

IN THE COURT OF THE SENIOR CIVIL JUDGE: NANDIKOTKUR

Present : Smt. N. Srividya,
Senior Civil Judge, Nandikotkur.

Monday, the 26th day of August, 2019.

APPEAL SUIT NO.1/2019

K. Anand

... Appellant/
Plaintiff

-Versus-

T. Srikanth Reddy

... Respondent/
Defendant

On appeal filed against the judgment and decree passed in
O.S.No.31/2016 dt.20.12.2018 by the Junior Civil Judge, Nandikotkur.

Between:

K. Anand,
S/o.K. Seshanna, 38 yrs.,
Hindu, Business, R/o.Mandlem (V),
Jupadu Bungalow (M), Kurnool.

... Plaintiff

-Versus-

T. Srikanth Reddy,
S/o.T. Shankara Reddy, Hindu,
age 42 yrs., Business, R/o.
Mandlem (V), Jupadu Bungalow (M),
Kurnool District.

... Defendant

This is an appeal filed Under Order XLI Rule 1 of Code of Civil Procedure
by the Appellant/ plaintiff against the Judgment and Decree passed in
OS.31/2016 dt.20.12.2018 on the file of Junior Civil Judge, Nandikotkur.

Appeal presented on 21.01.2019, and filed on 23.01.2019. The Jurisdiction
value of the appeal is same as in the trial Court i.e., Rs.1,03,030/- and C.F. of
Rs.3,526/- is paid U/s.49 of APCF & SV Act.

This Appeal is coming on 14.08.2019 for final hearing before me in the
presence of Sri T. Raghunatha Reddy, Advocate for Appellant and of Sri V.
Sarabhaiah, Advocate for Respondent and upon hearing both sides and perusing
the material available on record and having stood over for consideration till this
day, this Court doth order and DECREE as follows:

1. That the appeal be and the same is hereby dismissed.

2. That there be no order as to costs.

Given under my hand and the seal of the Court, on this the 26th day of August, 2019.

**SENIOR CIVIL JUDGE,
NANDIKOTKUR.**

MEMO OF COSTS
(Junior Civil Judge's Court, Nandikotkur.)

	For plaintiff :	For defendant:
1. Stamp on plaint	Rs. --	
2. Vakalath	Rs.	Rs. 2-00
3. Process	Rs. --	
4. Advocate's Fee	Rs. -Nil-	Rs. 4,791-00
5. Typing charges	Rs.	Rs. 100-00
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Total :	Rs. -Nil-	Rs. 4,892-00
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MEMO OF COSTS
(Senior Civil Judge's Court, Nandikotkur.)

	For Appellant :	For respondent :
1. Stamp on plaint	Rs. 3,526-00	--
2. Vakalath	Rs. 2-00	Rs. 2-00
3. Process	Rs. 65-00	--
4. Advocate's Fee	Rs. 4,791-00	Rs. -Nil- not certified
5. Typing charges	Rs. 100-00	Rs. -
6. P.W. charges	Rs. 10-00	Rs. --
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Total :	Rs. 8,494-00	Rs. 2-00
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S.C.J., NDK

IN THE COURT OF THE SENIOR CIVIL JUDGE: NANDIKOTKUR

Present : Smt. N. Srividya,
Senior Civil Judge, Nandikotkur.

Monday, the 26th day of August, 2019.

APPEAL SUIT NO.1/2019

K. Anand

... Appellant/
Plaintiff

-Versus-

T. Srikanth Reddy

... Respondent/
Defendant

On appeal filed against the judgment and decree passed in O.S.No.31/2016 dt.20.12.2018 by the Junior Civil Judge, Nandikotkur.

Between:

K. Anand

... Plaintiff

-Versus-

T. Srikanth Reddy

... Defendant

This Appeal is coming on 14.08.2019 for final hearing before me in the presence of Sri T. Raghunatha Reddy, Advocate for Appellant and of Sri V. Sarabhaiah, Advocate for Respondent and upon hearing both sides and perusing the material available on record and having stood over for consideration till this day, this Court delivered the following:

:J U D G M E N T:

This is an appeal filed Under Order XLI Rule 1 of Code of Civil Procedure by the Appellant/ plaintiff against the Judgment and Decree passed in OS.31/2016 dt.20.12.2018 on the file of Junior Civil Judge, Nandikotkur.

