THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.2505 of 1999

JUDGMENT:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful plaintiff is directed against the decree and judgment, dated 17.06.1999, of the learned I Additional Senior Civil Judge, Vijayawada , passed in OS.No.278 of 1987.

2. I have heard the submissions of *Sri Srinivas Emani*, learned counsel appearing for the appellant-plaintiff, and of *Sri T. Rajendra Prasad*, learned counsel appearing for the respondent-defendant. I have perused the material record.

3. For convenience and clarity, the parties in this appeal suit shall hereinafter be referred to as the plaintiff and the defendant as arraigned in the original suit.

4. Before proceeding further it is necessary to refer to the pleadings of the parties.

5. The plaint averments, in brief, are as follows: - 'The plaintiff originally tenanted for five years in the shop premises situate at Gopalreddy road, which belonged to the family of the defendant. The plaintiff purchased the said shop premises under a registered sale deed, dated 15.03.1984. From the date of the said purchase, the plaintiff has been in possession of the said premises as owner thereof. On account of the intimacy with the defendant, the plaintiff arranged a loan to the defendant from the State Bank of Hyderabad having given an undertaking to the bank that he would pay interest regularly out of the

rents payable to the defendant. It is in view of the said intimacy, the defendant requested the plaintiff to advance a sum of Rs.25,000/- as hand loan. Since the plaintiff had no ready money with him at that time, he borrowed the said sum, on 04.04.1984, from Kasaraneni Kutumba Rao of Kasaranenivaripalem, on the understanding to repay the said amount with interest at 18% per annum to the said Kutumba Rao. In his turn, the plaintiff advanced the said amount to the defendant, on 05.04.1984, and obtained a receipt from him in token of the said loan. Subsequently, the plaintiff demanded the defendant both orally and in writing to repay the said sum due under the receipt. The defendant has been giving vague, evasive and formal replies from time to time. The plaintiff was pressed for repayment of the amount borrowed by him for the sake of defendant from the said Kutumba Rao. The plaintiff wrote 4 to 5 letters; out of which 2 were sent under certificate of positing, on 22.11.1986 and 20.01.1987. Inspite of several opportunities and latitude, the defendant did not repay; but, extended certain promises to repay. The plaintiff was forced to pay interest to his creditor, Kuntumba Rao. Ultimately, the plaintiff paid Rs.25,000/- along with interest of Rs.750/- accrued by then to the said Kutumba Rao and obtained a receipt, on 09.03.1987, from the said Kutumba Rao. Except extending promises from time to time, the defendant did not pay the amount due to the plaintiff and ultimately his promises proved futile. Hence, the suit is filed for recovery of the amount due under the receipt, dated 05.04.1984, and interest on the said amount of Rs.25,000/- at 18% per annum from 05.04.1984 till date of the suit, that is, for recovery of a total sum of Rs.38,500/- with subsequent interest on the principal amount till payment or realisation and for costs.'

6. The defence of the defendant, which is in the nature of total denial as far as the suit transaction is concerned, in brief, is as follows:

