant did not choose to issue reply or pay the amount. Hence, the plaintiff was constrained to file the suit for recovery of Rs.1,50,000/- with interest and costs.

4. The defendant filed written statement admitting the execution of the promissory notes by him on 28.09.2001 in

favour of the plaintiff *inter alia* contending that he paid the amount covered under two promissory notes on 13.05.2002 and obtained a receipt. The defendant did not insist either to cancel or return the promissory notes as the receipt is with him. The defendant never imagines that the plaintiff will be so audacious to file the civil suit even though he repaid the amount under the receipt and hence the suit is liable to be dismissed with exemplary costs.

5. Basing on the above pleadings, the trial Court framed the following issues for trial:

- (1) Whether the discharge pleaded by the defendant under two suit pronotes is true and valid?
- (2) Whether the plaintiff is not entitled for the suit amount?
- (3) To what relief?

6. To substantiate the case, plaintiff examined herself as P.W.1 and got marked Exs.A1 to A3. To demolish the case of the plaintiff, the defendant examined himself as D.W.1 and got marked Ex.B1 receipt. The attestors and scribe of Ex.B1 were examined, on behalf of the defendant, as D.Ws.2 to 4. The expert was examined as C.W.1 and Ex.C1 was marked.

7. Basing on the oral and documentary evidence available on record, the trial court arrived at a conclusion that Ex.B1 receipt is a forged one and consequently decreed the suit with costs in favour of the plaintiff. Feeling aggrieved by the decree and judgment dated 17.04.2009, the defendant preferred A.S.No.123 of 2011 on the file of the Court of V Additional District Judge

(Fast Track Court), Guntur. The appellate Court after reappraising the oral and documentary evidence came to a conclusion that Ex.B1 receipt is a forged one and consequently dismissed the appeal holding that the plaintiff is entitled to recover the suit amount. Hence the defendant preferred the present second appeal.

8. Heard the learned counsel for the appellant and perused the record.

9. The following two points have been raised by the learned counsel for the appellant as questions of law:

(1) Whether the Courts below are justified in discarding Ex.B1 receipt by disbelieving the evidence of D.Ws.2 to 4 on the sole ground that they are close friends of D.W.1?

(2) Whether the findings recorded by the Courts below are perverse?

10. As both points are intertwined with each other, this Court is inclined to answer both points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings and evidence of both parties.

The defendant borrowed an amount of Rs.1,50,000/- from the plaintiff on 28.09.2001 agreeing to repay the same with interest @ 24% per annum and executed two promissory notes, Exs.A1 and A2, on even date in favour of the plaintiff. The plea of the defendant is that he repaid the suit amount to the

plaintiff on 13.05.2002 under Ex.B1 receipt; therefore, the suit is liable to be dismissed.

12. The entire controversy revolves around Ex.B1 receipt dated 13.05.2002. It is needless to say, when the suit is based on a promissory note, the burden of proof lies on the plaintiff to prove the execution of promissory note. Once the plaintiff proves the execution of promissory note by the defendant, then the onus of proof shifts on the defendant to prove that the suit promissory note is not supported by consideration or he discharged the suit amount. In the instant case, the defendant admitted execution of Exs.A1 and A2 promissory notes in favour of the plaintiff. It is a settled principle of law that admitted facts need not be proved. By examining P.W.1 and by marking Exs.A1 and A2, the plaintiff proved the execution of promissory notes in her favour by the defendant.

13. To non-suit the plaintiff, the defendant examined the scribe and attestors of Ex.B1. Admittedly, the plaintiff belongs to Vallabharaopalem of Ponnuru Mandal. Ex.B1 was alleged to have been prepared at Secunderabad. As per the testimony of D.Ws.2 and 3, the plaintiff received an amount of Rs.1,80,000/- from the defendant and executed Ex.B1 receipt. In the cross-examination of D.W.4, who is the scribe of Ex.B1, it is categorically elicited that D.Ws.2, 3 and 4 are close friends of D.W.1.

14. There is no hard and fast rule to disbelieve the testimony of friends or relatives. If the testimony of witness inspires the

confidence, regardless of his relation with one of the parties to the proceedings, the same can be considered. But in the instant case, there is no mention in the written statement that D.W.4 is the scribe and D.Ws.2 and 3 are the attestors of Ex.B1. When the defendant was very much aware of the names of the scribe and attestors of Ex.B1, what prevented him to mention their names in the written statement. Non-mentioning of names of the attestors and scribe in the written statement casts a cloud on the execution of Ex.B1 receipt by the plaintiff. The Courts below discarded the testimony of D.Ws.2 to 4 taking into consideration overall facts and circumstances of the case.

15. During pendency of the suit, the defendant himself filed a petition to send Ex.B1 receipt to the expert to compare the admitted signatures of the plaintiff with her alleged signature on Ex.B1. The trial Court allowed the same. C.W.1 is the expert, who has given Ex.C1 report. Q1 and Q2 are the disputed signatures of the plaintiff on Ex.B1. S1 to S12 are the admitted signatures of the plaintiff on vakalat and bank withdrawal forms. As per the testimony of C.W.1, Ex.B1 does not bear the signature of the plaintiff. To put it in a different way, the defendant created Ex.B1 and produced before the trial Court. The trial Court as well as the first appellate Court placed reliance on the oral testimony of C.W.1 and Ex.C1 report.

16. As rightly pointed out by the learned counsel for the appellant, an expert opinion is not a substantial piece of evidence. Any opinion given by an expert is only a piece of

evidence. It is needless to say that the opinion expressed by the Expert must be supported by other corroborative evidence. While appreciating the rival contentions, the Court has to take into consideration the other attending circumstances also.

17. It is the case of the defendant that he paid Rs.1,80,000/- to the plaintiff on 13.05.2002. The plaintiff filed the suit in the year 2004. There is a time gap of two years in between Ex.B1 and date of filing of the suit. In these two years, the defendant did not ask the plaintiff to return the suit promissory notes. Even assuming but not conceding that the plaintiff did not return the promissory notes, despite request made by the defendant, what prevented him to issue a legal notice directing the plaintiff to return the promissory notes. Any ordinary prudent man will not keep quiet for such a long time without asking for return of promissory note, having paid the entire amount. This is one of the circumstances which create a doubt in the mind of the Court. D.Ws.2, 3 and 4 being childhood friends of D.W.1, the possibility of deposing evidence in such a way to suit the claim of the defendant cannot be ruled out completely. Appreciation of evidence encompasses in it, consideration of the conduct of the parties also. In the instant case, the burden of proof lies on the defendant to prove that he paid the entire amount covered under Exs.A1 and A2 promissory notes. It is needless to say that simply because some other view is possible, basing on the material available on record that itself is not a valid ground to upset the concurrent finding of fact recorded by the Courts below. In the instant

case, the Courts below considered the oral and documentary evidence in right perspective and arrived at a conclusion that the defendant forged the signature of the plaintiff and created Ex.B1 receipt. The first appellate Court is a fact finding final court.

18. If the findings recorded by the Courts below are based on no evidence or based on evidence which is not legally admissible, such findings can be terms of perverse. In the instant case, the findings recorded by the Courts below are based on evidence much less legally admissible evidence.

19. In view of the above discussion, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse. The Courts below have not committed any error much less legal error while discarding the evidence of D.Ws.2 to 4. I am fully endorsing with the concurrent finding of fact recorded by the Courts below. There is no question of law much less substantial question of law in this appeal and as such, the second appeal is liable to be dismissed.

20. In the result, the second appeal is dismissed at the admission stage. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

27th November 2017.
Rns