2. The grounds of appeal by the appellant are that :

1. The judgment and decree of the trial court is contrary to law probabilities of case and weight of evidence and that the suit was erroneously dismissed and further, placed the ground that the trial

court concluded that the plaintiff failed to prove his claim and that the trial Court did not appreciate the evidence in a correct direction.

2. The other ground for preferring the appeal by the appellant/ plaintiff is that the trial court failed to appreciate the evidence of PW.1 and erroneously passed a finding that it could not believe the evidence of PW.1 and that the trial court failed to observe the evidence of DW.2 in total which is totally contra to the evidence of Dw.1 and was not corroborative in nature. The opinion of the trial court that the suit pronote is discharged is totally incorrect, is also one of the grounds for knocking the doors of appellate court.

3. The appellant further projected the grounds of appeal that the trial court wrongly concluded that the burden of proof is on the plaintiff and that he did not discharged the same. The other ground for appeal is that the trial court failed to observe that the entire burden is on the defendant to prove his discharge plea and that the trial court wrongly concluded that the appellant/ plaintiff came to the Court with unclean hands and that the plaintiff is not entitled for any relief.

4. The other ground of appellant/ plaintiff is that mere non-mentioning of issuance of legal notice by the plaintiff to the defendant is not suppression of material facts and that the observation of the trial court that issuance of legal notice before filing the suit is mandatory and the findings of trial court regarding Ex.A1 went wrong and further projected the ground that the trial court believed oal testimony of Dws.1 and 2, but not Ex.A1 and failed to find out the false evidence of Dws.1 and 2 and wrongly concluded the case and failed to observe as to why the respondent / defendant not examined another person by name Reddipogu Yesepu and also failed to appreciate established legal aspects with regard to the money suit, much particularly, when there is

plea of discharge in this case and prayed to set aside the judgment and decree of the lower Court and allow the appeal by decreeing the suit.

3. Heard both sides and perused the material available on record.

4. Now, the point for determination is :

“Whether the impugned judgment and decree passed by the learned trial Judge is sustainable and needs any interference of this Court while deciding the appeal ?”

5. POINT :

The parties to the appeal will be arrayed as that of plaintiff and defendant as plaintiff is the appellant and defendant is the respondent for the sake of convenience.

The learned counsel for the plaintiff argued at length that when the plea of discharge is taken by the defendant, the entire burden shifts on the defendant to prove the same and that the trial Court failed to observe the rule of burden of proof and on whom it lies at different cases of each case. It is argued that the trial Court could not appreciate Exs.A1 and A2, but could be able to appreciate the oral testimony of Dws.1 and 2 wherein there is lot of difference and their evidence is not in corroboration with each other. It is also argued that Section 81 of Negotiable Instrument Act which shows that delivery of instrument on payment or indemnity in cases of loss was not at all considered by the trial Court and further urged that mere non-mentioning of issuance of legal notice to the defendant is suppression of material fact and that the trial court started viewing the said simple issue very seriously and at the end, the trial court dismissed the suit without following the legal aspects and prayed this Court to allow the appeal. The learned counsel for the appellant also relied upon the judgment reported in **AIR 1940 Mad 631 between Nunna Gopalan Vs. Vuppuluri Laxminarsamma** and argued that Section 81 of Negotiable Instrument Act provides that any person liable to pay and called upon by the holder thereof to pay, the amount due on a

promissory note is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, or the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him and further argued that the respondent, having paid the promissory note without insisting on its return to her or without obtaining from the payee a guarantee, acted at her own risk.

6. The learned counsel for appellant also relief upon the judgment reported in **AIR 1981 Karn 245** decided between **Sudhakar Syndicate Pvt. Ltd., Vs. H.M. Chandra Shekaraiah and others** and argued that in order to apply Section 81 of Negotiable Instrument Act , the Hon'ble High Court of Karnataka framed certain terms that, the normal rule is that the document on which the suit is based, should be produced along with the plaint and that the production of basic documents is thus insisted on to afford protection to the person liable under it against a similar claim in a subsequent suit brought by a party who might claim to have legally acquired the rights under the document and produces it in support of his claim. The other problem is that the possibility of such risk is greater in the case of Negotiable Instruments which may change hands frequently by successive endorsements and that against the claim preferred by a holder in due course of such an instrument, the person liable under it may not be entitled to set up a plea that the amount due under the instrument has already been paid and that the possession of the instrument of the holder in due course will be prima facie evidence of the liability not having been discharged.

