

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

C.M.A. No.706 OF 2024

JUDGMENT:

1. This civil miscellaneous appeal is filed under Order XLIII Rule 1 of C.P.C, challenging the decree and judgment in A.S.No.2 of 2019 dated 08.05.2024 passed by the Civil Judge (Senior Division), Parchur, Prakasam District.

2. For the sake of convenience, the parties herein are referred as arrayed before the Court below.

3. The plaintiff filed O.S.No.6 of 2016 for recovery of money Rs.2,87,497/- together with interest and costs, based on six promissory notes dated 09.12.2003, 12.04.2004, 06.09.2004, 31.05.2007 and 13.01.2007 for Rs.25,000/-, Rs.25,000/-, Rs.15,000/-, Rs.10,000/-, Rs.25,000/- respectively, said to have been executed by the defendant in his favour, agreeing to repay the same on demand. The defendant made part payments and made an endorsement on the promissory notes. Again, the defendant borrowed an amount of Rs.25,000/- from the son of the plaintiff on 13.01.2007 and executed a promissory note in favour of the son of the plaintiff agreeing to

repay the same with interest and also made part payments. Later, the son of the plaintiff transferred the said pro-note for collection on 20.12.2014 by making necessary endorsement on the said promissory note dated 13.01.2007. In spite of demands made by the plaintiff, the defendant did not pay the amount due under the above promissory note. Then and the plaintiff claimed interest @ 12.5% p.a, therefore, it necessitated the plaintiff to file suit for recovery of money with interest and costs.

4. Before the Trial Court, the defendant filed written statement denying all allegations in the plaint and contended that, he neither borrowed the aforesaid amounts nor executed any promissory notes either in favour of the plaintiff or his son. The defendant and his wife are Government Teachers and earning decent salaries, so, there is no need or necessity for him to borrow money under suit promissory notes and the promissory notes are devoid of consideration. The alleged signatures of the defendant on those promissory notes were forged and suit promissory notes were created to derive undue benefit, since misunderstandings have cropped up between the plaintiff and the defendant in the Panchayat Elections were that occurred prior to filing of the suit. He neither made any payment to

the plaintiff nor executed any part payment endorsement, the subject promissory notes are barred by limitation. Only to save limitation, the plaintiff has high handedly made the payment endorsement as mentioned in the plaint by forging the signatures of the defendant. The plaintiff did not make any demand and has highhandedly filed the suit without giving prior notice to him and prayed for dismissal of the suit.

5. Considering the submissions of plaintiff and the defendant, the Trial Court dismissed the suit, observing that, since the plaintiff did not marked the part payments marked as exhibits, the Court cannot compute fresh period of limitation on Ex.A-1 to A-6 promissory note. Though the plaintiff has pleaded part payment endorsements, he did not prove the same by way of documentary evidence. The Trial Court further observed that, though Exs.A-1 to A-6 are true, they are not binding upon the defendant and finally the Court below came to conclusion that the claim of the plaintiff is barred by limitation and that the plaintiff is not entitled to recover entire suit amount.

6. Against the decree and judgment passed by the Junior Civil Judge's Court, Parchur in O.S.No.6 of 2016 dated 13.12.2018, the plaintiff preferred A.S.No.2 of 2019 before the Civil Judge (Senior

Division), Parchur. The First Appellate Court allowed A.S.No.2 of 2019 setting aside the decree and judgment passed by the Junior Civil Judge's Court, Parchur in O.S.No.6 of 2016 dated 13.12.2018, while remanding the matter to the Trial Court, directing the Trial Court to dispose of the suit on merits in accordance with law after receiving the additional evidence of the appellant/plaintiff. Challenging the order in A.S.No.2 of 2019 dated 08.05.2024, the present C.M.A is filed.

7. During hearing, Sri Naga Praveen Vankayalapati, learned counsel for the appellant herein/defendant would contend that the alleged part-payment endorsements are forged and created to save the limitation and the signatures of the defendant on the part payment endorsements do not belong to the defendant and therefore, the burden is on the plaintiff to prove the part-payment endorsements. In the chief evidence of P.W.1 and list of documents, the plaintiff did not pleaded about the part payment endorsements, but only marked Ex.A-1 to A-6 promissory notes. The plaintiff has to take all the steps to cure the lacunae in the suit itself, but the plaintiff has not taken any steps to recall P.W.1 and to mark the part-payment endorsements backside of the promissory notes.

8. On the other hand, Sri Sridhar Thummalapudi, learned counsel for the defendant herein/plaintiff would contend that, though the defendant has denied execution of promissory notes and passing of consideration, but during cross-examination he admitted his hand writings on all the promissory notes and part payment as well as part payment endorsements which are part and parcel of promissory notes are filed along with the plaint, but due to mistake of advocate or his clerk or due to oversight of Court, the part payment endorsements were not exhibited marked in evidence. The Trial Court failed to see the part payment endorsements, since they were not marked and gave a finding that since the part payment endorsements were not marked and held that the suit is barred by limitation.

9. Heard learned counsel for the appellant herein/defendant and learned counsel for the defendant herein/plaintiff and perused the material available on record.

10. As seen from the record, the plaintiff filed suit O.S.No.6 of 2016 on the file of the Junior Civil Judge, Parchur for recovery of money basing on the promissory notes said to have been executed by the defendant in his favour. The plea of the defendant is that, the suit promissory notes are devoid of consideration and the alleged

signatures of the defendant on all those promissory notes and part payment endorsements are forged.

11. Order 41 Rule 27 C.P.C speaks about production of Additional Evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

12. Unless part payment endorsements which form part of promissory notes to be received as additional evidence and are

exhibited separately, they cannot be looked into. In the present case, since the part payment endorsements on Exs.A-1 to A-6 are not marked, they cannot be looked into. The First Appellate Court rightly observed that, it may be the mistake of the advocate or clerk or due to the oversight of the Court, the part-payment endorsements though available in the record were not exhibited in the evidence, for which, the party should not be suffered and an opportunity should be provided to the plaintiff to adduce his additional evidence. No prejudice would be caused to the defendant on adducing additional evidence by the plaintiff, since the defendant will be given an opportunity to cross-examine the defendant with regard to the additional evidence. Therefore, receiving additional evidence of the plaintiff does not amount to cure his defect in the suit, as the part-payments endorsements were already filed in the suit along with the plaint. Therefore, the observations and findings recorded by the First Appellate Court does not warrants any interference by this Court.

13. Therefore, civil miscellaneous appeal is disposed of with the following directions:

- a. The learned Civil Judge (Junior Division), Parchur is directed to dispose of the suit on merits in accordance

with law, after receiving the additional evidence of the plaintiff, within a period of six (06) months from the date of receipt of copy of this order, uninfluenced by any of the observations if any made herein;

- b. Learned counsel appearing for both sides undertook before this Court that the parties as well as their counsel at Court below shall cooperate with the trial for speedy disposal of the matter as directed, without seeking any adjournments for chief-examination or cross-examination.

14. Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE VENKATESWARLU NIMMAGADDA

Dated: 24.02.2026

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THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

C.M.A. No.706 OF 2024

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