
(2003) 07 AP CK 0024

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1074 of 1998

Yarlagadda Satya Rao and Another

APPELLANT

Vs

Goli Ganiraju alias Sathiraju

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Citation : (2003) 6 ALT 284

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.L.N. Gopalakrishna Murthy, for the Appellant; N(P) Anjana Devi, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful defendants/appellants are the appellants in the present Second Appeal.

2. This Second Appeal is preferred as against the judgment and decree made in A.S.No. 22/97, dated 19-8-1998 on the file of IV Additional District Judge, Kakinada confirming the Judgment and decree made in O.S.No. 134/90 on the file of I Additional Subordinate Judge, Kakinada dt. 21-6-1996. The respondent/plaintiff instituted the suit O.S.No. 134/90 on the file of I Additional Subordinate Judge, Kakinada for recovery of suit amount on the strength of a promissory note dated 17-6-1989 executed by the appellants/defendants in favour of the respondent/plaintiff for Rs. 50,000/- repayable with interest @ 24% per annum together with subsequent interest at contract rate and costs of the suit.

3. The parties are referred to as "plaintiff" and "defendants" for the purpose of convenience.

4. It was pleaded in the plaint that the defendants borrowed a sum of Rs. 50,000/- from the plaintiff on 17-6-1989 and executed the suit promissory note agreeing to repay the same with interest @ 24% per annum and failed to repay the same in spite of several demands including a lawyer's notice dated

19-3-1990. The defendants are income tax assesseees and businessmen and hence are not entitled for the benefits of A.P. Act 4/38 and A.P. Act 7/77. Hence the suit.

5. In the written statement it was pleaded as follows:

The defendants borrowed only Rs. 30,000/- from the plaintiff, but the plaintiff obtained the suit promissory note for Rs. 50,000/-. Thus, the suit promissory note is not fully supported by consideration and hence the plaintiff is not entitled to enforce the same. The defendants are not businessmen and they did not borrow the money for business purpose. The defendants are not Income Tax assesseees and they are agriculturists entitled for the benefits of A.P. Act 4/38. Hence the interest is liable to be scaled down and therefore prayed to dismiss the suit.

6. The Court of first instance had settled the following Issues:

(1) Whether the suit promissory note is not supported by consideration to an extent of Rs. 20,000/- is true?

(2) Whether the defendants are agriculturists and entitled to the benefits of Act 4/38?

(3) To what relief?

On behalf of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A-1 to A-4 were marked. On behalf of the defendants, D.W.1, the 1st defendant was examined. Ex.A-1 is the promissory note executed by the defendants in favour of the plaintiff for Rs. 50,000/-, dated 17-6-1989. Ex.A-2 is the office copy of the legal notice. Exs.A-3 and A-4 are postal acknowledgments of defendants 1 and 2 respectively. The Court of first instance, on appreciation of both oral and documentary evidence, ultimately came to the conclusion that the respondent/plaintiff had proved the suit claim and had ultimately decreed the suit as prayed for with interest @ 24% per annum from the date of suit till the date of decree and thereafter @ 6% per annum till realization. Aggrieved by the same, the defendants preferred A.S.No. 22/97 on the file of IV Additional District Judge, East Godavari at Kakinada, and the said Appeal was dismissed, with costs. Aggrieved by the same, the present Second Appeal is preferred.

7. Sri V.L.N.G.K. Murthy, the learned Counsel representing the appellants/defendants had submitted that there is absolutely no evidence that the borrowing is only a commercial transaction and on the other hand it is for agricultural purpose. The learned Counsel also had drawn my attention to the fact that the defendants own agricultural lands. The learned Counsel also submitted that the burden of proving that the defendants are the income tax assesseees is on the respondent/plaintiff, but absolutely, no evidence had been let-in in this regard. Hence, the Courts below had totally erred in decreeing the suit. The learned Counsel also had maintained that there is no pleading that the borrowing is for business purpose or for any commercial purpose and in the

absence of the same, granting interest @ 24% per annum till the date of decree instead of granting @ 12% per annum, definitely is bad in law. The learned Counsel had taken me through the findings recorded by the Court of first instance and also the appellate Court. The learned counsel also commented that definitely the appellate Court had erred in coming to the conclusion that the appellants/defendants are not entitled to the benefit of Act No. 4/38 merely because the appellants own certain factories. The findings relating to the same had been pointed out by the learned counsel.

8. Per contra Sri Satyanarayana, the learned Counsel representing the respondent/plaintiff had taken me through the findings recorded by both the Courts below and had contended that the findings are concurrent findings and these are all findings relating to factual aspects which need not be disturbed in a Second Appeal. The learned Counsel also submitted that there is no question of law, much less, substantial question of law in the present Second Appeal. The learned counsel also would maintain that the contention of the appellants that the borrowing is not for business purpose or commercial purpose cannot be sustained since the recitals of Ex.A-1 are self-explanatory and it is clearly recited in the promissory note itself that the borrowing was for business purpose. In this view of the matter, the interest granted by both the Courts below definitely is well justified. The learned Counsel also pointed out that no doubt specific evidence was not let in to prove that the appellants/ defendants are income tax assesseees , but clear findings had been recorded relating to the fact that the appellants/defendants are owning two factories, one Sago factory and another Tiles factory, deriving a lot of income and this itself is more than sufficient for the present purpose.

9. Heard both the Counsel and perused the findings recorded by the Court of first instance and also by the appellate court.

It was no doubt seriously urged by the Counsel for the appellants that as far as interest portion is concerned, instead of granting the same @ 24% per annum till the date of decree, it should have been reduced to 12% per annum till the date of decree. As far as the factual aspects are concerned, after settlement of Issues, the evidence of P.W.1 and P.W.3 and Exs.A-1 to A-4 and D.W.1 had been elaborately discussed and findings had been recorded ultimately decreeing the suit and the findings were confirmed even by the appellate Court and hence such concurrent findings need not be disturbed in the Second Appeal.

10. It is no doubt true that specific evidence was not let in to prove that the appellants/defendants are income tax assesseees . But however, clear findings had been recorded that definitely the appellants/defendants are not entitled to the benefits of either Act No. 4/38 or Act No. 7/77 for the reason that they are owning Sago factory and also a Tiles factory and this is a finding of fact. Therefore, at any stretch of imagination, it cannot be said that such parties will be attracted by the provisions of Act No. 4/38 or Act No. 7/77. Further in the light of the recitals in Ex.A-1 itself, the contention that the amount borrowed was

for agricultural purpose also cannot be accepted and inasmuch as it is for business purpose, it should be taken to be a commercial transaction and hence awarding of interest @ 24% per annum is also well justified.

11. Hence, I do not see any reason to interfere with the concurrent findings recorded by both the Courts below. Accordingly, the Second Appeal is dismissed as being devoid of merits. In the facts and circumstances of the case, without costs.