(2000) 03 AP CK 0062

In the Andhra Pradesh High Court

Case No : SA No. 526 of 1992

Kannapu Reddy Venkata Subbareddy — APPELLANT

Vs

Gopavaram Rama krishna Reddy — RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 4
Contract Act, 1872 — Section 2

Citation : (2000) 3 ALD 484 : (2000) 3 ALT 441 : (2000) 2 APLJ 255

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. K. Rameshnath Reddy, for the Appellant; Mr. M.N. Narasimha Reddy, for the Respondent

Judgement

1. This second appeal by the sole defendant in the suit is directed against a reversing judgment. The sole respondent-plaintiff has filed the suit for the recovery of a sum of Rs. 17,294-24 ps., on the foot of a promissory note dated 6-5-1983 executed by the defendant in his favour for a sum of Rs. 10,054-79 ps., repayable with interest @24% per annum.

2. The defendant while admitting the execution of the suit pro-note pleaded that no cash was lent under the suit pro-note, but the same was executed in renewal of prior promissory notes. According to him, he initially borrowed Rs.2,000/- only under a pro-note dated 5-6-1974, which was renewed by executing a fresh pro-note dated 30-5-1977 for Rs.3,432/-. That on 30-5-1980, he made a part payment of Rs.20/- thereunder, which was endorsed thereon, and ultimately on 6-5-1983, they suit pro-note was obtained by the plaintiff for Rs. 10,054-79 ps., calculating interest at 24% p.a., from the inception. The defendant further pleaded that he was an agriculturist and as such interest is liable to be scaled down from the inception, as per Andhra Pradesh Agriculturist Debtors Relief Act IV of 38 (for short ''Act IV of 1938''). He also pleaded that he was a small farmer as defined in A.P. Act 7/77 and as extended by Act 45/87 and as such, the debt

must be deemed to have been discharged, and the suit was liable to be dismissed.

3. On the above pleadings, the following issues were framed in the suit.

(1) Whether the suit promissory note is renewal of earlier pronotes?

(2) Whether the suit promissory note is supported by consideration?

(3) To what relief?

4. In support of his case, the plaintiff, besides examining himself as PW1, also examined one of the attestors on the suit pro-note as PW2 and marked the suit pro-note as Ex.A1. On his side, the defendant examined himself as DW1 and got marked the previous pro-notes and endorsements thereon as Exs.B1 to B3.

5. While the specific case set up in the plaint was that cash consideration of Rs.10,054-79 ps., was paid to the defendant under the suit pro-note Ex.A1, in the evidence of PWs. 1 and 2, a new case was developed to the effect that the defendant borrowed a sum of Rs.10,000/- in cash from the plaintiff on 29-3-1982 and he repaid a sum of Rs.2,592/- towards interest and executed Ex.A1 for the balance amount of Rs.1 0,054-79 ps.

6. The trial Court, disbelieving the said evidence of PWs.1 and 2, came to the conclusion that the suit pro-note was not supported by consideration, and accordingly dismissed the suit with costs. The Appellate Court came to the conclusion that Ex.A1 was voluntarily executed by the defendant for the past debt owed by him to the plaintiff, as evidenced by Exs.B1 to B3 and that the same is a valid consideration for the suit pro-note, in view of Section 2(d) of the Indian Contract Act. On the further question whether the defendant was entitled for the benefits of Act IV of 1938 or Act 45/87, the Appellate Court was of the view that he was not entitled to the benefit of the said Acts, since he was working as a Village Branch Post Master and agriculture was not the main source of his livelihood. On the said findings, the Appellate Court reversed the judgment and decree of the trial Court and decreed the suit with costs throughout as prayed for.

7. One of the substantial questions of law framed in the second appeal is whether the lower Appellate Court acted legally in not applying the provisions of Act 4/38, having regard to the fact that the appellant/defendant is also an agriculturist.

8. It is not in dispute that the defendant owns and is possessed of an extent of Ac.1.10 cents of wet land and Ac. 1.20 cents of dry land. He is also working as Village Branch Post Master, which is a part time job. It is not the case of the plaintiff that the defendant is an Income Tax Assessee. The defendant is, therefore, undoubtedly an agriculturist within the meaning of A.P. Act IV of 1938. Though for claiming the benefit of Act 7/77 or 45/87, it should be shown that agriculture is the primary source of livelihood of the debtor and he also

personally cultivates the land owned by him, the said requirements need not be satisfied for claiming the benefit of Act IV of 1938. It is sufficient to prove that the defendant has a saleable interest in agricultural land and he does not come within the exceptions provided in the said Act. I am, therefore, satisfied that the Appellate Court committed an illegality in holding that the defendant is not entitled for the benefit of Act IV of 1938. On its own finding that the suit pro-note was executed in renewal of the prior promissory notes as evidenced by Exs.B1 to B3, and that the defendant owns and is possessed of agricultural land, it must be held that the debt has to be traced back to its inception and all interest is liable to be scaled down in accordance with the provisions of Act IV of 1938.

9. Accordingly, the second appeal is allowed. The judgment and decree of the lower Appellate Court are set aside, and the suit is decreed for the principal amount of Rs.2,000/- (rupees two thousand only) with interest thereon, as per the Act IV of 1938, from 5-6-1974 till the date of decree and at 6% per annum from the date of decree till realisation. Parties to bear their own costs.