

(2005) 11 AP CK 0058
In the Andhra Pradesh High Court
Case No : AS No. 2738 of 1996

Bathineni Vijaya Lakshmi and Another	APPELLANT
Vs	
Gottimukkala Radhaiah	RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2006) 2 ALD 322

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Harnath, for the Appellant; D. Krishna Murthy, for the Respondent

Judgement

P.S. Narayana, J.—This appeal is filed by plaintiffs 2 and 3 as against the Judgment and Decree made in O.S. No.88/89 on the file of Subordinate Judge, Bapatla, dismissing the suit. Respondent is the defendant. Plaintiffs 2 and 3 were brought on record as the legal representatives of the deceased 1st plaintiff as per order in I.A.No.1048/94 dated 17-8-1994. The suit was filed for recovery of an amount of Rs.47,600/- on the basis of a promissory note. It was pleaded that on 20-8-1986 the defendant borrowed Rs.35,000/- from the plaintiff for raising tobacco and executed a promissory note undertaking to repay the said amount with interest at 12% p.a. It was also pleaded that the defendant is not entitled to the benefits of A.P. Act 45 of 1987 as he owns Ac.3-00 of wetland and Acs.5-00 of dry land. Despite repeated demands, since the defendant failed to pay the amount, the suit was filed. As already referred to supra, the original plaintiff died and plaintiffs 2 and 3 were added as legal representatives. Respondent in this appeal -the defendant resisted the suit pleading that the suit promissory note is a rank forgery. It was also pleaded that the defendant purchased tobacco from one Tarigopula Ranga Rao and subsequently sold the barns to his relatives who agreed to pay the remaining balance amount to the said Ranga Rao. It was also pleaded that the said Ranga Rao also agreed to collect the remaining amount from the relatives of the defendant. The defendant sustained loss in agriculture.

The said Ranga Rao bore grudge against the defendant as his relatives did not pay the amount. Hence, the said Ranga Rao with the assistance of his followers created the suit promissory note and got the suit filed. The defendant is a small farmer owning Acs.4-00 of land. An additional written statement also was that the plaintiffs cannot further prosecute the litigation without the production of Succession Certificate. On the strength of the pleadings, the following issues and additional issues were settled by the trial Court:

Issues :

- (1) Whether the suit pronote is true, valid and binding on the defendants ?
- (2) Whether the suit is barred by time ?
- (3) Whether the defendants are small farmers and they are protected under Act 45/87 ?
- (4) To what relief ?

Additional Issues :--

- (1) Whether the plaintiffs have to obtain Succession Certificate to prosecute the suit ?
- (2) Whether the suit is maintainable ?
- (3) To what relief ?

The learned Judge on appreciation of evidence of P.W.I - the 1st legal representative of the deceased plaintiff, P.W.2 - Scriber, P.Ws.3 and 4 - Attestors, recorded a finding that the execution of promissory note - Ex.A.I is proved in accordance with law and hence the presumption relating to the payment of consideration to be drawn. A further finding had been recorded that the suit is within limitation since on the next day of working the suit was filed. On appreciation of the evidence of P.Ws.1 to 4 and also D.Ws.1 to 3 and also Ex.P.I, Exs.B.1 to Ex.B.3 and also Exs.X.1 to X.4, a further finding had been recorded that the defendant is not a small farmer and not entitled to the benefits of the Act 45 of 1987 as claimed by him. A further finding had been recorded that plaintiffs 2 and 3, the present appellants, cannot further prosecute this litigation without the production of Succession Certificate. In view of the dismissal of the suit, the unsuccessful plaintiffs preferred the appeal and in view of the adverse findings which had been recorded on all other issues, the cross-objections had been preferred.

2. Sri Harnath, the learned Counsel representing the appellants had filed a memo before this Court along with the Succession Certificate issued in Succession O.P.No.8/ 99 on the file of Junior Civil Judge, Ponnur. The learned Counsel would contend that inasmuch as the evidence was appreciated in proper perspective and positive findings had been recorded relating to all other issues, and in view of the fact that the suit was dismissed only on the ground of non-production of

Succession Certificate, the defect is cured now and hence the suit to be decreed as prayed for. The learned Counsel also would maintain that the Succession Certificate produced is an order made by the competent Court and though no separate application is filed, the same be looked into by this Court inasmuch as it is an order made by the Court, The learned Counsel also placed reliance on the following decisions and had urged the production of Succession Certificate even in the case of this nature is not at all necessary.

Chinna Pulliah (Died) by LR Vs. Land Acquisition Officer, Srisailam Project, Wanaparthy, Mahabubnagar District, ; Akula Mabukhan Vs. Rajamma and Others, ; Pedda Venkata Swamy (died) per LR Sunkalamma Vs. Land Acquisition Officer, Srisailam Project, Wanaparthy, Mahabubnagar District, ; G. Buddanna (died) per L.Rs. Vs. B. Subbarayudu, ; J. Kista Reddy and Others Vs. Mandal Revenue Officer, ; Inder Sain and another Vs. Man Singh Gujjar, ; K. Laxminarayan Vs. V. Gopalaswami and Another, and Maung Po Htwa v. Ma Jgwe Zin, AIR 1937 Ran 470.

It is contended by Mr. Harnath that merely because Succession Certificate is produced that does not mean that Succession Certificate is required in the matter and this aspect may also be considered in the light of the decisions cited in this regard.

