

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.5506 of 2011

ORDER:

The Civil Revision Petition is filed against the order dated 11.04.2008 passed in A.S. No.73 of 2006 by the Additional Senior Civil Judge (Fast Track Court) Gudivada.

2) The revision petitioner is the defendant and revision respondent is the plaintiff in O.S. No.516 of 2005 on the file of the Principal Junior Civil Judge, Gudivada, Krishna District

3) The suit is filed for recovery of Rs.17,191/- with interest at 24% p.a., based on the suit pro-note for Rs.10,000/- dated 30.08.2002 and for costs. After contest, the trial Court has dismissed the suit by judgment dated 23.10.2006. Aggrieved by the same, the plaintiff filed A.S. No.73 of 2006 before the learned Additional Senior Civil Judge (Fast Track Court) at Gudivada. By judgment dated 11.04.2008, the lower appellate Court has allowed the appeal, for Rs.20,191/- with subsequent interest at 6% p.a., on the principal amount of Rs.10,000/- from the date of filing appeal till the date of realization and costs, by setting aside the trial Court's judgment. Impugning the same, the present revision is maintained.

4) Before disposal of the appeal, I.A. Nos.1057 and 1058 of 2007 were filed by the respondent/plaintiff to adduce

additional evidence and for production of attendance register of Akshara Sankranthi, Phase-II for the year 2001-02 relating to Pamarru Mandal, Krishna District, for variation and comparison of signatures of respondent. The said petitions were allowed on 15.11.2007 vide separate orders.

5) In the appeal judgment at para No.5, it is stated that during pendency of the appeal the appellant's counsel has filed I.A.No.1058 of 2007 to adduce additional evidence and permission to produce registers of Phase-II of Akshara Sankranthi for the year 2001-02, which was allowed, CW.1 was examined, his evidence was recorded and Exs.X1 and X2 were marked.

6) The revision is filed impugning the first appellate Court's judgment for recovery of money. As the lower appellate Court's decree value is Rs.20,191/-, which is below Rs.25,000/-, for which there is no second appeal maintainable as per Section 102 C.P.C amended Act, 2002.

7) Learned counsel for the petitioner with the contentions in support of the grounds of the revision submit that, the reversal judgment of lower appellate Court in decreeing the suit by setting aside the trial Court's dismissal judgment is contrary to law, weight of evidence and probabilities of the case; the lower appellate Court has went wrong in allowing the interlocutory application on receiving of additional evidence to the prejudice of the revision petitioner/

defendant; the lower appellate Court has also went wrong in believing Exs.A5 to A12—xerox copies of resolution, wherein the Defendant has signed against his name as director of the Society; the lower appellate Court has also went wrong in accepting the oral evidence of PW.4, that was rejected by the trial Court for the reason assigned even in the judgment; the lower appellate Court has also failed to see that PWs.2 and 3, alleged attester and scribe of the suit pro-note—Ex.A1 are close relatives of PW.1, plaintiff, thereby, no credence can be attached to their evidence; the lower appellate Court has also failed to see that Exs.X3 and X4—xerox copies, where specimen thumb impressions of the defendant are present and that were summoned from Bank, which are important documents to establish that the defendant only affixes thumb impression of left hand and is not a signatory; the lower appellate Court has went wrong in inferring the plaintiff's case as if true since the defendant failed to give reply notice about execution of pro-note of Ex.A1, and thereby sought for setting aside the lower appellate Court's decree and judgment by confirming the trial Court's dismissal decree and judgment.

8) Learned counsel for the revision petitioner/defendant by reiterating the same has drawn the attention of the Court to the evidence on record in support of the contentions. Whereas it is the contention of the learned counsel for the revision respondent that for this Court while

sitting in revision there is nothing to interfere since the revision is within the limited scope against the appellate court's judgment, that too, when the 1st appellate Court is a fact finding judge under Order LXI Rule 33 C.P.C including for re-appreciation of the evidence and there is no such liberty granted by law and thereby, sought for dismissal of the revision confirming the lower appellate Court's decree and judgment supra.