The allegations that the plaintiff was originally a tenant in the shop premises of the family of the defendant and that subsequently he purchased the same under a registered sale deed, dated 15.03.1984, as stated in the plaint are true in a technical sense. However, the said sale is a nominal sale; and, it is not a sale in the real sense, if all the circumstances that lead to the sale deed are to be examined carefully and critically. The said sale deed was brought into existence under pressurised circumstances to which the plaintiff subjected this defendant to. This defendant, though was not put to physical coercion, was under mental exertion and in a confused state of mind, after the death of his father. Therefore, the said sale deed did not come into existence under a free will of this defendant. Hence, and as it is a questionable document under facts and in law, the said sale deed is liable to be set aside. This defendant reserves his right to initiate appropriate proceedings against the plaintiff at appropriate time. From the father of the defendant, the plaintiff took on lease, the shop premises, which is a valuable property in a business locality, on a monthly rent of Rs.250/-. When the plaintiff created inexplicable and inescapable hardship to the father of the defendant, he filed a proceeding for eviction of the plaintiff from the premises; and, the plaintiff drove the defendant's father into litigation as the plaintiff is experienced in Court litigation. To the misfortune of this defendant, the father of this defendant died when the said litigation was pending in respect of the said tenanted premises. After the death of the father of the defendant, the plaintiff took advantage of lack of worldly knowledge and experience in the Court affairs on the part of this defendant and forced the defendant to come round to the terms dictated and succeeded in getting the sale deed executed by the defendant. As this defendant had no choice or option to exercise his mind carefully, he executed the sale deed in favour of the plaintiff. As possession of the premises was with the plaintiff and for want of proper guidance in Court matters, this defendant was unable to face any situation. The plaintiff managed and made this defendant to put his signatures on the sale deed to the dictations of the plaintiff. The allegations that on account of intimacy, the plaintiff arranged a loan to this defendant from SBH and that on account of the said intimacy the defendant requested the plaintiff to advance a loan of Rs.25,000/- and that the plaintiff borrowed the said sum from Kuntumba Rao, on 04.04.1984, for the sake of lending it to this defendant and that he in turn lent that amount to this defendant, on 05.04.1984, and obtained a receipt in token of the said loan are all false. There was no need or any necessity, on 05.04.1984, for this defendant to borrow such a big amount from the plaintiff under a receipt. This defendant's family consists of his wife and two small children; and, this defendant hails from a rich family; and, is financially sound to attend to the urgent needs of his family, if any. If really there was any need at that time, this defendant's two sisters and a good considerable circle of friends, who are well to do, were there to help this defendant, who hails from a reputed family of Vijayawada. He is having considerable movables and immovable properties worth lakhs of rupees. There is no iota of truth in the plaint averments. No intimacy existed or exists between the plaintiff and the defendant. The defendant, his father and the ancestors belonged to Moghalrajpuram town, Moghalrajpuram of Vijayawada and are residents of the said place since a number of years. Even as on the date of the filing of the written statement, this defendant owns nearly Rs.50.00 lakhs worth of properties. This defendant's father worked for a number of years at Vijayawada as an Honorary Magistrate. This defendant's sisters own properties wroth crores of rupees and are ready to help and share the difficulties of this defendant in case of urgent needs of this defendant. As such, this defendant need not approach the plaintiff for any money; and, this defendant did not borrow any amount and put his signature on any receipt as alleged by the plaintiff. The alleged signature of the defendant on the receipt, dated 05.04.1984, is a forged one and this defendant never put his signature and received any amount under the said receipt. The allegations that the plaintiff demanded this defendant both orally and in writing to repay the amount due under the receipt and that this defendant gave vague, evasive and formal replies from time to time and that the plaintiff addressed 4 to 5 letters and that two letters out of them were sent under certificate of posting are all false. This defendant did not receive any letters said to have been written before the filing of the suit by the plaintiff. This defendant hails from an agricultural family and his main avocation is agriculture. There is no cause of action for the plaintiff. There is no contract and the alleged receipt is a concocted one. The suit claim is false and vexatious; and, to humiliate and dishonour this defendant, the plaintiff got orders of attachment before judgment as if this defendant is a pauper and has no ostensible means of livelihood. This defendant firmly refused to part with few yards of site abutting the premises covered by the so called sale deed, dated 15.03.1984, as the defendant was already cheated by the plaintiff. As the plaintiff bore grudge against the defendant for not giving few yards of site, he caught hold of men like Kutumba Rao etcetera and managed the receipt with the persons interested in him and filed the false suit. The suit is liable for dismissal with exemplary costs.

7. Taking into consideration the above pleadings, the trial Court framed the following issues for trial.

1. Whether the receipt, dated 05.04.1984, is true, valid and binding?
2. To what relief?

8. At trial, the plaintiff and the person who was said to have scribed the receipt, dated 05.04.1984, were examined as PWs1 & 2 and exhibits A1 to A6 were marked on the side of the plaintiff. The defendant was examined as DW1 and no documents were exhibited on his side.

9. As noted, on merits and by the judgment impugned in this appeal suit, the trial Court dismissed the suit of the plaintiff. Therefore, the plaintiff preferred this appeal.

