
(1969) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Second Appeal No. 827 of 1964 and C.R.P.N. 1062 of 1966

Sattaru Narayanaappalanaidu and Others

APPELLANT

Vs

Tadela Latchanna

RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:

Citation : AIR 1971 AP 174

Hon'ble Judges : Kupuswami, J;Gopalarao Ekbote, J

Bench : Division Bench

Advocate : B. Bheema Raju and A. Ganagadhara Rao, for the Appellant; N. Bapiraju and T. Anantha Babu, for the Respondent

Judgement

1. The undivided father of appellants 3 to 5 in the Second Appeal executed a promissory note dated 3-3-1956 for a sum of Rs. 1,000/- agreeing to pay interest at 18% per annum. Subsequently he made certain payments. On 29-11-1958 he executed a promissory note for Rs. 1,489/- being the amount due under the prior promissory note after giving credit to the payment. A suit was filed against the father as defendant-1 and his sons as defendants 2 to 4 and others for the recovery of the amount due under that promissory note which was marked as Ex. A-1 in the case. The defendants contended inter alia that they were agriculturists and entitled to the benefit of the scaling down of the debt under the Madras Agriculturists' Debt Relief Act of 1938 (Act IV of 1938) (hereinafter referred to as the Act.) The Trial Court holding that they were so entitled, scaled down the amount due under the promissory note and gave a decree for Rs. 465-76 nap. with proportionate costs and dismissed the rest of the suit claim. The plaintiff-creditor preferred A. S. 92 of 1963 to the Additional District Court, Srikakulam. The learned District Judge held following the decision of a Full Bench of the Madras High Court, in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, , that in respect of a debt incurred after the coming into force of the Act, it is necessary before the debtor could be given relief u/s 13 of the Act that he should prove that he was an agriculturist not only on the date when the debt

was incurred but also on the date of the suit and as it was found that he had ceased to be an agriculturist by the date of the suit by reason of the fact that the first defendant was carrying from the year 1956 on ward she was not entitled to claim the benefit of scaling the result the suit was decreed in full as claimed by the plaintiff. Defendants 3 to 9 have preferred the Second Appeal, defendants 1 and 2 having died during the tendency of the suit.

2. The only question that is argued in the Second Appeal is that the view of the lower appellate Court that in order to claim benefit u/s 13 of the Act, it must be proved that the debtor is an agriculturist on the date of the suit is contrary to law.

3. The revision petition is directed against the judgment of the Music Magistrate, Elurur in Small Cause Suit No. 4/66. The suit was brought by the respondent against the petitioner for the recovery of a sum of Rs. 420/- due on a promissory note dated 5-11-1959 executed by the petitioner in favour of the respondents' father. That promissory note was a renewal of a previous promissory note dated 20-1-1951 executed for a sum of Rs. 2,000/-. The suit was brought on 11-11-1965 and it is admitted that on 14-12-1959 the debtor had sold all his agricultural lands and therefore, he was not an agriculturist on the date of the suit. The learned Munsif Magistrate following the decision of the Full Bench of the Madras High Court in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, , held that as the debtor was admittedly not on agriculturist on the date of the suit, the petitioner could not claim the benefits of Section 13 of the Act and decreed the suit as prayed for. The debtor has preferred the revision petition questioning the correctness of that decision.

4. It is seen from the facts stated, above the common question that arises for consideration in these two cases is whether in order to obtain benefit u/s 13 of the Act is necessary that the debtor should be an agriculturist both on the date when the debt was incurred, as well as on the date of the suit.

5. Both the cases were referred to a Bench by Justice Chinnappareddy as he felt that the decision is an important one requiring consideration by a Bench of this Court. After is case was referred to a Bench a Division Bench of this Court in its decision dated 28-10-1968 in D. R. P. 541 of 1964 (AP) (un-reported) has followed the decision of the Full Bench of the Madras High Court in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, and held that it is necessary that the debtor should be an agriculturist both on the date when the debt was incurred, as well as on the date of the suit, to claim benefit u/s 13 of the Act.

6. Mr. Bheemaraju who appeared for the petitioner in C. R. P. No. 1062/66 and who addressed the main arguments submitted that this decision requires reconsideration, inasmuch as various aspects of the matter which he placed before us were not considered by the Division Bench in that decision. The arguments that were advanced by Mr. bheemaraju were completely on the lines of the dissenting judgment in the decision of the Full Bench of the Madras High Court in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, That decision was

considered and discussed by the Division Bench before it ultimately followed the majority view. Anyhow as the matter was again argued fully and the various aspects referred to by the dissenting Judge in (1963) 2 MLJ 594 : (Air by Mr. Bheemaraju in the course of his arguments we felt it desirable to deal with them.

