

(1948) 07 MAD CK 0035
In the Madras High Court

Balaramireddigari Soma Reddi and Another	APPELLANT
Vs	
Gowkanapalle Thippa Reddi	RESPONDENT

Date of Decision : 06-07-1948

Acts Referred:

Citation : (1948) 61 LW 595 : (1948) 2 MLJ 282

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—The defendants are the appellants. The respondent instituted the suit out of which this second appeal arises for the recovery of a sum of Rs 3891-12-0 alleged to be due on a promissory note executed by the first defendant in favour of the plaintiff and the promissory note is dated 21st August, 1940. The second defendant is the son of the first defendant. The plaint itself admits that the borrowing by the first defendant commenced in 1922 and there were renewed promissory notes in between the suit promissory note and the original borrowing of 1922. The plea of the defendants was that though the promissory note was executed after Madras Act IV of 1938 came into force they were "agriculturists" entitled to relief under the Act. The circumstances under which the suit promissory note came to be executed are set out in paragraph 3 of the written statement of the first defendant, which states that the suit promissory note was not supported by consideration and that it was intended merely to serve as a voucher for the previous borrowing, that the plaintiff made fraudulent misrepresentations and prevailed upon the first defendant to execute the suit promissory note by making him believe that he would not enforce the suit note if on legal advice it was found that nothing was due under the said Act or that he would take only such sum as might be legally found due. This plea was overruled by the learned Subordinate Judge without giving any reasons and a decree was granted in favour of the plaintiff. There was an appeal to the District Court and the learned Judge thought that the matter was covered by Section 92 of the Evidence Act and that under that section the defendant was not entitled to raise the plea which he did in his written statement. His view was that

oral evidence in support of the arrangement pleaded by the defendant was inadmissible in evidence in view of the language of Section 92. In the result he dismissed the appeal by the defendants.

2. In my opinion the view of the Courts below is obviously wrong. The matter is really concluded by a decision of a Bench of this Court in *Gudivada Suryanarayana Vs. Tadikonda Alavandararao and Others*, where it was pointed out that a debt incurred after the commencement of Madras Act IV of 1938 cannot be scaled down except in accordance with Section 13. But in a suit on such a debt the defendant may plead that the document executed after the commencement of the Act was a mere voucher acknowledging a debt incurred prior to the commencement of the Act to which Section 8 or Section 9 of the Act would apply. If so much is pleaded and established, the excess over the amount due under the prior document on applying Section 8 or 9 may be treated as an amount in respect of which there is a failure of consideration. This, in my opinion, is exactly the plea of the first defendant in paragraph 3 of the written statement. He further adds that there was also a fraudulent misrepresentation. As the Courts below have misdirected themselves in law in ruling out oral evidence and in not considering the plea of the defendants, the decrees of the Courts below are set aside and the suit remanded to the District Court (as there is no temporary Sub-Court) for proper trial in the light of the observations contained in this judgment and in the judgment reported in the case cited above. The defendants are entitled to their costs throughout and irrespective of the result of the suit. The further costs will be provided by the decree to be passed in the suit. The Court-fee paid on the memorandum of Second Appeal and also in the appeal to the lower Court will be refunded.

3. Leave to appeal is refused.