

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 783 OF 2000

JUDGMENT:

1. The Second Appeal is filed against the judgment and decree dated 10.08.1998 in Appeal Suit No.34 of 1997 on the file of the Senior Civil Judge, Gurazala, Guntur district whereby the appeal preferred against judgment and decree dated 21.01.1997 in O.S. No.148 of 1995 on the file of the I Additional District Munsif, Gurazala were set aside.

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

“a) Does the evidence of plaintiff, scribe and attesor examined ask P.W.1 to P.W.3 prove execution of pronote Ex.A1 and borrowing of amount of Rs.10,000/- by the respondent from the appellant ?

b) Whether minor variance in evidence of P.W.1 to P.W.3 about execution of the pronote Ex.A1 as to inside or outside hotel either on table or pial has any legal effect the plaintiff's suit deserve dismissed ?

c) Whether in view of non-issue of reply to the notice of the appellant in Ex.A2 which was admittedly served on respondent under acknowledgement Ex.A3 drawing an adverse inference envisaged in Section 114 of the Indian Evidence Act is necessary ?

d) Whether the burden of proof that the suit pronote is not supported by evidence is on the appellant or the respondent ?”

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

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

(a) Plaintiff filed the suit against the defendant stating that the defendant borrowed an amount of Rs.10,000/- from him on 16.05.1992 and executed a promissory note on the same day agreeing to repay the same with interest @ 24% per annum, but failed to repay the same inspite of oral and written demands made by the plaintiff. Hence, the suit for recovery of Rs.13,653/- being the principal and interest under the suit promissory note.

(b) Defendant filed written statement denying the borrowal of Rs.10,000/- from the plaintiff and execution of the suit promissory note on 16.05.1992. It is stated that the plaintiff is a business man doing money lending business at high rate of interest; that the defendant used to obtain loans from him and discharge the same; that as the defendant did not discharge pronote debts at high rate of interest as demanded by the plaintiff, the suit pronote was fabricated with the help of his men to gain wrongfully, and hence, it is prayed to dismiss the suit.

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

- (i) whether the plaintiff is entitled to the suit amount ?
- (ii) whether the suit pronote is a forged one and not supported by consideration ?
- (iii) to what relief ?

6. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Ex.A1 was got marked, and on behalf of defendant, D.W.1 was examined but no documents were marked.

7. The trial Court, upon appreciation of the evidence on record, decreed the suit with costs directing the defendant to pay Rs.13,653/- with interest @ 6% per annum from the date of suit till realization on Rs.10,000/-. Challenging the judgment and decree of the trial Court, the defendant preferred Appeal Suit No.34 of 1997 on the file of the Senior Civil Judge, Gurazala. Vide the impugned judgment and decree, the first appellate court allowed setting aside the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the plaintiff.

8. Heard the learned counsel for the appellant. There is no representation for the respondent. This appeal is of the year 2000. It underwent several adjournments. Hence, it can be

disposed on merits without waiting for the learned counsel for the respondent to advance arguments.

9. Learned counsel for the appellant would contend that the first appellate court erroneously set aside the well reasoned judgment and decree passed by the trial Court; that the plaintiff proved that the defendant borrowed Rs.10,000/- from him under Ex.A1-suit promissory note, but, without adverting to the facts and circumstances of the case, and inspite of clear and unimpeachable evidence of P.Ws.1 to 3, the first appellate court reversed the finding of the trial Court, which is perverse, and hence, he prayed to set aside the judgment and decree passed by the first appellate court and confirm the judgment of the trial court.

10. 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 or 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 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.

11. The first appellate court, while dealing with subject matter of the suit filed for recovery of Rs.13,653/- by the plaintiff against the defendant under Ex.A1-suit promissory note, held that there are inconsistencies in the evidence of P.Ws. 1 to 3 with regard to place of execution, presence of witnesses and attesting the same on the date of the suit promissory note i.e. on 16.05.1992. The first appellate court enumerated several discrepancies in the evidence of P.Ws.1 to 3 and ultimately held that the plaintiff failed to prove execution of Ex.A1-suit promissory note and receipt of consideration of Rs.10,000/- thereunder by the defendant. The factual aspects with regard to genuineness and binding nature of Ex.A1-promissory note were elaborately discussed and answered by the first appellate court and it was pleased to dismiss the suit filed by the plaintiff for recovery of money basing on Ex.A1-promissory note, by setting aside judgment

and decree dated 21.01.1997 in O.S. No.148 of 1995 on the file of the I Additional District Munsif, Gurazala.

12. The first substantial question of law relates to borrowing of Rs.10,000/- by the defendant from the plaintiff under Ex.A1 promissory note. The second substantial question of law relates to place of execution of Ex.A1; the third one relates to non-issue of reply by defendant to Ex.A2, and the fourth one is with regard to proof of subject promissory note. All these questions are only factual aspects relating to money said to have been lent by the plaintiff and borrowed by the defendant. All the contentions raised in this Second Appeal relate to factual aspects. All these aspects have been elaborately dealt with by the first appellate court.

13. The first appellate court dealt with all the contentions in right perspective, and neither any inadmissible evidence is admitted, nor any admissible evidence was not acted upon, by the first appellate court. While reversing the judgment and decree of the trial Court, the first appellate court gave elaborate reasons. The findings of the first appellate court are based on the evidence. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. In view of the same, no question of law, much less substantial question of law, does arise for determination in the Second Appeal, as contended by the appellant/defendant no.1 to deal with under Section 100 of the Code of Civil

Procedure, 1908. The Second Appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Second Appeal is dismissed, confirming judgment and decree dated 10.08.1998 in Appeal Suit No.34 of 1997 on the file of the Senior Civil Judge, Gurazala, Guntur district. There is no order as to costs of the Second Appeal.

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

25.07.2018
DRK



(Dr.SA, J.)

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