

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1434 OF 2017

ORDER:

Heard the learned counsel for appellant/defendant and the learned counsel for respondent/plaintiff and perused the record.

2. This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, aggrieved by the judgment and decree dated 08.09.2017 passed in A.S.No.277 of 2015 on the file of the II Additional District Judge, Guntur (for short, 'first appellate court'), wherein the judgment and decree dated 31.08.2015 passed in O.S.No.11 of 2013 on the file of the Principal Junior Civil Judge, Guntur (for short, 'the trial Court'), were confirmed.

3. The appellant is the defendant, and the respondent is the sole plaintiff, in the suit. The parties are referred to, as per their array in the suit.

4. This appeal is filed stating that the judgment and decree passed by both the Courts below are contrary to law and erroneous and the Courts below committed serious error in granting decree in favour of the plaintiff and ultimately prayed to set aside the judgment and decree dated 31.08.2015 passed by the trial Court in O.S.No.11 of 2013, which was confirmed by the first appellate Court by judgment and decree dated 08.09.2017 passed in A.S.No.277 of 2015.

5. The plaintiff filed the suit for recovery of Rs.82,866/- from the defendant basing on a promissory note dated 20.09.2016 executed by the defendant in favour of the plaintiff after borrowing Rs.50,000/- agreeing to repay the same with interest @ 24% per annum. It is also stated that the defendant paid part amount i.e.,

Rs.10,000/- on 28.12.2008, Rs.10,000/- on 21.10.2009 and another Rs.10,000/- on 30.12.2009 and made endorsements on the back side of the pronote marked as Ex.A1. Thereafter, in spite of oral and written demands, as the defendant failed to pay the balance amount, plaintiff instituted the suit. To substantiate his claim, the plaintiff deposed as P.W.1 and also examined one of the attestors of Ex.A1-pronote as P.W.2 and got marked Exs.A.1 to A.6. On behalf of defendant, D.Ws.1 and 2 were examined and Ex.B1 and B2 were got marked.

6. The defendant filed written statement denying his signature and the said borrowing and execution of Ex.A1-pronote.

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

1. Whether the suit promissory note, dated 20.09.2006 is true, valid and supported by consideration?
2. Whether the payment endorsements, dated 28.12.2008, dated 21.10.2009 and dated 30.12.2009 are true and valid?
3. Whether the interest claimed by plaintiff is correct?
4. Whether the plaintiff is entitled for recovery of suit amount as prayed for?
5. To what relief?

8. The trial Court, after considering the oral and documentary evidence, decreed the suit in favour of the plaintiff and against the defendant for a sum of Rs.82,866/- with subsequent interest @ 12% per annum on the principal amount of Rs.50,000/- from the date of suit till the date of decree and thereafter @ 6% per annum till the date of realisation. Aggrieved by the said decree and judgment, the defendant preferred

A.S.No.277 of 2015 before the first appellate court. The first appellate Court, while dealing with the appeal, framed the following points for consideration:

1. Whether the suit promissory note is true, valid and binding on the defendant?
2. Whether the respondent/plaintiff is entitled for decree of suit?
3. Whether the judgment of the trial Court dated 31.08.2015 is on correct lines or needs any interference of this Court?

9. The first appellate Court, after re-appreciation of the oral and documentary evidence dismissed the appeal on 08.09.2017.

10. Aggrieved by that, the present Second Appeal is filed contending that the following questions of law would arise for determination:-

1. Whether the presumption under Section 114(a) of the Evidence Act can be drawn for non-production of opinion of a handwriting expert, when the suit promissory note Ex.P1 is forged one without considering other evidences and by comparing the signatures under Section 73 of Indian Evidence Act?
2. Whether the burden of proving the facts of passing of consideration under Ex.A1 suit promissory note is casts upon the defendants by producing negative evidence or on the plaintiff by producing positive evidence, when the same is disputed by the defendant?
3. Whether the lower appellate court has properly appreciated the evidence available on record being the final fact finding court by discussing on the evidence and reversing/confirming the findings of the lower Court?

11. The first question relates to presumption under illustration (a) to Section 114 of the Indian Evidence Act, 1872 (for short 'the Act') with regard to Ex.A1-pronote and also comparing the signatures on the pronote under Section 73 of the Act. The

trial Court, while relying on the evidence of P.Ws.1 and 2 and the contents of Ex.A1 and the endorsements thereon, held that the defendant executed the pronote which is genuine, believed the suit transaction and decreed the suit. While dealing with the subject matter of the suit, the trial Court had also considered the evidence of D.Ws.1 and 2 and the issue whether the defendant borrowed money under Ex.A1-pronote, which is a question of fact. Therefore, there are no circumstances to examine the presumption under illustration (a) to Section 114 of the Act. Further, no request was made before the trial Court to send the disputed signature on Ex.A1 pronote for comparing the same with the admitted signatures, to the handwriting expert under Section 45 of the Act. These all are factual aspects. The trial Court and the First Appellate Court have taken note of them and gave concurrent findings with regard to subject matter of the suit.

12. Insofar as the third substantial question is concerned, the findings of both the Courts below are based on evidence on record. The trial Court rightly appreciated the facts and circumstances of the case and it has not acted upon any inadmissible evidence or omitted evidence. The findings recorded by it are not perverse. No negative evidence was construed. The trial Court held that the suit transaction was proved by the plaintiff and accordingly decreed the suit. So, no substantial questions of law would arise for admission in this second appeal.

13. In view of the facts and circumstances of the case, there are no circumstances to frame the substantial questions of law as contended, nor any other substantial question of law emerges for determination by this Court.

14. Therefore, the appeal is dismissed at the stage of admission.

Miscellaneous Petitions, if any pending, shall stand closed.
There shall be no order as to costs.

DR. SHAMEEM AKTHER, J

Date: 20.07.2018
ssp

