

(1944) 09 MAD CK 0019
In the Madras High Court

Pulimati Krishnamurthi

APPELLANT

Vs

Boggavarapu Narayana and Another

RESPONDENT

Date of Decision : 05-09-1944

Acts Referred:

Citation : AIR 1945 Mad 18 : (1944) 57 LW 545

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner sued on a promissory note dated 16th March 1942, for a sum of Rs. 1818-3-0, executed in settlement of previous debts, one of May 1939 and the other of June 1939. The spit promissory note carried compound interest. It was admitted in the lower Court that the respondent was an agriculturist entitled to relief under Madras Act 4 of 1938. The lower Court in applying Section 13 of that Act, has apparently labored under the misapprehension that Section 13 was to be applied not to the actual suit contract, but to the previous debts which it superseded. There is nothing in Section 13 which imports the explanation to Section 8 and allows the Court to go behind the contract. The defendant may, of course, raise contentions under the ordinary law such as failure of consideration or a plea that the suit debt is nothing more than an acknowledgment of the antecedent debt, which would justify the Court into going into the amount due under the antecedent debt. The defendant did in fact raise the contention that when the defendant signed the suit promissory note, he did so under a representation that the amount for which he signed was only the amount due on applying the provisions of Act 4 of 1938. Unfortunately the defendant adduced no evidence, probably because under a misapprehension of the law shared by the lower Court, it was thought that evidence was unnecessary.

2. It is pointed out for the respondent that the suit contract is one which will come within the purview of the Madras amendment of the Usurious Loans Act, if it is established that the defendant is an agriculturist within the meaning of that

Act, to which a somewhat different definition of an agriculturist applies from that embodied in Act 4 of 1938. It is quite clear that the Court is not bound to go into any question of the Usurious Loans Act, unless there is a pleading and evidence in support of it. The defendant's case has been mismanaged in the Court below. I do not feel inclined to give a decree without giving the defendant a further opportunity to let in evidence, as it appears likely that the failure of the defendant to let in evidence may have been due to the legal misconceptions under which the learned trial Judge was laboring. The defendant should, however, pay the costs of this revision which have been necessitated to a large extent by his negligence. The revision petition is allowed with costs and the suit is remanded to the lower Court for fresh disposal after allowing both parties to adduce further evidence.