

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.2698 of 1996

JUDGMENT:

This appeal is filed by the unsuccessful defendants against the judgment and decree dated 03.06.1996 passed in Original Suit No.44 of 1986 by the Additional Subordinate Judge, Srikakulam.

2. As this is a first appeal and for the sake of convenience, the parties are referred to as they are arrayed in the suit i.e., as plaintiffs and defendants only.

3. The suit is filed for recovery of Rs.1,14,000/- from the assets of late Sri A. Gunnaiah, which are in the possession of the defendants with subsequent interest at 30% per annum and for costs.

4. The brief averments of the plaint are that first defendant is the wife and defendants 2 to 9 are the children of late Gunnaiah. On 06.07.1983, the said Gunnaiah borrowed a sum of Rs.60,000/- from the plaintiffs for construction of the cinema theatre and executed a pro-note agreeing to repay the same with interest at 30% per annum. After the death of Gunnaiah, the defendants are in possession and enjoyment of his properties and as such they have a moral/legal obligation to discharge the debts of late Gunnaiah. In spite of repeated demands and demand notice dated 29.06.1986, the defendants did not pay the due amounts.

5. Defendants 1 to 3 and 5 to 8 filed their written statement and defendants 4 and 9 filed a separate written statement. Later, defendants 5 to 8 filed an additional written statement also. Denying the averments of the plaint, the defendants contended that late Gunnaiah has no need to borrow money from the plaintiffs. All the allegations in the plaint are issues of lies and created for the purpose of the suit. Sri K. Vasayya, who is the father of first plaintiff, while doing business might have taken the signatures of late Gunnaiah on a blank paper with affixed revenue stamps and created the forged suit pro-note. The suit pro-note is also a rank forgery and brought into existence with the help of attestors and scribe, who are associates of K. Vasayya and the first plaintiff. They also pleaded that the suit is barred by time and that the interest claimed is usurious.

6. Defendant No.9 in her written statement and defendants 5 to 8 in their additional written statement assert that the suit pro-note is rank forgery as late Gunnaiah was bed-ridden prior to the date of pro-note and he died on 08.07.1983. Had the plaintiffs truly given money to late Gunnaiah on 06.07.1983, they would have claimed money instantaneously from his legal heirs after the death. They would not have kept quiet for a long period of three years. They also contended that the suit is barred by limitation as the suit is filed on 08.07.1986, whereas the alleged pro-note was executed on 06.07.1983.

7. After considering the pleadings of the parties, the following issues are settled for trial.

- i) Whether the suit promissory note is true and valid?
- ii) Whether the suit debt is binding on the defendants?
- iii) Whether the interest is usurious?
- iv) To what relief?

8. For the plaintiffs, PWs.1 to 4 were examined and Exs.A.1 to A.6 were marked. For the defendants, DWs.1 and 2 were examined but no documents were marked. After hearing both the parties and after considering the oral and documentary evidence, the lower Court allowed the suit granting a decree in favour of the plaintiffs and against the defendants. Against the said judgment and decree of the lower Court, the defendants filed the present appeal before this Court.

9. This Court has heard Sri Karri Murali Krishna, learned counsel for the appellants/defendants and Sri D. Ramalinga Swamy and Yallabandi Ramathirtha, learned counsel for the respondents/plaintiffs.

10. The essential point that arises for consideration in this case is whether Ex.A.1 suit promissory note was valid and is executed by the deceased-Gunnaiah. Issue No.1 is correctly framed as “whether the suit promissory note is true and valid?” This is a crucial point that has to be decided by this Court. The learned counsel for the appellants/

defendants argued essentially on this point only, apart from an issue of limitation, which will be dealt with later.

11. The learned counsel for the defendants in the suit and the appellants herein argued that the suit promissory note is not proved and that the deceased-Gunnaiah does not have the need to borrow the money at all. The first defendant in her written statement at para-10 states that one K. Vasayya while doing business with Gunnaiah might have taken signatures on a blank paper and engineered to create the forged promissory note. She also alleges that the suit promissory note is a rank forgery. The learned counsel for the appellants/defendants also argued that the burden cast upon the plaintiffs to prove the demand promissory note is not discharged; that the deceased Gunnaiah was a businessman of sufficient wealth and if he had in fact need to borrow money, he would have informed the first defendant about the same. Therefore, they urged taking advantage of the death of Gunnaiah, the suit is filed to lay a claim on substantial properties of the deceased.