3. Sri Krishna Murthy, the learned Counsel representing the respondent -Cross-objector - defendant made the following submissions :

At the outset, the learned Counsel raised an objection to the way in which the Succession Certificate is being produced before this Court and would comment that merely because at a belated stage the same had been produced, automatically the said document cannot be received. The learned Counsel also had taken this Court through the evidence of P.Ws.I to 4 and D.Ws.I to 3 and would comment that in the facts and circumstances, the adverse findings recorded relating to the other issues also cannot be sustained. While further elaborating his submissions, the learned Counsel had drawn the attention of this Court to Order XLI Rule 27 C.P.C. and would maintain that the said provision cannot be circumvented by the production of such Certificate at the appellate stage by way of memo. The learned Counsel also placed strong reliance on Manne Adinarayana v. Mane Chintanna (Died) and Ors. 1995 (2) ALD 204 and Smt. Pramod Kumari Bhatia Vs. Om Prakash Bhatia and Others, .

4. Heard the Counsel.

5. In the light of the respective contentions of the Counsel, the following points arise for consideration in this appeal :

(1) Whether the findings recorded by the learned Judge in relation to the validity of the promissory note in question - Ex.A. I to be confirmed or to be disturbed in any way ?

(2) Whether the findings recorded by the learned Judge in relation to the benefits

under Act 45 of 1987 to be confirmed or to be disturbed in any way ?

(3) Whether the Succession Certificate produced before this Court be received in the facts and circumstances of the case ?

(4) If so, to what relief the parties would be entitled to ?

Points 1 and 2 :

6. Relating to the execution of the suit promissory note - Ex.A.1, P.W.I deposed in detail, well supported by the scribe - P.W.2 and also the attestors -P.Ws.3 and 4. The defence is one of total denial. Though specific plea was taken denying any prior acquaintance, in the evidence of D.W.I, he had deposed in a different way altogether. The learned Judge appreciated the whole evidence available on record and had taken into consideration the evidence of P.W.I and also the evidence of P.Ws.2, 3 and 4, and recorded findings in detail. In the light of the same, this Court is of the considered opinion that the said findings need not be disturbed in any way. Apart from this aspect of the matter, Issue No.3 also was answered in detail on appreciation of both oral and documentary evidence and a finding had been recorded that the defendant is not a small farmer. In the light of the reasons recorded in detail at Para No. 10 by the learned Judge, these are well considered reasons recorded on the strength of the evidence available on record and hence, the said findings need not be disturbed. Hence, it is needless to say that the cross-objections filed by the defendant cannot be allowed in the light of the findings recorded by the learned Judge on appreciation of both oral and documentary evidence.

Point No.3 :

7. The most crucial aspect is in relation to the production of Succession Certificate before the Appellate Court. The Succession Certificate is filed along with a memo before this Court. No doubt, the learned Counsel representing the defendant also had pointed out some discrepancy and expressed a doubt whether the same would relate to the transaction in question. Be that as it may, this is an order passed by a competent Court and inasmuch as it is a subsequent event, the same being brought to the notice of this Court. Strong reliance was placed on Pramod Kumar's case (supra) wherein it was held that where application for reception of additional evidence was filed before the High Court after many years of suit had been filed, High Court refusing the same exercising the discretion was held to be justified. Reliance also was placed on Manne Adinarayana's case (supra), wherein the learned Judge of this Court observed as hereunder :

It is well settled law that wherever the appellate Court admits additional evidence, it should record its reasons for doing so. It is only when reasons are recorded, it can be seen whether additional evidence has been properly admitted or not. Omission to record reasons is a serious defect. In the decision to record reasons is useful and necessary for the Court of revision to see it discretion

under Order XLI Rule 27 C.P.C. has been properly exercised by the Court below. The additional evidence admitted in contravention of this rule should be discarded as inadmissible.

This is a matter on record that the respondents - defendants did not file any application under Order XLI Rule 27 C.P.C., stating the reasons for not filing them before the trial Court. The first appellate Court admitted the documents on record during the course of arguments without assigning any reasons as to why the documents are taken on record. Under these circumstances, the documents filed by the respondents -defendants during the course of arguments deserve to be discarded and, therefore, they are excluded from being considered.

There cannot be any doubt or controversy that when additional evidence has to be received at the appellate stage, certain conditions are to be satisfied. However, this is a peculiar case where the suit itself was dismissed only on the ground of non-production of Succession Certificate and on all other issues positive findings had been recorded. Aggrieved by the same, the present appeal was preferred. Further as can be seen from the number of O.P., it is Succession O.P.No.8/99 on the file of Junior Civil Judge, Ponnur, it is needless to say that it is a subsequent event. Even to bring a subsequent event to the notice of the appellate Court, procedure may have to be followed. However, in view of the fact that by virtue of a memo the said Succession Certificate is being produced before this Court, this Court is of the considered opinion that on this aspect the parties to be given an opportunity and to the limited extent, the matter may have to go back to the original Court. It is no doubt contended by Sri Harnath, the learned Counsel representing the appellants that the production of Succession Certificate itself is not necessary but the fact remains that Succession Certificate had been obtained and the same had been produced by way of memo before this Court.

Point No.4 :

8. In the light of the same, the Judgment and Decree of the trial Court are hereby set aside and the matter is remanded to the learned Subordinate Judge, Bapatla, to give opportunity to both the parties to adduce necessary evidence to the limited question for which the matter is being remanded. Cross-objections are hereby dismissed. On all other questions the findings recorded by the learned Judge are hereby confirmed. It is needless to say that this is a money suit, top priority to be given to this matter by the learned Judge. No costs.