
(2013) 12 AP CK 0059

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 2128 of 2002

Ms. Surisetty Nookaratnam

APPELLANT

Vs

Saragadam Gowri Ramalakshmi and Another

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 AP CK 0059

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant; K.V. Simhadri, for the Respondent

Judgement

B. Siva Sankara Rao, J.—The Appellant-1st defendant- Smt. Surisetty Nookaratnam in O.S. No. 83 of 1995 on the file of the Senior Civil Judge, Anakapalle, preferred this appeal against respondent-plaintiff-Saragadam Gowri Ramalakshmi Impugning the judgment and mortgage preliminary decree dt. 03.04.2002 in said suit filed for the reliefs of recovery of Rs. 1,09,209/- with interest at 21% p.a. (from the default to repay with 18% p.a. within three years of the borrowal), by personal decree and also mortgage preliminary decree for sale of mortgaged property in the event of failure to redeem by said defendant and another(second defendant subsequent vendee from defendant No. 1) based on Ex. A1 simple Regd. mortgage deed dated 06.05.1989 executed by the 1st defendant in favour of Pentakota Jagga Rao, which in turn was transferred/ assigned in the name of plaintiff under Ex. A2 registered transferred deed dated 21.02.1990 and for subsequent interest and costs. Before deciding the appeal lis, the factual matrix of the case from the pleadings and the evidence of both sides before the trial Court which is the subject matter of the appeal is the following:--

2(a). As per plaint in brief, in addition to what is referred above to avoid repetition, that the 1st defendant borrowed Rs. 50,000/- from one Pentekota Jagga Rao and executed Ex. A1 registered simple mortgage bond dated 06.05.1989 with the terms referred above hypothecating plaint schedule

property in his favour agreeing to repay the same with interest within three years or else with enhanced rate of interest; that 1st defendant paid Rs. 7,125/- on 20.02.1990 towards part payment and endorsed the same covered by Ex. A5, that the plaintiff paid Rs. 50,000/- to Pentakota Jagga Rao on 21.02.1990 towards full and final settlement under mortgage bond and obtained the Ex. A2 transfer of the same under registered transfer deed and as such the plaintiff is entitled to recover the balance amount, that the 1st defendant having failed to repay within the stipulated time of the mortgage debt by 06.05.1992; also executed Ex. B1 registered sale deed dated 01.02.1993 for the plaint schedule property in favour of the 2nd defendant and thereby both the defendants are liable for payment of suit amount and hence the suit claim with costs and subsequent interest against them.

2(b). The sum and substance of the written statement contest of 1st defendant, save those facts already referred above to avoid repetition, is that plaint schedule property was purchased in her name for name sake only, whose family consists of her husband-Surisetty Venkata Mohana Rao and her three daughters, Suresetti Sobha, Surisetty Nalini and Surisetty Bhanu and her only son-Surisetty Joga Naga Srinivas and they got joint rights in the mortgaged property, that the simple mortgage is not true, valid and binding on them to enforce in Court of law, that the sale deed dated 01.02.1993 executed by General Power of Attorney Holder is not true, valid and binding on her, that she is a small farmer and agriculturist and she is having Ac.0.10 cents of land(covered by Ex. B2 sale deed dt.) and her principal of livelihood is on agriculture only and so she is entitled to the benefit of Act 45 of 1987, Act 2 of 1990 and Act 4 of 1938, that she is not liable to pay interest as per the contract rate and the suit is also barred by limitation.

The 2nd defendant-Pentakota Varaha Sankara Rao filed his written statement submitting that he purchased plaint schedule property from the 1st defendant on 01.02.1993 under registered sale deed, that the 1st defendant has no right, title or interest over plaint schedule property and he alone got right, title or interest in the schedule property, that the plaintiff has to recover any amount if due from the 1st defendant and her properties only but not from him or from plaint schedule property, that the suit is bad for mis-joinder or non-joinder of necessities parties, that he is entitled to the benefits of Agriculturists' Debt Relief Laws, hence, to dismiss the suit.

