
(2003) 08 AP CK 0015
In the Andhra Pradesh High Court
Case No : SA No. 443 of 1992

Tirumalareddi Ramagopala Reddy and Others	APPELLANT
Vs	
Bhimavarapu Paravathi	RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 28

Citation : AIR 2004 AP 92 : (2004) 1 ALD 126 : (2004) 2 ALT 519 : (2004) 2 BC 536

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : C.C.S. Sastry, for the Appellant;

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Defendants in O.S. No. 84 of 1979 on the file of the Court of Subordinate Judge, Eluru are the appellants.

2. Respondent filed the suit against the appellant for recovery of Rs. 11,304.38 due to her under a promissory note dated 15.1.1977 executed by them in her favour for Rs. 10,000/-. The case of the appellants is that late T. Chinna Achireddy, father of Appellants 1 and 2 and husband of third appellant had dealings with the husband of the respondent in connection with his Tobacco business and the husband of the respondent came with a pre-written promissory note reciting as if it is executed by the sons of Achireddy for Rs. 10,000/-, to their house and asked them to sign that promissory note promising that accounts can be settled later, but Sivarama Krishna Reddy brother of appellants 1 and 2 refused to affix his signature thereto and the 3rd appellant affixed her signature thereto in her individual capacity but not as the guardian of her then minor son and as such the suit promissory note is an inchoate instrument and hence is enforceable. Basing on the pleadings, the trial Court framed four issues for trial. In support of her case respondent examined herself as PW.1 and another witness as PW2 and marked Exs.A1 to A6. on behalf of appellants third appellant was

examined as DW.1, first appellant was examined as DW.2 and another witness was examined as DW.3, but no documentary evidence was adduced on their behalf. The trial Court, after considering the evidence on record, held on issues 1 and 2 that the suit promissory note did not come into existence in the circumstances stated by the appellants, and is supported by consideration, and is enforceable against the appellants, and granted a decree in favour of the respondent. On appeal by the appellants in A.S.No. 106 of 1989, the learned District Judge, West Godavari at Eluru confirmed the judgment of the trial Court. Hence this second appeal.

3. The contention of Sri C.C.S. Sastry learned Counsel for the appellants is that since all the persons whose names are mentioned in its preamble did not execute Ex. A.1, and since the 3rd appellant executed Ex.A.1 in her individual capacity but not as the guardian of her minor son as described in the preamble of Ex.A.1, it is a void and enforceable instrument and so both the Courts below were in error in decreeing the suit of the respondent.

4. The preamble of Ex.A.1 shows that it is being executed by Sivaramakrishna Reddy, son of Atchi Reddy, Satyanamyana Reddy, a minor represented by his mother Bhikshavathamma, wife of Achi Reddy, Ramagopalareddy and Chandrapratapa Reddy, sons of Atchireddi, but Rajagopal Reddy, Chandrapratapareddy and Bhikshavathamma only signed Ex.A.1, Sivaramakrishna Reddy, whose name appears in its preamble, did not sign Ex.A.1. Bhikshavathamma affixed her signature to Ex.A.1 in her individual capacity but not as the guardian of her minor son Satyanarayana Reddy, as mentioned in its preamble.

5. When a document which was intended to be executed by plurality of persons is not executed all those persons and is executed one or only some of them, the question whether the said document can be enforced against the persons who executed it or not depends on the facts and circumstances of the case. If the executants had executed the document with a view to bind themselves in spite of the other intending executants refused to join its execution it certainly can be enforced against the executants; but if they execute the document on the specific understanding that it can be enforced against them only when the other persons mentioned therein also execute it, when some of the intending executants do not join its execution, it cannot be enforced against the executants also. So the question of enforceability of Ex. A.1 against the appellants is a pure question of fact as to whether they intended to bind themselves thereby irrespective of the others mentioned in its preamble join its execution or not. The Courts below after taking into consideration the plea of the appellant in their written statement, and the evidence adduced by them held that in spite of the refusal on the part of Sivaramakrishna Reddy to join its execution appellants, chose to execute Ex.A.1, and so it cannot be said that there was an understanding that unless all the persons shown in the preamble execute the document, it cannot be enforced against them. Since the evidence adduced by

the appellants clearly shows that they intended to bind themselves by Ex.A.1, in view of the ratio in Bolisetti Sundaram and Another Vs. Kanuparthi Venkatappadasu and Another, both the Courts concurrently finding against the appellants cannot be found fault with.

6. I find no force in the contention of the learned Counsel for the appellants that since the third appellant intended to execute Ex.A.1 on behalf of his minor son but not in her individual capacity, it cannot be enforced against the 3rd appellant. The principle laid down in Section 28 of the Negotiable Instruments Act would apply to execution of the instrument by the guardian of a minor. If the third appellant intended to execute Ex.A1 for and on behalf of her minor son, she ought to have mentioned that she is signing the promissory note on behalf of her minor son. When she omitted to mention that she is executing Ex.A1 on behalf of her minor son, and signed it as if she is executing it for herself, she is bound by Ex.A1 and so the Courts below granting a decree against the third appellant cannot be said to be erroneous.

7. For the above mentioned reasons and since the concurrent finding of fact by both the Courts below that Ex.A1 is supported by consideration needs no interference in this appeal, I find no merits in this second appeal and hence the same is dismissed with costs.