
(2010) 06 AP CK 0047
In the Andhra Pradesh High Court
Case No : Second Appeal No. 86 of 2010

Chatakondur Govinda Rajulu	Vs	APPELLANT
G. Sudha Madhuri and Others		RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Evidence Act, 1872 — Section 114, 45, 73
Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : (2010) 5 ALD 468 : (2011) 1 ALT 269 : (2011) 2 BC 91

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K.N. Jwala, for the Appellant; Nagaraju Naguru, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 98 of 1999 on the file of the Senior Civil Judge, Kadapa is the appellant. He filed the suit against the respondents for recovery of a sum of Rs. 1,81,810/-, with interest at 18% per annum. He pleaded that late G. Pratap Reddy, the husband of the 1st respondent, and father of the respondents 2 to 4 borrowed a sum of Rs. 95,000/- on 31-08-1994, and executed a promissory note. It was pleaded that he made a part payment of Rs. 500/- on 21-08-1997, and did not pay the balance, by the time he died. The appellant got issued a notice on 18-08-1999 to the respondents, demanding payment. Alleging that the respondents did not pay the amount, he filed the suit.

2. The respondents filed a written statement, denying the very execution of the promissory note, by Pratap Reddy. They have also pleaded that the appellant was himself a tenant in a large commercial complex, owned by their family, and that there was no necessity for the deceased to borrow any amount from the appellant. Reference was made to a decree passed in a suit filed against the appellant by the father of Pratap Reddy, and an eviction case filed by them against the appellant.

3. Through its judgment dated 13-10-2004, the trial Court decreed the suit. Aggrieved thereby, the respondents filed A.S. No. 6 of 2006 in the Court of Family Judge-cum-Additional District Judge, Kadapa. The lower Appellate Court allowed the appeal through judgment dated 31-08-2009 and reversed the decree passed by the trial Court. Hence, this second appeal.

4. Sri K.N. Jwala, learned Senior Counsel for the appellant, submits that the trial Court recorded a clear finding to the effect that the signature on the promissory note, Ex.A-1, dated 31-08-1994, was proved through cogent evidence, and there was absolutely no basis for the lower Appellate Court, in reversing that finding. He contends that PW-2, who is acquainted with the signatures of the deceased, Pratap Reddy, has not only produced the records containing the signatures of Pratap Reddy, being Exs.A-6 to A-11, but also deposed about the same. Learned Counsel submits that Ex.A-1 answers the description of a negotiable instrument, and it has been proved to the satisfaction of the Court. He also submits that an inference deserves to be drawn, as provided for u/s 114 of the Indian Evidence Act, 1872 (for short "Act"), and that the view taken by the lower Appellate Court cannot be sustained in law.

5. Sri Nagaraju Naguru, learned Counsel for the respondents, on the other hand, submits that, not a single witness has signed upon the promissory note, and even assuming that it is not required to be witnessed by any one, the appellant was under obligation to examine any third party, to prove the execution thereof. He contends that though PW-2 stated that he is acquainted with the signatures of late Pratap Reddy, it was not even suggested to him that Ex.A-1 contains the signature of Pratap Reddy, nor there was any occasion to compare the signatures on various aspects. Learned Counsel submits that the comparison undertaken by the trial Court in exercise of power u/s 73 of the Act was totally untenable, since no independent witness said that, signature on Ex.A-1 is that of Pratap Reddy.

6. The suit is for recovery of a sum of Rs. 1,81,810/-, on the strength of a promissory note said to have been executed by late Pratap Reddy. The respondents flatly denied the execution of the promissory note by the deceased. They have also pleaded that the promissory note is not supported by consideration. The trial Court framed two issues for its consideration, viz.,

1) Whether the suit promissory note was executed by Pratap Reddy, and whether it was supported by consideration? and

2) Whether the plaintiff is entitled for the decree, as prayed for?

7. The appellant deposed as PW-1 and one Mr. Yella Reddy was examined as PW-2. On his behalf, Exs.A-1 to A-11 were marked. The 1st respondent deposed as DW-1. She filed Exs.B-1 to B-5. The trial Court decreed the suit, and in the appeal preferred by the respondents, the lower Appellate Court framed only one point for its consideration, viz., whether the decree and judgment of the trial Court deserves to be set aside. It has allowed the appeal.

8. There is no denial of the fact that a promissory note is a negotiable instrument, as defined u/s 4 of the Negotiable Instruments Act. The Act does not require that the execution of negotiable instrument must be witnessed by a third party, much less attested. However, the appellant is under obligation to prove the execution of Ex.A-1. This has become necessary on account of the flat denial of the plaint averments by the respondents.

9. Howsoever consistent and cogent the evidence of plaintiff, as a witness in a suit may be, it does not gain trustworthiness, unless it is corroborated by independent witnesses. The appellant filed affidavit, in lieu of his chief-examination. He did not mention that any third party was present, when the promissory note was alleged to have been executed by, or the amount is said to have been paid to Pratap Reddy. He got issued notices to the respondents, after the death of Pratap Reddy. Those notices were marked as Exs.A-3 to A-5. In the cross-examination, it was elicited from the appellant, that he is a tenant in the premises owned by the father of Pratap Reddy, for the past 30 years. He has also admitted that Pratap Reddy became the exclusive owner of the premises, which included the portion leased to him. The rent is said to have been Rs. 50/- per month, at the commencement, and was enhanced to Rs. 1,250/- per month, by the time Pratap Reddy died. He filed two receipts of rent, issued by Pratap Reddy, on 04-04-1988 and 05-09-1988. He stated that he does not have any other receipts. He admitted that he is not paying the rent for the premises from September, 1998 onwards. The appellant stated that the premises were purchased by one Mr. Narsimha Reddy, and on an oral demand made, the rent is being paid to the said Narsimha Reddy. He admitted that he did not issue any notice to Pratap Reddy for repayment of the amount, covered by Ex.B-1. The appellant also stated that he is not an income tax assessee earlier to 2002, and there is nothing on record to show that he has received a sum of Rs. 500/- on 21-08-1997 from Pratap Reddy. He admitted that he suffered a decree in the hands of Ranga Reddy, father of Pratap Reddy, in O.S. No. 319 of 1997, but feigned ignorance as to whether the 1st respondent came on record as LR in that suit. It was suggested to him that he has bore grudge against respondents 1 to 4, ever since they came on record in the suit, and that no amount was borrowed by Pratap Reddy.