2(c). From the pleadings, the trial Court framed the following issues:--

- i) Whether the facts of 1 defendant borrowing Rs. 50,000/- from Pentakota Jagga Rao and executed a simple mortgage deed and later on paying Rs. 7,125/- towards part payment of amount due on mortgage are true?
- ii) Whether the plaintiff paid Rs. 50,000/- to said Pentakota Jagga Rao and got obtained a transfer under a registered transfer deed dated 21.02.1998?
- iii) Whether the transfer of mortgage bond under a registered transfer deed

dated 21.02.1990 is binding on the 2nd defendant?

iv) Whether the plaintiff can recover the suit claim amount by proceeding against 2nd defendant and against plaint schedule property?

v) Whether the suit is bad for mis-joinder and non-joinder of parties?

vi) Whether the interest claimed is usurious, excessive and penal?

vii) Whether the suit is not maintainable under law?

viii) To what relief?

2(d). After framing of issues and from the evidence adduced on both sides oral and documentary on record, the trial Court by its preliminary decree and judgment granted the reliefs in favour of plaintiff and against the defendants which they impugned.

2. As can be seen from the findings of the trial Court, the 1st defendant (who is the borrower of the suit Ex. A.1 simple registered mortgage deed, dt. 06.05.1989 amount of Rs. 50,000/- from and executed in favour of the transferor/assignor of suit mortgage debt with charge in favour of the plaintiff); in turn sold thereafter said mortgaged property to the 2nd defendant (no other than son of said original mortgagee) under Ex. B.1 registration extract of the sale deed of 1993. The suit for mortgage debt was adjudged for recovery with interest at 21% p.a. with charge on the mortgaged property that was decreed by mortgage preliminary decree dt. 03.04.2002 of the suit claim of suit filed on 02.11.1995, which decree reads that the amount due to the plaintiff on the mortgaged plaint schedule property up to 16.10.1995 of Rs. 50,000/- towards principal and Rs. 59,209/- towards interest thereon, together with Rs. 8052/- costs of the suit in all Rs. 1,17,291/- that the defendants do pay into Court by 02.06.2002 or any further time being extended by redemption, with subsequent interest there on at 6% p.a. from date of suit i.e. 16.10.1995 till realization with costs of such sum being adjudged to pay to redeem and in default the plaintiff may apply for final decree for sale of the mortgaged property to realize the proceeds to discharge the debt being fallen due and to pay the balance to the defendants, else to recover any balance from the defendants by granting time for redemption two months.

3(a). The appeal by defendants impugning legality and correctness of trial Court judgment is with the contentions in the grounds of appeal that the decree and judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case, that the trial Court should have held that the Ex. A.1 mortgage deed is not true, valid and binding on the defendant and also the plaintiff did not pay of Rs. 50,000/- to Pentakota Jagga Rao in got obtained transfer under Ex. A.2 registered transfer deed, dt. 21.02.1990; that the suit is bad for mis-joinder and also non-joinder of husband and children of the 1st defendant, that the interest claimed is usurious, excessive and penal, that it should have drawn adverse inference against the plaintiff for her non-

examination and also her transferor Pentakota Jagga Rao evidencing transfer of mortgage deed under Ex. A.2 for valuable consideration, that the subject matter of simple mortgage deed Ex. A.1 dated 06.05.1989 is the joint family property consisting of 1st defendant, her husband and her three daughters (two are minors) and one son who have joint right in the property mortgaged, that simple mortgage deed Ex. A.1 dt. 06.05.1989 is not true, valid and binding on the persons mentioned supra, that sale deed Ex. B.2 dt. 01.02.1993 executed by GPA holder is not true, valid and binding on the 1st defendant, that the 1st defendant is an agriculturist and a small farmer holding Ac.0.10 cents of land situated in Gollagam village, Subbavaram Mandal and her principal source of livelihood is only agriculture as evidenced by pattadar passbook Ex. B.3, that the 1st defendant is entitled to the benefits under the amended Act 7 of 1977 by Act 45 of 1987 and Act 2 of 1990 and also of the amended Act 4 of 1938 and the mortgage even if true thus gets abated, that the plaintiff and 2nd defendant are business people and as such they are not entitled to the benefits under Debt Relief laws and hence to set aside said decree and judgment by dismissing the suit claim with costs.

