
(2002) 06 AP CK 0141

In the Andhra Pradesh High Court

Case No : Second Appeal No. 516 of 1991

Madasu Ganeswara Rao

APPELLANT

Vs

Pasupuleti Subba Rao and Another

RESPONDENT

Date of Decision : 27-06-2002

Acts Referred:

Citation : (2002) 6 ALD 385 : (2003) 3 ALT 762

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.S.R. Subramanyam, for the Appellant; J. Venugopala Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful plaintiff in both the Courts below is the appellant and the respondents are the defendants in the suit. The appellant-plaintiff instituted a suit O.S. of 1979 on the file of the 1 Additional District Munsif, Tanuku for recovery of Rs. 3.446-36 ps being the Principal and interest due on a promissory note dated 31.5.1976 executed by the respondent-defendants in favour of the transferor of the appellant-plaintiff for a consideration of Rs. 3,000/- payable with interest thereon.

2. The case as pleaded in the plaint is that the defendants borrowed Rs. 3,000/- from one K. Suryanarayana Raju undertaking to repay the same with interest thereon and executed a promissory note on 31.5.1976 and the said Suryanarayana Raju transferred the suit promissory note on 20.08.1976 receiving a sum of Rs. 3,000/- in favour of the present plaintiff, the appellant in the Second Appeal and in spite of repeated demands, the respondent-defendants did not pay the same and it was also pleaded that the respondent-defendants are not entitled to the benefits of the A.P. Agriculturists Debt Relief Act (Act IV of 1938) and also the A.P. Agricultural Indebtedness (Relief) Act, 1977. The respondent-defendants no doubt had taken a stand that they did not borrow the amount from the transferor of the plaintiff and the first defendant borrowed Rs.

1,000/- prior to 31.5.1976 from Ananda Raju and he had obtained promissory note from both the defendants and the suit promissory note is a renewal of earlier promissory note and an amount of Rs. 1500/- was added in the suit promissory note and Ananda Raju obtained suit promissory note in the name of the plaintiff's transferor. It was also further pleaded that the plaintiff's transferor is not a small farmer and the promissory note was transferred in favour of the plaintiff only with a view to overcome the provisions of the A.P. Agriculturists Indebtedness (Relief) Act (Act 7 of 1977).

On the strength of the said pleadings, the following issues were settled:

- (1) Whether the suit pronote is true, valid and binding on the defendants?
- (2) Whether transfer endorsement is true, valid and binding upon the defendants?
- (3) Whether the provisions of Act 7/77 are applicable to the defendants?
- (4) To what relief?

3. The Court of the first instance had recorded the evidence of P.W. 1 to P.W.3 and D.W. 1 to D.W. 3 and Exs. A-1 to A-4 marked and on appreciation of oral and documentary evidence on issue No. 1, it was held that the suit promissory note is true, valid and binding on the defendants. However, on issue No. 2 it was held, the transfer was made with a view to circumvent or evade the provisions of Act 7 of 1977 and hence the transfer endorsement is not true, valid and binding on the defendants and while answering issue No. 3 it was held that inasmuch as the provisions of Act 7 of 1977 are applicable to the defendants, they are entitled to the benefits of the said Act and hence the plaintiff in the suit is not entitled to recover the suit amount.

4. Aggrieved by the said judgment and decree, the unsuccessful plaintiff preferred A.S. No. 14 of 1982 on the file of the Subordinate Judge, Tanuku and the same was dismissed. Aggrieved by the said judgment and decree made by the appellate Court, the unsuccessful plaintiff in both the Courts below had preferred the present Second Appeal.

5. Mr. M. Ram Mohan, learned Counsel representing the appellant-plaintiff had contended that the Courts below had totally erred in dismissing the suit, having held that the suit promissory note was true, valid and binding on the defendants, especially in view of the presumption u/s 118 of the Negotiable Instruments Act. The learned Counsel also had contended that the provisions also are not in accordance with the evidence available on record. The learned Counsel also submitted that the plaintiff is definitely a small farmer who is entitled to realise the amount and the finding that the very transfer was effected only with a view to circumvent or overcome the provisions of Act 7 of 1977 cannot be sustained in the light of the clear evidence available on record.

6. Miss. Renuka, learned Counsel representing the respondents, on the other hand had contended that both the Courts had recorded concurrent finding that

the transferor of the plaintiff-appellant is not a small farmer. The learned Counsel also pointed out that the very transfer was effected only with a view to get over the provisions of Act 7 of 1977 and these findings are findings of fact recorded by both the Courts below and hence in view of the limitations imposed on this Court while deciding a Second Appeal u/s 100 of the Code of Civil Procedure, this is not a matter warranting any interference whatsoever.

7. Heard both the Counsels.

8. Though certain questions had been raised and argued by both the Counsels, the only question that arises for consideration in the present Second Appeal is that whether the Courts below had recorded correct finding that the plaintiff would not be entitled to claim the relief though he is a small farmer, if his transferor was not a small farmer under the provisions of Act 7 of 1977.

9. The facts of the case are simple and plain and they need not be repeated again. The suit is instituted for recovery of the amount mentioned supra on the strength of a promissory note Ex. A-1 and Ex. A-2 is the transfer endorsement. Ex. A-3 and Ex. A-4 are the office copies of the notice and the reply notice. The nature of findings recorded by the Trial Court which had been affirmed by the appellate Court already had been discussed in brief while commencing the judgment itself and those aspects need not be repeated again. No doubt a finding had been recorded that the plaintiff is a small farmer but further a specific finding is recorded on appreciation of both oral and documentary evidence that the transferor of a promissory note is not a small farmer and this is purely a question of fact and concurrent findings had been recorded on this aspect by both the Courts below. Hence it being a pure question of fact in the Second Appeal, I am not inclined to disturb such finding to the effect that the transferor of the promissory note Ex. A-1 is not a small farmer within the meaning of Act 7 of 1977. When that being the position, the next question will be by the mere fact that the plaintiff is a small farmer, whether he is entitled to recover the amount from the respondent-defendants on the strength of the transfer endorsement made by the transferor under Ex. A-2. This question has to be answered in negative only especially keeping in view, the different provisions of the A.P. Agricultural Indebtedness (Relief) Act, 1977 and also the very object and the purpose of the said Act.

10. In *R. Venku Naidu v. M. Kodadu and Ors.*, 1991 ALT NRC 50. (C.R.P. No. 6000 of 1987, dated 09.08.1991), a Division Bench of this Court while dealing with a similar question had arrived at a conclusion that in a case where the original decree holder is not a small farmer and transfers the decree debt to the person who is a small farmer, the transferee decree holder is not entitled to realise the decree debt from the debtor in view of the provisions of the A.P. Agricultural Indebtness (Relief) Act, 1977.

11. In the present case, as already stated supra, a clear finding had been recorded that Ex. A-2 transfer was effected only with a view to circumvent or to

get over the provisions of Act 7 of 1977 and I do not see any reason to take a different view in this regard in the present Second Appeal.

12. Viewed from any angle, the Second Appeal is devoid of merits and accordingly the same is dismissed, but in the facts and circumstances of the case without costs.