

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.653 of 2017

JUDGMENT:

This second appeal is filed by the defendant, under section 100 CPC, assailing the judgment and decree dated 16.09.2016 passed in A.S.No.19 of 2015 on the file of Special Judge for trial of Cases under SCs & STs (POA) Act-cum-Additional District Court, Vizianagaram, wherein whereby the decree and judgment dated 20.07.2015 passed in O.S.No.153 of 2012 on the file of Junior Civil Judge Court, Srungavarapukota, decreeing the suit filed by the plaintiff for recovery of the suit amount, was confirmed.

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. The facts leading to filing of the second appeal are briefly as follows: On 11.10.2009, the defendant borrowed an amount of Rs.40,000/- from the plaintiff and executed a promissory note in favour of the plaintiff agreeing to repay the same with interest at 24% per annum. The defendant did not choose to pay the suit amount in spite of repeated requests. Having no other alternative, the plaintiff filed the suit for recovery of the suit amount.

4. The defendant filed his written statement denying all the averments made in the plaint inter alia contending that the defendant did not borrow any amount much less Rs.40,000/- from the plaintiff on 11.10.2009. It is the further contention of

the defendant that the Junior Civil Judge Court, at Srungavarapukota, has no territorial jurisdiction to entertain the suit as the defendant belongs to Guntur District. The further case of the defendant is that the plaintiff with the connivance of scribe and attestors created the promissory note with an ulterior motive. Hence, the suit is liable to be dismissed.

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

1. Whether the suit promissory note is true, valid and binding on the defendant?
2. Whether this Court has no territorial jurisdiction over the matter?
3. Whether the suit claim is barred by limitation?
4. Whether the plaintiff is entitled to decree as sought on the plaint?
5. To what relief?

6. To substantiate the case, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Ex.A1 was marked. To demolish the case of the plaintiff, the defendant examined himself as D.W.1 but no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that Ex.A1 promissory note is a valid and binding on the defendant and consequently decreed the suit in favour of the plaintiff and against the defendant. Feeling aggrieved by the judgment and decree of the trial Court dated 20.07.2015 in O.S.No.153 of 2012, the defendant preferred A.S.No.19 of 2015 on the file of Special Judge for trial of Cases under SCs & STs

(POA) Act-cum-Additional District Court, Vizianagaram. The first appellate Court after reappraising the oral, documentary evidence and other material available on record independently arrived at a conclusion that the plaintiff is entitled for recovery of the suit amount basing on Ex.A1 promissory note and dismissed the appeal on 16.09.2016. Hence, the defendant preferred the second appeal.

8. Heard Sri N.Chandradhar Rao, learned counsel for the appellant, Sri Ambati Sreekanth Reddy, learned counsel for the respondent and perused the record.

9. The substantial question of law urged by the learned counsel for the appellant is two fold: (1) The Junior Civil Judge's Court at Srungavarapukota has no territorial jurisdiction to entertain the suit; and (2) the findings recorded by the courts below are perverse.

10. Before advertng to the findings of the Courts below, this Court is placing reliance on the judgment in **Municipal Committee, Hoshiarpur v. Punjab SEB¹**, wherein, while dealing with the scope of Section 100 of CPC, the Hon'ble Apex Court held at paragraph No.16 as follows:

16. ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial

¹ (2010) 13 SCC 216

question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

11. Let me consider the facts of the case on hand in the light of the above legal principle.

Point No.1:

12. It is needless to say that the plaintiff has to file the suit in the Court within whose jurisdiction the cause of action arose or where the defendant has been ordinarily residing. A perusal of the record reveals that the defendant is the native of Guntur. Admittedly, the suit is filed on the file of the Junior Civil Judge Court, Srungavarapukota. It is the case of the plaintiff that the defendant executed Ex.A1 promissory note at Srungavarapukota. As per the testimony of D.W.1, he is native of Guntur; therefore, the Junior Civil Judge Court, at Srungavarapukota has no territorial jurisdiction to entertain the suit. It is needless to say that P.W.1 and D.W.1 being the parties to the suit, the possibility of giving evidence in such manner in order to suit their claim cannot be ruled out completely. Hence, much weight cannot be attached to oral testimony of P.W.1 and D.W.1. Ex.A1 is the promissory note. P.W.2 is the scribe and P.W.3 is the attesor of Ex.A1 promissory note. As per the testimony of P.Ws.2 and 3, Ex.A1 promissory note was executed by the defendant in Srungavarapukota. As seen from the testimony of P.W.3, he used to reside at Srungavarapukota as well as in Guntur in order to carry on his business. In the cross-examination of P.Ws.2 and 3, nothing is elicited to shake their testimony so far

as execution of Ex.A1 promissory note at Srungavarapukota. Nothing is elicited in the cross-examination of these witnesses that Ex.A1 promissory note was created at Srungavarapukota due to previous animosity between them and D.W.1. The testimony of P.Ws.2 and 3 remain unchallenged so far as execution of Ex.A1 promissory note at Srungavarapukota. By examining P.Ws.2 and 3, the plaintiff clearly established that Ex.A1 promissory note was executed at Srungavarapukota. The record reveals that the cause of action for filing of the suit arose within the territorial jurisdiction of Junior Civil Judge Court, Srungavarapukota.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the Junior Civil Judge Court, at Srungavarapukota, has territorial jurisdiction to entertain the suit. The Courts below considered the oral and documentary evidence in right perspective and arrived at a conclusion that the Junior Civil Judge Court, Srungavarapukota has territorial jurisdiction to entertain the suit. I am fully endorsing with the findings recorded by the Courts below. Hence, point No.1 is answered in favour of the respondent and against the appellant.

Point No.2:

14. The person, who files a suit basing on promissory note, has to establish the execution of the promissory note and the same is supported by consideration. As seen from the testimony of P.Ws.2 and 3, the defendant borrowed an amount of Rs.40,000/- from the plaintiff and executed Ex.A1 promissory

note in favour of the plaintiff agreeing to repay the same with interest at 24% per annum. Except putting formal suggestions, nothing is elicited in the cross-examination of P.Ws.1, 2 and 3 to establish that Ex.A1 promissory note is a forged one or the same is not supported by consideration. The defendant has taken a specific plea that the plaintiff fabricated Ex.A1 promissory note. For the reasons best known, the defendant has not taken any steps to send the disputed signature on Ex.A1 along with his admitted signatures to the expert for comparison and opinion. Mere taking of plea of forgery in the written statement by itself would not amount to substantiating the stand taken by the defendant. In the cross-examination of P.Ws.1 to 3, nothing is elicited to substantiate the stand of the defendant that Ex.A1 promissory note is created one. By examining P.Ws.2 and 3, the plaintiff clearly established the execution of Ex.A1 promissory note by the plaintiff after receiving an amount of Rs.40,000/- from the defendant. The testimony of P.Ws.2 and 3 clearly reveals that Ex.A1 promissory note is supported by consideration.

15. The trial Court as well as the first appellate Court considered the oral and documentary evidence in the light of the provisions of Indian Evidence Act. The findings recorded by the Courts below are supported by evidence much less legally admissible evidence. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Courts below.

Having regard to the facts and circumstances of the case, I am unable to concede to the contention of the appellant that the findings recorded by the Courts below are perverse and liable to be set aside while exercising the jurisdiction under Section 100 of CPC. There is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

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

26.10.2018
Rns



T.SUNIL CHOWDARY, J