3(b). Heard both sides and perused the material on record. In the course of hearing the appeal, the learned counsel for the appellants-defendants reiterated the above contentions in seeking to set aside the trial Court's decree and judgment by dismissal of the suit claim. Whereas it is the contention of the counsel representing the respondent-plaintiff that the appeal claim is speculative and baseless in order to trouble further the plaintiff and the trial Court after discussion of the entire evidence on record by proper appreciation of fact and law came to the right and reasoned conclusion and for this Court while sitting in appeal, there is nothing to interfere and hence, to dismiss the appeal. The parties are being referred to for convenience as were arrayed before the trial Court.

4. From the above, the points that arise for consideration are:

i) Whether the mortgage deed and the debt covered therein are true and supported by consideration and enforceable against the 1st defendant if it is her property and if not how far to bind on the other family members of her viz., her husband and children? if valid and binding to enforce by the original mortgagee Pentakota Jagga Rao?

ii) Whether the transfer/assignment under registered deed Ex. A.2 by him in favour of plaintiff for consideration and enforceable against the 1st defendant and any others and if so, whether the sale of the property by the 1st defendant or her GPA holder in favour of 2nd defendant is exempted from the mortgage debt and liability enforceable?

iii) Whether the mortgage debt is abated by the provisions of amended Act, 7 of 77 covered by Act, 45 of 1987 and Act, 2 of 1990? if not, whether the pre-lite rate of interest prior to the suit awarded at contract rate by the trial Court is

usurious and excessive and liable to be scale down either under the Act, 4 of 1938 or under Usurious Laws Act, 1937 amended by the Act, 1961?

iv) To what result?

5. The above points for consideration 1 to 3 are inter-related and any separate discussion will be at the cost of repetition of factual matrix to avoid the same and for convenience, the three points are taken up together to answer jointly.

6. Ex. A.1 is the registered simple mortgage deed in favour of Pentakota Jagga Rao, father of 2nd defendant to the suit executed by the 1st defendant Smt. S.G. Ramalakshmi on 06.05.1989 by referring that it is her own and absolute property. There is nothing to show therefrom of it is the property purchased in her name either by her husband or by the joint family of her husband with any coparcenary property if existed from any nucleus. It is further to mention that the recital in the said mortgage deed is crystal clear that she purchased the property earlier by payment of consideration of Rs. 32,000/- and add. It is not any long prior to the mortgage. Even if it is long prior to the mortgage it makes no difference as it clearly shows the mortgaged property consists of two shops admittedly lying in Anakapalli municipal limits. The evidence of D.W. 1 including her cross-examination and her suggestions including in the cross-examination of P.Ws. 1 to 3 are crystal clear in this regard about the mortgaged schedule property consists of two shops and vacant site appurtenant to it in her possession and enjoyment as absolute owner. Thus there is no basis to contend that it is joint family property or purchased from any joint family nucleus in her name and for so purchasing used any joint family funds from any property or means of joint family of her husband and children. Though she disputed the Ex. A.1, it is proved from said evidence of P.Ws. 1 to 3 with reference to Ex. A.1 recitals and from cross-examination of D.Ws. 1 and 2 i.e. defendants 1 and 2.

