

(2006) 06 AP CK 0116
In the Andhra Pradesh High Court
Case No : AS No. 355 of 2006

Yalamanchili Vijaya Kihore

APPELLANT

Vs

Peeta Brahmananda Rao

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Citation : AIR 2007 AP 55 : (2006) 5 ALD 355 : (2006) 5 ALT 488

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, for the Appellant; A. Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The unsuccessful plaintiff in O.S. No. 762 of 1993 on the file of the I Additional Senior Civil Judge, Vijayawada, is the appellant. He filed the suit against the respondent, for recovery of a sum of Rs. 27,500/- with interest at the rate of 24% per annum from 19-9-1990, totalling to Rs. 52,432/-.

2. The appellant pleaded that the respondent borrowed a sum of Rs. 27,500/- from one V. Nageswararao on 19-9-1990 and executed a promissory note, undertaking to repay the said amount with interest at the rate of 24% per annum. The promissory note is said to have been transferred in favour of the appellant, for a consideration of Rs. 27,500/- on 18.10.1990 by the said Nageswararao- P.W.2, through an endorsement. It was alleged that in spite of demand by the appellant, the respondent did not repay the amount.

3. The respondent filed a written statement denying the averments in the plaint. It was stated that the defendant did not borrow any amount from P.W.2 and that P.W.2 or the appellant did not have any means or source to lend such amount. He pleaded that the so-called promissory note as well as the endorsement thereon, is fabricated and forged. The trial Court dismissed the suit through its judgment, dated 16-8-2001.

4. Sri P. Sridhar Reddy, the learned Counsel for the appellant submits that the trial Court dismissed the suit on a hyper technical ground that P.W.2 did not have the capacity or means to lend the amount. He submits that the appellant had proved the promissory note, marked as Ex.A.2, as well as the endorsement thereon, dated 18-10-1990, marked as Ex.A.1, and in that view of the matter, the suit ought to have been decreed.

5. The learned Counsel for the respondent, on the other hand, submits that the appellant failed to prove Ex.A.2, since no independent witness was examined. He further contends that the evidence of P.W.2 itself had clinchingly established that he did not possess adequate means to lend any amount to the respondent.

6. On the basis of the pleadings before it, the trial Court framed the following issues:

1. Whether the plaintiff is a bona fide purchaser in due course ?
2. Whether the suit pronote is true, valid and supported by cash consideration ?
3. Whether the suit pronote is a forged document as alleged in the written statement ?

7. The appellant was examined as p.w.1 and the transferor of the promissory note was examined as P.W.2. The endorsement and the promissory note were marked as Exs.A.1 and A.2 respectively. The respondent deposed as D.W.I and filed Exs.B.1 and B.2. The suit was filed on the basis of an endorsement made in respect of a promissory note in favour of the appellant by P.W.2. There did not exist any privity of contract between the appellant and the respondent. The question as to whether it was permissible for the appellant to file a suit against the respondent without impleading the transferor of the promissory note would have assumed significance, but for the fact that the said transferor was examined as P.W.2. For all practical purposes, it can. be said that the interests and personalities of the appellant on the one hand and P.W.2 on the other, have merged into one.

8. To enforce the obligation under the promissory note, the holder thereof is required to prove the execution as well as its contents. The respondent denied both. Therefore, it was obligatory on the part of the appellant herein to prove Ex.A.2, the promissory note, on both the aspects.

9. The deposition of P.W.2, in the context of proof of Ex.A.2 is of hardly any help to the appellant. P.W.2 himself stated that Ex.A.2 was written by the respondent himself and two persons subscribed their signatures, as witnesses to the same. The best and proper means, through which the execution of Ex.A.2 could not have been proved, was by examining the witnesses, who were said to have been present at the time of its execution. For the reasons best known to them, the appellant and P.W.2 did not take any steps to examine the said witnesses. The evidence of P.W.2 can be said to be of some help to the appellant, only to prove the endorsement in his favour, and nothing more.

10. In the cross-examination of P.W.2, several questions touching upon his capacity to lend the amount were posed. The answers to all such questions were as evasive as they could be. He was not a professional money-lender. Therefore, he was under obligation to satisfy the Court as to his capacity to lend the amount to the respondent. Though P.W.2 stated that he has got agricultural income, without specifying as to whether it represents the income derived out of agricultural lands, or sale proceeds of the land, he did not furnish the particulars, even after a specific question was raised, in this regard. The trial Court recorded a finding that P.W.2 did not hold any landed property, as on the date of promissory note.

11. The respondent pleaded that P.W.2 maintained a chit fund company and that he was a subscriber to it. In proof thereof, he filed Exs.B.1 and B.2. It was alleged that the appellant is none other than the clerk of P.W.2. The capacity of the appellant to purchase the promissory note was also disputed. The respondent categorically pleaded that the present suit was filed only, on account of the differences that arose between him and P.W.2. The plea of the respondent gained acceptability, with the failure on the part of P.W.2 in giving proper explanation as to the circumstances, under which Ex.A.2 came into existence or as to the transfer thereof, in favour of the appellant.

12. The appellant himself pleaded that he purchased Ex.A.2 for consideration of Rs. 27,500/-. By that date, interest for one month had already accrued upon it. Neither the appellant nor P.W.2 has explained as to how and why the promissory note was transferred for the same amount, even after one month. Several other aspects remained unexplained by the appellant. The trial Court had appreciated the matter from the proper perspective and by analyzing the evidence on record, on settled principles of law. The appellant miserably failed to establish the execution of the promissory note or payment of consideration to the respondent.

13. Hence, the appeal suit is dismissed. There shall be no order as to costs.