12. In reply to this, the submission of the learned counsel for the respondents/plaintiffs is that the stand of the defendants in the written statements is contradictory, on one hand they state that the signatures were obtained on a blank promissory note and in the next line they state that the signatures are forged. The learned counsel also points out that from the oral and documentary evidence, the execution

of promissory note, payment of consideration etc., are proved and that the judgment passed by the lower Court is a correct judgment. There are no grounds to interfere with the same.

13. This Court after hearing both the learned counsel notices that since the suit is filed for recovery of money based on Ex.A.1 pro-note, the burden lies upon the plaintiffs to prove that the promissory note is valid and binding. This is issue No.1 as framed by the lower Court.

14. In order to prove the case of the plaintiffs, four witnesses were examined. PW.1 by name K. Venkata Ramana is the first plaintiff. He gave evidence on his behalf and on behalf of other plaintiff, who is his niece. He clearly states that Gunnaiah requested him to advance a loan of Rs.60,000/- about one week prior to the execution of Ex.A.1. He also states that on the date of execution of Ex.A.1 Gunnaiah talked with one Nazar Khan (PW.3), K. Chinnarao and P. Krishnamurthy Raju (PW.4) about the manner in which the promissory note was executed and the payment was to be made. He also states that Gunnaiah used to borrow money earlier also. He states that the money lent under Ex.A.1 promissory note belongs to him and to the first plaintiff. He denied the suggestion that the signature on Ex.A.1 does not belong to Gunnaiah.

15. PW.2 is the scribe of the promissory note. He states that he went to the house of PW.1 after he was asked to go there and he found Nazar Khan, K. Chinnarao, P.

Krishnamurthy Raju and Bhavani present there. He clearly deposes that late Gunnaiah told that he was borrowing Rs.60,000/- from PW.1 and requested him to scribe the promissory note. Thereafter, he deposed about the manner in which the note was scribed. He states that he knows K. Chinnrao and Nazar Khan but he has no connection with them.

16. PW.3 is Nazar Khan, who is the first witness to Ex.A.1-promissory note. He states that on 06.07.1983 he went to the house of late Gunnaiah to purchase old tires. Late Gunnaiah asked him to follow him in a car to go to the house of K. Venkata Ramana (first plaintiff) and to be a witness. He describes the manner in which he went to the house and also the manner in which the promissory note was scribed. He clearly deposed that after receiving the consideration, the promissory note was given to the scribe and then he signed on it as a first witness. A suggestion was put him that the signature on Ex.A.1 does not belong to Gunnaiah, but he denied the signature.

17. PW.4 P. Krishnamurthy Raju deposes that on 06.07.1983 Gunnaiah and PW.3 came and picked him up and all of them took a car and went to the house of PW.1. Thereafter, a word was sent to the scribe for preparing the promissory note. He clearly deposed that he was personally present when Gunnaiah signed on Ex.A.1 promissory note. Later, Gunnaiah gave the pro-note to the scribe who wrote

the word “witnesses” in telugu and both PW.3 and himself signed on the document as witnesses. There is no effective cross-examination to disbelieve what is deposed by these witnesses.

18. For the defendants, second defendant was examined as DW.1. He states that his father used to inform him if he has borrowed any money from anyone. He also states that the mother also never informed him about the borrowing. He deposed that Ex.A.1 does not contain his father's signatures. In his cross-examination, he admits that his father borrowed money from others and has a business relationship with the plaintiff's father. He also states that he has no personal knowledge about the business and the dealings carried on by his father. He also admits that by the date of death of his father, the theatre called Ramakrishna theatre was being constructed and 70% of the theatre work was completed by his father. He also admits that his father borrowed money from Sundaram Finance for construction of the theatre.

19. The second witness examined for the defendants is the wife of deceased-Gunnaiah, who is the first defendant in the suit. She also deposed that she has no knowledge of any of the plaintiffs and that the signature on Ex.A.1 does not belong to late Gunnaiah. She states that he never borrowed any money from the plaintiffs and that if he has borrowed, she would have been informed. In her cross-examination, she

states that he has no knowledge about the business affairs of her husband or the details of the debts. However, she admits that he borrowed Rs.5 lakhs in State Bank of India for construction of the theatre. She also admits that by the time of the death, the theatre work was in progress. In addition, she also states that the deceased used to take tyres on cash basis and credit basis from the father of the first defendant.

