

(2013) 07 AP CK 0017

Andhra Pradesh High Court

Case No: C.C.C.A. No. 100 of 2001

T. Manjula Devi

APPELLANT

Vs

Tata Rao (Died) and Other

RESPONDENT

Date of Decision: July 30, 2013**Citation:** (2014) 1 ALD 35 : (2013) 6 ALT 229**Hon'ble Judges:** S.V. Bhatt, J; L. Narasimha Reddy, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

L. Narasimha Reddy, J.

The plaintiff in O.S. No. 108 of 1991 on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad is the appellant. She feels aggrieved by the dismissal of the suit. The parties are referred to, as arrayed in the suit. The plaintiff filed the suit for recovery of a sum of Rs. 4,17,188/-, which includes principal of Rs. 2,37,500/- and interest of Rs. 1,79,688/-. It was pleaded that the deceased 1st defendant was her maternal uncle. He borrowed a sum of Rs. 1,46,500/- and as a measure of repayment thereof, he executed an agreement, dated 26.04.1988, Ex. A1, assigning one-third of his distribution rights of a film, by name "Gopalaraogari Abbayi", subject to a minimum of Rs. 1,30,000/-. It was pleaded that no amount whatever was received under that arrangement and between 04.06.1988 and 04.11.1988, he borrowed a further sum of Rs. 91,000/-.

2. The plaintiff has also pleaded that the 1st defendant executed another agreement, dated 14.02.1989, Ex. A2, to the effect that his one-third rights in the film which were assigned to one Sri Maruthi Rao can be claimed by her i.e. the plaintiff. On the same day, one more agreement, Ex. A3, is said to have been executed acknowledging the amounts that are borrowed, totalling to Rs. 2,37,500/-. The further plea of the plaintiff was that as a measure of security for repayment of the amount, the 1st defendant deposited a sale deed, dated 11.02.1985, Ex. A4, in respect of an item of immovable property, situated at Sithafalmandi, Hyderabad.

Stating that the 1st defendant did not pay the amount in spite of repeated demands, she filed the suit for preliminary decree vis-à-vis the suit schedule property and for a decree for recovery of amount.

3. The 1st defendant filed a written statement stating that he borrowed a sum of Rs. 82,500/- from the plaintiff and arrangements under Exs. A1 and A2 were made to repay the amount. He pleaded that on failure of the attempts through Exs. A1 and A2, he repaid a sum of Rs. 82,500/- to the plaintiff, part in cash and part through demand drafts. As regards the title deeds, he stated that they were with his Chartered Accountant, by name Sri Subba Rao and the plaintiff has obtained the same clandestinely. He denied the execution of Ex. A3.

4. During the pendency of the suit, the 1st defendant died. His legal representatives, wife and two daughters, were brought on record as defendants 2 to 4. They filed written statement denying the liability of the 1st defendant towards the plaintiff and stated that they did not succeed to any estate or property from the 1st defendant.

5. Through its judgment, dated 28.08.2000, the trial Court dismissed the Suit. Hence, this appeal.

6. Sri B. Nalin Kumar, learned counsel for the plaintiff, submits that once the 1st defendant admitted that he executed Exs. A1 and A2, his plea that Ex. A3 was brought into existence by using a signed blank stamped paper cannot be accepted. He submits that the trial Court assumed several facts to itself and recorded findings, which are contrary to the evidence.

7. Sri P. Venugopal, learned counsel for defendants 2 and 3 and Sri T. Nagarjuna Reddy, learned counsel for the 4th defendant, on the other hand, submit that the actual amount advanced by the plaintiff was only Rs. 82,500/- and the same has been repaid by the 1st defendant. He submits that the plaintiff herself admitted receipt of Rs. 82,500/- and rest of the claim is only fictitious in nature.

8. Taking the pleadings in the suit into account, the trial Court framed the following issues and additional issue for its consideration:

Issues:

(1) Whether the agreement, dated 26.04.1988 is true, valid and binding on the 1st defendant?

