

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

S.A.No.808 OF 2017

ORDER

This second appeal is directed against the judgment and decree dated 30.10.2014 passed in A.S.No.7 of 2012 by the Senior Civil Judge, Parchur, confirming the order of the Junior Civil Judge, Parchur, in CFR No.853 of 2010, dated 17.02.2012.

The appellant is the plaintiff and respondent is the defendant.

The plaintiff filed suit for recovery of an amount of Rs.37,275/- on 09.07.2010. When the office took an objection as to how the suit was maintainable as it was barred by limitation, the suit was heard on 17.2.2012 vide CFR No.853 of 2010 by the Junior Civil Judge, Parchur and the same was rejected under Order 7 Rule 11 (d) CPC on the same day. Aggrieved by the same, the plaintiff preferred A.S.No.7 of 2012 before the Senior Civil Judge, Parchur.

Learned Senior Civil Judge framed the following points for consideration:

1. Whether the suit is hopelessly barred by limitation or not?
2. Whether the order of the lower Court is in accordance with law or not?
3. To what relief?

Learned Senior Civil Judge after hearing the arguments advanced on behalf of the plaintiff that acknowledgment of debt gives fresh cause of action held that the plaintiff has not filed the suit within three years from the year 2005, and filed it only on 9.7.2010, and by relying on judgment in *Kotha Dhanalakshmi vs. Bandi Sreenivasulu Reddy*,¹ confirmed the order dated 17.02.2012 of the Junior Civil Judge, Parchur, *vide* judgment and decree dated 30.10.2014.

Learned counsel for the appellant was once again pointed out with regard to maintainability of the suit. He placed reliance on the judgment of the learned Single Judge of this Court in *A. Venku Dikshitulu vs Gundu Subbayya*

¹ 2009(5) ALD 332

*Setti*² and also Division Bench judgment of this Court in *Dondapati John vs. Vaddi Subrahmani and anr*³.

In the instant case, the defendant borrowed an amount of Rs.20,000/- and executed the suit promissory note on 10.08.2003 agreeing to repay the same with interest at 15% per annum. In the year 2005, IP No.3 of 2005 was filed by the defendant on the file of the Senior Civil Judge, Parchur and the plaintiff was arrayed as respondent No.7 in the said IP. After contest, the said IP was dismissed on 15.6.2007. Aggrieved by the same, the defendant preferred an appeal and the same was also dismissed on 26.06.2007. Even after dismissal of the said IP, the defendant did not choose to pay the said amount. Under those circumstances, the suit for recovery of a sum of Rs.37,275/- was filed by the plaintiff on 9.7.2010.

In order to satisfy the issue of limitation, learned counsel appearing for the appellant submits that in view of the acknowledgment of debt by the defendant in his IP

² AIR 1957 AP 437

³ AIR 1965 AP 260

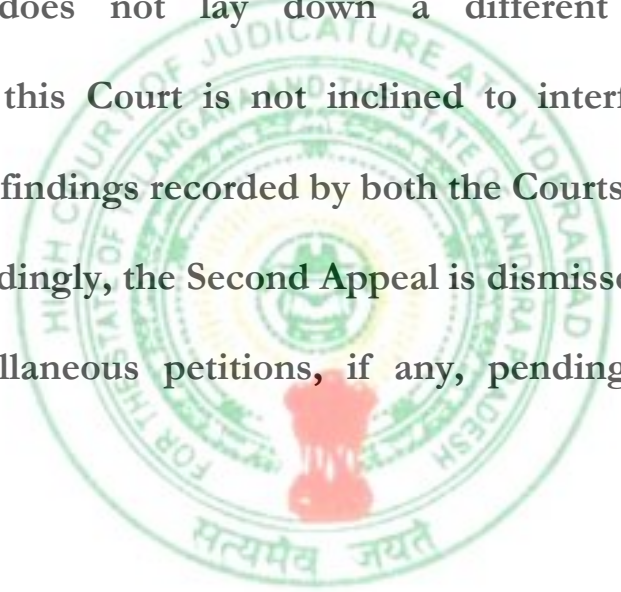
proceedings, the limitation be reckoned from the date of filing of the IP.

Admittedly IP was filed in the year 2005 whereas the present suit was filed in the year 2010. Hence, the suit is barred by limitation.

The decisions relied on by the learned counsel for the appellant does not lay down a different proposition. Therefore, this Court is not inclined to interfere with the concurrent findings recorded by both the Courts below.

Accordingly, the Second Appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE A.RAMALINGESWARA RAO

13th October, 2017

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