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**(2007) 03 AP CK 0032**  
**In the Andhra Pradesh High Court**  
**Case No : SA No. 520 of 1995**

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|----------------------------------------|------------|
| Kalisetti Venkata Ramanaiah and Others | APPELLANT  |
| Vs                                     |            |
| Tirupati Kondamma                      | RESPONDENT |

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**Date of Decision :** 14-03-2007

**Acts Referred:**

Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 — Section 290, 292, 3, 3(1), 4

**Citation :** AIR 2007 AP 286 : (2007) 3 ALD 826

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** B. Damodhar Reddy, for the Appellant; Chakravathi, for K. Ravindra Babu, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.V.S. Rao, J.—The respondent herein (hereafter called, the plaintiff) filed O.S. No. 6 29 of 1980 on the file of the Principal District Munsif, Nellore, for recovery of a sum of Rs. 8,600/- being the amount payable on mortgage deed, dated 14-3-1970 executed by the appellants herein (hereafter called, the defendants) and for a charge on the mortgage property. By judgment and decree, dated 24-6-1987, the trial Court dismissed the suit on the ground that the suit debt stands discharged u/s 4 of the A.P. Agricultural Indebtedness (Relief) Act, 1977 (for brevity, the Act). The plaintiff, however, succeeded before the first appellate Court. His appeal being A.S. No. 6 1 of 1987 " on the file of the Court of the Additional District Judge, Nellore, was allowed on 28-6-1995. Aggrieved by which, the present second appeal is filed.

2. The plaintiff brought the suit alleging that Javaramaiah and his two sons Venkata amaiiah and Dhananjaya (father and two sons) borrowed a sum of Rs. 2,500/-for meeting the marriage expenses of the daughter of the first defendant and executed simple mortgage deed, dated 14-3-1970 hypothecating the plaint schedule joint family properties to an extent of Acs. 18.98 of dry agricultural

lands and that though a sum of Rs. 1,000/- was paid on 18-4-1971, the defendants failed to discharge the debt. In their written statement, the defendants took the plea that they are small farmers within the meaning of the Act, and therefore, the suit debt stands discharged. During the pendency of the suit, the elder son of Jayaramaiah died and his mother was brought on record as legal heir and subsequently, the first defendant Jayaramaiah also died and the legal heirs were also brought on record.

3. The trial Court framed seven issues. The plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.20 besides examining P.W.2. Defendants examined D.Ws.1 to 3 and marked Exs.B.1 to B.24. On considering this evidence, on issue No. 4, the trial Court held that the suit debt stands discharged and therefore, suit is liable to be dismissed. The appellate Court, however, took a view that as defendants own more than prescribed limit of agricultural lands, they are not entitled for the relief under the Act.

4. Learned Counsel for the appellants contends that the suit debt was incurred by the joint family and therefore, the entire extent of property was owned by family admeasuring Acs. 18.98 has to be apportioned equally among all the members of the joint family, in which event, the suit debt stands discharged. Learned Counsel for the appellants relied on the decisions of P. Varahamma Vs. Repeti Ramanna and Others, , Krishna Murthy and Others Vs. Government of Andhra Pradesh, ., He also points out that the lower appella"te Court erred in not following the Full Bench judgment of this Court in Dasam China Pappayya Raju Vs. Sripada Ramachandra Prabhakara Rao, . Learned Counsel also points out that the judgment relied on by the appellate Court in T. Rambabu v. V, Ramavathi 1988 (1) ALT 987, does not decide correctly the question of law involved in the case. Learned Counsel for the respondent/plaintiff refutes the allegations.

5. The only point that arises for consideration is whether the debt owed by the joint family requires to be split up into different units for the purpose of conferring the benefit under the provisions of Act No. 7 of 1977.

#### Statutory Provisions

6. The Act is a legislative measure to provide relief from indebtedness to agricultural labourers, rural artisans and small farmers in the State. Section 4 of the Act is the main provision starting with a non-abstante clause. It is to the effect that notwithstanding various statutes mentioned therein (mainly dealing with agriculturalists relief, money lending and pawn broking), every debt by an agricultural labourer, rural artisan or small farmer shall be deemed to be wholly discharged and no Civil Court shall entertain any suit for recovery of any debt including interest which is deemed to be discharged under the provisions. What is more important is that all the suits for recovery of debts shall abate. Section 4 of the Act confers the debt relief benefit on a small farmer. The term "small farmer" is defined in Section 3(t) of the Act, as to mean a person whose principal means of livelihood is personal cultivation or cultivation as a tenant/share

cropper/ mortgagee with possession, if agricultural land does not exceed one hectare of wet land or two hectares of dry land. The term "person" is defined in Section 3(p) of the Act as to mean an individual and a family. "Family" as defined in Section 3(1) of the Act is in relation to a person as individual, the wife or husband, as the case may be and their unmarried minor children.

