
(1999) 07 AP CK 0123
In the Andhra Pradesh High Court
Case No : A No. 3097 of 1985

A. Srinivasulu Naidu (died) his LRs. APPELLANT
Vs
P. Rajasekharappa RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1999) 5 ALD 255 : (1999) 4 ALT 430

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : Mr. N.V. Ranganadham, for the Appellant; Mr. J.V. Prasad, for the Respondent

Judgement

1. This appeal by the defendant arises against the judgment and decree in OS No.45 of 1974 dated 22-8-1983 on the file of the Subordinate Judge's Court, Chittoor where by the claim of the plaintiff for Rs. 15,9307- was decreed with interest at 6% per annum from the date of the suit and costs.

2. The claim in the suit rests on the allegation that in view of earlier friendly relations between the plaintiff and the defendant, the plaintiff lent a sum of Rs.14,500/- to the defendant for redeeming the jewels which were pledged with one T.C. Gajaraj Mehata of Madras on the promise that the jewels would be redeemed and the amount be paid back by replugging the jewels with some Bank at Chittoor. Thus, an amount of Rs.2,500/-, Rs.10,000/-and Rs.2,000/- were given on 2-7-1971, 3-7-1971 and 3-7-1971 respectively totalling to Rs.14,500/- which was acknowledged by a letter of the defendant in Ex.A.1 dated 3-7-1971. The defendant again borrowed/a further sum of Rs.1,000/- on 5-7-1971, which was paid through cheque issued by the mother of the plaintiff. Though the defendant paid a sum of Rs.2,000/- through a cheque drawn on the District Co-operative Central Bank, Chittoor, the balance amount of Rs.13,500/- remained unpaid inspite of the demands made by the plaintiff. Therefore, the suit claim with interest at 6% per annum.

3. The defendant contested the claim on the allegation that the plaintiff had no capacity to pay money to others and the plaintiff and his mother were living together and that the plaintiffs mother is the owner of a printing press. The defendant earlier was due Rs.2,500/- to the mother of the plaintiff and the mother of the plaintiff paid Rs.10,000/- on 3-7-1971 and also Rs.2,000/- by way of a cheque. The payment made on 2-7-1971 was denied. The allegation that the plaintiff did lend any money to the defendant is totally denied. It was only for the purpose of income tax and on the request of the plaintiffs mother that the said letter in Ex.A.1 was given by the defendant. The plaintiffs mother paid only Rs.14,500/- as after payment of Rs.10,000/-, she took Rs.1,000/- in cash and she gave a cheque for the same. It was further contended that in respect of a suit in O.S.No.48 of 1970 on the file of the Subordinate Court, Chittoor, wherein the defendant was appearing for the plaintiff herein, the plaintiff herein on 21-7-1971 informed that the printing press is sought to be attached towards recovery of the money by the decree holder and, therefore, the defendant offered to the father of the decree holder therein a sum of Rs.12,000/- and accordingly the suit amount was taken by him on 21-7-1971 which was acknowledged under a receipt by his daughter, which was handed over to the defendant. The defendant also sent Rs.1,300/- to one Rosi Naidu, an advocate on behalf of the plaintiff as per the request of the plaintiffs mother for the purpose of depositing and obtaining leave to defend the suit O.S.No.6284 of 1970 on the file of the City Civil Court, Madras. On 10-11-1971, a sum of Rs.2,000/- was paid by cheque to the plaintiff at the request of the plaintiffs mother. On 27-11-1971 Rs.500/- was paid to the plaintiff through his clerk. Thus by 27-11-1971, a sum of Rs.15,800/- was paid and the entire debt was discharged paying an excess of Rs.1,300/-. The defendant requested for the return of the letter dated 27-11-1971 in Ex.A7 and accordingly the plaintiffs mother gave the better discharge of the even date on 3-7-1971. Therefore, the defendant is not liable to the suit amount. The suit is bad for non-joinder of parties and the plaintiff and his mother colluded together in view of some subsequent misunderstandings and filed the suit. The defendant therefore prayed that the suit is liable to be dismissed with exemplary costs.

4. On the issues arising out of the respective pleadings, the plaintiff examined P.Ws.1 and 2 and marked Exs.A.1 to A.25 and in defence D.Ws. 1 to 4 were examined and Exs-B1 to B54 were marked. Further Exs.X1 to X18 were marked through the Commissioner. The Court below on a consideration of the evidence and the documents marked has decreed the suit holding that the defendant had borrowed the amount only from the plaintiff and not from the mother of the plaintiff; the letter dated 3-7-1971 in Ex.A1 is binding on the defendant; that the plaintiff and his mother were not living together in view of the partition already effected in the year 1967; the advance of Rs.12,000/- was made by the plaintiff to the defendant and the plea of discharge is not true and that the plaintiff is entitled for the interest.

5. The learned Counsel appearing for the appellant sought to attack the findings

of the Court below on the grounds that the evidence and the documents on record have not been properly appreciated -especially Exs.B1, X1 to X 18. The appellant being the advocate of the plaintiff in an earlier suit wherein the plaintiff figured as the defendant had paid amounts to the advocate at Madras and there is already a discharge of the debt. The findings recorded by the trial Court are not based on proper evidence.

6. The learned Counsel appearing for the respondent-plaintiff sought to sustain the decree by pointing out that there is ample evidence on record supported by documents which go a long way in proving the plaintiff's claim and the defence as set up by the appellant, who is an advocate, is wholly unsustainable.

7. In view of the rival contentions, the questions which fall for consideration in this appeal are whether Ex.A1 is valid and binding on the defendant and whether the discharge pleaded by the defendant is true.