9) Heard both sides and perused the material on record.

10) Before the trial Court, in proof of the case of the plaintiff besides plaintiff came to the witness box as PW.1, she cause examined three witnesses out of whom, the evidence of PW.2—G.Bhaskar is treated with no value, but for the evidence of PWs.3 and 4—J.Nageswara Rao, K.Venkateswara Rao and plaintiff relied upon Exs.A1 to A10 viz., Pronote dt.30.08.2002, Xerox copy of Minutes page Nos.118 to 121 dt.25.06.2001, Attested Xerox copy of resolutions covered by Exs.A3 to A10 of the year 2001-02 respectively. Besides the defendant examined as DW.1 cause examined three more witnesses, P.Ravi Kumar, Y.Rajendra Prasad, K.Hanumantha Rao and placed reliance on Ex.B1—C.C of pro-note dated 07.07.2004 and Ex.B2—Registration extract of sale deed dated 12.05.2004.

11) It is during pendency of the appeal as referred supra, one V.V.Suryaprasad is examined as CW.1, and marked Exs.X1 and X2, original record of Akshara Sankranthi and the name of D.Rambabu at page No.154 of phase-II, Serial No.11 respectively, besides trial Court's judgment shows Exs.X1 to X4 already marked viz., Xerox copy of authorization letter dated 09.09.2006, Xerox copy of additional Cane register 1993-94, 1994-95, Attested Xerox copy of Specimen Thumb impression and Xerox copy of specimen thumb impression form.

12) Learned counsel for the petitioner submits that among PWs.1 to 4, leave about PW.2, who did not turn up for cross examination, treated with no value, who is attestor of Ex.A1—pronote, PWs.3 and 4 deposed in support of the case of the plaintiff of whom, PW.3 scribed the suit promissory note and the President of Kotha Kurumaddali Milk Producers Co-operative Society was examined as PW.4, who produced the minutes book of the society in order to prove that the defendant was one of the Directors of the Society during the year 2001 and in the general body meeting, he signed the resolutions that were recorded in the minutes book. It is to say that besides what PWs.1 and 3 deposed about Ex.A1 is valid and duly signed and his contention is that it is forged one in this revision, the statement is untrue, and his other contention is that he is a marks man and not a signatory.

PW4 evidence shows that he is signatory in the resolution which are Exs.A2 to A10 (supra).

13) What the trial Court mainly relied upon in dismissing the plaintiff suit is that PW.1 in her cross examination stated that she was not present when Ex.A1 was scribed, and that she does not know who were present when it was executed. Whereas in her chief affidavit she has stated that at the time of execution of Ex.A1—pronote, the attesor and scribe were present and she paid the consideration under it to the defendant and having received the same, he signed on Ex.A1 suit pro—note.

14) In view of the above, the evidence of PW.1 in her chief examination is quite inconsistent with her evidence in the cross examination.

15) The lower Court observed that PW.3, who is the scribe of Ex.A1—pro-note in his chief affidavit stated that the plaintiff paid the consideration under Ex.A1 pro-note to the defendant in his presence and then in the presence of attesor—PW.2 and then the defendant subscribed his signature on Ex.A1—pro-note. However, PW.3 in his cross examination stated that PW.1 was not present when he scribed Ex.A1 but again he stated that PW.1 asked him to scribe Ex.A1. Hence, this evidence is inconsistent to rely in the conclusion of saying PWs1 and 3 (supra) no way proves execution of pronote by defendant and passing of

consideration. Coming to the evidence of PW.4 with reference to Ex.A2 minutes book and Exs.A3 to A10 marking through him (supra), it is also not helpful to the case of the plaintiff in order to prove that the defendant is a signatory because PW.4 did not firmly state that the signatures on Exs.A3 to A10 belong to the defendant but he is stating the said fact in a doubtful manner. It is also observed PW.4 in his cross examination stated that from 25.08.2005 to 16.05.2006, the defendant put his thumb impressions only on the dates of the meetings that were recorded in the minutes book. In proof of the same, Exs.X3 and X4 were marked on behalf of defendant, which were subsequent thumb impressions for opening the bank account by the defendant and also produced Ex.B2—registration extract for the sale deed dated 12.05.2004, which contains his thumb impression only to support his contention that he is a signatory but for marks man.

