
(1951) 03 MAD CK 0040
In the Madras High Court
Case No : Appeal No. 556 of 1948

Chitturi Venkataraju

APPELLANT

Vs

Kodarasetti Venkataramana and Others

RESPONDENT

Date of Decision : 20-03-1951

Acts Referred:

Usurious Loans Act, 1918 — Section 3

Citation : AIR 1951 Mad 1013 : (1951) 2 MLJ 84

Hon'ble Judges : Panchapagesa Sastry, J

Bench : Single Bench

Advocate : P. Somasundaram, for the Appellant; C.V. Dhikshitalu, for the Respondent

Final Decision : Allowed

Judgement

Panchapagesa Sastry, J.—This is an appeal by the plaintiff-mortgagee against the judgment and decree of the Subordinate Judge of Kakinada in so far as his claim for compound interest has been disallowed. The suit was on a mortgage for Rs. 3344 repayable in six instalments and carrying interest at the rate of twelve annas per cent per mensem with yearly rests. The first defendant who had purchased the property from its prior owner had undertaken to discharge an earlier mortgage on this very property of the year 1922. The principal sum advanced thereunder was Rs. 2000. That mortgage carried interest at nine per cent per annum compound interest. Out of the consideration for the sale, the first defendant had been directed to discharge the mortgage of 1922. It appears that he made some payments thereunder and ultimately the suit mortgage came to be executed in 1935 for the amount of Rs. 3344. Defendants 2 and 3, the sons of the first defendant, were then minors. The suit is brought in 1947 for recovery of the amounts due. Defendants 2 and 3 had now become majors. The main defence was that the rate of interest provided in the suit mortgage bond is usurious, excessive and unconscionable and the defendants should be given relief under the terms of the Usurious Loans Act. Several other defences were

raised. But they were all found against the defendants and rightly. Learned counsel for the respondents admitted that the decision on those points could not be challenged. The lower Court took the view that the property at the time of the mortgage was worth about Rs. 10000 at least and in those circumstances, the provision for compound interest at nine per cent was excessive, and the transaction was substantially unfair. In this view, he disallowed the compound interest but decreed the claim for balance of principal and interest calculated at nine per cent per annum simple interest. It is against the amount so disallowed that this appeal has now been filed by the plaintiff.

2. The point for determination is, "Is compound interest in the circumstances excessive and was the transaction substantially unfair to invite the application of the Usurious Loans Act?"

3. The defendants are traders. They are described as such in the plaint. No doubt all of them claim to be agriculturists within the meaning of Madras Act IV of 1938. It is significant however in the deed of mortgage Ex. A-1, the mortgagors described themselves as merchants and residents of Kakinada village. It was fairly admitted before me that they were carrying on business and it could not be extended that their main source of income was agriculture. In these circumstances the mere fact that compound interest is provided for cannot be a basis for drawing the presumption that the transaction was substantially unfair. The Madras Amendment of the Act in relation to agriculturist borrowers cannot therefore apply. The decision relied on by the learned counsel for the respondents in "*Mukundarao v. Suryanarayana Naidu*", A.S. No. 615 of 1947 is not altogether in point.

4. Looking at the facts we have to bear in mind the following circumstances. The property had been purchased statedly for Rs. 4000 though the first defendant would have it that he paid another Rs. 1000 not mentioned in the sale deed and supports it by the production of a receipt. Even taking it that it was purchased for Rs. 5000 in 1937, in the partition deed among the brothers, it was valued at Rs. 4000 only. According to the first defendant, it must have been undervalued for the purposes of stamp duty. Be that as it may, the first defendant claimed to have improved the property also to the extent of at least Rs. 2000 after it was allotted to his share. In 1935, according to him, the property would be worth very nearly Rs. 10000 to Rs. 12000. At present the valuation is put down by him at Rs. 20000. The appellant's advocate argues that having regard to the fact that the property was valued at Rs. 4000 only in the partition deed of 1932 at a time when depression had set in, it could not be that the property was worth anything like what the first defendant would have it in 1935. As pointed out by the learned Judge, however, seeing that he was content to take a mortgage of this property alone for about Rs. 3000 odd it should be taken that the property was worth at least Rs. 6000. It is stated that this property is situate in a prominent locality in an important town and under such circumstances, there was ample security and the provision for compound interest was not justified.

The claim no doubt at this distance of time comes to a large figure although the original advance was really Rs. 2000. But that is because very nearly 28 years have elapsed. The first defendant giving evidence stated that there was nothing in writing to show that he effected any improvements. He stated he could not give any instances where loans had been obtained at six per cent alone as pleaded by him. He further admitted categorically that he did not make any payment all these years "for want of money". According to him, the property is worth nearly Rs. 20000 now and he examined D. W. 1 also to speak to the same. If the property had been purchased with a direction to pay off the mortgage and the first defendant had not chosen to do so but found it convenient to renew the mortgage and if he could not make these payments all these years for want of money as he admits, if the property had appreciated in value to a considerable extent mainly by unearned increment, I do not see any justification why he should keep the benefit of this increment to himself and try to reduce the rate of interest in respect of the mortgage on this very property as agreed to by him voluntarily and willingly in the deed of mortgage. There seems to be no particular justice or equity in favour of that view. That the amount now claimed is large is, as already stated, due to the fact that the first defendant had not exerted himself in the least to make efforts to discharge this loan. He is a business man admittedly and had been trading all through. In these circumstances, I am not prepared to say that he had succeeded in establishing that the rate of interest provided for in 1935 is so excessive as to make the transaction substantially unfair even at that time. I do not see any reason therefore why the bar gain should not be enforced between the parties as per the terms of the contract. There has been no objection taken to the form of the decree on behalf of the respondents 2 and 3. All the defendants were merely content with a reduction of the rate of interest. That in my view cannot be granted. In the result it follows that this appeal should be allowed with costs. The decree of the lower Court will be modified accordingly.