



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3369]

**TUESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY-FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

SECOND APPEAL NO: 373/2009

Between:

Kumba Venkateswara Rao,

...APPELLANT

AND

Vuppala Satya Murthy

...RESPONDENT

Counsel for the Appellant:

1.N V R AMARNATH

Counsel for the Respondent:

1.CHAKRAVARTHY P V S K

The Court made the following JUDGMENT:

1. This Second Appeal has been filed by the Appellant/Defendant against the Decree and Judgment dated 03.02.2009, in A.S.No.54 of 2005 on the file of learned Additional Senior Civil Judge's Court, Narasaraopet (for short, 'the 1st Appellate Court') confirming the decree and Judgment dated 04.04.2005, in O.S.No.27 of 2002 on the file of learned Principal Junior Civil Judge's Court, Narasaraopet (for short, 'the trial Court').

2. The Respondent is the Plaintiff, who filed the suit in O.S.No.27 of 2002 seeking recovery of Rs.48,000/- being the principal and interest due on a promissory note dated 27.12.1998 executed by the Defendant in favour of Plaintiff with subsequent interest at 24% per annum and for costs.

3. Referring to the parties as they are initially arrayed in the suit is expedient to mitigate potential confusion and better comprehend the case.

4. The factual matrix, necessary and germane for adjudicating the contentious issues between the parties inter se, may be delineated as follows:

Defendant borrowed Rs.25,000/- from Plaintiff on 27.12.1998, agreeing to repay with 24% annual compound interest, and executed a promissory note as collateral security. Despite repeated demands and a legal notice from Plaintiff, Defendant failed to repay and issued a reply notice with false allegations. Consequently, the Plaintiff filed this suit to recover the amount.

5. The Defendant filed a written statement denying the allegations in the plaint, asserting that he never approached the Plaintiff for any loan. He claims the suit promissory note is forged and created with the intent to gain unlawfully. The Defendant challenges the Plaintiff to prove that money was received on 27.12.1998. He believes that due to animosity between them, the Plaintiff fabricated the promissory note with the help of his close friends who served as attestors. The Defendant contends that he did not need to borrow money and that the claimed interest is excessive, violating the Usurious Loans Act. Additionally, he asserts ownership of agricultural lands and eligibility for the benefits of Act 4 of 1938.

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

- 1) *Whether the suit promissory note is true, valid and binding on the Defendant?*
- 2) *Whether the Plaintiff is entitled to claim interest as prayed for?*
- 3) *Whether the Plaintiff is entitled for suit claim as prayed for?*
- 4) *To what relief?*

7. During the trial, P.W.1 to P.W.3 was examined and marked Exs.A.1 to A.4 on behalf of the Plaintiff. Conversely, on behalf of the Defendant, DW.1 was examined and marked Ex.B.1.

8. After completing the trial and hearing the arguments of both sides, the trial Court decreed the suit in O.S.No.27 of 2002 for Rs.48,000/- with subsequent interest at 6% p.a., on the principal amount of Rs.25,000/- from the date of the suit till the date of realization.

9. Aggrieved by the same, the Defendant filed an Appeal in A.S.No.54 of 2005 on file of the 1st Appellate Court. The 1st Appellate Court, being the final fact-finding Court, framed the following points for consideration:

- 1) *Whether the suit promissory note Ex.A1 is true and valid document, duly executed by the Defendant in favour of the Plaintiff and is binding on the Defendant and is enforceable?*
- 2) *Whether the judgment and decree of the trial Court requires any interference?*
- 3) *To what relief?*

10. The 1st Appellate Court, after scrutinizing oral and documentary evidence on behalf of both sides, dismissed the Appeal in A.S.No.54 of 2005 by its Judgment and Decree dated 03.02.2009. Assailing the same, the Defendant preferred the present Second Appeal.

11. I heard Sri N.V.R. Amarnath, learned Counsel representing the Appellant/Defendant and Sri P.V.S.K. Chakravarthy, learned Counsel for the Respondent/Plaintiff.

12. The Appellant's Counsel contends that the 1st Appellate Court misinterpreted the legal principles, misapplied the evidence and Law, and failed to evaluate the testimony of P.Ws.1 to 3 properly. He asserts that the suit promissory note is an apparent forgery. Additionally, he asserts that the 1st Appellate Court overlooked that the Respondent could not lend such a large sum and that the Appellant had no need to borrow it. The learned

Counsel further claims that without providing reasons and acknowledging discrepancies in DW.1's testimony, the trial Court erroneously concluded that the Appellant habitually altered signatures and upheld the Respondent's claims. According to the Appellant, the 1st Appellate Court's judgment merely mirrors the trial Court's decision.

