IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF NOVEMBER TWO THOUSAND AND TEN

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Second Appeal No.526 of 2000

Between:

Sri Venkateswara Rice Working Company,
Turumella, represented by its Managing Partner
and another

.. Appellants

AND

Turumella Chennakesavarao and 7 others

.. Respondents

JUDGMENT:

The Second Appeal is directed against the judgment and decree in A.S.No.33 of 1993 on the file of the IV Additional District Judge, Guntur, dated 3-9-1998.

The parties are referred to herein as they are arrayed before the trial court.

The plaintiff filed the suit for recovery of Rs.22,000/- with future interest and costs against the 1st defendant-firm, the 2nd defendant-Managing Partner and defendants 3 to 9-partners (defendants 3 to 9 being impleaded subsequently as per the orders in I.A.No.1265 of 1991 dated 5-3-1992). The plaintiff claimed that

the firm did business from 1-12-1981 till the end of 1983 with the 2nd defendant as the Managing Partner and the 2nd defendant borrowed Rs.16,000/- on 26-05-1983 from the plaintiff for business purpose and issued a chit on the letterhead of the 1st defendant firm through Gaddipati Somayya, its clerk, agreeing to repay the same with interest at 18% p.a. The debt was entered in the account books of the 1st defendant firm and the amounts were not repaid in spite of demands and a notice for which a false reply was given by the 2nd defendant. The plaintiff sought for interest at 12½ % p.a. on the principal sum.

The defendants 1 and 2 filed one written statement, while the other defendants filed another written statement admitting that defendants 2 to 9 constituted a partnership firm doing business till the end of 1983. The 2nd defendant claimed that defendants 5 and 6, who are sons of the plaintiff and the 4th defendant, who is the son of Somayya, are the active partners of the 1st defendant firm and the 3rd and 4th defendants were managing the business of the firm. The 2nd defendant further claimed that he was a partner in another Rice Mill along with the plaintiff and others and always used to be in the Rice Mill. The 2nd defendant denied borrowing Rs.16,000/- for the purpose of 1st defendant firm or agreeing to repay the same with interest at 18% p.a. or any demands by the plaintiff. The 2nd defendant also claimed that the account books of the 1st defendant firm were always with Gaddipati Somayya and his son and on the plaintiff's sons taking advantage of it, false entries might have been made. In fact, the plaintiff was indebted to the 2nd defendant and when he demanded for payment of the same, this suit was filed with false allegations and the suit is bad for non-joinder of parties. The other defendants claimed that the

2nd defendant was managing the 1st defendant firm and all the partners agreed at the time of dissolution of the firm at the end of December 1983 to make the 2nd defendant responsible for collection of assets and payment of liabilities of the firm. The 2nd defendant was in custody of the account books in which the arrangement was also endorsed and hence, the other defendants denied any liability for the suit sum apart from raising the question of limitation.

The trial Court framed issues on the entitlement of the plaintiff for recovery of the amount, the suit being vitiated by non-joinder of necessary parties, the indebtedness of the plaintiff to the 2nd defendant, the binding nature of the arrangement between the partners on the plaintiff and the bar of limitation.

The trial Court examined PWs.1 and 2 and DWs.1 and 2 and marked Exs.A.1 to A.10 and B.1 to B.29 during trial. It rendered its judgment on 7-12-1992 holding that the subsequent addition of other partners as defendants makes the issue of non-joinder of necessary parties redundant. The trial Court, after extensively referring to the oral and documentary evidence, opined that during the relevant period, defendants 2 and 3 acted as the Managing Partners of the 1st defendant-firm irrespective of the truth or otherwise of the 2nd defendant acting as a Manager of another firm. The trial Court referred to Ex.A.7-balance sheet dated 3-10-1988 showing the balance as on 16-12-1983 and Ex.A.8-Assessment order pertaining to the 1st defendant firm issued by the Income Tax Officer. Exs.A.7 and A.8 were not acted upon by the trial Court as being subsequent to the dissolution of the firm and as the 3rd defendant in the custody of the account books prepared Ex.A.7, the failure of the plaintiff to

give notice to the 3rd defendant to produce the account books was also taken adverse notice of and considering that the mere entries in the books of account are not sufficient to prove the transaction, the trial Court answered the issues against the plaintiff. The trial Court also concluded that the question of limitation needs no decision in view of other conclusions and consequently, dismissed the suit with costs.

