
(2011) 11 AP CK 0022
In the Andhra Pradesh High Court
Case No : S.A. No. 651 of 2009

Smt. Ramasalamma

APPELLANT

Vs

Potturi Venkata Srinivasa Raju

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 — Section 2(4), 2(7), 2A, 3, 3(5)
Civil Procedure Code, 1908 (CPC) — Section 100
Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : (2011) 11 AP CK 0022

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; H. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

G. Bhavani Prasad

1. The second appeal is against the judgment and decree in A.S. No.20 of 2006 on the file of the Principal District Judge, Ranga Reddy District, dated 30-04-2009, by which the appeal was dismissed without costs and the judgment and decree in O.S. No.643 of 2001 on the file of IV Additional Senior Civil Judge's Court (Fast Track Court), Ranga Reddy District, dated 29-12-2005 by which the suit was dismissed with costs, were confirmed.

2. The parties are referred to herein as they are arrayed in the suit.

3. The plaintiff filed the suit for recovery of Rs.2,25,392/-on the basis of four pronotes dated 01-08-1998, 02-09-1998, 01-02-1999 and 05-01-2000 for Rs.40,000/-each executed by the defendant in favour of Peda Basi Reddy, husband of the plaintiff. The defendant was stated to be a family friend of V. Subba Reddy, the plaintiff's brother, leading to the borrowal for his family

expenses and constructing a building agreeing to repay the same with interest at 24 per cent per annum. Peda Basi Reddy died on 21-06-2001 and the defendant did not pay in spite of demands by Peda Basi Reddy and after his death, the plaintiff. The part payments made were given credit to and the suit was filed for recovery of balance.

4. The defendant admitted his acquaintance with V. Subba Reddy through the defendant's brother-in-law U.V. Ramaraju. But he claimed that on the insistence of V. Subba Reddy, who had financial dealings with U.V. Ramaraju, the promissory notes were obtained from the defendant, which were not supported by consideration. The defendant never saw the plaintiff or Peda Basi Reddy and V. Subba Reddy lending monies on exorbitant rates of interest, never passed receipts for payments or returned the pronotes. V. Subba Reddy acknowledged receipt of Rs.20,000/- on 13-08-2000 under a receipt and further acknowledged receipt of payments in a book maintained by Ramaraju. As Subba Reddy is Government employee, he was obtaining pronotes in the name of Peda Basi Reddy and even the part payments alleged are false. The first two pronotes are barred by limitation and V. Subba Reddy got the endorsements written on the reverse of the promissory notes by threatening the defendant. The suit transactions are hit by the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F (for short "the Act") and hence, the suit be dismissed with costs.

5. The trial Court framed the following issues and additional issues for trial.

(1) Whether the suit pronote is true, valid and binding on the defendant ?

(2) Whether the plaintiff is entitled to a decree to suit claim amount ?

(3) To what relief ?

Additional issues, dated 27-06-2003:

(1) Whether late husband of the plaintiff was a money-lender without a valid licence and if yes, whether the suit transactions are hit by the provisions of A.P. (Telangana Area) Money Lenders Act ?

(2) Whether the suit claims covered by the promissory notes dated 1.8.1998 and 2.9.1998 are within limitation ?

6. The trial Court examined P.Ws.1 to 6 and D.Ws.1 to 3 and marked Exs.A.1 to A.5 and B.1 to B.10 during trial.

7. The trial Court rendered its judgment referring to the rival pleadings, evidence and arguments and referring to the total denial by the defendant except the execution of Exs.A.1 to A.4 pronotes, noted the presumption u/s 118(a) of the Negotiable Instruments Act to arise. Noting that while the plaintiff and her husband are residents of Timmareddy Palem in Prakasam District, the defendant, V. Subba Reddy and P.Ws.1 to 6 are residents of Hayatnagar Mandal, the trial Court noted that the place of the transactions or the part payments were not specified in the plaint except referring to Vanasthalipuram as the place of the