10. Learned counsel for the plaintiff, while reiterating the pleaded case of the plaintiff, which is already stated supra, contended as follows:

There was no need for the plaintiff to forge exhibit A1 receipt and bring a suit against the defendant with whom the relationship was good. There is no motive suggested to PWs1 & 2 for forging the receipt and bringing a false suit. The trial Court failed to see that there is a reference to exhibit A1 receipt in exhibit A2 notice, dated 22.10.1986, sent by the plaintiff to the defendant under certificate of posting. The same was not denied by DW1 in his cross examination by PWs1 & 2. Sending notice by certificate of posting to the last known address of DW1 is sufficient notice to DW1. The trial Court erred in comparing the signature of the defendant on exhibit A1 with the other signatures on vakalat, deposition and exhibit A6-sale deed, dated 15.03.1984, executed by the defendant in favour of the plaintiff. The trial Court having compared the signatures ought to have held that exhibit A1 was executed by DW1 and that the denial of signature on exhibit A1 by DW1 is a false self serving statement. The trial Court ought to have properly appreciated the evidence of PWs1 & 2. As could be seen from the recitals in exhibit A6 sale deed, the defendant (DW1) sold away the property to PW1 as DW1 has to discharge a bank loan. The said circumstance also strengthens the case of the plaintiff that DW1 was indebted at that time. The trial Court ought to have seen that as at that time since good relationship existed between PW1 & DW1, PW1 lent the amount to DW1 and obtained exhibit A1, a simple receipt from him on account of the good relationship with him. The trial Court ought not to have built up a case for the defendant on assumptions & conjectures and by making observations in its judgment that a promissory note should have been obtained and that the amount due and payable towards balance of sale consideration by the plaintiff to the defendant ought to have been adjusted towards the suit debt. The Court below ought not to have made further erroneous observations that such non adjustment of the loan amount towards part of the sale consideration under exhibit A6 belies the contentions of the plaintiff. The trial Court was in error in making observations that the absence of name of PW2 in the plaint and in exhibit A2 & A4 letters disproves the plaintiff's case. Such observations are untenable. The observation of the trial Court that there is no reference to exhibit A1 in exhibit A2 letter written by the plaintiff to the defendant is erroneous as a reading of the said letter shows that it was clearly mentioned that, on 05.04.1984, Rs.25,000/- was borrowed by defendant under a receipt, which is exhibit A1. The trial Court has not properly appreciated the oral and documentary evidence and recorded erroneous findings on conjectures & surmises, without application of mind. The trial Court made certain observations in the judgment without any basis in the defence and inspite of absence of cross examination of PWs1 & 2 by the defendant. The trial Court ought to have seen that exhibit A1 is not a forged document and that the defendant failed to establish any of his defences. Therefore, the findings that exhibit A1 receipt is not a genuine receipt and that the defendant did not borrow any amount from the plaintiff are not in accordance with the principles governing appreciation of evidence. The trial Court ought to have seen that the evidence of PWs1 & 2 coupled with the documentary evidence is sufficient to come to a conclusion that the suit transaction under exhibit A1 is true and that the signature on exhibit A1 of the defendant is not forged. The trial Court ought to have seen that the evidence need not be pleaded; and, it failed to properly apply the rules of evidence under the Indian Evidence Act. Hence, the appeal may be allowed and the impugned judgment may be set aside and the suit may be decreed as prayed for.

10.1 He relied upon the following decisions: Decision in **Venkayala Bhadram v. Noni Venkata Rao**[1] is relied upon in support of the contentions that the suit is instituted within time and that the suit is not barred by law of limitation as the last day of limitation on which the suit is to be instituted happened to be a public holiday. Decisions in **Greater Mohali Area**

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1 2002 (1) ALD 341

Development Authority & another v. Manju Jain & others[2] **& Ranju @ Gautam Ghosh v. Rekha Ghosh & others**[3] are relied upon in support of the proposition that when a letter is sent under a postal certificate or registered post to correct address, there can be a presumption that such letter which was posted in due course reached the addressee.

