
(1998) 12 AP CK 0034
In the Andhra Pradesh High Court
Case No : CRP No. 616 of 1998

Reddi Varamaiah

APPELLANT

Vs

Pereddi Nagi Reddi

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Limitation Act, 1963 — Section 19

Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : (1999) 2 ALD 265 : (1999) 1 ALT 603 : (1999) 1 APLJ 238 : (1999) 2 CivCC 70

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. M. Radha Krishna and M. Ravi Prakash, for the Appellant;

Judgement

1. The respondent though served not engaged any Counsel. His name was called out and none appeared for him. Heard the learned Counsel for the petitioner.
2. The petitioner before this Court is the defendant. The respondent-plaintiff filed the suit for recovery of Rs.1,783.60 ps. due on a pronote and other legal charges and costs. It is the case of the respondent-plaintiff that the defendant took loan of Rs. 1,400/- at Nandikotkur on 28-5-1992 and executed suit pronote dated 28-5-1992 under Ex.A1, agreeing to repay the said amount with interest at the rate of 24% per annum on demand. The plaintiff stated that in spite of several demands made by him, the defendant did not pay the amount. However, on 25-5-1995 the defendant sent an amount of Rs.400/- through his wife Neelamma. She made an endorsement on the said pronote having paid Rs.400/-. Thereafter the balance amount was not paid. The plaintiff, under those circumstances, got issued lawyer's notice vide Ex.A2 dated 5-6-1997 and in spite of service of lawyer's notice the defendant did not pay the amount and hence he filed the suit. The defendant by filing a written statement denied the allegations made by the plaintiff. It is contended by the defendant that the pronote was a fabricated document with the help of plaintiff's henchmen to get

unlawful benefit from the defendant. it is further stated that the payment of endorsement on the suit pronote is not that of his wife. Even otherwise it is an unenforceable document. He has never authorised his wife to pay the amount on his behalf and as such the suit is barred by limitation. The said endorsement of payment of Rs.400/- stated to have been made by the wife of the defendant was marked as Ex.A4, dated 25-4-1995.

3. The plaintiff examined PWs.1 and 2 and got marked Exs.A1 to A4. Defendant examined himself as DW1 and no documents were marked on his behalf.

4. The trial Court on the basis of the evidence of PW1-plaintiff and PW2-the scribe, held that the pronote Ex.A1 is proved. It further held that notice alleged to have been sent by the plaintiff vide Annexure A2 was not served on the defendant as contended by the plaintiff since the postal acknowledgment Ex.A3 bears the signature, where as the defendant being illiterate puts only thumb impression. It was also held that Ex.A4 i.e., the endorsement of the wife of the defendant dated 25-5-1995 is proved and accordingly the suit is in time in view of Section 19 of the Limitation Act. Accordingly, the suit was decreed.

5. Learned Counsel for the petitioner strenuously contended that the plaintiff has not proved the suit document Ex.A1. He further contended that at any rate the endorsement vide Ex.A4 is also not proved. Even assuming that such an endorsement is made by the wife of the defendant the same was without the authority of the defendant and as such Ex.A4 cannot have the effect of saving the limitation. He further contended that the Court below has erred in observing that the defendant should have examined his wife, by placing burden on the defendant. In fact it is for the plaintiff to prove the endorsement vide Ex.A4 as duly authorised by the wife of the defendant. Therefore, the impugned judgment and decree is liable to be set aside.

6. So far as Ex.A1 is concerned, in my view, in view of the presumption arising u/s 118 of the Negotiable Instruments Act, on the basis of evidence of PWs.1 and 2, the finding recorded by the Court below that Ex.A1 is proved, does not call for any interference under the revisional jurisdiction.

7. The other point that falls for consideration is whether the suit is in time. The trial Court has given a finding that Ex.A3-the postal acknowledgment is not proved. The notice was not served on the defendant as admitted by PW1. The defendant is an illiterate person and he puts only thumb impression. If that is so the case of the plaintiff that he got issued notice vide Ex.A3 is totally false case as held by the trial Court. In the light of this background I have to consider Ex.A4, the endorsement said to have been made by the defendant's wife on 25-5-1995, so as to see whether the suit is in time. Ex.A4 also bears the thumb impression. There is no presumption in favour of such endorsement u/s 118 of the Negotiable Instruments Act. Therefore, the burden is on the plaintiff to prove Ex.A4 so as to take Ex.A4 as an authorised payment on behalf of the defendant so as to save the limitation. It is no doubt true that defendant and Neelamma,

who is said to have made endorsement vide Ex.A4, are husband and wife. There is no evidence to show that there is any cordial relation between them. PW2 in his cross-examination clearly admits that "I do not know about the family members of defendant. The defendant did not use to sign. The defendant has no knowledge how to sign" PW1 in his evidence does not speak about whether the defendant and his wife are having cordial relations. He states that "I do not know whether the defendant executed the pronote by agreeing that he will pay the amount or on my order. I do not remember whether the defendant agreed to pay the debt to me by him or through his agents. I cannot say the day and time when the defendant's wife paid Rs.400/- on 25-5-1995. Only the defendant's wife came and paid the amount. I did not pass any receipt for the amount paid by the defendant's wife."

8. From this evidence it is clear that the plaintiff has not proved that the defendant's wife had authority to pay the amount. The Court below has erred in placing the burden on the defendant stating that the defendant should have examined his wife. In fact it was for the plaintiff to examine the wife of the defendant to prove that the said amount of Rs.400/- was authorised payment for and on behalf of the defendant. In the circumstances, it can be safely held that the plaintiff has failed to prove that the defendant's wife had the authority to pay Rs.400/-. He does not know even the date (sic. day) and time when the defendant's wife paid the said amount. Moreover, in his cross-examination he has further admitted that "In the plaint I did not mention whether the defendant sent his wife for payment of Rs.400/- as he was suffering from ill-health." From this admission it is clear that the plaintiff has not pleaded such a payment by the wife as an authorised agent of the defendant. It is an established principle of law that without any pleadings the evidence let in that behalf would not be admissible. From a reading of the entire evidence of P Ws. 1 and 2 it is clear that Ex. A4 is fabricated only to save the limitation. As held by the Court below, even alleged notice sent by the plaintiff vide Annexure Ex.A2 was not served on the defendant. Even the said notice appears to be a fabricated document. From these circumstances, it is clear that both the alleged notice as Annexure Ex.A2 and the endorsement vide Ex.A4 are the documents created only to save the limitation. Admittedly, the defendant was working as a "Cooli" under the plaintiff and as stated by the defendant their relationship, i.e., between the plaintiff and the defendant, were strained due to the dispute as to the wages the defendant was entitled. Having regard to these circumstances, I am constrained to hold that the plaintiff has not proved that the alleged payment made by the wife of the defendant vide Annexure Ex.A4 was an authorised payment and if it was not an authorised payment suit would be barred by time. Suit pronote was dated 25-5-1992 and the suit is filed in the year 1997 after nearly five years. In this view of the matter it could be safely concluded that the suit was barred by time.

9. In view of my above findings the suit is liable to be dismissed as barred by time. Hence, I pass the order as under:

"The Civil Revision Petition is allowed. Impugned Judgment and decree are hereby set aside and the plaintiff's suit is dismissed as barred by time."

10. No costs.