transactions in the jurisdiction para. The trial Court noted the evidence for the plaintiff to state Exs.A.1 to A.4 transactions to have taken place at the house of V. Subba Reddy at Vanasthalipuram when Peda Basi Reddy was visiting Hyderabad for his medical treatment. While P.W.1 was stated in detail to be ignorant of the transactions and the suit, the trial Court noted the inherent improbability of all the four transactions and Peda Basi Reddy advancing Rs.40,000/-each at Hyderabad on all the four occasions when he came for medical treatment as if he was prepared for the same each time and the defendant coming with a blank promissory note and a blank receipt each time anticipating advancement of such money. The requirement of money on all the four occasions for the defendant is also the same and one or other of the witnesses appeared at the home of Subba Reddy just before the transaction. P.W.1 never saw the defendant and Subba Reddy never attested any of the pronotes. Subba Reddy does not enter the witness box and the source of payment of Rs.40,000/-each was also considered to have been not satisfactorily stated. D.Ws.2 and 3 claimed to be borrowers from V. Subba Reddy like U.V. Rama Raju, the brother-in-law of D.W.1, and Ex.B.5 pass book was noted to be containing the signatures of Subba Reddy. The trial Court also noted that Ex.B.9 pronote and Ex.B.10 receipt and the evidence of D.Ws.1 to 3 probablise the truth of Exs.B.5, B.9 and B.10 and the preponderance of probabilities was, hence, considered to be establishing that Exs.A.1 to A.4 were not supported by consideration. The trial Court also noted that apart from not specifying the part payments under Exs.A.1 and A.2, there was also no notice prior to the suit or reference to the Court case by P.W.1. Though the endorsements of repayment on the reverse of Exs.A.1 and A.2 were made by the defendant, the defendant never made any complaint about making such endorsements under threat. However, when P.W.1 and the defendant did not visit the places of the other, the part payments also become doubtful and the endorsements of payment on 25-06-2001 were also considered to have not been established. Consequently, Exs.A.1 and A.2 pronotes were considered to be barred by limitation. The trial Court also found from Exs.B.1 to B.4 and B.6 to B.8 and the admissions of P.W.1 that the transactions are hit by the Act when Peda Basi Reddy was probablised to be a professional money-lender without a valid licence. While holding that the plaintiff does not require any succession certificate to file the suit, in view of the other findings, the trial Court dismissed the suit with costs.

8. In appeal, the first appellate Court rendered the impugned judgment considering the points whether the suit promissory notes and the endorsements on Exs.A.1 and A.2 are valid, true and binding, whether the suit is barred by limitation and whether the transactions under Exs.A.1 to A.4 are hit by the Act. The first appellate Court noted that Section 118 of the Negotiable Instruments Act leads to the presumption that Exs.A.1 to A.4, the execution of which is admitted by the defendant, are duly executed for consideration. As the defendant did not examine anybody else except himself to prove his defence, the appellate Court disbelieved that any prudent man will execute four pronotes for

Rs.40,000/-each in favour of an unknown person without any consideration for the sake of his brother-in-law. D.W.1 is an educated Government employee and he did not examine his brother-in-law U.V. Ramaraju for whose benefit he claimed to have executed the pronotes. The first appellate Court also noted that mere acquaintance of P.Ws.2 to 6 with V. Subba Reddy, the brother of the plaintiff, could not have led to disbelieving their evidence in the absence of any reason for them to depose falsely and the evidence of P.Ws.2 to 6 was held to prove due execution of Exs.A.1 to A.4 for consideration. The first appellate Court also referred to the admissions of D.W.1 about the endorsements of payments on Exs.A.1 and A.2 being in his own hand apart from the absence of any action by the defendant against Subba Reddy. The endorsements also were, therefore, believed and the first appellate Court held the suit to be within limitation even concerning Exs.A.1 and A.2. However, the first appellate Court considered that the burden of proof on the defendant to prove the suit transactions being hit by the Act had been discharged, as the promissory notes were admittedly executed at Hyderabad and Peda Basi Reddy was concluded to have lent the amounts to the residents of Hyderabad on execution of pronotes at Hyderabad agreeing to repay the principal with interest. Though Exs.B.4 and B.9 do not contain interest clause with the interest column being left blank, the appellate Court referred to the admission of P.W.1 that her husband lent amounts to various persons on interest. On analyzing Exs.B.1 to B.4 and B.6 to B.8 and admissions of P.W.1, the first appellate Court concluded the transactions to be within the provisions of the Act and Peda Basi Reddy to be a professional money-lender without a valid licence. In view of that finding, the appeal was dismissed without costs.