11. Learned counsel for the defendant while supporting the decree and judgment of the trial Court and while reiterating the defence of the defendant, which is already stated supra, in detail, *inter alia,* contended as follows:

The defendant categorically pleaded that he is a person from a reputed family of Vijayawada and that he owns properties and that his sisters and circle of friends are all well to do people and that they are always available in times of need, if any, to help the defendant and that there was no need for the defendant to approach the plaintiff for hand loan and borrow Rs.25,000/- under the alleged receipt more particularly in view of the fact that there are already disputes between plaintiff and the father of the defendant and the apparent circumstances in which the defendant was made to come round to the terms of the plaintiff and execute a sale deed. The defendant also categorically denied the alleged borrowal of amount under Exhibit A1 receipt from the defendant and his signature on the alleged receipt, exhibit A1. The evidence of PW2 shows that he formerly worked as a clerk of the plaintiff. He is interested in PW1. His signature as scribe on exhibit A1 and the words 'written by' at his signature would show that the same are in different ink and that the same were subsequently incorporated on exhibit A1 receipt to press him into service as a witness on behalf of the plaintiff. His evidence, which is interested, is of no

[2] 2010(6) Supreme 714
[3] 2007(8) Supreme 718

avail to the plaintiff. The trial Court rightly held that the ink of the pen used to put the signature by the scribe is different from the ink of the pen which was used to scribe the contents of exhibit A1 and that the body of the document on one hand and the words 'written by' and the 'signature' of the scribe on the other are not written at the same time and with the same pen and by the same person and that, therefore, exhibit A1 is a doubtful document and that the oral evidence produced by the plaintiff is not convincing and believable. The trial Court, having compared the signatures on various documents available on record, came to a conclusion that the alleged signature said to be of the defendant on exhibit A1 is forged and that, therefore, exhibit A1 is not genuine. The trial Court rightly held that under exhibit A6 sale deed, which was executed, on 15.03.1984, and registered, on 04.07.1984, a sum of Rs.16,158.70 ps which was due towards balance of sale consideration was paid in cash by the plaintiff to the defendant and that if really the plaintiff lent Rs.25,000/- under exhibit A1 receipt, dated 05.04.1984, to the defendant, the plaintiff ought to have adjusted the balance of sale consideration towards the debt due under exhibit A1 receipt and that the failure to do so also suggests that the claim of the plaintiff is false. The trial Court, therefore, rightly held that from the recitals in exhibit A6 sale deed, an inference is possible that the defendant has not received the amount as loan from the plaintiff. The defendant in his evidence categorically stated that he never borrowed any amount from the plaintiff and never executed exhibit A1 receipt and that his signature on exhibit A1 is forged and that he did not receive letters, exhibits A2 & A4, said to have been sent under certificate of posting and that no demand was ever made by the plaintiff to the defendant to discharge the loan amount covered by exhibit A1 and that the suit is liable to be dismissed. In the cross examination, it is not even suggested to the defendant that he received the letters, exhibits A2 & A4, which were sent under certificate of posting and that his signature on exhibit A1 is his signature. Signatures on printed receipts were only shown to him and he denied his signatures on the printed receipts. The defendant further admitted that signatures on the sale deed, dated 15.03.1984, are his signatures; but, denied the suggestion that he had taken a hand loan of Rs.25,000/- and passed exhibit A1 receipt to the plaintiff. Due to the absence of cross examination on the material aspects stated by DW1 in his evidence, it shall be deemed that the version of DW1 in the chief examination is admitted. PW2 stated that he is an attestor though exhibit A1 shows that he is a scribe. No explanation is forthcoming from the plaintiff for not obtaining a promissory note and for obtaining a receipt that too by merely stating therein 'received with thanks Rs.25,000/-'. It is not even stated in the receipt that the amount is received as a hand loan or a loan. The receipt even if assumed to be true does not disclose that the amount mentioned therein is received by the defendant as a hand loan and it is repayable. Though it is the case of the plaintiff that when the defendant approached for a hand loan he approached Kutumba Rao and borrowed Rs.25,000/-, on 04.04.1984, as he was not having money at that time and that he in turn lent that amount on the next day, 05.04.1984, under exhibit A1 to the defendant, the plaintiff for reasons best known to him failed to examine the said Kutumba Rao as a witness and failed to file the receipt under which he discharged the amount allegedly due to the said Kutumba Rao, though he stated in his pleading and further admitted in his evidence that there is a document to show that he discharged loan of

Rs25,000/- with interest to Kutumba Rao; the non examination of the said Kutumba Rao, despite a specific suggestion to PW1 that he did not borrow any amount from the said Kutumba Rao, is fatal to the case of the plaintiff. The trial Court appreciated the oral and documentary evidence correctly and in proper perspective and recorded well reasoned findings on all the issues. The contentions of the appellant-plaintiff are untenable and the appeal suit, which is devoid of merit, is liable to be dismissed.