10. PW-2 was examined by the appellant. This witness is said to have worked in the Kadapa Co-operative House Building Society Ltd., as Clerk-cum-Manager (as a peculiar phenomenon). He stated that he is acquainted with the signatures of Pratap Reddy.

11. It was not even stated in the affidavit filed in lieu of chief-examination, that Pratap Reddy was a member of that society, or that he has borrowed any amount from them.

12. To be precise, the statement made in the affidavit reads as under:

I am working as clerk-cum-Manager in Cuddapah Cooperative House Building

Society Limited, Kadapa for the last 10 years of Cuddaph Cooperative housing Building Society Limited, for the years 1994 to 1995 and he discharged his work as president and he was signing in a Bill C Book, Cash Book relating to Cuddapah Cooperative House Building Society Limited, Kadapa and I know the signature of late G. Pratap Reddy and the signatures with the minutes book and cash book are of late G. Pratap Reddy I know also the plaintiff for the last 10 years.

13. Hardly one gains any idea as to the circumstances under which Pratap Reddy said to have any dealing with the society. Assuming that PW-2 worked as Clerk-cum-Manager, he did not state as to the circumstances under which Pratap Reddy signed Exs.A-8 and A-9, when questioned in the cross-examination.

14. Assuming that the signatures on Exs.A-8 and A-9 can be said to have been made by Pratap Reddy, it becomes highly doubtful as to whether they can be treated as admitted signatures. The reason is that the similarity between them, on the one hand, and the signature on Ex.A-1, on the other hand, was not established through process known to law. The evidence of PW-2 does not take the matter any further to the extent of making the signatures on Exs.A-8 and A-9 undisputed. The appellant did not elicit a statement, to the effect that PW-2 has seen Ex.A-1 and is of the view that the signature thereon tallies with those, on Exs.A-8 and A-9.

15. A statement to that effect would have provided an occasion for the appellant to file an application u/s 45 of the Act, to send Ex.A-1, on the one hand, and Exs.A-8 and A-9, on the other hand, for opinion of the expert. Since no such effort was made, there did not exist any occasion for him to seek expert's opinion.

16. The nature and extent of the proof of a promissory note in a case, where the executant is no more, substantially differs from the one, in which the executant is alive. In the cases of the second category, the trial Court would have an occasion to obtain the signatures or thumb impressions of the executant in the open Court and proceed to compare the same with the disputed one, either by sending the documents to expert's opinion, u/s 45, or undertake comparison, by itself, u/s 73 of the Act. Such a facility does not exist in the first category of cases. There would be serious handicap in identifying the starting point, viz., ascertaining the undisputed signatures. In such cases, it is only when a clear picture emerges, as to the undisputed nature of a signature of a deceased, executant, that the exercise of comparison can be undertaken. It is in this context, that the appellant failed to lay proper foundation.

17. It is necessary to know, as to how the trial Court based its conclusion as to the proof of Ex.A-1.

18. After the issues are extracted, it summarized the oral and documentary evidence in one paragraph. It proceeded on the assumption that the signatures of Pratap Reddy were identified by PWs 1 and 2. The sentence reads,

On behalf of the plaintiff, the plaintiff was examined as P.W.1 and Yella Reddi who identified the signature of late G. Pratapreddi on the promissory note and also the signatures of the said Pratapreddi on minutes book and cash book was examined as P.W.2.

19. It may be noted that Ex.A-9 was not shown to PW-1 and Ex.A-1 was not put to PW-2. It proceeded to observe,

I am of the clear opinion that the evidence of PWs.1 and 2 is believable one and the evidence of PW.1 clearly goes to show that on 31.08.1994 G. Prathap Reddy executed Ex.A.1 promissory note agreeing to repay the same with interest at 18% per annum and G. Prathap Reddy paid Rs. 500/- and made Ex.A.2 endorsement and thereafter Prathap Reddy did not pay any amount except Rs. 500/-. The evidence of PWs.1 and 2 is believable one. Now G. Prathap Reddy is not alive and the property of G. Prathap Reddy is in the hands of the defendants. The present suit was filed within three years from 21.08.1997 as per the plaint was presented on 11.10.1999.

20. He just did not indicate the basis for arriving at this conclusion.

21. Respondents specifically pleaded that the appellant suffered a decree in the hands of the father of Pratap Reddy, and that the 1st respondent filed RCC 12 of 1999 for eviction, and that the suit was filed as a counterblast. None of these issues was referred to. No one has spoken about the writing on Ex.A-1. The trial Court assumed to itself, that the writing was also of Pratap Reddy.

22. Learned Senior Counsel submits that Section 73 of the Act empowers a Court to undertake comparison of the disputed writings and signatures, by itself. As observed earlier, an exercise of that nature can be undertaken only when the Court has undisputed signatures and writings before it. Such is not the case here.

23. The findings recorded by the trial Court are perverse and not based on any evidence. The lower Appellate Court has corrected the errors committed by the trial Court. No question of law arises for consideration in this Second Appeal.

24. The Second Appeal is dismissed. There shall be no order as to costs.