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**(1988) 04 AP CK 0028**  
**In the Andhra Pradesh High Court**  
**Case No : Appeal No. 1628 of 1980**

Sambasiva Rao

APPELLANT

Vs

Bank of Baroda

RESPONDENT

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**Date of Decision :** 12-04-1988

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 1  
Evidence Act, 1872 — Section 61, 62, 63  
Registration Act, 1908 — Section 17, 47  
Transfer of Property Act, 1882 — Section 58

**Citation :** (1991) 70 CompCas 840

**Hon'ble Judges :** K.R. Ramaswamy, J

**Bench :** Single Bench

**Advocate :** E. Manga Chary, for the Appellant; C. Trivikrama Rao, for the Respondent

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## Judgement

K. Ramaswamy, J.

1. The appellant is the defendant. The respondent-bank laid a suit to recover the suit amount of Rs. 20,000 principal and interest accrued thereon, totalling to Rs. 36,000.68. The case of the respondent is that the appellant had deposited on July 20, 1974, his documents of title and also executed the promissory note, exhibit A-1 of even date, received a sum of Rs. 20,000 agreeing to pay interest at 4% in excess of the Reserve Bank of India rate of interest prevailing at that time. He did not pay the amount. He deposited the title deeds by way of equitable mortgage. Therefore, the suit was laid for recovery of the amount under Order 34, Rule 1, Civil Procedure Code. The appellant resisted the suit on three grounds : Firstly, it is contended that the suit is barred by limitation. Secondly, it is contended that there is no creation of the mortgage as he did not hypothecate his properties. It is only a certified copy. Therefore, it is not a creation of mortgage by deposit of title deeds. It is, thirdly, contended that the rate of interest is usurious. The trial court framed three issues which are held against the appellant, and the suit is decreed. Thus, this appeal.

2. Sri Manga Chary, learned counsel for the appellant, contended that, admittedly, there is nothing in writing that the appellant had deposited the documents of title with an intention to create an equitable mortgage. He contends that the certified copy of the partition deed is not a title deed. Therefore, it cannot be construed to be an equitable mortgage. I express my inability to accede to this contention. Section 58(f) of the Transfer of Property Act provides that "Where a person in any of the following towns ..... and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds." The question is whether the deposit of the certified copy of the partition deed is a creation of equitable mortgage by deposit of title deeds. Though the appellant had denied, the court below has found, on the facts and circumstances of the case, that it is incredible to believe the appellant's case that he did not deposit the certified copy of the partition deed. A copareener acquires a right in a coparcenary property on a partition deed if it is duly executed and registered. For a Hindu Mitakshara coparcenary, it is not absolutely necessary that the partition deed is to be registered. It is now well-settled that even loans drawn by the coparcener in settlement of the claims of preexisting rights to avoid future litigations are sufficient to create a title in the coparcenary property, The title is a preexisting right and not for the first time acquired under the document. But once it is reduced to writing, u/s 17 of the Registration Act, it is a compulsorily registrable document u/s 47 thereof. From that date, the copareener acquires a right, title and interest in the property acquired on partition with his coparceners. Section 61 of the Evidence Act provides that the contents of the document may be proved either by primary or by secondary evidence. Primary evidence means the document itself produced for the inspection of the court. Section 63 provides that secondary evidence means and includes the certified copies given under the provisions hereinafter provided. A certified copy obtained from the Registrar of the original partition deed duly registered is the contents of the original and, therefore, they substitute the place of the original document, as envisaged u/s 62 of the Evidence Act. When the appellant has produced the certified copy, obviously he induced the officers to believe that the original has been lost and requested the officers to accept the certified copy thereof as a document of title. Under these circumstances, I hold that the certified copy of the partition deed is secondary evidence as envisaged under section 63 of the Evidence Act, and, therefore, it can be acted upon.

3. The next question is whether the appellant has deposited the document with an intention to treat it as an equitable mortgage. Mortgage by deposit of title deeds in English law is called equitable mortgage. Equity requires that deposit of documents of title without more or without writing or without oral words will create an equity charging upon the property referred to in the document. The requirements for deposit are : (1) the existence of a debt; (2) deposit of title

deeds; (3) intention that the deeds shall be security for the debt. It is not in dispute that the appellant obtained the loan on July 20, 1974, and executed the promissory note, exhibit A-1, and also the documents of title, exhibit A-4, enclosing no encumbrance certificate and the certificate of the village officers, exhibits A-8 and A-9. The question then is whether there is an intention to deposit the title deeds. It is no doubt true that the appellant had not signed in the register maintained by the bank, but in exhibit A-5, security register maintained by the bank in the regular course of business, an endorsement has been made that, on July 20, 1974, the documents of title have been deposited by the appellant with them and loan obtained thereon. It is not necessary that he should sign on the document. What is required is deposit of title deeds with the bank. When the documents are in the custody of the bank, the necessary and inescapable inference that could be drawn is that the appellant had deposited his documents of title, namely, partition deed, as security for realisation of the debt obtained from bank. Whether the appellant has intended to deposit documents as security is an inferential fact which is to be found from the facts and circumstances in this case. Admittedly, he obtained a no encumbrance certificate under exhibit A-8 dated July 1, 1974, and a certificate issued by the village officer under exhibit A-9 dated July 15, 1974, to the effect that he is the owner of the property to an extent of ac.5.60 cents and they indicate that he intended to create those documents as securities. Thus considered, I hold that the appellant has deposited the partition deed, exhibit A-4, as security for the realisation of the debt. Accordingly, it is an equitable mortgage within the meaning of section 58(f) of the Transfer of Property Act.

4. The next question is whether the appellant is liable to pay interest at 12% with quarterly rests. Section 3 of the Usurious Loans Act, 1918 (Act No. 10 of 1918), provides that notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the court has reason to believe that the interest is excessive .... the court may exercise all or any of the following powers, namely, to reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest. The Madras Amendment Act (Act 8 of 1937) introduced a proviso in its application to section 3 wherein a presumption has been drawn that any interest charged with compound interest shall be presumed to be usurious in the case of loans granted to an agriculturist. Therefore, when 12% interest with quarterly rests has been charged and the appellant admittedly is an agriculturist and the loan was advanced as a crop loan, by operation of the proviso, the rate of interest must be deemed to be excessive. The question then is whether the transaction is liable to be reopened and whether the appellant is entitled to be relieved of the usury. Sri Trivikrama Rao, learned counsel for the appellant, has contended that by operation of section 21A of the recent amendment of the Banking Regulation Act, the loans covered under the provisions of the Act are excluded and that, therefore, the appellant is not entitled to the benefit. I am unable to agree. The agriculturists

have been treated as a separate class even by the Reserve Bank of India for the purpose of loans and recovery of loans from them. Therefore, when the Legislature is aware of the existence of the previous law and no specific time has been fixed to repeal the existing law as regards the applicability of the later Act and when the statute treated the agriculturists as a separate class, as regards agriculturists, it is the special law that is applicable to them and, therefore, the court is entitled to reopen the transactions and if it finds that the rate of interest is excessive, that has to be reduced. This court, in A. S. 32 of 1981 dated September 22, 1987, has held that charging interest with regard to the agriculturists at 12% with yearly rests is a reasonable rate of interest. Accordingly, the decree of the court below is modified and the appellant is liable to pay interest at 12% with yearly rests.

5. The appeal is, accordingly, allowed to the extent indicated above and the decree of the court below is set aside and there shall be a decree accordingly. The interest shall be till the date of decree and thereafter 6% interest u/s 34 of Civil Procedure Code, till date of realisation. No costs.