13. Based on the Appellant's contentions, the following substantial questions of Law is involved in this Second Appeal:

(a) Whether the appreciation of evidence which has to be done under Section 3 of the evidence Act is proper or not.

(b) Whether the proof of the execution of the promissory note has been done as per the established principles of Law.

(c) Whether Section 118 of the Negotiable Instrument Act is properly interpreted in the present circumstances of the case to the Appellant herein in this particular case.

(d) Whether the evidence is admissible in Law or not.

14. Before delving into the matter, since the Appeal is filed under Sec.100 CPC, this Court must see the scope of Section 100 of CPC.

15. In ***H.P.Pyarejan V. Dasappa (dead) by L.Rs. and others***¹, the Hon'ble Supreme Court held that:

Under Section 100 of the Code (as amended in 1976), the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of Law. Interference with the finding of fact by the High Court is not warranted if it involves re-appreciation of evidence (see Panchugopal Barua v. Umesh Chandra Goswami (1997) 4 SCC 713) and Kshitish Chandra Purkait v. Santosh Kumar Purkait (1997) 5 SCC 438).....

16. Considerations in Section 100 of CPC arise only when there is a substantial question of Law and not mere such questions of Law or one based on facts. However, it has to be borne in mind that in case of misapplication of

¹ 2006 (3) ALT 41 (SC)

Law and improper appreciation of evidence on record, particularly the documentary evidence, it is the bounden duty of the High Court sitting in second Appeal to consider such questions which are substantial in terms of Law.

17. In the second Appeal, while exercising jurisdiction under Section 100 of the CPC, this Court must confine itself to the substantial questions of Law involved in the Appeal. This Court cannot re-appreciate the evidence and interfere with the findings of the Courts below, where the Courts below recorded the findings judicially by appreciating both oral and documentary evidence. Further, the substantial questions of Law are the sine qua non for the exercise of jurisdiction. This Court cannot substitute its own opinion unless the findings of the Courts below are manifestly perverse and contrary to the evidence on record.

18. To substantiate the Ex.A.1 promissory note transaction, Plaintiff provided testimony as PW.1 and also examined PW.2 (V.V. Pavan Kumar), P.W.3 (N.G.K. Acharyulu) attestors of the Ex.A.1 promissory note. Upon careful examination of their evidence, it is evident, as correctly observed by the trial Court, that their testimonies are consistent and cogent regarding the execution of the Ex.A.1 promissory note and passing of consideration to the Defendant. The record further reveals that before filing the suit, Plaintiff issued a legal notice, as reflected in Ex.A.2, which Defendant acknowledged receiving, as evidenced by Ex.A.3. Defendant issued Ex.A4 reply notice dated 10.12.2001. The notices exchanged between the parties reflect the stand both parties took in the suit.

19. The Defendant was examined as DW.1 and reiterated the content of his written statement during his chief examination. He also referred to another case, O.S.No.99 of 2004. In cross-examination, P.W.1 initially stated that he had lent the amount to the Defendant, which was covered under O.S.No.99 of 2004. However, he later clarified that one Madhusudhana Rao had lent the

amount to the Defendant through a promissory note, which was subsequently transferred to P.W.1, who then filed the suit in O.S.No.99 of 2004. It appears that P.W.1 may have misstated that he had lent the money under two separate promissory notes. The 1st Appellate Court rightly observed that this discrepancy does not defeat the credibility of the suit transaction. The confusion in P.W.1's testimony may have led to this inconsistency, but it does not necessarily cast doubt on the legitimacy of the claim.

20. In support of his defence, the Defendant relied on Ex.B1, an L.I.C. Bond in his name. As correctly observed by the 1st Appellate Court, Ex.B1 was not referred in the Defendant's written statement. The policy indicates that Defendant took out an L.I.C. policy in his name while Plaintiff is an L.I.C. agent. According to DW.1, there have been disputes between him and the Plaintiff since 1999. However, the suit transaction occurred on 27.12.1998, indicating that no such conflicts existed between them in 1998. DW.1 further testified that the Plaintiff and Defendant are not strangers but have been acquainted since childhood. He claimed that disputes arose concerning the revalidation of the L.I.C. policy. However, the Defendant did not plead that the disputes occurred about the revalidation of the policy.

21. The trial court noted that, as per Order VIII of the CPC, the defence must be clear and specific, and any necessary particulars must be provided. The 1st Appellate Court observed that DW.1, in cross-examination, admitted that his signature on Ex.A4 (the reply) differed from the signatures on the Vakalat given to his Counsel. Based on this, both courts concluded that the Defendant was accustomed to signing in different styles at different times, perhaps to avoid comparison.

