(1981) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Second Appeal No. 317 of 1979

E. Chinna Rangaiah APPELLANT

Vs

C. Rangaiah RESPONDENT

Date of Decision : 18-02-1981

Acts Referred:
Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 — Section 3, 4

Citation : AIR 1981 AP 173 : (1981) 1 ALT 276

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : K. Jwala Narsimhan, for the Appellant; K. Hanumaiah, for the Respondent

Final Decision : Allowed

Judgement

Muktadar, J. 1. The defendant in O. S. No. 276 of 1976 on the file of the District Munsif''s Court, Giddalur is the appellant before me. The original plaintiff had filed the suit for recovery of money on the basis of a mortgage deed Ex. A-1 dated 10-8-1957. The plea of the defendant was one of discharge and in support thereof, he filed Exhibit B-2 dated 1-11-1970. The defendant further pleaded that he was a small farmer as defined in Section 3 (t) of the Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977, hereinafter referred to as the Act, and as such he was entitled to the benefits thereof. After framing the issues and putting the parties to trial, the trial Court gave a finding that the debt was still subsisting because the trial Court had not accepted the plea of discharge pleaded by the defendant. The trial Court, however, also found that the defendant was a small farmer and as such he was entitled to the benefits of the Act. The legal heirs of the original plaintiff also claimed that they were small farmers and as such they were also entitled to the benefits of the Act. On evidence the trial Court found that plaintiff No. 1 was getting an income of Rs. 1,200/- other than agricultural income and so be was not a small farmer. But so far as plaintiff No. 2 was concerned, her claim was that the was a cooly. The trial Court rejected this claim of plaintiff No. 2 as it found that she had not claimed to be an agricultural labourer within the meaning of Section 3 (b) of the Act. The trial Court also found that the original creditor was not a small farmer and, therefore, not entitled to claim the benefits of the Act. Consequently, having found the defendant to be a small farmer, the trial Court dismissed the suit. The plaintiffs preferred an appeal against the judgment and decree of the trial Court, and the appellate Court reversed the decree of the trial Court by holding that plaintiff No. 2 was a small farmer and, therefore it decreed the suit to the extent of her half share. While doing so, it also gave a finding that the defendant was also a small farmer; but since plaintiff No. 2 was a small farmer it held that the suit had not abated. Hence, this Second Appeal.

2. Mr. Jwalanarasimhulu, the learned Advocate, appearing for the appellant contends that having regard to the definition of the word ''creditor'' as found in Clause (h) of Section 3, and the definition of the word ''debt'' as found in Clause (i) of Section 3 read with Sub-clause (xii) of Clause (i) of Section 3 of the Act, the lower appellate Court was incorrect in decreeing the suit of the plaintiffs because, according to the learned Advocate, it is only when it is found that the person from whom the debt was contracted by the debtor, was an agricultural labourer, a rural artisan or a small farmer then only such a debt would not come within the ambit of the word ''debt'' as defined in Section 3 (i) of the Act and as such the suit would not be hit by the provisions of the Act. What the learned Advocate contended was that if the original creditor was an agricultural labourer, a rural artisan or a small farmer, then the borrowing of a debt from such a person would not be considered to be a debt under the Act and, therefore, the Act would not be applicable. But where the original person from whom the debt was contracted by the debtor was not an agricultural labourer, nor a rural artisan, not a small farmer, then it would be considered to be a debt within the meaning of the Act, and the suit would be continued until the defendant establishes that he is a rural artisan or an agricultural labourer or a small farmer. Mr. Jwalanarasimhulu further contends that while defining the word ''creditor'' in Clause (h) of Section 3, the words ''his heirs, legal representatives and assigns'' are used, which would only mean that the term ''creditor'' takes in its wake his heirs, legal representatives and assigns. Therefore, if the original creditor dies, his heirs, legal representatives and assigns could also file suit as they would be considered as creditors; but if the ''person'' (original creditor) was an agricultural labourer, a rural artisan or a small farmer, then the debt would not be considered to be a debt within the meaning of the Act and, therefore, the Act would not apply to such a debt

3. I am of the opinion that the contention advanced by the learned Advocate for the appellant will have to be acceded to in this case. In order that a debtor should get the benefit under the Act it is necessary that the debt should be a debt within the ambit of Section 3 (i) of the Act. Section 3 (h) defines a ''creditor'' to be a person from or in respect of whom the debtor has borrowed or incurred a debt and includes his heirs, legal representatives and assigns.

