

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

A.S.No.2766 of 2001

JUDGMENT:

This appeal is filed by the defendant in the suit O.S.No.96 of 1997 against the judgment and decree dated 02.07.2001 passed by the Senior Civil Judge, Kovvur, West Godavari District.

2. For the sake of convenience, the parties are referred to as the plaintiff and and defendant only.

3. The suit is filed for recovery of Rs.1,31,258/- being the principal and interest due on a promissory note dated 01.12.1995 executed by the defendant in favour of the plaintiff for Rs.1,00,000/- repayable with interest at 18% per annum and for costs of the suit. Interest is claimed at contract rate.

4. The plaint averments in brief are that the defendant borrowed a sum of Rs.1,00,000/- on 01.12.1995 for discharging the family debts and for doing business from the plaintiff and executed the suit promissory note agreeing to repay the same on demand with interest at 18% per annum. Subsequently, the plaintiff demanded the defendant to repay the suit amount. The defendant did not pay any amount to the plaintiff and he was postponing the same on some pretext or the other. As the defendant is a business man, the plaintiff is entitled to claim interest at 18% per annum. Hence, the suit.

5. The defendant filed his written statement stating that it is not true that the defendant borrowed an amount of Rs.1,00,000/- on 01.12.1995 towards his family maintenance and business purpose. He actually borrowed a different amount of Rs.1,00,000/- under Ex.B.1 and agreed to repay the same with compound interest at Rs.1.50 paise per hundred per month which comes to Rs.1,500/- per month and agreed to discharge the amount within three years. The plaintiff obtained the signatures of the defendant, his wife-Satyavathi and son-Veera Venkata Satya Vijayakumar on a general stamp paper worth Rs.50/- during the said period. The plaintiff took the signature of the defendant on three empty promissory notes with revenue stamps worth Rs.1/- each. For all the said papers which are in the handwriting of Y.E.S. Narayana, the plaintiff gave the photostat copies of the same to the defendant. Subsequently, the defendant paid Rs.75,000/- to the plaintiff towards part payment and to that effect the plaintiff issued a receipt to the defendant. Out of the three empty promissory notes created by plaintiff, one of the promissory notes was obtained in the name of Pemmaraju Satyanarayana Murthy. The plaintiff passed a receipt for Rs.5,000/- including interest of Rs.2,000/- in favour of the defendant. The plaintiff is not entitled for the interest as claimed in the suit.

6. Based on the above pleadings, the following issues and additional issue were framed for trial.

Issues:

- i) Whether the pronote dated 01.12.1995 is true and is supported by consideration?
- ii) To what relief?

Additional Issue:

- iii) Whether the payment covered by receipt dated 12.02.1997 and 25.07.1997 are true, valid and binding on plaintiff?

7. For the planitff, three witnesses were examined as PWs.1 to 3 and Exs.A.1 to A.3 were marked. For the defendant, seven witnesses were examined as DWs.1 to 7 and Exs.B.1 to B.8 were marked. Ex.C.1 to C.9 were also marked by the Commissioner.

8. After considering the entire evidence both oral and documentary, the lower Court came to the conclusion that the plaintiff is entitled to a decree as prayed for. It is this judgment that is now assailed in this appeal.

9. This Court has heard Sri S.M. Subhan, learned counsel for the appellant/defendant and Sri C.C.S. Sastry, learned counsel for the respondent/plaintiff.

10. The facts which are clear from the record are that the plaintiff filed the suit for recovery of the sum due on the basis of a promissory note. The defendant contended that the promissory note is false and that there was never any borrowing of money under the same. As per the defendant, there is an agreement in which the defendant borrowed money, but not under Ex.A.1 promissory note. The agreement (xerox copy) is marked as Ex.B.1. The defendant alleged that

he had discharged a substantial part of the loan due and she also filed the receipts to prove the case. Based on this pleading, the Court framed the issues which were mentioned earlier. Issue No.1 is whether the suit promissory note is actually supported by any consideration and additional issue is whether the payment covered by the receipts dated 12.02.1997 and 25.07.1997 are true.

11. To prove her case, the plaintiff examined herself as PW.1. In the evidence, she reiterates her plaint averments and also denies the fact that there is any other transaction. She also denied her signature on the receipt dated 12.02.1997. In the course of cross-examination, she again denied that the signatures on the receipts belonged to her. She asserted and stated that there is no agreement between her and the defendant and that the same was discharged. PW.1 also marked Exs.A.1 to A.3.

