

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MONDAY, THE FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

AS No. 138 OF 2017

Appeal filed under Section 96 of CPC aggrieved by the decree and judgement in O.S.No.329 of 2012 dated 31.10.2016 passed by the Principal Senior Civil Judge, Kurnool.

Between:

1. P Bala Maddilety [died by his LRs]
2. Nagamani, Wife of Late P. Bala Maddilety, Hindu, Aged about 45 years, Housewife, R/o. H.No.29/178-13, SBI Colony, Nandyal, Kurnool District, Railway Station Road, Nandyal Town, Kurnool District.
3. Manoj Kumar, Son of Late P. Bala Maddilety, Hindu, Aged about 27 years, Employee, LIC, R/o. House No.29/178-J3, SBI Colony, Nandyal, Kurnool District, Railway Station Road, Nandyal Town, Kurnool District.

...Appellants/Defendants

AND

K Thimmaiah, Son of K. Maddilety, Hindu, Aged about 55 years,
R/o. Bethamcherla Village and Mandal, Kurnool District.

...Respondent/Plaintiff

Counsel for the Appellant: SRI VEDULA SRINIVAS

Counsel for the Respondent: SRI K. RATHANGA PANI REDDY

The Court made the following: JUDGMENT

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

A.S.No.138 of 2017

JUDGMENT:

This appeal, under Section 96 CPC, is preferred against the judgment and decree, dated 31.10.2016, passed in O.S.No.329 of 2012 on the file of the Court of Senior Civil Judge, Kurnool.

2. The case of the plaintiff is that the defendant borrowed an amount of Rs.2,00,000/- on 15.05.2009 and another sum of Rs.2,00,000/- on 20.12.2009 from the plaintiff for his family necessities and on the said dates, he executed two promissory notes in favour of the plaintiff agreeing to repay the same with interest at 24% per annum on demand to the plaintiff. Though the plaintiff demanded repayment of the debt under the promissory notes, the defendant finally refused to pay the amount. The plaintiff got issued a legal notice, dated 20.03.2012 to the defendant. The defendant issued reply with all false allegations. Hence, the plaintiff is constrained to file the present suit for recovery of a sum of Rs.6,60,000/- against the defendants 2 & 3 with subsequent interest at 24%.

3. The 1st defendant filed his written statement during his life time denying the material averments and putting the plaintiff to strict proof of the same. After receipt of the legal notice, the 1st

defendant paid entire debt under the said promissory notes with interest in the presence of S.Bala Venkata Swamy and the defendant's wife, Nagamani, in the house of the plaintiff at Bethamcherla and the plaintiff returned the said two pro-notes.

4. After filing of his written statement, the 1st defendant died and defendants 2 & 3 were added as his legal representatives.

After appearance, defendants 2 & 3 filed their written statement denying the plaint averments and contending that the suit promissory notes are fabricated for wrongful gain and no consideration is passed under them. The deceased 1st defendant never signed or put his thumb impression on the promissory notes. The attestors and scribe are close associates of the plaintiff. These defendants did not succeed to the estate of the deceased 1st defendant. The suit is liable to be dismissed.

5. Basing on the above pleadings, initially, the following issues were settled for trial:

- (i) Whether the plaintiff is entitled for recovery of the suit amount of Rs.6,60,000/- under two promissory notes together with subsequent interest and costs as prayed for?
- (ii) Whether the suit promissory notes are already discharged by the defendant in the presence of Bala Venkata Swamy and Nagamani as contended by him in his written statement?
- (iii) Whether the suit promissory notes are true, valid and binding on the defendant?
- (iv) To what relief?

Consequent to the filing of the written statement by defendants 2 & 3, the following additional issue was also framed:

Whether the estate of the deceased defendant No.1 in the hands of D2 and D3 is liable for the suit claim?

During the course of trial, the plaintiff got himself examined as PW1 and also examined PW2 and got marked exhibits A1 to A3. On the other hand, the 3rd defendant got himself examined as DW1. But, no documentary evidence was adduced.

6. On merits, the trial Court, decreed the suit with costs for a sum of Rs.6,60,000/- together with subsequent interest at the rate of 24% per annum from the date of the suit to the date of decree and at 6% per annum therefrom till the date of realization on the principal amount of Rs.4,00,000/- against the estate of the deceased 1st defendant in the hands of defendants 2 & 3.

7. Aggrieved thereby, the defendants 2 & 3 preferred this appeal. It is contended on behalf of the defendants 2 & 3 that the trial Court erroneously decreed the suit on improper appreciation of evidence and the defendants 2 & 3 are not liable for the alleged debts of the 1st defendant; and that the plaintiff did not amend the prayer after the legal representatives of the deceased 1st defendant were brought on record.

8. The main ground of argument advanced in appeal is that there is no finding given by the trial Court as to what estate is left by the deceased in the hands of the defendants 2 & 3, though there is a specific plea taken by them in the written statement denying receipt of any estate by them from the deceased 1st defendant.