7. Section 13 of the Act is in the following terms:-

"In any proceeding for recovery of a debt, the Court shall scale down all interest, due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6 1/4% per annum, simple interest." The expression "debt" is defined in Sec. 3 (iii) as meaning "any liability in cash or kind, whether secured or unsecured, due from an agriculturist."

8. The relevant portion of Section 3 (ii) which defined "Agriculturist" is as follows:-

"Agriculturist" means a person who has a salable interest in any agricultural or horticultural land in the province of Madras not being land situated within a Municipality or cantonment"

If these definitions are incorporated into Section 13 it would read as follows:-

"In any proceeding for recovery of a debt, due from a person who has a salable interest in any agricultural or horticultural land, the court shall scale down all interest due to him after the commencement of the Act so as not to exceed a sum calculated at 6 1/4 per cent per annum simple interest of the amount."

The terms of Section 13 so read are clear to the effect that the debt must be due from a person who has a salable interest in any agricultural land when the proceedings for recovery of a debt are instituted. In defining "agriculturist" the present tense "has any salable interest" is advisedly used. Similarly, "debt" is defined as "a debt due from an agriculturist" which would mean in the context of Section 13 as a debt due at the time when the proceeding for the recovery of a debt is instituted. Therefore on a plain reading of the terms of Section 13 read with Sections 3 (ii) and 3 (iii) it would follow that the debtor must be an agriculturist on the date of the proceeding. The learned dissenting Judge in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, ;laid stress upon the expression "incurred" occurring in Section 13 and held that giving the words their plain grammatical meaning it is enough that at the time when the debt was incurred the debtor was an agriculturist. In our view, the expression "incurred" by an agriculturist cannot be construed in isolation without reference to the meaning of the words "Agriculturist" and "debt" as defined by the Act.

9. The argument that the expression "has salable interest" in the definition of the "Agriculturist" is referable to the status of the debtor as an agriculturist when the debt is incurred, does not commend itself to us as it is opposed to the clear language of the definition clause. Reliance was also placed upon Sections 19, 23 and 23 (A) of the Act. It was argued that in these sections, particularly in Sections 23 and 23 (A) a specific reference is made to judgment debtor "claiming

to be entitled to the benefits of the Act" thereby indicating expressly that the debtor should be an agriculturist on the date of the application. The absence of an express provision to that effect in Section 13 indicates, according to the petitioners that the Legislature did not intend that for the purpose of Sec. 13 the "debtor" should be an "Agriculturist" on the date of the proceeding. On the other hand, it is also pointed out that there are other provisions in the Act like Section 19 (a) under which it is enough if the debtor is an agriculturist on certain specified dates, namely 1-10-1937, 22-3-38 even though application for relief may be filed by the debtor years after. It is, therefore argued that whenever the Legislature wanted to make it clear that the debtor should be an agriculturist on a particular date a provision was made to that effect whereas in Section 13 there is no such provision. This argument, in our opinion, does not take into account the different circumstances in which the various sections come into operation. Section 19 (a) applies only to debts prior to the Act. That is why it became necessary to provide that the status of the agriculturist should be determined on certain specified dates 1-10-1937, 22-3-38. With reference to Sections 19 and 23 it was felt that it was not sufficient that the debtor was an agriculturist on those dates and therefore, it was provided that he should also be an agriculturist on the date of the application. As far as Section 13 is concerned, which relates to a debt incurred after the Act, as the language of the section itself is clear to the effect as pointed out above, that the debtor should be an agriculturist on the date of the proceeding, it was perhaps felt that it was necessary to mention again that he should be a debtor on any particular date.

10. Another provision which was relied on by the petitioner, is the explanation to S. 13 which is in the following terms:-

"For the purposes of this section, the definition of "agriculturist" in Section 3 (ii) shall be read as if (I) in proviso (A) to that section for the expression "the financial years ending 31st March 1938". The expression, "the financial years ending on the 31st March " immediately preceding the date on which the debt is incurred" were substituted: and (ii) in Provisos (B) and (C) to that section for the expression "the four half years immediately proceeding the 1st October 1937" the expression "the four half years ending on the 31st March or the 30th September, whichever is later immediately proceeding, the date on which the debt is incurred" were substituted."

According to the petitioner the explanation unmistakably shows that the Legislature regarded the date, on which the debt was incurred, only as the crucial date.

