
(2004) 03 AP CK 0118
In the Andhra Pradesh High Court
Case No : SA No. 15 of 2000

Gudivada Mahalakshmi

APPELLANT

Vs

Rajana Atchayya (died) per LRs.

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1987 — Section 4

Citation : AIR 2005 AP 7 : (2004) 3 ALD 296

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : K. Subrahmanyam, for the Appellant; D. Gopalkrishna, for the Respondent

Final Decision : Dismissed

Judgement

E. Dharma Rao, J.—Aggrieved of the judgment and decree dated 31.7.1997 passed in A.S. No. 10 of 1991 by the learned Subordinate Judge, Chodavaram, reversing the judgment and decree dated 26.11.1990 passed in OS No. 421 of 1987 by the learned District Munsif, Narasipatnam, the present Second Appeal is filed by the plaintiff in the suit.

2. The suit was filed for recovery of an amount of Rs. 4,580/- with subsequent interest, from the defendant. The case of the plaintiff is that the defendant borrowed an amount of Rs. 4,000/- for purchasing an engine and executed a promissory note agreeing to repay the same with interest at 6% p.a. When the defendant failed to repay the amount inspite of several demands, the plaintiff got issued a legal notice dated 16.12.1986, which was replied by the defendant with false contentions on 12.3.1986, the plaintiff came up with the suit. The plaintiff also claims that her husband died and she is having five sons and one daughter and the family has only Ac.5.00 of land, of which Ac.3.00 is dry land and as such she is having only 1/42nd share in the property and as such the suit does not abate under the provisions of A.P. Act 45 of 1987. It is further averred that the defendant is not a small farmer inasmuch as he is having Ac.10.00 of land of

which Ac.5.00 is wet land and he is having one son.

3. A written statement was filed by the defendant denying borrowing of amounts for the purpose of purchasing engine, as he is already having an engine. It is the case of the defendant that one Gudivada Rajababu, son of the plaintiff, is acquainted with him and since he requested to sell away the engine which he had, the defendant took Chitrada Bangara Raju and Maddu Appalaidu to Mr. Gudivada Rajababu, and the bargain was settled at Rs. 4,000/- and agreed that the engine would be purchased after deducting the cost of repairs and paid Rs. 100/- as advance money. Since the entire consideration amount was not paid, Mr. Rajababu insisted for security and when the intending purchasers agreed to execute a pro-note, Mr. Rajababu did not agree for the same and as such the defendant had to execute the suit promissory note in favour of his mother i.e., the plaintiff. Thus the suit promissory note is not supported by any consideration.

4. On these pleadings, the Trial Court framed the following issues:

1. Whether the suit promissory note came into existence as pleaded in the written statement?

2. To what relief?

After the issues were framed, the plaintiff filed I.A. No. 683 of 1988 pleading that she is a small farmer, which was allowed. Thereafter, the defendants filed additional written statement traversing the allegations contained in the amended plaint and contended that the plaintiff is having a rice mill in Sy.No. 71/2 of Yendapalli Village and she gets non-agricultural income of Rs. 1,000/-per month. He further contends that himself and his major son are having Ac.1.57 cents of dry land and Ac.0.69 cents of wet land in Gurrampeta village, which they inherited as ancestral property and since he is having half share in the said property, he is a small farmer and, therefore, the suit claim abates under the provisions of the State Act 45 of 1987.

5. On these pleadings an additional issue to the effect whether the defendant is entitled to the benefits of Act 45 of 1987 was framed.

6. On behalf of the plaintiff - appellant herein, PWs.1 and 2 were examined and Exs.A-1 to A-11 were marked. On behalf of the defendant-respondent, DWs.1 to 7 were examined and Exs. B-1 to B-4 were marked Exs.X-1 to X-4 were also got marked.

7. The learned Junior Civil Judge, on appraisal of both oral and documentary evidence, drawing presumption u/s 118 of the Negotiable Instruments Act in respect of Ex.A-1 pronote, which is rebuttable presumption, and since the defendant failed to rebut the same by convincing and clinching evidence, accepted the claim of the plaintiff and decreed the suit for a sum of Rs. 4,580/- and denied the benefits of Act 45 of 1987 to the defendant, though held that both the defendant and the plaintiff are small farmers.

8. Aggrieved of the said judgment and decree, the defendant preferred appeal being AS No. 10 of 1991 and the learned Subordinate Judge, Chodavaram, by the judgment and decree impugned herein, allowed the appeal with costs throughout dismissing the suit.

9. Aggrieved of the same, the present Second Appeal is filed by the plaintiff inter alia contending that since the defendant has admitted execution of Ex.A-1, it is not incumbent on the appellant to prove the same, that the learned Subordinate Judge went wrong in inferring that the suit debt is a family debt of the plaintiff, that the learned Subordinate Judge erred in treating the entire properties of the appellant and her sons and daughters as one unit on the assumption that the suit debt is a family debt and that no notional partition can be made with regard to the share of the appellant in the family properties, following the decision T. Rambabu v. V. Ramavathi and Ors., 1988 (1) ALT 987. The plaintiff raising substantial question of law as to whether the first appellate Court is correct in finding that the suit pro-note is a family debt in the absence of any plea in the written statement of the defendant in this regard and also with regard to the properties of the plaintiff, prayed to allow the appeal.

