

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.284 of 2013

JUDGMENT:

This appeal is filed by the defendants, under Section 100 CPC, assailing the judgment and decree dated 18.12.2012 passed in A.S.No.57 of 2011 on the file of the XI Additional District Court, Gudivada, Krishna District.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. Heard the learned counsel for the appellants and perused the record.

4. The facts leading to filing of the second appeal are briefly as follows: It is the case of the plaintiff that on 07.05.2003, the defendants borrowed an amount of Rs.1,00,000/- from the plaintiff and executed a mortgage deed in favour of the plaintiff agreeing to repay the loan amount together with interest @ 18% per annum. The defendants handed over the registered sale deed dated 19.03.1991 to the plaintiff as a security. In spite of repeated demands, the defendants did not choose to repay the amount. On 03.09.2007, the plaintiff got issued a legal notice directing the defendants to repay the loan amount, but in vain. Hence, the plaintiff filed O.S.No.24 of 2010 on the file of the Court of Principal Senior Civil Judge, Vijayawada, seeking preliminary decree basing on mortgage deed.

5. Defendants 2 to 4 filed a memo adopting the written statement filed by the first defendant. The first defendant filed

written statement denying all the averments made in the plaint *inter alia* contending that when the defendants approached the plaintiff for developing their fish tank, the plaintiff demanded them to execute registered mortgage deed in his favour for Rs.1,00,000/-. The defendants are agriculturists; therefore, the plaintiff is not entitled to claim interest at 18% per annum. On the same day, i.e. on 07.05.2003, this defendant encashed the cheques issued by the plaintiff and repaid an amount of Rs.35,000/- to the plaintiff. The mortgage deed was not supported by consideration. The defendants are entitled for the benefit of Act 4/1938. Hence, the suit is liable to be dismissed.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the mortgage deed dated 07.05.2003 was not supported by consideration to the extent of Rs.35,000/-?
2. Whether the defendants are agriculturists, and therefore entitled for scaling down the rate of interest to 12.5% p.a. from 18% p.a.?
3. Whether the plaintiff is entitled for preliminary decree as prayed for?
4. To what relief?

7. Before the trial Court, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A10 were marked. On behalf of the defendants, D.W.1 was examined and Ex.B1 was marked.

8. The trial Court after considering the oral, documentary evidence and other material available on record, arrived at a conclusion that Ex.A1 mortgage deed was supported by consideration and passed a preliminary decree for Rs.1,82,917/- with interest at 12.5% p.a. from the date of

mortgage deed i.e. 07.05.2003 till the date of filing of the suit i.e. 25.01.2010 on principal sum of Rs.1,00,000/- and also granted interest at 6% per annum on the principal sum of Rs.1,00,000/- from the date of suit till the date of payment. The trial Court granted six months time for redemption. Feeling aggrieved by the judgment and decree of the trial Court, the defendants preferred A.S.No.57 of 2011 on the file of XI Additional District Court, Gudivada, Krishna District. The learned Additional District Judge, after reappraising the oral and documentary evidence available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the defendants executed Ex.A1 mortgage deed in favour of the plaintiff agreeing to pay the same with interest and consequently, dismissed the appeal. Hence, the unsuccessful defendants preferred this second appeal.

9. The question of law urged by the appellants' counsel is 'Whether Ex.A1 mortgage deed is supported by consideration?'

10. The defendants have taken a specific plea in their written statement that they are the agriculturists by profession, therefore, they are entitled for the benefit of Act 4 of 1938 i.e., for scaling down of the rate of interest. The trial Court as well as the first appellate Court arrived at a conclusion that the defendants are entitled for the benefit of Act 4/38 and accordingly granted interest. The plaintiff did not file appeal challenging the decree and judgment of the trial Court so far as scaling down of rate of interest is concerned. There is no much dispute between the parties with regard to the granting of interest by Courts below.

11. The defendants themselves have admitted the execution of Ex.A1 mortgage deed in favour of the plaintiff. In view of the admission made by the defendants, this Court is of a considered view that the defendants have executed Ex.A1 mortgage deed in favour of the plaintiff.

12. The next question that falls for consideration is Whether the defendants have paid Rs.35,000/- to the plaintiff on 07.05.2003. A perusal of the Ex.B1 reveals that the fourth defendant presented three cheques given by the plaintiff on 07.05.2003 and withdrew an amount of Rs.50,000/-. For one reason or the other, defendants 1 to 3 did not choose to come into witness box in order to substantiate the stand that fourth defendant paid Rs.35,000/- to the plaintiff on 07.05.2003. There is no mention in the written statement in whose presence fourth defendant paid Rs.35,000/- to the plaintiff. Except self-served testimony of D.W.1, there is no other convincing evidence to establish that the defendants paid an amount of Rs.35,000/- to the plaintiff on 07.05.2003. The defendants having admitted execution of Ex.A1 failed to establish that the same is not supported by consideration. Whether the fourth defendant paid Rs.35,000/- to the plaintiff or not is purely a question of fact. The first appellate Court is the fact finding final Court. As rightly pointed out by the learned counsel for the appellants, if the findings recorded by the Courts below are not based on any evidence, certainly, this Court can upset the same while exercising the jurisdiction under Section 100 CPC. The trial

Court as well as the first appellate Court meticulously considered the oral and documentary evidence available on record and arrived at a conclusion that the defendants failed to establish that they have paid an amount of Rs.35,000/- to the plaintiff. The Courts below have assigned reasons much less cogent and valid reasons to its findings while not placing much reliance on Ex.B1. I am fully endorsing with the findings recorded by the Courts below.

13. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the Courts below are perverse and liable to be set aside.

14. Having regard to the facts and circumstances of the case, there is no question of law much less substantial question of law involved in this appeal. Hence, the second appeal is liable to be dismissed.

15. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

20.11.2018

Rns