22. In cross-examination, Defendant claimed that he had enemies from Narasaraopet and that, upon their instigation, Plaintiff fabricated the suit promissory note. However, this plea was not included in the written statement and appeared to be a new development introduced during the trial. If this

contention had been truthful, Defendant would likely have included it in his written statement from the outset. Based on this shifting narrative, both the trial court and the 1st Appellate Court concluded that the Defendant attempted to alter his defence at various stages of the proceedings, likely to strengthen his case, despite having no factual basis for such claims in his pleadings.

23. According to Plaintiff and his witnesses, Defendant executed Ex.A1, the promissory note. This assertion was also made in Ex.A2, the legal notice. Based on the evidence, both the trial court and the first Appellate Court noted that if the Plaintiff had intended to fabricate Ex.A1 for wrongful gain, he could have engaged a third party to scribe the promissory note, as the Law does not require the person executing the promissory note to also scribe its contents. Therefore, this Court concludes that the Plaintiff had no apparent reason to forge the Defendant's signature as the scribe.

24. For the reasons best known to the Defendant, as rightly pointed out by both the Courts, he did not take steps to get the suit document (Ex.A1) referred to a handwriting expert for comparison and opinion. He has not let in evidence in support of his contention concerning the financial capacity of the Plaintiff. The Defendant himself admitted that the status of Plaintiff was L.I.C. agent with whom he got transactions.

25. It is well-established in Law that a mere denial of the receipt of consideration does not constitute a valid defence. Defendant has failed to present any substantial reason or evidence to challenge the credibility of the testimonies of PWs.1 to 3 regarding the execution of the promissory note. The evidence of PWs.1 to 3 was consistent regarding executing the promissory note by the Defendant. Despite extensive cross-examination, nothing emerged to undermine the evidence of PWs.1 to 3 about executing the promissory note and passing consideration. Furthermore, Defendant failed to establish the circumstances under which he executed Ex.A.1 without receipt of consideration amount. Moreover, any rebuttal could have been based either

through direct evidence or by proving the preponderance of probabilities. In this instance, the Defendant did not rebut the presumption even by the preponderance of probabilities.

26. In light of the defence presented and the evidence submitted, the trial Court and the 1st Appellate Court observed that the Defendant failed to discharge the initial burden of proof to demonstrate the non-existence of consideration. Moreover, no other evidence refutes the presumption provided under Section 118 of the N. I Act. This Court has no hesitation in affirming that the Plaintiff has successfully established the validity of Ex.A.1.

27. The Hon'ble Supreme Court, in several cases, has held that the exercise of powers under Section 100 of CPC can interfere with the findings of fact only if the same is shown to be perverse and based on no evidence. Some of these judgments are ***Hajazat Hussain V. Abdul Majeed & others.***², ***Union of India V. Ibrahim Uddin***³, and ***Vishwanath Agrawal V. Sarla Vishwanath Agrawal***⁴.

28. The findings of the trial Court and the 1st Appellate Court, which affirm that Plaintiff has established the execution of the suit promissory note by Defendant after receiving the consideration amount, is neither perverse nor a result of misinterpretation of documents or misreading of evidence. After careful reading of the material on record, this Court finds that the trial Court and the 1st Appellate Court concurrently decreed the Plaintiff's suit by recording all the findings of facts against the Defendant enumerated above, and the findings were neither against the pleadings nor evidence nor against any provisions of Law.

29. This Court discerns no perversity in the Judgments rendered by the learned trial Court and the 1st Appellate Court. The findings and reasoning

² 2011 (7) SCC 189

³ 2012 (8) SCC 148

⁴ 2012 (7) SCC 288

provided by both the Courts are consistent with established legal principles. Both the Courts meticulously reviewed all the evidence available on record.

30. This Court considers that the trial and 1st Appellate Courts' conclusions are not subject to interference under Section 100 of CPC. In these circumstances, upon consideration of the decrees and judgments of the trial Court as well as the 1st Appellate Court, this Court is satisfied that the arguments presented pertain solely to the factual matrix and do not involve any substantial questions of Law. The Appellant has not raised any legal issues in this Second Appeal that warrant consideration. There is no sufficient ground to interfere with the judgment of the trial Court and the 1st Appellate Court. There is no question of Law, let alone the substantial questions of Law, involved in this Second Appeal, and therefore, the Appeal is liable to be dismissed.

31. As a consequence, the Second Appeal is ***dismissed without costs.*** The judgment dated 03.02.2009 of learned Additional Senior Civil Judge Narasaraopet, in A.S.No.54 of 2005, stands confirmed.

Miscellaneous petitions pending, if any, in this Appeal shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 10.12.2024
MS

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

SECOND APPEAL NO. 373 OF 2009

Date: 10.12.2024

MS