7. The Act nowhere deals with joint family or coparcenary, which is very peculiar to Hindu Law. What would be the position when the debt is incurred by the head of the family to meet the expenses of the joint family or to discharge the obligations of the joint family. All the members of the joint family are liable to discharge the debt. There are exceptions to this Rule, but it is not necessary to go into these. Suffice to mention that when the contract for debt affects the joint family property, all of them must be sued. A decree even against the Manager of the joint family is binding on all the members of the joint family, even if they are not co-nominee parties to the suit. It is also permissible for the Managing Member of the family to represent the entire family in a suit for mortgage or for a suit for recovery of possession of immovable property. See Para 320 at pg.668 of Mayne's Hindu Law and Usage; 14th Ed., by Justice Alladi Kuppaswami, Chief Justice (Retd.) : 1996

8. In Mulla's Principles of Hindu Law" (15th Ed., 1982), Section 290 is to the effect that, "where the sons are joint with their father and debts have been contracted by the father for family purposes, the sons as members of the joint family are bound to pay the debts to the extent of their interest in the coparcenary property". In Section 292 of the same book, referring to Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, the following principle of law is enunciated.

292. Creditor's suit-(1) Suit against father.- In a case where the son is under a pious obligation to pay the father's debt, the creditor may sue the father alone and obtain a decree against him, and he may execute the decree by attachment and sale of the entire interest of the father as well as the son in the joint family property, and the sale will bind the son though he was not made a party to the suit, unless the debt contracted by the father was for an immoral purpose. Even if the son was originally impleaded in the suit and the suit was afterwards withdrawn against him the decree against the father can be executed against the son's interest in the joint family property.

9. Therefore, in Hindu Law, all the members of the joint family are severally liable to discharge the suit debt to the extent of their share in the joint family property. This principle has a bearing when we examine the issue whether the entire extent under the cultivation of the joint family has to be reckoned for the purpose of knowing whether the defendants' pleading discharge of debt under the Act are small farmers or not.

10. In Varahamma's case (supra), the Division Bench of this Court considered the question whether the debt incurred by joint Hindu family is attracted or not

by the provisions of the Act. In the said case, Varahamma obtained a preliminary decree in a suit brought on mortgage. She filed mortgage suit against Repeti Ramanna and his sons. In the final decree proceedings, the sons and daughter of the mortgagor opposed the petition. Their contention was that the debt was not binding on them. They also took an alternative plea that the suit abated u/s 4(2) of the Act (then in the Ordinance stage). The trial Court declined to accept the plea, but held that they are entitled for the benefit under the Act as they are "small farmers" within the meaning of Section 3(t) of the Act, because the entire extent of land was only Acs. 1.88 of wet land. This was the subject-matter of the revision before this Court. It was contended for Varahamma that the debt incurred by joint Hindu family is indivisible, that the liability created was joint and several, and that the debts due for joint family are not attracted by the provisions of the Act. It was also contended that the person, who owed the debt and the entire property owed by the joint family should be taken into consideration for the purpose of the Act and not individual share of each member of the joint family. This Court did not accept the contention of Varahamma and held that when the debt is incurred by the joint family, the share of each major member of the joint family has to be notionally computed for ascertaining whether each member is a "small farmer" within the meaning of the Act. It is apt to quote the following observations:

According to the definition "family" includes only the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children. It does not include major children. Therefore, the incidents of joint Hindu family or coparcenary property as understood under the Hindu Law cannot be imported in interpreting the provisions of this Act. The contention of the learned Counsel for the petitioner rooted in the basic principles of Hindu Law that every coparcener has joint interest and joint possession in the coparcenary property and no coparcener is entitled to any exclusive possession of any part of the joint family property, must, therefore, be rejected. The object and the purpose of the Act is to provide relief from indebtedness to agricultural labourers, artisans and small farmers in the State. The Legislation is apparently actuated with the State policy to wipe out the indebtedness of small farmers. It is a crusade against oppression and harassment of the weaker sections at the hands of the creditors. The import of the incidents of a Hindu joint family as could be gleaned from the texts of Hindu Law in the interpretation of this special beneficial enactment would frustrate the very object and purpose of the Act, Reason and spirit of the statute relentlessly pursued compels one to the conclusion that a debt of a joint Hindu family is attracted by the provisions of the Act and the share of each major member of the joint family has to be notionally computed for ascertaining whether he is a "small farmer" within the provisions of the Act.

(emphasis supplied)

11. The next authority is also a decision of the Division Bench in Krishna Murthy "s case (supra). This case was decided on 29.9.1978 (six months after the

Varahamma's case (supra), was decided). This case decided constitutional validity of the Act, which was challenged in a group of writ petitions essentially brought by the creditors. One of the submissions in the said case was that by reason of the definition of "family" in Section 3(1) of the Act, the joint Hindu family satisfying the other requirements does not get the benefit of the Act. Referring to Varahamma's case (supra), the Division Bench explained thus:

...In our opinion, the definition of "family" in relation to a person is deliberately included by the Legislature to give benefit to the different units of a joint family which satisfy the requirements of the Act. When a debt is owed by a joint family, it will have to be split up into different units as defined in Clause (1) for the purpose of giving benefit under the Act. Otherwise, there is no purpose in defining the "family" limiting its scope to an individual, the wife or husband and their unmarried minor children. Therefore, this definition clearly leads to the conclusions that when a debt is owed 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 this Act in respect of each share of the debt owed by the family. Let us illustrate. Supposing there is a joint family consisting of five such units and possessing five hectares of wet land. As per the definition contained in Section 3(1) read with the other provisions, it is logical to conclude that the family must be deemed to have been in five smaller units, each having one hectare. Since each unit comes within the definition of a "small farmer" as it owns only one hectare of wet land, then each of the five units gets the benefits of the Act.