In appeal in A.S.No.33 of 1993, the IV Additional District Judge, Guntur, again considered the rival contentions and evidence and opined in the impugned judgment that the 2nd and 3rd defendants acted as Managing Partners of the firm during the relevant period as held by the trial Court. The first Appellate Court also considered Exs.A.7 and A.8 to be not liable for rejection as created by the plaintiff, as they emanated from a competent authority/the Income Tax Department. The first Appellate Judge felt that the defendants, who are parties to the proceedings, themselves have to produce the relevant original records if any of them are in custody of the same and their non-production could not lead to any adverse presumption against the plaintiff. The 2nd defendant could have taken steps to issue notice to produce the documents to the other defendants, but he alleged that they were colluding with the plaintiff. The first Appellate Court, therefore, disagreed with the trial Court and allowed the appeal and decreed the suit with costs on the strength of Exs.A.7 and A.8.

In second appeal, the defendants 1 and 2 challenged the first Appellate Court's judgment on the ground that when Ex.A.1 was not signed by the 2nd defendant and defendants 5 and 6 are the sons of the plaintiff and the 4th defendant is the son of PW.2, the manipulation of the documents is not improbable. The scope of collusion as alleged by the 2nd defendant ought to have been

considered and therefore, questions of law arise for consideration about the possibility of reliance on Exs.A.7 and A.8 in spite of Ex.A.1 being not signed, the scope of collusion between the plaintiff and the defendants 4 to 6 and the perversity of appreciation of evidence by the first Appellate Court.

The Second Appeal was admitted on the substantial questions of law raised in the grounds of appeal.

Sri Koka Satyanarayana Rao, learned counsel for the appellants and Sri G. Ramachandra Reddy, learned counsel for the plaintiff are heard.

The points/substantial questions of law, which arise for consideration are those referred to above as specified in the grounds of appeal.

The Chit-Ex.A.1 dated 26-5-1983 is admittedly on the letter head of the 1st defendant and though it was unsigned, it referred to a borrowal of Rs.16,000/- repayable with interest. Ex.A.7-true copy of the balance sheet of the 1st defendant firm as on 16-12-1983 and Ex.A.8-Assessment order pertaining to the 1st defendant firm issued by the Income Tax Officer, Tenali, relate to the period prior to the end of 1983, during which period the firm was admittedly in existence and the firm was admittedly doing business and the 2nd defendant was admittedly a partner in the firm. The finding of fact by both the trial and first Appellate Courts that the defendants 2 and 3 were the Managing Partners of the firm during the relevant period was based on the probabilities arising out of the evidence on record and does not appear susceptible to be disturbed. The trial Court also did not suspect the authenticity of Exs.A.7 and A.8 and it referred to two binding precedents only to conclude that such entries by themselves might not be

sufficient to charge a person with liability. But the question is whether Exs.A.7 and A.8 offered sufficient circumstantial corroboration to the claims of PW.1 supported by PW.2 and the contents of Ex.A.1-Chit. The mere absence of any signature on Ex.A.1 by itself is not an improbablising circumstance and even if PW.2 is an interested witness, it is well settled that every interested evidence is not treated as false evidence though such evidence has to be scrutinized with extra care and caution. But, on the very probabilities discussed by the trial Court itself, not considering Exs.A.7 and A.8 as corroborating the claims of the plaintiff does not appear justified and when there is no possibility of manipulation of Exs.A.7 and A.8 as observed by the first Appellate Court, the entries therein cannot be considered to have been wrongly relied on by the first Appellate Court. While the 2nd defendant as noted by the first Appellate Court did not take any steps to compel the other defendants to produce the original books of account of the 1st defendant firm, if they are with them as alleged by him, the 2nd defendant cannot rely on merely the weakness in the plaintiff's version due to the absence of signature on Ex.A.1. The mere relationship between defendants 4 to 6 and PWs.1 and 2 could not have resulted in rejection of the claim and no provision or principle has been brought to notice as to why the absence of signatures on Ex.A.1 should result in non-consideration of Exs.A.7 and A.8 nor was any positive evidence on record pointed out from which collusion between the plaintiff and defendants 4 to 6 should have been a matter of compulsive inference. Under the circumstances, the appreciation of evidence by the first Appellate Court cannot be considered perverse and the second appeal cannot succeed in the absence of existence of any substantial questions of law, with the questions raised being pure questions of fact.

Accordingly, the Second Appeal is dismissed without costs.

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G. BHAVANI PRASAD, J

Date: 30-11-2010

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