9. The plaintiff in the present appeal contended that substantial questions of law arise about relying on Exs.B.1 to B.4 and B.9 about the applicability of the Act without any legally acceptable evidence. The appellant also contended that in the absence of proof of transactions taking place in the notified areas under the Act, the Courts below erred in holding the transactions to be hit by the Statute and when the appellant specifically claimed to be an agriculturist and never stated to be doing any money lending business, the Statute should not have been applied to the case. Hence, the appellant desired the dismissal of the suit to be reversed.

10. A learned Judge of this Court admitted the second appeal on the questions of the absence of proof of transactions taking place in the notified areas under the Act and the disregard to the specific plea of the appellant that she is an agriculturist and not doing any money lending business.

11. Sri O. Manohar Reddy, learned counsel for the appellant and Sri H. Venugopal, learned counsel for the respondent are heard and both the learned counsel referred to various precedents, which will be referred to in due course.

12. The points for consideration in this appeal are the substantial questions of law on which the second appeal has been admitted.

13. Exs.A.1 to A.4 promissory notes described the promisee Polimera Peda Basi

Reddy as a resident of Prakasam district, while the defendant was described as a resident of Vanasthalipuram. Exs.A.1 to A.4 were in the own hand of the defendant. The plaintiff as P.W.1 admitted during cross-examination that the defendant never visited their village. P.W.2 spoke about the husband of P.W.1 coming to Hyderabad for medical check up and staying at the house of Subba Reddy, brother of P.W.1, at which time Ex.A.1 pronote was executed by the defendant on receiving the consideration of Rs.40,000/-agreeing to repay the same with interest at 24 per cent per annum. P.W.3 similarly stated about the execution of Exs.A.3 and A.4 promissory notes and the endorsements of payments on Exs.A.1 and A.2 pronotes at the house of Subba Reddy. P.W.4 also deposed about the execution of Ex.A.4 pronote and payment of consideration of Rs.40,000/-at the house of Subba Reddy. P.W.5 was similarly a witness to Ex.A.2 claimed to have been executed by the defendant after receiving consideration of Rs.40,000/-at the house of Subba Reddy. P.W.6 was an attester of Ex.A.3 and the evidence of P.Ws.2 to 6, thus, clearly disclosed that the transactions under Exs.A.1 to A.4, the execution of Exs.A.1 to A.4 pronotes and the endorsements of payments on Exs.A.1 and A.2 pronotes were at the house of V. Subba Reddy, brother of P.W.1. Even the version of the defendant as D.W.1 was about V. Subba Reddy obtaining the promissory notes from him in connection with his financial dealings with his brother-in-law U.V. Ramaraju.

14. The Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 F came into force in the whole of Telangana area of the State of Andhra Pradesh from the date of its publication in the Official Gazettee. Section 2-A of the Act in its heading states non-mulki money-lenders to be barred from carrying on business of money lending and sub-section (1) thereof states that no money-lender who is a stranger shall carry on the business of money-lending from 18th Khurdad 1355 F. Money-lenders were required to get their names registered and obtain a licence u/s 3 and sub-section (5) of Section 3 mandated that no money-lender shall carry on in any district the business of money-lending without obtaining a licence provided for in sub-section (2). Section 9 of the Act mandates in sub-section (1) that the Court shall frame and decide the issues whether the money-lender is a money-lender as defined in Section 2(7) and whether he has complied with the provisions of Section 3, Section 5 (1) (a) and (b) and Section 6 (1) and (2) of the Act in every suit relating to a loan. Sub-section (2) of Section 9 lays down that if it is proved that the plaintiff is a money-lender as defined in Section 2(7), but does not hold a licence granted u/s 3, the Court shall dismiss his suit.