(emphasis supplied)

12. In *Boya Gajjela Sunkanna's case* (supra), this Court considered the question whether share of major son alone should be excluded while computing the land holding for the purpose of determining whether the judgment-debtor was or was not a small farmer. In the said case, the petitioner suffered decree for a sum of Rs. 2,770/-. In executing proceedings, the petitioner filed an application u/s 4 of the Act contending that as he is a small farmer, the debt must be deemed to have been discharged. He pleaded that he and his five sons constituted joint Hindu family and that the family owns about Acs. 10.00 of land and if the same is notionally divided among the members of the joint family, he would get less than the minimum specified under the provisions of the Act. The plea was rejected by the Executing Court on the ground that the share of major son alone should be excluded while notionally considering the extent of land. This Court, however, did not agree. It was held:

Section 3(t) of the Act 7/77 which defines "small farmer" to mean a person whose principal means of livelihood is income derived from agricultural land and who holds and personally cultivates agricultural land looks to each individual debtor and not to the members of the joint family collectively. Prima facie, therefore, in order to determine whether the judgment-debtor is or is not a small

farmer what has to be taken into account is only the share that belongs to him in the joint family and not the shares of other co-parceners whether they are majors or minors. I am, therefore, unable to approve the lower Court's judgment in counting the shares of the minor children also along with that of the judgment-debtor for purposes of determining the status of the judgment-debtor as a small farmer.

13. Where an individual claims to be a small farmer whether the land belonging to his wife or other members of his family, can be added to his holding in order to arrive at the upper limit referred to Section 3(t)(i) defining the expression "small farmer"? This was the question, which fell for consideration before the Full Bench in China Pappayya's case (supra). The Full Bench answered the question holding that where an individual claims to be a small farmer, the land which he alone holds and personally cultivates should be taken into consideration and the lands belonging to the husband or the wife and that of the minor children should not be taken into consideration. Incidentally, the Full Bench also considered the same question in the case of joint Hindu family. Referring to Krishna Murthy 's case (supra) and Varahamma's case (supra), the Full Bench laid down as under:

...We now proceed to consider the case where the debtor or the creditor is a joint Hindu family. In Krishna Murthy's case (supra), it was held that when a debt is owed 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. As an illustration, the learned Judges considered a joint family consisting of five such units and observed that as per the definition contained in Section 3(1) read with the other provisions, it is logical to conclude that the family must be deemed to be consisting of five smaller units to consider the position of each unit with reference to the definition of "small farmer". We are in agreement with the said decision and we are of the view that when a debt is owed by a joint family, it has to be split up into different units according to the expression family" for the purpose of giving benefit under the Act. Otherwise, there was no purpose in defining the expression "family" in that manner.

(emphasis supplied)

14. Before considering the decision in T. Rambabu's case (supra), by the learned Single Judge (as His Lordship then was), the principles that emerge from the four decisions may be noticed.

1. The extent which a person holds and the extent, which he personally cultivates has to be taken into account to arrive at the conclusion whether or not a person is a "small farmer" for the purpose of the Act.

2. When the joint Hindu family is attracted by the provisions of the Act, the share of each major member of the joint Hindu family has to be notionally computed

for ascertaining whether he is "small farmer" within the meaning of the Act.

3. When the debt is owed by a joint family, it has to be split up into different units according to the expression of "family", for the purpose of giving benefit under the Act.

15. In T. Rambabu's case (supra), a learned Single Judge of this Court took the view that where a debt is joint family debt consisting of father, son and other members, the mortgage debt cannot be split up nor can the notional shares of the debtors be split up. In Para 24, the judgment in China Pappayya's case (supra), the Full Bench clearly laid down that the debt owed by joint family has to be split up and that the decision in T. Rambabau's case (supra), is not correct one.

16. In this case, the trial Court has considered issues 3 to 5 dealing with this aspect and came to the conclusion that the appellants herein (defendants) are small farmers and they are entitled for the benefit under the Act. The first appellate Court placed reliance on the judgment of T. Rambabu's case (supra), while reversing the well considered judgment of the trial Court. As held supra, the ratio in T. Rambabu's case (supra), is contrary to the dicta laid down by the Full Bench, and therefore, is not correct law.

17. In the result, for the above reasons, the second appeal is allowed. The judgment of first appellate Court is set aside and judgment in O.S. No. 6 29 of 1980 on the file of the Court of the Principal District Munsif, Nellore, is restored, with costs throughout.