20. In addition to the co-plaintiff/PW.1, the plaintiffs have examined their scribe and attestors of Ex.A.1. They have proved the passage of consideration and the witnesses depose with clarity about the manner in which the promissory note was executed. There is no effective cross-examination from the defendants on these aspects.

21. The initial pleading of the defendants is that the deceased Gunnaiah did not have need to borrow money. But, both DWs.1 and 2 admit the borrowings made by late Gunnaiah from other sources. The fact that emerges clearly is that the theatre which was constructed by Gunnaiah was in an advanced stage of construction. Therefore, Gunnaiah's need for money is borne out by record. Ex.A.1-promissory note clearly states that the amount is being borrowed for the purpose of construction of the cinema theatre. The fact that Gunnaiah borrowed money from other sources is deposed by DWs.1 and 2 clearly.

22. The defendants also pleaded that the suit promissory note is forged. They did not however take any

steps to prove the said forgery. The admitted signatures were not sent to any hand writing expert for comparison with the promissory note signatures.

23. In view of all the above, this Court is of the clear opinion that late Gunnaiah did borrow money under Ex.A.1 promissory note and agreed to repay the same with interest. The finding of the lower Court on this issue No.1 is correct and this Court finds no reason to interfere with the same.

24. As far as issue No.3 is concerned, it is about the alleged usurious nature of the interest. This Court notices that the borrowing is a pure and simple commercial borrowing. The deceased Gunnaiah was an experienced businessman and he needed money for construction of the theatre. The lower Court also rightly discussed the legal and factual aspects and came to a conclusion that the interest claim is not usurious. The burden was on the defendants to prove that the interest was usurious. There is absolutely no documentary or other evidence to show prevailing rates of interest at that point of time to enable the Court to verify and decide that the rate is usurious. Subsequent interest was awarded at 18% p.a. only from the date of the suit. Therefore, this Court is of the opinion that the issue No.2 is rightly decided in favour of the plaintiffs and against the defendants.

25. As a result of the findings on issue Nos.1 & 3, this Court holds that the promissory note is binding on the defendants. The defendants are enjoying the properties

inherited by them from late Gunnaiah. Therefore, they are liable to discharge the said debt. Issue No.2 is also decided in favour of the plaintiffs.

26. Apart from these issues, during the course of arguments, the learned counsel for the appellants made a submission that the suit is barred by time. This Court notices that in the plaint itself the plaintiffs have pleaded that the limitation for filing the suit expires on 06.07.1986, which is on Sunday and as 07.07.1986 was declared to be a public holiday due to the death of Babu Jagjeevan Ram, the suit is filed on 08.07.1986. In the plaint, the plaintiffs gave the above mentioned reasons and filed the suit on 08.07.1986. This is in accordance with Section 4 of the Limitation Act, 1963.

27. In view of the fact that 06.07.1986 is Sunday and 07.07.1986 is declared as public holiday, the lower Court took the case on file, conducted the trial and gave the decree. In the course of written statement, no issue was raised about these holidays being not correct or about the alleged defective presentation of the plaint. In the absence of any pleading or evidence to show that 06.07.1986 was not a Sunday or that 07.07.1986 was not a public holiday on account of the death of Sri Babu Jagjeevan Ram, this Court cannot allow the appellants to argue that the presentation of the suit is wrong. There is a clear pleading in the plaint about these aspects which is not denied in the written statements. Therefore, the

defendants are estopped from raising the plea. There is no evidence to show that 07.08.1986 was not declared a holiday as pleaded due to the death of Babu Jagjeevan Ram. The lower Court also noticed this aspect and clearly held that 06.07.1986 is a Sunday and that 07.07.1986 was a public holiday. Nothing to the contrary was pointed out during the hearing of the appeal. It is a fact that Babu Jagjeevan Ram died on 06.07.1986. In the absence of any contradictory material, this Court concurs with the findings of the lower Court on this issue and holds that the defendants now cannot raise this issue.

28. For all the above reasons, the appeal is dismissed. The judgment and decree dated 03.06.1996 passed in Original Suit No.44 of 1986 by the Additional Subordinate Judge, Srikakulam are confirmed. In the circumstances of the case, there shall be no order as to costs.

29. Miscellaneous Petitions, if any, pending in this appeal shall also stand closed.

Date: 18.07.2018
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D.V.S.S. SOMAYAJULU, J