

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 359 of 2016

JUDGMENT:

1. The Second Appeal is filed by the appellant/defendant against the judgment and decree dated 29.01.2016 in Appeal Suit No.74 of 2013 on the file of the IX Additional District Judge, Chittoor, whereby the judgment and decree dated 29.01.2013 in O.S. No.214 of 2008 on the file of the Junior Civil Judge, Pakala, decreeing the suit filed for recovery of money basing on a promissory note, were confirmed.

2. The appellant herein is the defendant, and the respondent herein is the plaintiff, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. The Second Appeal was admitted on the following substantial questions of law.

“a) Whether the request of the appellant to send the disputed documents to handwriting expert ought to have been accepted without insisting upon the production of contemporaneous documents containing admitted signatures?

b) Whether the courts below erred in not invoking the power under Section 73 of Evidence Act, to compare the signature of the executants in Ex.A-1 with the signatures of the appellant found in the official records such as Ex.B-1 to Ex.B-5?

c) Whether the judgments of the learned Trial Court and the Appellate Court are perverse inasmuch

as relevant evidence has been ignored and irrelevant and inadmissible material has been taken into account while giving findings on disputed issues?"

4. To adjudicate the *lis*, it is necessary to refer to admitted and disputed facts.

(a) The plaintiff filed the suit for recovery of a sum of Rs. 90,000/- from the defendant stating that the latter borrowed a sum of Rs. 54,000/- from the former on 05.12.2005 for his family necessities and executed a promissory note on the same day agreeing to repay the same with interest @ 24% p.a., but did not repay the same inspite of repeated oral demands and also issuance of notice dated 20.11.2008. Hence the suit.

(b) The defendant filed written statement denying plaint averments and contending that the defendant did not borrow any amount from the plaintiff and he had no necessity to borrow the same; that the suit promissory note is a fabricated document by the plaintiff to harass the defendant for wrongful gain. Hence, it is prayed to dismiss the suit.

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

- 1) Whether the suit promissory note is duly executed by the defendant?
- 2) Whether the suit pronote is materially altered?
- 3) Whether the plaintiff is entitled for the suit claim?
- 4) To what relief?

6. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A3 were got marked, and on behalf of defendant, D.W.1 was examined and Exs.B1 to B6 were got marked.

7. The trial Court, upon appreciation of the evidence on record, decreed the suit with costs. Challenging the judgment and decree of the trial Court, the defendant preferred A.S. No.74 of 2013 on the file of the IX Additional District Judge, Chittoor. Vide the impugned judgment and decree, the first appellate court dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the defendant.

8. Heard both sides and perused the record.

9. Learned counsel for the appellant/defendant would contend that the defendant filed an application before the trial court to send the signatures on the disputed document i.e. Ex.A1- promissory note, to the hand-writing expert for comparison with the admitted signatures of defendant; that the said application was dismissed and the revision filed by the defendant was also dismissed; that the defendant had taken the ground in the first appeal, which was not considered; that the signatures on the disputed document are quite different from the admitted ones; that the trial court ought to have compared the signatures on the promissory

note Ex.A1 as required under Section 73 of the Indian Evidence Act, 1872; that both the courts below have not appreciated the evidence on record in proper perspective and arrived at, perverse findings, and ultimately, prayed to allow the Second Appeal. In support of his contention, he relied on a decision in *Murari Lal v. State of Madhya Pradesh*¹.

10. On the other hand, learned counsel for the respondent/plaintiff would contend that both the courts below rightly placed reliance on the evidence of P.Ws. 1 to 3 and Ex. A1 and rightly held that the plaintiff successfully established execution of suit promissory note by the defendant and receipt of consideration thereunder; that there are no grounds to interfere with the concurrent findings of both the courts below; the substantial questions of law relate to factual aspects and hence there are no grounds to interfere with the findings of the courts below.

11. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact nor on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of

¹ (1980) 1 Supreme Court Cases 704

sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

12. The plaintiff instituted the suit against the defendant for recovery of a sum of Rs. 90,000/- stating that the defendant borrowed a sum of Rs. 54,000/- from him on 05.12.2005 and executed Ex.A1 promissory note in his favour agreeing to repay the same with interest @ 24% p.a., but did not repay the same inspite of oral demands and also issuance of Ex.A2-notice which was received by defendant under Ex.A3-postal acknowledgement. Whereas the defendant has taken a defence that he never borrowed any amount from plaintiff or executed any promissory note in his favour and that Ex.A1 is forged and fabricated document. Coming to evidence, plaintiff as P.W.1 substantiated his case with regard to the defendant borrowing the amount and executing Ex.A1. P.W.2 is one of

the attestors of Ex.A1. He supported the case of plaintiff with the regard to the defendant borrowing Rs. 54,000/- on 05.12.2005, and executing Ex.A1, in his presence. P.W.3 is scribe of Ex.A1. He supported the case of plaintiff. Though P.Ws. 1 to 3 were cross-examined by the defendant, nothing has been elicited to discard their version in the examination-in-chief. Their evidence remained unshaken. The defendant, as D.W.1, deposed that Ex.A1 is a forged and fabricated document and that he never borrowed any amount from the plaintiff. P.Ws.2 and 3 have no grouse or enmity against the defendant to depose false against him. Therefore, the cogent and convincing evidence adduced by the plaintiff, proved the suit transaction and execution of the suit promissory note Ex.A1 by the defendant. Both the courts below elaborately dealt with the evidence on record and decreed the suit.

13. As regards the contention of defendant that in the absence of examination of the disputed signatures on Ex.A1 with that of the admitted ones, the courts below ought not to have believed the execution of Ex.A1, is concerned, having taken such a plea, it is for him to take appropriate steps for comparison of the disputed signatures with the admitted ones. As seen from the record, the petition filed by the defendant for sending the disputed and admitted signatures to Forensic Science Laboratory, Hyderabad for comparison was allowed and the documents were sent. Later, when the

documents were returned for want of some more documents, the defendant did not take appropriate steps. Thereafter, he filed another petition for the same relief and the same was dismissed by the trial court, which was affirmed by this court in the revision. However, the evidence adduced by the plaintiff is acceptable to prove the execution of suit promissory note Ex.A1 and receipt of consideration thereunder.

14. The other contention of the defendant is that the courts below did not invoke the power under Section 73 of the Indian Evidence Act, 1872 to compare the disputed signatures with the admitted ones. In *Murari Lal's* case(1 supra) relied on by the learned counsel for the appellant, it is observed thus:

“The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. [Section 73](#) of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there

are expert opinions they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that [Shashi Kumar v. Subodh Kumar](#) and Fakhruddin v. State of Madhya Pradesh (supra) were cases where the Court itself compared the writings.”

Comparison under Section 73 of the Act is not mandatory. When there is ample oral and document evidence on record to believe the suit transaction, court need not compare the admitted and disputed signatures on its own to arrive at a finding. Therefore, non-comparison of signatures on Ex.A1 with the admitted ones by the Courts below is not fatal. The decision relied on by the learned counsel for the appellant has no application to the facts of the present case.

15. The substantial questions of law in the grounds of appeal are only on factual aspects. Both the Courts below analysed the entire evidence on record and gave concurrent findings on the factual aspects. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. Under these circumstances, no question of law, much less substantial question of law, as contended by the appellant/defendant to deal with under Section 100 of the Code of Civil Procedure, 1908 comes up for determination in

the Second Appeal. Therefore, there are no merits in the Second Appeal and the same is liable to be dismissed.

16. In the result, the Second Appeal is dismissed. No costs.

Miscellaneous Petitions pending, if any, in the Second Appeal shall stand closed.

08.08.2018
DRK

(Dr.SA, J.)



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