7. The learned counsel for appellant / plaintiff also relied upon the judgment of the Hon'ble Madras High Court reported in **1947 (2) MLJ 196** wherein it is the contention of the appellant that the Hon'ble High Court of Madras held that there is certainly negligence on the part of the first defendant that when he made the payment, it is clear that the promisee was unable to produce the promissory note and make an endorsement of

payment and even deliver it up to him cancelled. It is the submission of the learned counsel for appellant that under Section 81 of Negotiable Instrument Act, the first defendant was before payment entitled to have the promissory note shown to him and on payment entitled to have it delivered up to him or if the instrument cannot be found, to be indemnified against any further claim thereon against him and that this is that he should have done and if he did not act as indicated in the section, he has to blame himself. It is also held as per the contention of the appellant that in any finding, the ultimate claim must be only against the promisee whom he had paid and he cannot be allowed to plead any defence to an action by a holder in due course. The learned counsel for appellant argued that the judgment reported in AIR 1940 Mad 631 was also relied upon and held that the decree of the lower Court dismissing the suit against the first defendant was set aside and decreed the suit by allowing the appeal.

The learned counsel for appellant / plaintiff prayed this Court to decree the suit by setting aside the judgment and decree of the lower Court dismissing the suit.

8. On the other hand, the learned counsel for respondent / defendant argued that the lower court rightly dismissed the suit by believing the version of Dws.1 and 2 and further argued that the judgments relied on by the plaintiff are not at all applicable to the facts of this case and prayed this Court to dismiss the appeal by upholding the judgment and decree of the trial Court.

9. Perused the record along with judgment and decree of the trial court in O.S.No.31/2016.

The facts mentioned under AIR 1940 Mad 631 are not at all same or similar with that of the facts in the present case on hand for the reason that

in the said case, the defendant paid the amounts, but the plaintiff did not file any Insolvency petition and did not even say that the original pronote was with some advocate. In the present case on hand, the pleadings of the plaintiff, evidence of PW.1 as well as the record of the trial Court shows that original pronote is not placed before the trial Court or the appellate court herein and the plea for non-filing of original pronote is that it is filed in the insolvency petition. In the cross-examination PW.1 deposed that insolvency petition is dismissed. The defence taken by the defendant is that when the same was demanded to be given to the defendant, plaintiff stated that it is with some advocate at Atmakur. Without showing the original document by the plaintiff, his legal burden is not shifted at all so that the judgment relied on by the appellant can be followed.

10. The judgment relied upon by the appellant reported in 1947 (2) MLJ 196, the defence taken by the defendant No.1 and other defendants was totally different and the findings of the Hon'ble High Court therein cannot be made applicable to the present case on hand. The entire facts and circumstances mentioned in AIR 1981 Karn 245 cannot be made applicable because facts and circumstances are totally different.

11. After careful perusal of the entire judgment and the evidence let in by both the parties, this Court observed that the ground of appeal by the plaintiff that the lower Court disbelieved Ex.A1 and believed the version of Dws.1 and 2 is correct. It is the contention of plaintiff that under Ex.A1, defendant borrowed an amount of Rs.1,30,000/- on the date of Ex.A1 and that on the date of Ex.A2, defendant paid an amount of Rs.1,00,000/-. These two pleas are admitted by both the parties. The basic point for the main dispute is whether the discharge of the entire debt by the defendant after payment of Rs.1,00,000/- on 22.12.2014 is true or not. As rightly pointed out

by the learned counsel for appellant, the entire burden is on the defendant to prove that he repaid the entire balance debt after deletion of Rs.1,00,000/- under Ex.A2.

12. Though it is not a point to be raised at this juncture, but this Court felt that it is necessary to note down by the trial court that when a discharge plea is being pleaded by the defendant, the issue must be framed on that lines and allow the defendant to lead the evidence at first instance because, except the discharge of entire debt, other pleading of the plaintiff with regard to execution of Exs.A1 and A2 are admitted even by defendant and there is nothing for the plaintiff to prove more as admitted facts need not be proved.