10. Insofar as the plea of small farmer set up by the plaintiff is concerned, the lower appellate Court adverted to the evidence of PW-2, who is no other than the son of the plaintiff and DW-6, Sarpanch of Yendapalli Village. It is the evidence of PW-2 that the family possessed Ac.8.00 of both dry and wet lands and filed Exs.A-2 to A-8 sale deeds, showing acquisition of the lands. PW-2 admitted that after the death of his father, they are living joint He further admitted that his brother is constructing a rice mill in the name of Srihari Rice Mill. The learned Subordinate Judge adverted to the income from Ac.8.00 of the land and the joint status of the family and thus came to a conclusion that Ex.A-1 is a joint family lending and the income derived from the rice mill has to be considered as joint family income, which cannot be, in any event, less than Rs. 1,000/-per month and thus it exceed Rs. 1,200/-per annum and, therefore, the plaintiff -appellant herein is certainly not a small farmer and consequently held that the suit debt is abated.

11. The learned Counsel for the appellant contended that where the debt is a joint family debt, it cannot be split up, nor can the notional shares of the debtors in the joint family property be split up and a unit in such a case is the joint family, and relied on a decision of this Court in T. Rambabu v. V. Ramavathi and Ors. 1988 (1) ALT 987 . This judgment was rendered by a learned Single Judge after following the Full Bench judgment in Dasam China Pappayya Raju Vs. Sripada Ramachandra Prabhakara Rao, , wherein the Full Bench has ruled that when a debt is owned by a joint family, each unit thereof consisting of an individual, the wife or husband as the case may be, of such individual and their unmarried minor children should be taken as a debtor within the meaning of the Act in respect of each share of the debt owed by the family. Following this principle, the learned Single Judge has held that the cases where the debt is a

joint family debt, consisting of father and son and other members, the mortgage debt cannot be split up nor can the notional shares of the debtors be split up. A unit in such a case will be the joint family and that is because the debt is a joint family debt. Admittedly, in the case on hand, it is joint family debt and Ex.A-1 is executed by the defendant in favour of the plaintiff. Therefore, it is the contention of the learned Counsel that the judgment of the appellate Court reversing the judgment of the Trial Court and holding that there is no question of splitting up the debt between the members of the joint family and no notional partition is permissible as the entire property is joint family property, is untenable. It is further contended on behalf of the appellant - plaintiff that the ratio laid down in T. Rambabu's case cannot be made applicable to the facts and circumstances of the case, inasmuch as the facts therein relate to a case of mortgage debt, whereas it is not the same in the instant case.

12. On the other hand, the learned Counsel for the respondent has placed reliance on a decision *Pamidi Surayanarayana and Ors. v. Pinnamaneni Veerayya* 1985 (1) ALT 316, wherein a learned Single Judge of this Court has held that when the debt is owed by the family or is for the benefit of the family, the unit consisting of the father, his wife, and minor children as per the definition of the word "family" in Section 3(1) of the A.P. Agricultural Indebtedness (Relief) Act, 1977 has to be taken and the property held by the "family" as a "small farmer" u/s 3(5) of the Act has to be considered, inasmuch as the word "person" in Section 3(p) also includes a family. In the case of a family debt, the unit for purpose of Section 3(1) will be a unit of the family and each major coparcener, his wife, and minor children, if there are more units of major coparcener than one, the property owned or held by each of the families of the major coparcener as a separate unit has to be separately ascertained, but within each family unit, the land held by the husband, wife and the minor children has to be aggregated. If, however, the debt is an individual debt of the father, there is no question of aggregating the property of any of the other members of the family viz., of the wife and minor children.

13. The learned Counsel for the respondents further submitted that if the debt is a joint family debt, it has to be split up into different units of family, as defined in the Act and it has to be considered whether each unit is a small farmer or not and comes within the meaning of "Small Farmer" and placed reliance on a decision of this Court in *P. Pedda Nagi Reddy Vs. G. Pullaiah Setty*, . A Division Bench of this Court, having regard to the facts and circumstances of the case and the relevant provisions of the Act, has held that the law is well settled that if the debt is a joint family debt, it has to be split up into different units of "family" as defined in the Act and it has to be considered whether each unit is a small farmer or not and each unit of the joint family consisting of an individual, husband or wife, as the case may be, of such individual and their unmarried minor children, should be taken as judgment - debtor within the meaning of the Act in respect of each share of the debt owed by the family.

14. The decisions relied on by the learned Counsel for the respondent are relevant, inasmuch as where the debt is a joint family debt, it cannot be split up nor can the notional shares of the debtors be split up. The lower appellate Court has given a categorical finding that the entire extent of Ac.8.00 held by the appellant has to be considered as one unit of the joint family and lending has to be considered as a joint family lending.

15. The further objection of the learned Counsel for the respondent is that the ratio laid down in T. Rambabu's case cannot be made applicable to the facts on hand, inasmuch as that case relates to a mortgage debt. I am unable to countenance this argument for the simple reason that irrespective of the facts, the principle laid down therein applies to the present case on all fours.

16. For the foregoing reasons, the substantial question of law raised in this second appeal deserves no consideration. The second appeal accordingly fails and is dismissed. No order as to costs.