15. A loan is defined in Section 2(4) to mean a loan secured or unsecured, advanced on interest in cash or in kind, and shall include every transaction which is in substance a loan and shall not include the transactions specified in the provision. Exs.A.1 to A.4 clearly specified the demand pronotes to have been executed for sums of Rs.40,000/-each payable with interest at 24 per cent per annum. Exs.A.2 to A.4 mentioned the interest to be annually compounded and the transactions under Exs.A.1 to A.4 are, thus, relating to loans within the meaning of Section 2(4) of the Act.

16. Section 2(7) of the Act defines a money-lender to mean a person, who, within the meaning of this Act, only advances loan in the ordinary course of his business or does so along with other business and shall also include the legal representative of such person. The transactions under Exs.A.1 to A.4 having taken place in Vanasthalipuram, which is a part of Hyderabad within Telangana area of the State of Andhra Pradesh, the territorial applicability of the Act to the transactions cannot be in doubt and the transactions being loans within the meaning of the Statute, in this suit relating to those loans, the Court shall frame and decide the issues about the money-lender being a money-lender as defined in the Statute and his complying with the provisions of Section 3 regarding holding a licence and admittedly Polimera Peda Basi Reddy has no licence obtained u/s 3 of the Act at any time nor was it claimed that P.W.1 or V. Subba Reddy, who was claimed to be the person who obtained Exs.A.1 to A.4 from the defendant, had any such money lending licences at any point of time. The only question that remains is whether the promisee under Exs.A.1 to A.4 advances loans in the ordinary course of his business or does so along with other business within the meaning of the Act. If he does so, the Court shall have to dismiss the suit, as he falls within the definition of money-lender u/s 2(7) and does not hold a licence u/s 3 of the Act. As the definition of a "money-lender" includes the legal representative of such person including a person claiming to be the representative of the person advancing the loan on the ground of succession or assignment or otherwise, the plaintiff also falls within the mischief of Section 9(2) obligating the Court to dismiss the suit under such circumstances.

17. Therefore, the basic question of fact for determination is whether Polimera Peda Basi Reddy is a person who advances loans in the ordinary course of his business or does so along with other business.

18. The principles laid down in the precedents cited in this regard need to be referred to and in *Komravelli Vara Laxmi v. Syed Kasim Hussain* 1962 (II) ALT 210, a Division Bench held that the burden of proof lies upon the defendant to establish that the plaintiff is a money-lender within the meaning of the Act and that the suit is consequently hit by the provisions of the Act as held earlier in *Munagala Yadgiri v. Pittala Veeraih* 1958 ALT 543, which was followed later overruling the contrary view. The Division Bench also held that there must be a certain degree of system and continuity about the transactions, which is a question of fact in each case. The word "business" imports the notion of system, repetition and continuity. The word "regular" shows that the plaintiff must have been in the habit of advancing loans to persons as a matter of regular business and an isolated act of money-lending does not attract the definition of money-lender under the Act.

19. In *Mrs. K. Sudersanam Vs. S. Venkatarao*, the principle was followed and it was held that the definition of money-lender in the Act did not include those who advanced monies casually.

20. In *A. Agaiah v. Deepchand Singh* 1972 APLJ 17 Short Notes of Recent Cases,

it was pointed out that it is a statutory and obligatory requirement to frame two statutory issues u/s 9 irrespective of any provision in any other law in any suit relating to a loan whether there is a pleading or not. It was also held that the burden is on the defendant.

21. In *Lohori Seethayya v. Malgireddy Matta Reddy* 1973 (2) APLJ 265, while noting that the burden of proof is on the defendant, a learned Judge held that in the course of lending there must be an element of business which always implies a gain motive. Even if the suit pronote does not stipulate for the payment of any interest, it is the duty of the Court to rip open the mask which conceals the true nature of the transactions, expose the money-lender and subject him to face the consequences which flow from the application of the Act, provided, of course, the requirements are satisfied.