16) It is observed from the judgment of the trial Court that the trial Court by exercising the powers conferred under Section 73 of the Indian Evidence Act, compared the alleged signatures of the defendant appeared on Exs.A3 to A10 with regard to his alleged signature on Ex.A1 but both are not tallying.

17) Coming the to the lower appellate Court's impugned judgment, the appellate Court has reversed the trial Court's dismissal judgment supra.

18) It is observed that the Exs.A3 to A10 reveals signature of defendant and he is also in the habit of putting signatures that was not appreciated properly by the trial Court and it is also observed that the signatures thereon are similar with that of Ex.A1 from its comparison and PW.1 is only house wife and not educated woman and she felt afraid in the box while deposing evidence as she has no much legal knowledge. The trial Court ought to have observed that the plaintiff successfully proved her case and the transaction covered by Ex.A1 is correct and genuine.

19) In the appeal, CW.1 was examined as an additional witness, who was working as Mandal Literacy Officer at Pamarru since 1997, and he was giving evidence as per the records at Kurumaddali Village. The scheme was started for adult education by the Government of Andhra Pradesh to educate old and aged persons. The respondent by name D.Rambabu was one of the members of Akshara Sankranthi of Phase-II. Out of 100 days, he attended 89 days and got 76 marks which was shown at page No.154 of Akshara Sankranthi of Phase-II, Serial No.11. The original record is marked as Ex.X1. CW.1 further deposed that he knows the defendant, writes his name and the defendant has

undergone six months training and he attended 89 days out of 100 days and he got 76 days, and there is every possibility for him to sign on Ex.A1 and the signatures appears in as per Exs.A2 to A10 appears to be that of defendant. His evidence as per the lower appellate Court (supra) shows the defendant signed.

20) This Court is not an expert in comparing the handwritings and signatures including of any contemporary relevancy available for comparison but for in view of the dispute as to the signature on the pro-note is that of the defendant or not, with reference to Ex.X1 and Exs.A2 to A10.

21) So far as the evidence of PWs.1 and 3 is concerned, what is the inconsistency is in the presence of the plaintiff or not that signed by defendant.

22) Once the evidence of PW.3 being the scribe of pro-note, clearly reveals that the defendant signed in his presence, there is a presumption of passing of consideration, under the suit pro-note, as laid down under Section 118 of N.I Act. The evidence of PW.3 coupled with the evidence of CW.1, and the original register covered by Exs.X1 and X2 with reference to Exs.A2 to A10, and the lower appellate Court rightly came to the conclusion, for this Court while sitting in revision, there is nothing to interfere.

23) Further, so far as the lower appellate Court's receiving of additional evidence which is raised under Section 105 C.P.C is one of the grounds of the revision concerned. Once the lower appellate Court in its very order observed referring to Order LXI Rule 27 (1) (b) C.P.C of such additional evidence is required for effective disposal of the suit lis covered by the appeal, there is nothing to interfere with the additional evidence and its appreciation that too, when that of additional evidence is adduced through the witness—CW.1.

24) Having regard to the above, the revision is dismissed confirming the lower appellate Court's judgment. No order as to costs.

25) Consequently, Miscellaneous petitions, if any pending in this revision, shall stand closed.



JUSTICE Dr. B.SIVA SANKARA RAO

Date:05.03.2018
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