11.1 He relied upon the decision in **Ravinder Kumar Sharma v. The State of Assam & others**[4] and **Rajinder Pershad v. Darshana Devi**[5] on the aspects of manner of impeachment of the credit of a witness and appreciation of evidence.

12. I have given earnest consideration to the facts & submissions. I have carefully gone through the oral and documentary evidence.

13. Now the points that arise for determination in this appeal suit are:

1. Whether the receipt, dated 05.04.1984, (exhibit A1) is true and binding on the defendant?
2. Whether the decree and judgment of the trial Court are unsustainable under facts and in law as being contended by the plaintiff-appellant.
3. To what relief?

14. **<u>POINT No.1:</u>**

14.1 The cases of the parties may be summed up as under.

The plaintiff brought the suit on the basis of a receipt, dated 05.04.1984, that is, exhibit A1 for recovery of Rs.25,000/- with interest at 18% per annum from the date of the receipt, *inter alia,* alleging that he was earlier a tenant in the shop premises

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[4] 1999 SAR (Civil) 837
[5] 2001 SAR (Civil) 763

of the family of the defendant, having taken the same on lease from the father of the defendant, and that he later purchased the same from the defendant under exhibit A6, registered sale deed, dated 15.03.1984, and that the consideration was paid partly by way of discharge of loan due by the defendant to the State Bank of Hyderabad and by paying the balance consideration of RS.16,158.70 ps in cash to the defendant and that in-fact, the plaintiff arranged the loan to the defendant from the bank on the undertaking that he would regularly pay the rent towards interest due on the loan advanced to the defendant by the bank and that on account of such intimacy, the defendant approached him with a request to advance Rs.25,000/- as hand loan and that at that time he was not having ready money and, hence, he borrowed the said sum, on 04.04.1984, from one Kutumba Rao agreeing to repay the same to him with interest at 18% per annum and that in turn he advanced the said amount to the defendant, on 05.04.1984, under exhibit A1-receipt and that the defendant despite oral and written demands by means of letters did not repay and postponed repayment on one pretext or the other and that two of such written letters were sent under certificate of posting to the defendant and that the suit is filed as there was no reply and the defendant's vague promises to repay the debt proved futile. Plaintiff also pleaded that when he was pressurised by his creditor, Kutumba Rao, he discharged the loan due to the said Kutumba Rao and obtained a receipt, dated 09.03.1987.

14.2 Per contra, the defendant while admitting that the plaintiff was formerly a tenant in the shop premises in the property of the family of the defendant, *inter alia,* contended that the plaintiff created inexplicable hardship to his father and that, therefore, his father was forced to file proceedings for eviction and thus, the plaintiff dragged the father of the defendant into litigation and that unfortunately his father died during the pendency of litigation and that the plaintiff, taking advantage that the defendant is not having worldly knowledge and experience in court affairs, obtained the sale deed, exhibit A6, in respect of the tenanted property and that at that time the defendant was under mental exertion and in a confused state of mind due to the death of his father and that the sale deed executed without free will is nominal and that, therefore, the defendant reserves a right to challenge the same. That apart, the defendant stated in his defence that he is from a reputed family of Vijayawada town and that he is financially sound and that he had no necessity to borrow any amount at that time as alleged by the plaintiff and that his sisters and good circle of friends are well off and are available to help him in case of his urgent needs, if any, and that he never approached the plaintiff with a request to lend Rs.25,000/- and that he never borrowed the said sum and never executed exhibit A1 receipt and that the same is forged and that as there was no loan transaction, no demands either oral or written were made and that he did not give evasive replies to the demands as alleged and that the letters allegedly sent under certificate of posting were not received by him and that the plaintiff has already cheated the defendant and that the alleged exhibit A1 receipt is concocted and that he is not liable for the suit amount or any part thereof. He further pleaded that when the defendant firmly refused to part with a few yards of site abutting the premises covered by the sale deed, exhibit A6, the plaintiff bore grudge and caught hold of his men like Kutumba Rao and managed the receipt with the help of persons interested in him.