13. In the present case on hand, though the plaintiff entered the witness box, he clearly deposed before this Court that he got issued legal notice to the defendant on 10.12.2014. This Court could not understand and is not at all convinced with the arguments of the learned counsel for appellant that as to why the said fact of issuance of legal notice, dt.10.12.2014 was not mentioned in the plaint. It is the argument for the learned counsel for plaintiff that non-mentioning of issuance of said legal notice is a minor fact and a simple thing and that it cannot be viewed seriously naming it as suppression of material fact. The trial Court rightly named it as suppression of material fact. More over, plaintiff during the course of cross-examination clearly admitted that he got issued legal notice on 10.12.2014. This Court also observed that as and when the defendant disclosed about the issuance of said legal notice by the plaintiff through his written statement, the plaintiff did not choose to file any rejoinder on that aspect, if at all it is not true, but some how during the course of cross-examination, plaintiff admitted about issuance of the legal notice. Thereby, with the said admission, strength to the defence of defendant is gained.

14. Coming to the point of believing and disbelieving the evidence on hand by the trial court, this Court observed that when the onus of proof of discharge is completely on the defendant, as per his contention through his written statement, defendant got examined himself as well as one of the persons in whose presence the rest of the debt was repaid to the plaintiff on 22.12.2014. It is the case of defendant that in the presence of two persons by name Reddipogu Yesepu and Surya Raju of Mandlem village, the balance pronote amount was paid. But the plaintiff did not even choose to file any rejoinder on the said aspect and remained silent without even objecting the same though the Civil Procedure Code, 1908 provide ample opportunity. Even at the stage of cross-examining DW.1, plaintiff could not elicit the presence of plaintiff and the defendant alone. Dw.1 clearly deposed that he demanded plaintiff to return the promissory note after payment of balance amount, but plaintiff stated to him that original pronote is kept with the Advocate of Atmakur. During the course of cross-examination of this DW.1, witness admitted that plaintiff filed creditor I.P.No.1/2015 on the file of Senior Civil Judge, Nandikotkur and that the same was dismissed on merits. Even the pleadings in the plaint disclose that plaintiff filed I.P.No.1/2015 and that original pronote is filed in the said I.P. It shows that even prior to filing of the present suit, the said I.P. is filed. But plaintiff did not choose to disclose that the said I.P. was dismissed on merits. Further, in the cross-examination of DW.1, mere putting a suggestion that the balance pronote amount was not paid in the presence of said two persons and it was denied. Nothing was elicited regarding the said two persons and about their presence or non-presence, specifically on the said date. The DW.2 who happens to be one of the persons in whose presence balance pronote amount was alleged to have been paid and this Court is of the view that it is a best opportunity for the plaintiff to elicit many facts which could support his version or demolish the

defence. But the cross-examination of DW.2 further confirmed the case of the defendant that at the time of execution of Ex.A1, defendant did not call him and this witness clearly deposed that DW.1, himself and one person by name Yesepu went to the house of plaintiff to pay the amounts and the plaintiff and defendant mutually counted the amount and noted it down and further admitted that they asked plaintiff to give receipt regarding payment of money, but the plaintiff stated that since they all are residents of the same village, he will give it later and that the original pronote is given to one Atmakur advocate. This witness also deposed that like DW.1 that DW.1 did not ask for any receipt later and that no police case is filed.

15. One of the grounds for preferring appeal by the plaintiff is that the trial court believed the version of Dws.1 and 2, but disbelieved Ex.A1 and A2 and that the trial Court did not choose to suspect as to why defendant did not examine the other person by name Yesepu in whose presence also, the alleged payment of pronote amount is done. This Court is of the view that when the plaintiff is of the view that the court should suspect the non-presence of said Yesepu and that there is every possibility of projecting a false defence by the defendant taking the names of DW.2 and the said Yesepu, what made the plaintiff remain silent from filing an application summoning the said person when the defendant in his written statement clearly mentioned about the address of the said persons like the said two persons are from Mandlem village. This Court is of the view that defendant felt satisfied by examining DW.2 alone out of the said two persons.