(2) Whether the 1st defendant borrowed an amount of Rs. 2,37,500/- from the plaintiff?

(3) Whether the part payments pleaded by the defendant in his written statement are true, correct and binding on the plaintiff?

(4) Whether the plaintiff is entitled to the suit amount as prayed for?

Additional Issue:

(1) Whether the plaintiff is entitled to the preliminary decree prayed for?

9. To prove her case, the plaintiff deposed as P.W. 1 and her husband was examined as P.W. 2. Exs. A1 to A10 were filed. The 2nd defendant deposed as D.W. 1 and she filed Exs. B1 to B4. The suit was dismissed.

10. The points that arise for consideration before us are

(1) Whether the plaintiff proved the factum of borrowing of Rs. 91,000/- by the 1st defendant after execution of Ex. A1? and

(2) Whether the plaintiff proved the transaction of mortgage?

11. The suit was filed for recovery of Rs. 4,17,188/-, which included the principal amount of Rs. 2,37,500/-. The plaintiff and the original defendant are closely related. The 1st defendant is the maternal uncle of the plaintiff. He admitted that a sum of Rs. 82,500/- was borrowed by him from the plaintiff for investment in the production of a film. There is no serious dispute about this aspect. In consonance with the practice prevalent in the film industry, certain distribution rights were assigned in favour of the plaintiff under Ex. A. 1. That, however, did not materialise, obviously because the film was not a success. Recognising that the plaintiff did not realise any amount towards her one-third share, the 1st defendant made an attempt through Ex. A. 2 to assign his own one-third also, which, by that time was assigned to another person, by name Maruthi Rao.

12. It is the case of the plaintiff that even while the arrangements under Exs. A1 and A2 were in vogue, she has advanced a further sum of Rs. 91,000/-. The only basis pleaded by her for this, is Ex. A3. It is important to note that Exs. A1, A2 and A3 are executed on stamp papers, which are purchased on the same day. Though there is a reference of Ex. A2 in Ex. A3, it is not so the other way. If both the documents are executed on the same day between the same parties, that too with reference to the financial deals, there ought to have been cross-reference in each of them.

13. The plaintiff does not dispute that she has received a sum of Rs. 82,500/-. The plea of the 1st defendant was that once his attempt to assign the distribution rights in favour of the plaintiff did not fructify, he has arranged the payment of principal amount of Rs. 82,000/- with an additional sum of Rs. 500/-. Heavy burden rested upon the plaintiff to prove that a sum of Rs. 91,000/- was advanced by her. Not a single witness in this behalf was examined. It is no doubt true that the burden rested upon the 1st defendant to disprove Ex. A3, once he admitted the signature thereon. Unfortunately, he did not survive throughout the proceedings. There is any amount of doubt as to the genuinity of Ex. A3. Be that as it may, one does not expect the plaintiff to advance further amount, when her complaint was that the amount already advanced was not repaid. Therefore, we answer the point against the plaintiff.

14. The plaintiff pleaded the existence of a transaction of mortgage on the sole ground that a sale deed, Ex. A4, was deposited with her. A simple mortgage can certainly be brought into existence by deposit of title deeds. However, the mortgagee must explain, the deposit of the title deed was with a specific understanding that it is for the purpose of creation of a mortgage. An accidental possession of a document by itself does not bring about mortgage.

15. The law does not stipulate the execution of a formal deed in respect of simple mortgages. However, the general practice is to at least prepare a note as to the deposit of the documents, duly incorporating the conditions, such as rate of interest and the mutual rights and obligations of the parties. If, for any reason, even this basic document is not prepared, proper evidence in this behalf must be adduced. In the instant case, the plaintiff did not even mention as to when the mortgage was created, what was the rate of interest and what is the schedule of payment, agreed to between the parties. The inescapable conclusion is that there did not exist any transaction of mortgage between the plaintiff and the 1st defendant.

16. Hence, the appeal is dismissed. There shall be no order as to costs. The miscellaneous petitions filed in this appeal shall also stand disposed of.