
(2011) 12 AP CK 0053
In the Andhra Pradesh High Court
Case No : Second Appeal No. 254 of 2008

Challagulla Ratnamanikyam and others APPELLANT
Vs
M/s. D.N.Rao and Company, Auto and General Financiers and RESPONDENT
another

Date of Decision : 06-12-2011

Acts Referred:

Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 — Section 3(I)

Citation : (2012) 2 ALD 518 : (2012) 3 ALT 129

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : R.V. Prasad, for the Appellant; J. Suresh Babu, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri Justice L. Narasimha Reddy

1. For the sake of convenience, the parties are referred to as arrayed in the suit.
2. The respondent - plaintiff, a registered partnership firm, filed O.S.No. 33 of 1994 in the Court of Additional Senior Civil Judge, (Fast Track Court), Gudiwada, against Chllagulla Satyanarayana, the husband of the 1st appellant and father of appellants 2 to 5, for recovery of Rs. 40,000/- , with interest at 24% per annum, on the strength of a promissory note, dated 24.05.1988. During the pendency of the suit, Satyanarayana, the sole defendant, died and his legal representatives, the appellants herein, were brought on record. The plaintiff pleaded that the defendant borrowed a sum of Rs. 40,000/- . for his family necessities, viz., to perform the marriage of his daughter and executed the promissory note on 24.05.1988. It was pleaded that unable to pay the amount within time, the defendant made a token payment of Rs. 300/- , on 19.05.1991, and endorsed an acknowledgement of the debt, on the reverse of the promissory note. The plaintiff pleaded that, in spite of repeated demands, the defendant did not pay the amount.

3. The defendant filed a written statement, opposing the suit. He admitted that the promissory note, marked as Ex.A.3, was executed on 24.05.1988, while borrowing a sum of Rs. 30,000/- . It is stated that though in the promissory note the amount was mentioned as Rs. 40,000/- , only Rs. 30,000/- was paid and the balance was sought to be adjusted towards future interest. He denied the endorsement, dated 19.05.1991, marked as Ex.A.4. He has also taken the plea that he is a small farmer, as defined under the A.P. Agricultural Indebtedness (Relief) Act, 1977 (Act 7 of 1977) (for short "the Act").

4. The trial Court decreed the suit through judgment, dated 19.11.2002. The appellants filed A.S.No. 5 of 2003 in the Court of X Additional District Judge, Krishna. The appeal was dismissed on 15.06.2007. Hence, this second appeal.

5. Sri R.V.Prasad, learned counsel for the appellants, submits that the trial Court and the lower Appellate Court have misread the evidence, particularly with reference to Ex.A.4 and held that the suit was filed within limitation. He contends that if Ex.A.4 is excluded from consideration, the suit is barred by limitation. He further submits that the principle laid down by this Court in various decisions, as regards the interpretation of the expressions of "small farmer" and "debtor" under the Act, was not adopted.

He places reliance upon the judgment of this Court in Kalisetti Venkata Ramanaiah and Others Vs. Tirupati Kondamma,

6. Sri J.Suresh Babu, learned counsel for the respondent, on the other hand, submits that the defendant admitted the execution of the sale deed and borrowing of the amount, and his denial as to the endorsement and the corresponding acknowledgement, marked as Ex.A.4, were found to be not correct. He contends that the defendant borrowed the amount to perform the marriage of his daughter, and admittedly, if the land owned by all the members of the family, as defined under the Act is taken into account, the defendant does not fit into the description of a "small farmer".

7. Though the suit was filed for recovery of amount on the strength of a promissory note, the pleadings of the parties have given rise to several contentious issues. The trial Court framed the following issues for its consideration:

- i) Whether the plaintiff is a registered firm and the person who signed is authorised to file this suit?
- ii) Whether the suit pronote is not supported by consideration in a sum of Rs. 10,000/- ?
- iii) Whether the discharge of Rs. 20,000/- pleaded by the defendant is true?
- iv) Whether the payment endorsement dated 19.05.1991 is true?
- v) Whether the suit claim is barred by time?

vi) Whether the defendant is a small farmer as defined under Act II of 1991? If so he is not entitled to the benefit of Act?.