16. For the above reasons, this Court is of the view that the finding of the trial court believing the evidence of Dws.1 and 2 holds good. As far as disbelieving of Ex.A1 is concerned, defendant contended that at the time of payment of the balance pronote amount, when he demanded for the original

pronote, plaintiff stated that it is with Atmakur advocate. This Court mentioned supra at the beginning of the judgment that I.P.No.1/2015 was already filed by the plaintiff and it was dismissed and that the present suit under appeal is filed in the month of March, 2016. The filing of I.P. was done in the year 2015 and the alleged payment of balance pronote amount took place in the month of June, 2014. Even the point of selling property by the defendant to some lady was also raised by the plaintiff himself, but not the defendant and much particularly, only at the time of cross-examining Dws.1 and 2 as well as during the course of cross-examination of plaintiff himself. It was admitted fact that during the said period, some property was sold by the defendant. When the plaintiff was under the knowledge of the said sale transaction, this Court felt that there is every possibility of handing over the original pronote to some counsel in order to file I.P. This Court also observed that it was the cross-examination of plaintiff for both the Dws.1 and 2 that whether any calculation memo was issued or not and the answer was that there was no calculation memo. But DW.2 deposed that both the plaintiff and DW.1 counted the money and noted it down. This Court is of the view that when Ex.A2 was merely admitted endorsement that Rs.1,00,000/- is paid towards part payment of pronote amount and when there is no calculation either with regard to the interest portion or the payment is towards the entire principal amount, it is the view of the Court that plaintiff cannot take the shelter under Section 81 of Negotiable Instrument Act that it is for the defendant to demand for the receipt or demand for the endorsement regarding the payments.

17. This Court is also of the view that neither the trial court nor the appellate Court herein saw the original of Exs.A1 and A2. It is pertinent here to mention that both the documents are certified copies basing on which the suit under appeal is filed and somehow, it is numbered. It is settled principle

that a suit which is based on negotiable instrument, the original documents is to be filed and in the present case on hand, though the trial court did not take the objection with regard to the filing of original document, the appellant did not even choose the provisions under Order XXXI of CPC by producing the originals of Exs.A1 and A2. It shows that the plaintiff though categorically submitted the arguments through his counsel as well as admitted in the cross-examination that the I.P. filed by him against the defendant was already dismissed, there is no reason mentioned by him as to why he did not file the original pronote before this Court. This court also observed that there is every possibility of filing of suit based on the pronotes and that is the reason why pronote will be superseded soon after disposal of the litigation. This Court is of the view that the judgments on which the appellant relied upon are not at all applicable to the present facts of the case on hand and taking the plea of Section 81 of Negotiable Instrument Act.

18. The plea taken by the defendant at the trial Court by way of his pleadings as well as in the evidence that the pronote was when demanded, he replied that the original pronote is with an advocate at Atmakur goes to convince this Court about plea of the defendant is true. The plaintiff admitted the fact of filing Insolvency petition as well as issuance of legal notice, but did not choose to mention the same in the plaint and file the so-called notice. When the plaintiff could able to suppress the said fact of issuing notice which could definitely help him with regard to his case, it appears to this Court that plaintiff with an ulterior motive did not even mention about the issuance of notice to the defendant on 10.12.2014. Even, when the defendant through his written statement took the plea of discharge that soon after receipt of legal notice from the plaintiff, he along with PW.2 and another person by name Yesepu repaid the amounts by going to the house of plaintiff, this plaintiff did not choose to file the said notice. The

burden of proof will never shift whereas, onus of proof shifts basing on the facts and circumstances of the case. In the present case on hand, without filing the original pronote, plaintiff is trying to convince the Court. The plaintiff may take the point for argument that when defendant admitted Exs.A1 and A2, he need not prove the transaction covered under Ex.A1 and Ex.A2 by filing the original documents. But there is a burden known as legal burden which would never shift on anyone and the person who claims something through some document, it is for him to initially discharge the said legal burden. This Court is also of the view that plaintiff miserably failed in discharging the legal burden either in the trial Court or before the appellate court and this Court is of the view that the defendant could able to discharge his burden of showing atleast some length of probabilities of his case by examining Pw.2, but whereas the plaintiff failed. This Court is of the view that though the trial court took some views in discussing the suit, this Court for the foregoing reasons mentioned supra is of the view that the ground taken by the appellant are not convincing so that, the judgment of the lower Court can be set aside or interfered.

19. In the result, the appeal is dismissed.

Dictated to the Stenographer, after transcription, corrected and pronounced by me in open Court, this the 26th day of August, 2019.

SENIOR CIVIL JUDGE,
NANDIKOTKUR.

Appendix of evidence

-Nil-

SCJ, Ndk.

Copy to the Junior Civil Judge, Nandikotkur.

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