7. Now coming to Ex. A.2 transfer by assignment of said mortgage debt with charge on the mortgaged property by said original mortgagee Pentakota Jagga Rao in favour of the plaintiff, the plaintiff proved the same from the evidence of her husband P.W. 1 and also that of P.W. 2 apart from P.W. 3 evidence in this regard to a little extent. The recital of Ex. A.2 are also crystal clear of the transfer from assignment of the debt with charge of the property is for consideration. When such is the case, the burden shifts on the defendants, if at all any of them to dispute the Ex. A.2 transfer deed. The 1st defendant did not discharge the same much less by her vendee 2nd defendant under Ex. B.1 sale deed; apart from the fact of 2nd defendant (D.W. 2) no other than son of said transferor Jagga Rao under Ex. A.2 to plaintiff. They having not examined in discharge of the burden while Ex. A.2 if not supported by consideration; not even choose to summon if at all as a Court witness said Pentakota Jagga Rao. In the absence of which there is nothing to draw any adverse inference much less against the proof of the plaintiff's suit claim as Ex. A.2 also is proved from plaintiff of transfer for consideration of Ex. A.1 mortgage debt with charge. Now coming to contention of the Ex. B.1 sale deed not executed by her but for GPA

holder in favour of D.W. 2 and not binding on her concerned, apart from she failed to prove the same, it is not much relevant whether Ex. B.1 sale transaction between 1st and 2nd defendants proved or not. It is because such sale is subject to the discharge of the mortgage debt by 2nd defendant also by stepping into the shoes of 1st defendant. There is nothing even shown by D.Ws. 1 and 2-the defendants of the sum was discharged to the original mortgagee Pentakota Jaggarao-father of defendant No. 2-D.W. 2.

8. Now coming to the contention of the 1st defendant that she is a small farmer within the definition of amended Act, 7 of 1977; the benefit of which extended after December, 1976 by Act, 45 of 1987 till 01.01.1988 and thereafter even by amended Act, 2 of 1990 till 31.05.1989 and the mortgage debt covered by Ex. A.1 mortgage deed was since before on 06.05.1989 within the period of enforcement of the said amended Act; and thereby the debt is if deemed discharged and abated concerned, the fact that she was owning another Ac.0.10 cents of a dry site at Gollagam village panchayat, Sabbavaram Sub Registration which she purchased covered by Ex. B.2 registration extract from her vendor in 1987 does not mean that it is an agricultural land even she filed Ex. B.3 pattadar passbook obtained for it in the absence of showing No. 2 adangal of actual cultivation and tilling of the land with any. From such evidence when not proving the contention that it is an agricultural land in her personal cultivation, it cannot be given credence and the decision relied upon Sivakumaram Chengal Rao Vs. P. Paramasivappa, showing for initial burden is on the debtor claiming the debt abated or deemed discharged under Act as a small farmer is by producing 10-I account and adangals and when discharged with burden, the burden shifts on the plaintiff to plead and prove the defendant is not a small farmer or both are small farmers and the debt is not abated. The facts are different as there the revenue adangals of actual cultivation of the lands therein filed; here not filed as discussed already. Thereby, the proposition law laid down in that case on those facts has no application to the present case for such proof. Apart from it, even taken for arguments sake that Ac.0.10 cents is covered by Ex. B.2 sale deed extract coupled with Ex. B.3 passbook which is admittedly in her name landed property within the meaning to claim from its owning without even tilling as agriculturist, she has to establish that her other source of income is less than Rs. 1200/- p.a. for the three years or more prior to the debt. In fact, as discussed above, the very Ex. A.1 mortgage deed shows that she purchased the two shops some time prior to the mortgage for more than Rs. 32,000/- by payment of cash in her name. when that Ac.0-10 cents is uncultivable dry site is not proved as fetching that income for her pooling in purchasing with more than Rs. 32,000/- the mortgage scheduled two shops, it is crystal clear that her other source of income is more than Rs. 1200/- p.a. Apart from it, there is evidence of P.Ws. 2 and 3 apart from that of P.W. 1, more particularly, with reference to P.W. 3 all the two shops of 1st defendant covered by mortgage schedule are leased out and getting income by her more than Rs. 500/- p.m. per shop. Though there are suggestions in mainly contending from a stray sentence in P.W. 3's cross-