14.3 PW1 in his examination in chief stated that after the execution of exhibit A6 sale deed, the defendant who was not in good financial position approached him for a loan in the month of April, and that he paid Rs.25,000/-, on 05.04.1984, and that the defendant delivered exhibit A1 receipt in token thereof and that the defendant signed exhibit A1. He further deposed about the oral and written demands and exhibited A2 & A4, office copies of letters, and A3 & A5 corresponding posting slips, apart from exhibit A1-receipt, and exhibit A6-sale deed. He also stated that the defendant neither issued a reply nor paid the amount and, therefore, he filed the suit. He did not make a whisper in his examination in chief about the defendant first approaching him earlier to the day of lending and about the borrowal of amount by him from Kutumba Rao on the previous date of exhibit A1 and he in turn lending the amount borrowed from Kutumba Rao to the defendant. In his cross examination, he, having stated that there is a document to show that he borrowed hand loan of Rs.25,000/- from Kutumba Rao, did not file any such document to show that he borrowed hand loan from Kutumba Rao for the purpose of lending it to the defendant. Though it is stated in the plaint that under pressure he was constrained to pay interest to Kutumba Rao and that he discharged the loan due by him to Kutumba Rao and obtained a receipt, on 09.03.1987, he did not even make a mention of it in his evidence and did not file any such loan discharge receipt, if any, issued by the said Kutumba Rao. It was suggested to him that exhibit A2 & A4, office copies of letters, are fabricated for the purpose of the suit and that he did not send any such letters to the defendant and that exhibits A3 & A5, certificate of posting slips, do not relate to exhibits A2 & A4, letters. However, he denied the said suggestions.

14.4 It is in his evidence that one Ganga Raju acted as an attestor and scribe of exhibit A1. The said Ganga Raju, who was examined as PW2, testified that he worked as a clerk under the plaintiff for about 6 years from 1983 to 1988 and that one register maintained by the plaintiff discloses the said fact and that there are money transactions between the plaintiff and the defendant and that the plaintiff lent Rs.25,000/-, on 05.04.1984, as hand loan at the house of the defendant and he scribed exhibit A1-receipt and signed it and that the defendant also signed the said receipt and that he signed as an attestor and that the defendant received the said amount in his presence and that the recitals in exhibit A1 were made on the instructions of the defendant. He denied the suggestions that no transaction took place in his presence and that exhibit A1 is fabricated by forging the signature of the defendant and that he is speaking falsehood at the instance of the plaintiff as he worked under him.

14.5 Now turning to the evidence of DW1, it is to be noted that he denied the suit money transaction between him and the plaintiff and the lending of the amount of Rs.25,000/- by the plaintiff, on 05.04.1984, and his giving a receipt under exhibit A1 and his signature on exhibit A1 and also the oral and written demands allegedly made by the plaintiff for repayment of the said hand loan and further stated that he did not receive exhibit A2 & A4 letters and that, therefore, the suit is liable to be dismissed. In his cross examination, he admitted his signatures on the rent receipts earlier given to the plaintiff and on the sale deed executed by him in favour of the plaintiff and that he had taken a loan of Rs.1,50,000/- from SBH, Governorpet Branch, but, stated that plaintiff has not recommended for the said loan. He further admitted that he sold the other portion of the property to the other tenant. When it was suggested to him that he had taken the hand loan and passed exhibit A1 he denied the said suggestion. He also denied the further suggestion that he invented the theory of forgery to avoid payment of money to the plaintiff.

14.6 Thus, the cross examination of DW1 is very cryptic and the case pleaded by the plaintiff is not even suggested to him. Suffice if it is observed there is no cross examination on various material aspects of the case pleaded by the plaintiff.

14.7 As noted, there is no whisper in the evidence of PW1 that after the defendant approached him with a request to advance hand loan, he in turn borrowed money from Kutumba Rao by undertaking to repay the same with interest to the said Kutumba Rao and that on the next day he lent the said amount to the defendant under exhibit A1-receipt. For reasons best known, the plaintiff did not file his loan document with Kutumba Rao and the discharge receipt showing repayment of loan by him to Kutumba Rao, though he admitted that there are receipts evidencing the said facts. He did not examine the said Kutumba Rao as a witness on his side though the defendant denied the said aspect of the case of the plaintiff. No explanation is forthcoming from the plaintiff for not stating any thing on this aspect in his examination-in-chief and for not examining the said Kutumba Rao and not filing the afore-stated documents related to the loan transaction between the plaintiff and the said Kutumba Rao and its discharge.