9. The trial Court decreed the suit directing the decretal amount to be realised from the estate of the deceased 1st defendant in the hands of defendants 2 & 3. Of course, there is no finding as to what is the estate left by him. Though no issue was framed on this aspect, the defendants 2 & 3 did not take any steps to get a specific issue framed in this regard as to whether the deceased has left any estate and continued with the trial. But, an additional issue was framed as to whether the estate of the deceased/defendant No.1 in the hands of defendants 2 & 3 is liable for the suit claim and also the same is also answered in favour of the plaintiff.

10. Insofar as the suit claim is concerned, the contention of the plaintiff is that the 1st defendant borrowed an amount of Rs.2,00,000/- on 15.05.200 and Rs.2,00,000/- on 20.12.2009 under two different promissory notes, but the same were not repaid by the defendant. Though the defendant admitted in his reply under exhibit A6, dated 31.03.2012, and also in the written statement, he defended the suit on the ground that the said

amounts were paid to the plaintiff and those two promissory notes were taken back after tearing them and those were enclosed to the written statement. After filing of the written statement, the 1st defendant died. His wife and son were added as defendants 2 & 3. They filed separate written statements. Son was examined as DW1. But, he failed to file two promissory notes annexed to the written statement of 1st defendant, in evidence on behalf of the defendants. On the other hand, the plaintiff filed two separate promissory notes marked as exhibits A1 and A2 for the same amount and with the same dates. His (PW1) evidence is supported by the evidence of PW2, who is the sole attester of exhibits A1 and A2. In fact, the said promissory notes are autographs of the 1st defendant. They give rise to presumptive of being supported by the consideration. Therefore, the plaintiff could discharge his initial burden of establishing the suit claim, but the defendants failed to disprove the case of the plaintiff nor could they establish their defence. DW1 in his evidence stated that the 'scribe' and attester of suit promissory note are close associates of the plaintiff and further stated that the deceased 1st defendant had never signed or put thumb impression on the promissory notes. This part of evidence is contrary to the documents under exhibits A1 and A2. As is already noted, there is no separate scribe and those documents are autograph of the deceased. DW1 has not even referred to the repayments said to

have been made by the 1st defendant as stated in his written statement. Except denying the suit transaction, nothing was deposed by DW1 in his evidence in chief examination. No other witness has been examined nor was any other documentary evidence placed by the defendants 2 & 3.

11. Thus, the trial Court has rightly decreed the suit based on the suit promissory notes under exhibits A1 and A2. Mere plea taken in the written statement is not proof of the case of the defendants. Since the question of any estate would arise in the proceedings under execution, as the trial Court decreed the suit only against the estate left by the 1st defendant in the hands of defendants 2 & 3, there need not be any detailed enquiry in the trial Court as to what exactly is the estate left by the deceased. If at all, there is no estate left by the 1st defendant with the defendants 2 & 3, the plaintiff cannot get the decree executed at all against the defendants 2 & 3 who are the appellants herein. As such, there is no merit in the appeal.

12. In the result, the appeal is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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Sd/- V DIWAKAR
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The Principal Senior Civil Judge, Kurnool.
2. The Section Officer, V.R Section, High Court of Andhra Pradesh at Amaravati.
3. One CC to Sri Vedula Srinivas, Advocate [OPUC]
4. Two CCs to Sri K. Rathanga Pani Reddy, Advocate [OUT]
5. Two CD copies.

Trt
VNA *f. ch. choudhary*

HIGH COURT

DATED:05/09/2022

JUDGMENT

AS.No.138 of 2017

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DISMISSING THE A.S

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MONDAY, THE FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO



PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

AS No. 138 OF 2017

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...Respondent/Plaintiff

Appeal filed under Section 96 of CPC aggrieved by the decree and judgement
in O.S.No.329 of 2012 dated 31.10.2016 passed by the Principal Senior Civil Judge,
Kurnool.

This appeal coming on for hearing and upon perusing the grounds of appeal,
the judgment and decree of the Lower Court and the material papers in the appeal
and upon hearing the arguments of Sri Vedula Srinivas, Advocate for the appellant,
and of Sri K. Rathana Pani Reddy, Advocate for the Respondent

This Court doth order and decree as follows:

1. That the appeal be and hereby is dismissed.
2. That there be no order as to costs in this A.S.

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Sd/- V DIWAKAR
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The Principal Senior Civil Judge, Kurnool.
2. Two CD copies.

Trt

K. Ch. Chowdary

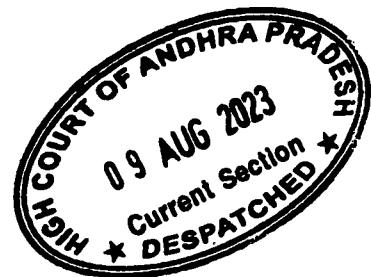
HIGH COURT

DATED:05/09/2022

DECREE

AS.No.138 of 2017

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