Inclusion of heirs, legal representatives and assigns it only meant for the purposes of showing that in case the original creditor dies, his heirs, legal representatives and assigns would also be considered as creditors. Therefore, it is for them to show that this is not a debt coming within the ambit of the word ''debt'' as defined in Clause (i) of Section 3 of the Act. Section 3 (i) of the Act defines a ''debt'' to include any liability owing to a creditor in cash or in kind, whether secured or unsecured payable under a decree or order of a Civil Court or otherwise and subsisting at the commencement of this Act, but does not include, as per Sub-clause (xii), any debt contracted by a debtor from a person who is an agricultural labourer, a rural artisan or a small farmer.

4. A close reading of Section 3 (i) with Sub-clause (xii) would show that it is only when the debt if contracted by a debtor from a ''person'' who is an agricultural labourer, a rural artisan or a small farmer, will not be included in the word ''debt'' as defined in Section 3 (i). But where a debt is contracted by a debtor from a ''person'' who is not an agricultural labourer, or a rural artisan or a small farmer, then that debt will surely come within the meaning of the word ''debt'' as defined in Clause (i) of Section 3 of the Act. When such is the position, it will have to be seen as to whether the original creditor was an agricultural labourer, a rural artisan or a small farmer. If the original creditor does not qualify himself to be an agricultural labourer or a rural artisan or a small farmer, then the debt would be considered to be a debt within the meaning of the word ''debt'' as defined in the Act. The term ''creditor'' defined in Section 3 (h) of the Act, to my mind, is not material for purposes of this case. Therefore, what the lower appellate Court ought to have seen in the instant case was whether the original creditor, namely, the "person" from whom the debt was contracted by the debtor, was an agricultural labourer, or a rural artisan or a small farmer. If that person was not an agricultural labourer, or a rural artisan or a small farmer, then it could be considered to be a debt as defined in Clause (i) of Section 3 of the Act, in which case, it would not be necessary for the Court to go into the question as to whether the heirs, legal representatives and assigns of the creditor are small farmers or not. In other words, if the "person" i.e. , the original creditor is a small farmer, agricultural labourer or a rural artisan, then any debt contracted from him by a debtor will not be considered to be a debt within the meaning of the Act. As such, such a creditor who is an agricultural labourer, a rural artisan or a small farmer, can continue with the prosecution of the suit and the Act would not be applicable to the case. But if the original creditor is not an agricultural labourer, a rural artisan or a small farmer, then the suit will abate provided the defendant found to be an agricultural labourer, a rural artisan or a small farmer. Therefore, it was not correct on the part of the lower appellate Court to go into the question as to whether plaintiff No. 2, who is admittedly the legal representative of the original creditor, was a small farmer or not. I have arrived at the above conclusion because in Section 3 (i) (xii) the Legislature has used the word "person" instead of the word ''creditor''. Therefore, the only interpretation would be that what the Courts would have to see in whether "the person" from

whom the debt was contracted was an agricultural labourer, a rural artisan or a small farmer, and not his heirs, legal representatives or assigns.

5. Mr. Hanumaiah, the learned Advocate appearing for the respondents contends that the lower Courts ought to have gone into this aspect of the case and enquired as to whether the "person" i.e. , the original creditor was a small farmer or not. I regret, I cannot accede to this contention because there was no such plea by the legal representatives of the plaintiff that the "person" i.e. , the original creditor was a small farmer. As such, it was not necessary for the lower Courts to enquire as to whether the "person" from whom the debt was contracted, i.e., the original creditor was a small farmer or not. What the legal representatives of the original plaintiff pleaded was that they were small farmers and as such they were entitled to the benefits of the Act, and it was that plea which was enquired into by the lower Courts. Since it was not alleged that the "person" from whom the debt was contracted was a small farmer, an agricultural labourer or an artisan, therefore, the "debt" does not come within the ambit of the provisions of Section 3 (i) (xii) of the Act. Since the lower Courts have given a finding that the defendant is a small farmer, the suit abates.

6. Hence, this appeal is allowed and the suit is dismissed as having abated u/s 4 (1) of the Act. Having regard to the circumstances of the case, there will be no order as to costs in this appeal.