12. PW.2 was the scribe of Ex.A.1 promissory note. He clearly deposed to the effect that the defendant borrowed money from the plaintiff and received the consideration and signed Ex.A.1 in his presence. He denied a suggestion that no consideration was paid to the defendant under Ex.A.1 and that it was filled up. PW.3 is a handwriting expert who was examined on commission. This witness examined the signature on the disputed document-Ex.B.3 and also the signatures, which were taken in the open Court and sent to him for comparison. Through him Ex.C.1 to C.9 were marked.

These include the photographs of the signatures of disputed and admitted signatures. Ex.C.1 is the opinion of the expert containing five pages. Basing on his experience and knowledge, he certified that Ex.B.3 receipt is not signed by the plaintiff. The expert concludes that subsequent signature was written freely while the disputed signature has been written extremely carefully and slowly with concentration fixed on external design and formation of the letters. He also stated that there are broad differences in the signatures.

13. In contradiction to this, the defendant examined himself as DW.1. His contention is that he signed a blank promissory note and executed an agreement and borrowed money from the plaintiff. The signature on the promissory note is not however denied. The defendant's case is that there is an agreement, which is marked as Ex.B.1. Ex.B.2 is the memo served on the counsel for the plaintiff to cause production of the original of Ex.B.1. Ex.B.3 is the receipt under which the defendant alleged that he paid Rs.75,000/-. In the cross-examination, a suggestion was put that Rs.75,000/- is never paid and Ex.B.3 is a disputed/created document.

14. To support the case, DW.1 also examined DWs.2 & 3. DW.2 stated that he scribed Ex.B.3 receipt. He identified his signature on Ex.B.3. DW.3 is another witness who supported the case of the defendant and he is the witness who signed in Ex.B.3. He also states that a sum of

Rs.75,000/- was paid in his presence. DW.5 is the scribe of the agreement Ex.B.1. According to him, his wife, son and himself have executed the agreement Ex.B.1 and he also states that when Ex.B.1 was executed, the plaintiff took the signatures of the defendant on four white papers.

15. In the light of this evidence, the learned counsel appearing for the appellant/defendant argued that the defendant discharged his liability cast upon him by filing a copy of the agreement (Ex.B.1), which is the original transaction between the plaintiff and the defendant and by filing the receipts and examining the scribe and attestors connected with these documents.

16. In reply to this, the learned counsel for the respondent/plaintiff argued that the defendant did not discharge the burden and that on the contrary the plaintiff discharged the burden of proving her case.

17. This Court on examination of the documentary evidence and the oral submissions notices that the defendant did not deny his signature on Ex.A.1 promissory note. He merely states that he signed on blank promissory note which is filled later. The evidence of PWs.1 & 2 clearly shows that the promissory note was validly executed and nothing was elicited in the oral evidence to show that a blank or an inchoate instrument was subsequently filled up. This Court therefore holds that the plaintiff discharged the burden cast upon her.

18. Coming to the defendant's case, this Court notices that the defence is based upon Ex.B.1 agreement only a photostat copy of the said document was filed, but no steps were taken to summon the original of Ex.B.1. The notice Ex.B.2 that is given to produce the document is also not in the format under Order XII Rule 8 CPC. In addition, the trump card of the defendant's case is the receipt by which he says Rs.75,000/- was supposedly paid. The expert to whom the signature under Ex.B.3 was sent for examination came to the conclusion that the signature on Ex.B.3 does not belong to the defendant makes it clear that the entire theory set by the defendant is false. It appears from the record that the plaintiff herself filed the application for sending the document for expert opinion and thereafter the opinion was obtained. Therefore, the plaintiff has proved that the receipt is not signed by her. In view of this evidence and the fact that the original of Ex.B.1 is not on record, this Court has to accept the plaintiff's case.

19. In view of the above, this Court holds that the defendant has failed to prove his case. Ex.B.1 has not been proved. Ex.B.3 was sent to the expert. The expert opinion is marked in evidence and the expert deposed orally that he came to the conclusion that the signature on Ex.B.3 is not that of the plaintiff. The photographs filed with the deposition of this witness found acceptance by the lower Court. This Court also concurs with the finding of the lower Court on this

issue. The evidence of PW.3 hand writing expert was not in any way shaken during the course of the cross-examination.

20. Therefore, in view of the evidence of PWs.1 & 2 and the fact that Ex.B.3 has a forged signature, this Court holds that the lower Court was right in deciding the issue No.1 and the additional issue in favour of the plaintiff and against the defendant. The consequential relief (issue No.2) is an issue based on the earlier issue and the lower Court rightly decreed the suit with costs as prayed for. This Court finds no reason to interfere with the same.

21. For all the above stated reasons, the appeal is dismissed. In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 23.03.2018
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D.V.S.S. SOMAYAJULU, J