8. The case of the plaintiff rests on Ex.A.1 dated 3-7-1971, on which date, the total sum of Rs.14,500/- was allegedly given to the defendant and acknowledged thereunder. Whereas, the defendant sought to claim that an amount of Rs. 10,000/- was paid in cash by the plaintiffs mother and another Rs.2,000/- by way of cheque by her only. Admittedly, there are relations between the plaintiff and the defendant earlier. The mother appearing as PW2 supported the plaintiff allegations. A bare reading of Ex.A1 shows that the defendant borrowed a sum of Rs. 10,000/- and a further sum for the purpose of redeeming the gold articles pledged with a banker at Madras. Under the very, same document, the defendant agreed to pay back the amounts to the plaintiff. Ex.A1 is in the handwriting of the defendant himself. Even though according to the defendant, the amount was borrowed from the mother of the plaintiff and not from the plaintiff, the written document does not make it believe. In view of the clear admission of the execution of Ex.A1 by the defendant and that too in his handwriting, it will be too late in the day to contend on the part of the defendant that the amount was not borrowed from the plaintiff. Therefore, on the admitted case of the defendant and the existence of Ex.A1 supported by the evidence of PWs.1 and 2, it has to be held that it was executed by the defendant alone.

9. On the aspect of the plaintiff and PW2 constituting a joint family and whether there is any partition between them. Ex.A20 dated 12-6-1967 was pressed into service to show the partition between the two. The defendant who is an advocate had sent notices in Exs.A4 and A8 mentioning the partition. Thus the defendant is aware of the said partition between the plaintiff and his mother. Further Ex.A6, a certificate issued by the Village Karanam shows that PWs.1 and 2 are having lands of their own and enjoying separately. There is no evidence let in to show that PW2 was acting as the Manager. The cist receipts filed in Exs.B11 to B20 would not by themselves conclusively show as to the factum of partition. Therefore, in the absence of any positive evidence coming forth on record, it is difficult to believe that PWs.1 and 2 continue to remain as a joint family and that PW2 was acting as the Manager.

10. The claim of the defendant was that the cheque was given by the mother for Rs.1,000/- on behalf of the plaintiff. But there is no proof to show, through any accounts maintained by the defendant, about the said payment. The counter-foil of Ex.A22 contains the signature of the plaintiff. In view of these circumstances, it has to be held that the advance of Rs.1,000/- was made by the plaintiff and no cheque was issued by the mother of the plaintiff as alleged in the written statement.

11. The fast question which remains to be considered is the plea of discharge by the defendant. It was alleged that on 21-7-1971, on the intimation given by the plaintiff, the decree holder in OS No.48 of 1970 sought to attach the printing press belonging to the mother of the plaintiff and he, appearing of the plaintiff herein (defendant in OS No.48 of 1970), paid the amounts to the decree holder at her request and deposited the same to the credit of the said suit and sought leave to defend the suit in OS No.6284 of 1970. No doubt, there was a money decree against the plaintiff and PW2 obtained by a third party and the defendant was the advocate for the defendants therein (plaintiff and his mother in the present suit) and the execution proceedings. According to the plaintiff, supported by PW2, an amount of Rs.12,000/- was paid to the third party under receipt in Ex.B1 dated 21-7-1971 directly and the same, instead of filing in the Court, had remained with him. Taking advantage of the same, Ex.B.1 was pressed into service. A reading of Ex.B1 shows that the amount was paid by PW2 directly to the third party, who of course, remained unexamined. There is no such recital mentioning the name or the role played by the defendant. Though Ex.B1 is in Tamil, no attribution of whatsoever nature was made against him to disbelieve the very receipt or the contents therein. It is surprising to note that the defendant being an advocate has to get involved in such transactions unexpected of a professional. No accounts were produced by the defendant. The trial Court has proceeded on sound reasons by considering Ex.A1 and other evidence in detail and has rightly disbelieved the case of the defendant that he paid Rs.12,000/- to a third party decree holder of PW2. There is also not much evidentiary proof and support to further the case of the defendant as to the sending of Rs.1,300/- to an advocate at Madras at the instance of PW2. Therefore, for these reasons and other reasons mentioned already, the plea of discharge does not hold any water and liable to be rejected. Regarding the payment of Rs.500/-, one Kannappa, the clerk of the defendant, who again remained unexamined, was alleged to be a witness. The self same reasons as above follow with regard to the payment of Rs. 500/-. A perusal of Ex.B7 and the evidence of PW2 and that of DW1 throws serious doubts on the various alleged payments or the adjustments as sought to be claimed by the defendant. The entire alleged transactions as alleged by the defendant smacks of the lack of bona fides and also fairness. No convincing reasons have been shown to believe the plea of discharge and no basis has been made out through any positive evidence. A reference was made regarding another suit and the pendency of an appeal, which ultimately, has been subsequently, disposed of by this Court by

dismissing the suit as filed since the matter was one amongst the partners in respect of an alleged credit and the remedy being only one for accounts (vide AS No.461 of 1986 dated 22-6-1999). Reliance placed on Ex.B.51 which appears to have been filed at a very late stage does not again hold much basis. The said document had undergone a thorough verification by a handwriting expert resulting in his report Ex.X.3, which opined that the signature on Ex.51 is the same as that of the admitted signature of the plaintiff. However, Ex.B51, having not seen the light of the day nor made part of any pleadings, would not persuade this Court to put a seal of authority on its genuineness.

Therefore, in view of the above reasons, I hold hat the plea of discharge is not true and the same stands rejected. No other points are urged.

12. There are no merits in the appeal and accordingly it is dismissed with costs.