22. Again in *Khaja Begum Vs. Gulam Mohiuddin and Others*, a Division Bench held that if the suit transaction is not a loan as defined in the Act, the plaintiff need not have a licence to file the suit.

23. In *N. Kamala Mani Vs. O.V. Subramanyam*, another Division Bench following *Dwarkadas v. Habib Mohammad Jaffer* (1962) 1 Andh.W.R. 144, which was followed in *Khaja Begam v. Gulam Mohiuddin* (6 supra), dissented from *Lohori Seethayya v. Malgireddy Matta Reddy* (5 supra) in so far as the scope of the definition of loan u/s 2(4) of the Act. However, the Division Bench noted that on appraisal of the evidence in *Lohori Seethayya v. Malgireddy Matta Reddy* (5 supra), the "loan" was proved to have been lent on interest, though the promissory note was to the contrary, bringing the case within the scope of the Act.

24. The evidence in the present case has to be examined with reference to the above principles. The plaintiff herself as P.W.1, while claiming to be agriculturist, owning and cultivating agricultural lands, yielding substantial income, also claimed that her husband Polimera Peda Basi Reddy, the promisee under Exs.A.1 to A.4, also carried on pearls business in addition to agriculture. She further admitted that her husband gave amounts to various persons on interest basis. While she was unaware of any lending of money under Ex.B.4, she also claimed ignorance whether some other suits were filed in different Courts at Kandukuru on transferred promissory notes after the death of her husband. While she was unaware whether any money lending licence was obtained by her husband, her admission about her husband giving amounts to various persons on interest basis may not show such transactions to be just casual. The evidence of P.Ws.2 to 6 showed that Peda Basi Reddy readily obliged the defendant, when he requested for hand loans leading to execution of Exs.A.1 to A.4 agreeing to repay the amounts on demand with interest at 24 per cent per annum. The very transactions stated by P.Ws.2 to 6 leading to Exs.A.1 to A.4 are not suggestive of any casual nature and if the defendant approaches Peda Basi Reddy at his brother-in-law's house on all the four occasions for hand loans, he must have had an idea of Peda Basi Reddy advancing such loans for interest.

25. The defendant as D.W.1 claimed that he came to know at Kandukuru in 2002 in the office of Sri Sambasiva Rao, advocate, who defended him in the two suits filed by the plaintiff at Kandukuru Court, that Peda Basi Reddy used to lend money on exorbitant rates of interest. He claimed those two suits also to be based on promissory notes.

26. D.W.2 claimed to have executed pronote dated 15-12-1995 in the name of Peda Basi Reddy for Rs.25,000/-at the instance of V. Subba Reddy and to be paying interest to Subba Reddy. D.W.3 also made a similar claim about a pronote for Rs.10,000/-dated 03-12-1995 in favour of Peda Basi Reddy and he claimed Exs.B.9 and B.10 to be the promissory note and receipt so executed. He claimed to have paid interest at Rs.300/-per month.

27. Exs.B.1 to B.3 registered notices issued at the instance of P.W.1 were about the transactions of lending by Peda Basi Reddy repayable with interest at 24 per cent per annum. Ex.B.4 was claimed to be a pronote executed by Dr. K. Venkateswara Rao in favour of Peda Basi Reddy for Rs.20,000/-and of course, the interest payable was kept blank. Exs.B.6 to B.8 relate to another pronote transaction in favour Peda Basi Reddy, the amount being repayable with interest at 24 per cent per annum. Exs.B.9 and B.10, as already referred to, were by D.W.3 in favour of Peda Basi Reddy, but the interest column in Ex.B.9 was blank.