8. On behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.5 were filed. DW.1 was examined and Exs.B.1 and B.2 were filed, on behalf of the defendant. The suit was decreed and in the appeal preferred against the decree, the lower Appellate Court framed the following points for its consideration:

i) Whether the plaintiff has legally proved Ex.A.4, payment endorsement dated 19.05.1991 on the reverse of Ex.A.3 suit pronote and if so, the plaintiff suit is in time?

ii) Whether D.1 was a debtor within the meaning of the Act and if so is a small farmer and if so is entitled to the benefits of Act and if so, the suit debt is deemed to be abated as discharged?

iii) Whether this Court interfere any warrant to set aside decree and judgment of trial Court dated 19.11.2002 in O.S.No. 33 of 1994 and if so to what relief?

and ultimately the appeal was dismissed.

9. The defendant admitted the execution of Ex.A.3, but disputed the amount borrowed under it. While the figure mentioned in Ex.A.3 is Rs. 40,000/- , the defendant pleaded that he was paid only Rs. 30,000/- and that he repaid a sum of Rs. 20,000/- , before the suit was filed. However, he failed to prove both the facts pleaded by him.

10. Another important contention advanced by him was about the limitation. He denied the endorsement, marked as Ex.A.4. Here again, the trial Court recorded a finding on the basis of oral and documentary evidence to the effect that the endorsement is true. Thereby, the suit was found to be within limitation. This aspect is not seriously canvassed before this Court.

11. Strong exception is taken to the findings recorded by the trial Court and the lower Appellate Court, as regards the applicability of the provisions of the Act, to the facts of the case. The defendant raised the plea that he is a small farmer and that the suit cannot be maintained for recovery of the amount, in view of the bar imposed under the Act. The Act defines the "small farmer" as the one, who holds and personally cultivates the land not exceeding one hectare , if it is wet, and two hectares, if it is dry. In case of Schedule Tribes, the stipulated extent is double.

12. It was pleaded that the wet land held by the defendant was only Acs.2.05 cents, and in that view of the matter, he answers the description of a "small farmer".

13. In case the debt is incurred by an individual, the extent of the land held by that person, may become relevant, to examine the question as to whether he answers the description of "small farmer", as defined under the Act. If the amount was borrowed for the purpose of the family, a further examination

becomes necessary. In several judgments, this Court dealt with the said aspect, with reference to the connotation of joint family, as understood under the Hindu law, and the definition of "family", u/s 3(I) of the Act.

14. Two Division Benches of this Court, in *P. Varahamma Vs. Repeti Ramanna and Others*, and *Krishna Murthy and Others Vs. Government of Andhra Pradesh*, took the view that where the debt is incurred by a joint family, and the suit for recovery thereof is filed against one of the erstwhile co-parceners, the holding of such erstwhile co-parcener after division in the family, and not the combined holding of the family, would become relevant. In other words, though the debt may have been incurred for the benefit of joint family, the land that was held by the joint family cannot be taken into account for this purpose. The same was explained and summed up by this Court in *Kaliseti Venkata Ramanaiah's* case (1 *supra*).

15. In the instant case, the debt was not incurred for the purpose of any joint family. On the other hand, it was incurred for the benefit of the family, headed by the defendant. This family comprised of the defendant, his wife and unmarried children. Apart from the defendant, his wife held land, in her individual capacity. The definition of the "family" u/s 3(I) of the Act, takes in its fold, the person, his wife and unmarried children. If the holding of these persons is taken into account, the defendant does not answer the description of a "small farmer".

16. An attempt is made by Sri R.V.Prasad, learned counsel for the appellants, to convince this Court, a notional partition, among all the family members must be presumed and only then the question as to whether a defendant answers the description of a "small farmer", be considered. The law laid down by the Division Benches in the two judgments, referred to above, provides ample guidance, in this regard. Their Lordships maintained a clear distinction between a "joint family", which comprises of several smaller units, on the one hand, and an "independent family", as defined u/s 3(I) of the Act, on the other hand. A "joint family" will give rise to several units of smaller families as and when partition or division is effected, whereas a "family" defined in Section 3(I) of the Act, is a unit by itself, not comparable to the joint family.

17. The trial Court and the lower Appellate Court have taken the correct view in this regard. Though discussion was undertaken in the suit and the appeal as regards the income of the defendant, it is felt that it was not necessary, in view of the fact that the holding of the family is found to be more than the stipulated extent.

18. The second appeal is, therefore, dismissed. There shall be no order as to costs.