14.8 In this backdrop of oral evidence, it is necessary to have a look at exhibit A1 receipt. The contents of the said receipt verbatim are as under:

> "Received with thanks from Sri
> K.M.P. Sundara Siva Rao
> Rs.25,000/- (Rupees twenty
> Five thousand only)
> G. Sudheer Babu
> 5-4-84"

There is no mention in the said receipt that the amount is taken as a loan or a hand loan. On the other hand, the receipt recites that the money is 'received with thanks'. As rightly contended by the learned counsel for the defendant, if the money is lent under a hand receipt, the words 'received with thanks' will not generally be mentioned in such a receipt. Further, it appears from the case of the plaintiff that after the defendant approached for a loan, the plaintiff did not advance the loan immediately. The plaintiff admittedly advanced the loan to the defendant one day after he borrowed the amount from one Kutumba Rao. Therefore, there was sufficient time to obtain a promissory note instead of a receipt. However, no explanation is offered for not obtaining a promissory note though there is ample opportunity to do so in the facts and circumstances of the case.

14.9 Coming to the aspect that the defendant had no necessity to borrow the amount from the plaintiff, it is to be first noted that though the defendant pleaded that he had no necessity to borrow amount at the relevant time and that he is a well to do person and that he is having sisters who are also well to do and a good circle of friends to help him in case he needed money, he, however, did not state anything on this aspect in his evidence. However, it is borne out by record that the plaintiff having purchased the shop premises from the defendant under a sale deed, dated 15.03.1984, not only discharged the bank loan but also paid the balance consideration of Rs.16,158.70 ps in cash to the defendant. It is also in evidence that the defendant also sold another property to another tenant. The suit loan transaction, according to the plaintiff took place on 05.04.1984. A perusal of exhibit A6-sale deed shows that it was executed, on 15.03.1984, i.e., hardly about 20 days just prior to the loan transaction pleaded in the plaint. However, though exhibit A6-sale deed was executed on 15.03.1984, it was registered, on 04.07.1984, that is, after the alleged loan transaction under exhibit A1. On harmonious consideration of the chronology of events and the evidence brought on record, it is possible to hold that the pleaded defence that the defendant had no necessity at that relevant time to borrow amount from the plaintiff is more probable than the case of the plaintiff that the defendant is in need of money and, therefore, approached him for a hand loan. Further, the plaintiff did not issue any notice by registered post to the defendant before filing the suit. He only pleaded that he made oral demands and written letters and that two of such letters were sent under certificate of posting; and, exhibited office copies of letters, A2 & A4, and under certificate of posting slips, A3 & A5. The plaintiff simply relies upon the presumption that the letters posted under certificate of posting with correct address shall be presumed to have been received by the defendant. However, DW1 stated that he did not receive A2 & A4 letters. Yet, not even a suggestion is given to him that he received the letters. A suggestion that oral demands were made and that the defendant made vain promises to repay but did not repay is also not given to the defendant. Therefore, the said presumption as to service of letters stands rebutted. In that view of the matter, the decisions in **Greater Mohali Area Development Authority (**2 supra**) & Ranju @ Gautam Ghosh (**3 supra**)** relied upon by the learned counsel for the plaintiff on the aspect of presumption of service of exhibits A2 & A4, letters, is of no avail to the plaintiff. Therefore, it follows that the plaintiff could not even establish that a demand was made for repayment of the loan before institution of the suit. Further, as also rightly observed by the trial Court, the content of the body of exhibitA1-receipt on one hand and the words 'written by' & the 'signature' of the scribe (PW2) on exhibit A1 on the other are in different colours of ink. PW1 in his examination-in-chief simply stated that he paid the amount of Rs.25,000/-, on 05.04.1984, and the defendant delivered the receipt in token of Rs.25,000/-. He did not state that his clerk (PW2) scribed the receipt and that the loan amount was advanced in his presence, though in his cross examination he stated that his clerk Gangaraju acted as a scribe and attestor. In the light of the over all factual and evidential background, in the considered view of this Court, the evidence of PW2, the former clerk of PW1, does not advance the case of the plaintiff any further.