28. At least Exs.B.1 to B.3 and B.6 to B.8 probablise that Peda Basi Reddy was lending monies on promissory notes repayable with interest and even if the evidence of D.Ws.1 to 3 about the transactions being with V. Subba Reddy cannot be taken as probablising Peda Basi Reddy to be a money-lender, the evidence of P.Ws.2 to 6 about Exs.A.1 to A.4 transactions of advancing monies repayable with interest at 24 per cent per annum clearly lend credence together with Exs.B.1 to B.3 and B.6 to B.8 to the probability of Peda Basi Reddy lending monies for interest to various persons, which are not in the nature of mere casual transactions. Even if the information to D.W.1 at his advocate's office at Kandukuru were to be taken lightly as hearsay, Peda Basi Reddy's wife, the plaintiff, obviously spoke from her personal knowledge when she stated about her husband giving amounts to various persons on interest basis. The very suit claim as stated in the plaint is about the family friendship between V. Subba Reddy and the defendant leading to advancement of loans by Subba Reddy's brother-in-law Peda Basi Reddy to the defendant and Peda Basi Reddy advancing the loans during his visits to Hyderabad for treatment on all the four occasions could not have been just termed as casual.

29. The burden of proof is, of course, on the defendant, but it is well settled that when once the evidence of both the parties is placed before the Court, the question of burden of proof loses much of its relevance, unless the evidence is evenly balanced. Even otherwise, the broad human probabilities arising out of the evidence on record as analysed above indicate Peda Basi Reddy being in the habit of advancing loans to persons as a matter of regular business indicating a certain degree of system and continuity about the transactions without any

possibility of dismissing the transactions under Exs.A.1 to A.4 as four isolated transactions of money lending or casual transactions. Even if the two transactions under Exs.B.4 and B.9 did not stipulate in the promissory notes payment of any interest, and are, therefore, capable of being construed to be not loans under the Act, the other evidence probablises Peda Basi Reddy being a "money-lender" within the meaning of Section 2(7) of the Act.

30. The trial Court in its judgment, after a detailed reference to the evidence on this aspect, concluded that the transactions took place at Hyderabad and Peda Basi Reddy being a professional money-lender without a valid licence, the suit is hit by the Act. In the impugned judgment, the first appellate Court reanalyzed the evidence on this aspect all over again and its conclusion about the truth and validity of and consideration for Exs.A.1 to A.4 also strengthens Peda Basi Reddy entering into such transactions not casually but regularly. The appellate Court also referred to Exs.B.1 to B.10 as establishing Peda Basi Reddy lending amounts to the residents of Hyderabad on execution of pronotes agreeing to repay the principal with interest and further referred to the admissions of P.W.1 on this aspect. The appellate Court rejected the contention of there being no continuity of transactions of money lending or there being only casual money lending and the conclusions of the first appellate Court about the applicability of the Act are based on its conclusions of fact.

31. It is well settled that the first appellate Court is the final Court of fact finding. In *Madhavan Nair v. Bhaskar Pillai* (2005) 10 SCC 553 , it was held that when the first appellate Court neither ignored any material evidence nor considered any inadmissible evidence, the High Court was not justified in interfering with the concurrent findings of fact and even if the first appellate Court commits an error in recording a finding of fact, that will not be a ground for the High Court to upset the same. Similarly in *Mst. Sugani Vs. Rameshwar Das and Another*, the Apex Court held that concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers u/s 100 of the CPC and a substantial question of law has to be distinguished from a substantial question of fact. It was also held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact.

32. In the light of the principles laid down by the Apex Court, it is, therefore, clear that it is not within the province of this Court to interfere with the findings of fact by the first appellate Court, more so when there is no perversity involved in such findings.

33. While the findings of the first appellate Court on other aspects were not challenged by either party, the transactions under Exs.A.1 to A.4 or even the other transactions having admittedly taken place within the Telangana area of the State of Andhra Pradesh to which the Act applies and the plaintiff laying her claim to the suit reliefs as the legal representative of Peda Basi Reddy who was probablised to be a money-lender within the meaning of Section 2(7) of the Act,

both the questions on which the second appeal has been admitted have to be answered against the appellant and the second appeal has to fail.

34. Accordingly, the second appeal is dismissed without costs.