

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.2298 of 2002

JUDGMENT:

In a suit registered as O.S.No.26 of 2000 on the file of the learned Senior Civil Judge at Khammam, laid by the respondent herein as the plaintiff, for recovery of Rs.1,00,000/-, the judgment and decree were passed on 30.09.2002, decreeing the suit for Rs.1,51,750/-, which includes accrued interest till the date of filing of the suit, with interest at 6% per annum on Rs.1,00,000/- from the date of plaint till the date of realization with costs, and aggrieved over the same, the defendant preferred the present appeal.

Heard Sri B.Adinarayana Rao, learned counsel for the appellant – defendant, and Sri V.Padmanabha Rao, learned counsel for the respondent – plaintiff.

Learned counsel for the appellant would submit that, though, the money transaction alleged to have taken place on 15.01.1998, in the notice got issued by the plaintiff, the date was shown as 15.05.1998 and, therefore, the said circumstance would belie the execution of Ex.A1. It is also his submission that 13th, 14th and 15th of January, 1998, were Sankranti Festival days, and, therefore, the question of opening the bar does not arise and even the evidence of P.Ws.2 and 3 cannot be believed. For the said reasons, the learned counsel would seek to allow the present appeal suit and to dismiss the aforesaid O.S.

Learned counsel for the respondent, on the other hand, would submit, the very fact that the notice got issued by the plaintiff stood unanswered and even the defendant went to the extent of denying his signatures by asserting that he would sign only in Telugu, but not in English, but the admission made by him as to his signatures in English occurring on Exs.A4 and A5 got summoned from the record in C.C.No.446 of 1997, which are the examinations under Sections 239 and 313 Cr.P.C in the said C.C., would prove that the stand of the defendant is totally incorrect and further the evidence of P.Ws.2 and 3, who are the scribe and the attester, would prove the execution of Ex.A1 and also the evidence of PW.1 in passing of consideration thereunder.

The learned trial Court did not believe the stand put forth by the defendant. In the first instance, it recorded a finding as to the capacity of the plaintiff to lend that much amount observing that the plaintiff owns and possesses Ac.20.00 of land besides a bar shop, and, therefore, it cannot be said that he did not have the amount to lend to the defendant. On the second issue, as to whether the suit pronote was genuine and executed by the defendant, the trial Court, besides recording that the evidence of P.Ws.2 and 3 support the suit transaction, also observed that even based on probabilities from Exs.A4 and A5, in which the signatures of the defendant are occurring in English, which were admitted by him, though, he took the plea that he is in the habit of signing only in Telugu, but never signed in

English, which completely contradicts the admission of his signatures occurring in Exs.A4 and A5, it can be said that the defendant executed Ex.A1. Basing on these findings, the trial Court decreed the suit as mentioned above.

The following points would arise for consideration:

1. Whether Ex.A1 suit pronote is true, valid and binding on the appellant-defendant ?
2. Whether the judgment and decree under challenge cannot be sustained ?

In the present case, when both, the oral evidence of PWs.1 to 3 and DW.1 and the documentary evidence, Exs.A1 to A5, are examined, unhesitatingly, it can be said that the findings recorded by the trial Court *ex facie* based on appreciation of evidence on proper lines and cannot be faulted on the ground of legal infirmity being crept into. The very fact that the defendant received the suit notice under Ex.A2, evidenced by Ex.A3, is sufficient enough to hold that he had no answer to deny the borrowal of Rs.1,00,000/- under Ex.A1, lest he would have got issued a suitable reply and would have taken the defence, in accordance with the reply, in his written statement, which he did not do so.

The other circumstance, which strongly condemns the case of the defendant, is that, though, he took the stand that he is in the habit of signing only in Telugu, when Exs.A4 and A5, which are the examinations under Sections 239 and 313 Cr.P.C in C.C.No.446 of 1997, in which he figured as an accused, were confronted to him, he

admitted them as having signed by him and this would strongly probabilise the transaction under Ex.A1 and the case of the plaintiff. Thus, viewed from any angle, there is absolutely no legal infirmity in the findings recorded by the trial Court warranting interference.

Accordingly, the appeal suit is dismissed with costs.

Miscellaneous applications, if any pending in the instant appeal, stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 21, 2017
v v