14.10 On a careful analysis of the oral and documentary evidence and for the reasons afore-stated, this Court finds that the plaintiff failed to prove that the defendant borrowed Rs.25,000/- as hand loan under exhibit A1 and accordingly hold that he is not entitled to a decree as prayed for.

14.11 I have gone through the judgment of the trial Court. No-doubt, there are certain reasons assigned in the judgment of the trial Court which may not stand the test of scrutiny. The trial Court, having compared the signatures of the defendant on the vakalat and deposition on one hand and the signature said to be of the defendant on exhibit A1 on the other held that the first set of signatures on the said documents do not tally with the disputed signature on exhibit A1. However, the learned counsel for the plaintiff pointed out that the defendant for reasons which are not far to seek scribbled some writings 'like signatures' on his vakalat and deposition and that he purposely put his signatures in Telugu language on his written statement and that his said conduct indicates that he designedly disguised his signatures to support his false defence that his signature on exhibit A1 is forged. Be that as it may, merely because the defendant did not maintain consistency in his signatures malice cannot be attributed and no inference favourable to the case of the plaintiff can be drawn as there is no cross examination of DW1 on the said aspects by showing his signatures on the available material documents including exhibit A1. The learned counsel for the plaintiff also pointed out that the signature of the defendant on exhibit A6 sale deed tallies more or less with the signature on exhibit A1-receipt. However, DW1 was not confronted with the signatures on exhibit A1 and exhibit A6-sale deed during his cross examination and it was not even suggested to him that the signatures on the said two documents are similar. Further, in his cross examination, DW1 was not even confronted with the exhibit A1-receipt and it was not even suggested to him that the signature appearing on exhibit A1 is his signature. Thus, the cross examination of DW1 is wanting on many material aspects of the case. Further, the failure to put the plaintiff's own case to DW1 in his cross examination, which ought to have been put to DW1, is also a circumstance which undermines the truthful nature of the case pleaded by the plaintiff. The decision in **Ravinder Kumar Sharma** (4 supra) supports the view that a cross examining counsel should put to the witness of the opponent so much of the case of his client with which that particular witness is concerned and that if no such question of his client is put to such witness during the cross examination it can be held that the case of such party is not substantiated. Decision in **Rajinder Pershad** (5 supra) supports the proposition that if the witness is intended to be impeached, the counsel cross examining him is bound to give an opportunity of making an explanation with regard to the disputed statement by drawing his attention to that part of the statement, which is being disputed or objected to as untrue, and that without such opportunity being given his credit cannot be impeached. Thus, this Court's view that in the facts and circumstances of this case, when DW1 contended that his signature on exhibit A1 is forged and further denied his signature on exhibit A1 in his evidence, he ought to have been confronted with his signature on exhibit A1 by drawing his attention to the signature for the purpose of impeaching his credit finds support from the above cited decisions of the Supreme Court.

14.12 For the afore-said reasons, this Court holds that the plaintiff failed to prove that exhibit A1 receipt is true. As a sequel it must be held that the said receipt is not binding on the defendant. Point is accordingly answered.

15. Before taking up the next point, it is to be noted that exhibit A1 receipt is dated 05.04.1984, but, the suit was instituted on 06.04.1987 and not on 05.04.1987 and hence, it is necessary to make a passing reference to the issue of bar of limitation. As per settled legal position, ordinarily in computing the time, the rule which is being consistently followed and is to be observed is to exclude the first day and include the last day in view of the provisions of Section 12 of the Indian Limitation Act, 1963, and Section 9(1) of the General Clauses Act. Further, as per the provision of Section 4 of the Indian Limitation Act, 1963, where the prescribed period for any suit expires on a day when the Court is closed, such suit may be instituted on the day when the Court reopens. Since 05.04.1987 is a Sunday, the suit instituted, on 06.04.1987, is well within time.

16. **<u>POINT No.2:</u>**

Though this Court, in this judgment, did not fully endorse the reasoning of the trial Court, however, for the other reasons in the impugned judgment, which are sustainable, and for all the reasons that are now assigned and also the finding under point no.1 supra, this Court holds that the trial Court is justified in dismissing the suit of the plaintiff and that the said finding of the trial Court, therefore, does not brook interference. Point is thus answered.

17. **POINT No.3:**

In the result, the appeal suit is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

19.03.2018
Vjl