examination of he agreed for door number referred therein of a shop is not correlating to the schedule property shop numbers regarding the alleged business centre in the shop. She admitted as D.W. 1 in the cross-examination that she is getting rent of only Rs. 100/- p.m. by letting out one of the shop to an old woman for residence. Even to believe the same she could not examine that woman and no any documentary evidence filed much less any lease or payment receipts and it is strange to believe her version of she does not know even the name of so called tenant of her. It shows therefrom that the income from each shop is more than Rs. 100/- per month. Therefrom it was rightly concluded by the trial Court of other source of income is more than the prescribed limit under the Act. It is suffice to say when other source of income she is realizing is more than Rs. 1200/- p.a. from three years or more prior to the debt contracted and even date thereafter she is not entitled to the benefit of Act, 7 of 1977 amended by Act, 45 of 1977 and Act, 2 of 1990 respectively.

9. Now coming to whether the rate of interest claimed or even granted by the trial Court in the preliminary decree at 18% p.a. is excessive and usurious and liable to be scaled down concerned, as after date of the suit for the pendente-lite interest and post-lite interest, the trial Court itself granted at 6% p.a. on the principal sum adjudged though it is a mortgage preliminary decree under Order 34 Rule 11 of CPC and not a simple money u/s 34 of CPC; to award pendente-lite interest from date of suit till date of preliminary decree and thereafter till expiry of the period of redemption fixed of two months to the preliminary decree, it makes no difference from non-mentioning of said provision from both provisions of Section 34 and Order XXXIV Rule 11 CPC in awarding pendente-lite and post-lite interest, give discretion to the Court on the rate of interest to reduce even below contract rate and particularly other than for commercial transactions the post-lite interest to be awarded is only at 6% p.a. Thus, there is nothing to interfere as even under Act 4 of 1938 if at all any benefit she is entitled the interest that can be awarded is Rs. 1% p.m. simple and at 6% p.a. is far below that. Now coming to pre-lite interest the substantial interest concerned, In view of the above discussion that she got the property in the municipal area which is the mortgaged schedule property and she is getting income other than agricultural from by letting out the shops of more than Rs. 1200/- p.a. from pretty long time that is since purchase prior to the mortgage and also she got other source of income for her contributing and purchasing the mortgaged property some time prior to the mortgage by spending Rs. 32,000/-; she is not entitled to the benefit of amended Act, 4 of 1938. Now coming to the rate of interest is usurious and otherwise within the discretion of the Court liable to be reduced and if so at what rate concerned, the fact remains which the Court can take judicial notice of the fact that it is not a commercial purpose of the borrower even not entitled to get the benefit of Act, 4 of 1938, the rate of interest to be awarded must be reasonable and not usurious. Even there is no evidence let in to show the 18% p.a. pre-lite interest is far above the market rate of interest and above bank lending rate of interest other than for commercial transactions

awarded by the trial court. From the two expressions of the Apex Court in Mahesh Chandra Bansal v. Krishna Swaroop Singhal, (1997) 10 SCC 681 and in D.D.A. and Others Vs. Joginder S. Monga and Others, , the pre-lite interest to award is at 12% p.a. by reducing from 18% p.a.

10. Having regard to the above, by reducing the rate of interest from date of debt to the date of suit from 18% p.a. to 12% p.a.; rest of the appeal claim is to be dismissed with no costs. Accordingly, Points 1 to 3 are answered. In the result, by confirming the trial Court's mortgage preliminary decree, the pre-lite interest from date of mortgage debt till date of suit is reduced from 18% p.a. to 12% p.a. and also of the pendent-lite interest thereafter on such principal sum adjudged from date of suit till date of preliminary decree and further till expiry of period of redemption under Order XXXIV Rule 11 CPC at 12% p.a. instead of 6 p.a. so far as post-lite interest is concerned, it is granted with effect from the expiry of period of redemption till redemption or realization at 6% p.a. on such principal sum adjudged to be arrived. There is no order as to costs of the appeal.