11. Ramamurti, J., considered that the Legislature specially inserted explanations 1 and 2 making substitutions in Section 3 (ii), seeing that the definition of "Agriculturist" in Section 3 (ii) which is referable to the state of affairs existing at the commencement of the Act, cannot possibly apply to a period after the commencement of the Act. With respect the learned Judge, assumed in making this observation that the definition of the expression "Agriculturist" was referable to the state of affairs existing at the commencement of the Act only, a matter

which was actually the subject for consideration. In our view, having regard to the expression "has salable interest" it would refer to the date on which the debt is sought to be enforced. If that is so, the very hypothesis on which Ramamurthi, J., came to the conclusion that the explanations were added, falls to the ground.

12. It was lastly contended that it could not have been the intention of the Legislature that there should be different results in the matter of scaling down according to the date on which the debt is sought to be enforced. It was argued that if the debtor is to be "Agriculturist" on the date of the proceedings he would be entitled to the benefit of Section 13 during particular years when he satisfied the definition of "Agriculturist" but would not be entitled to its benefit during other years when he did not satisfy that test and this would involve a duty on the Court to embark upon an enquiry about the status of the debtor on different dates. We do not consider this apprehension is justified. All that is required, u/s 13 is that the debtor should be an agriculturist on the date of the institution of the proceeding. It is enough if the Court decides the status of the debtor on that date and it is not necessary for the Court to investigate his status on several different dates. As pointed out by the Judge there is no uniform principle followed by the Act in regard to the date on which the status of the debtor has to be ascertained. In some cases it is the commencement of the At, in other cases it is 1-10-37 and so on. Therefore, there would be nothing against the scheme of the Act if on a proper construction of Section 13 the status of the debtor has been determined with reference to the date of the commencement of the proceedings.

13. Having taken the view that by reason of the expression "incurred by an agriculturist" the plain meaning is that the debtor should be an agriculturist, on the dates when the debt was incurred, Justice Ramamurthy proceeded to consider whether there is anything in the scheme of the Act to prevent the Court from giving effect to this plain meaning. On the contrary, in our view the plain meaning of the terms of Section 13 read with definitions is that the debtor should be an agriculturist on the date of the proceeding and the investigation must be whether there is anything in the scheme or other provisions of the Act which would prevent the Court from giving effect prevent the Court from giving effect to this construction. We fail to see why such a construction should not be placed upon the section.

14. In the result, even after hearing the arguments of Mr. Bheemaraju we are not inclined to take a different view from that expressed in the unreported judgment of a Bench of this Court in C. R. P No. 541 of 1964 (AP) following the majority view in the decision in Pappathi Ammal alias Nallammal Vs. Nallu Pillai, .

15. Reference was made to decisions in Punyavatamma v. V. H. V. Satyanarayana (1960) 1 AWR 336, Beekamchand Dhannalal Firm v. Subbaraju 1960 1 AWR 397 : Chebrolu Nagabhushanam and Another Vs. Rachapudi Seetharamiah, . In the first two of these cases it was held that liability is incurred only when the amount is borrowed and it would not be postulated that the debt is incurred each time when a promissory note is renewed or when accounts are settled or when

any document is executed in pursuance of the settlement of accounts. In Chebrolu Nagabhushanam and Another Vs. Rachapudi Seetharamiah, , the question for consideration was whether Section 9 of the Act would apply to promissory note executed after the commencement of the Act for the discharge of an anterior debt incurred after -10-32 and before the commencement of the Act. It was held that Section 9 would apply and Section 13 had no application. In that connection it was observed that Section 13 can have application only to a borrowing made for the first time after the Act came into force and is not attracted to renewals of debts incurred prior to the commencement of the Act. It is difficult to regard renewal as incurring a debt within the purview of that section.

16. We fail to see how these decisions can be of any assistance in determining the question with which we are concerned.

17. In 1962 1 AWR 373 : (Air 1962 AP 431), it was held that where there was a debt incurred after the Act and was subsequently renewed, the debtor was entitled u/s 13 to have the debt scaled down as and from the date of the original debt. This again is not of much assistance in this case. But it is pertinent to note that dealing with Section 13, it was observed that "Section 13 of the Act itself commences with the clause in any proceeding for the recovery of a debt" thereby indicating that the disability to recover a sum in excess of the interest provided by the section will attach itself to the creditor only when he starts proceedings for enforcing his claim. If the disability is attached to his claim it should also stand to reason that the benefit of Section 13 available to the debtor would also have to be determined with reference to the date when proceedings are instituted.

18. For all these reasons we hold that the judgment of the Court below in each of these cases is correct.

19. The appeal and the Revision Petition are dismissed with costs.

20. Appeal and revision dismissed.