

**(2024) 01 AP CK 0017**

**Andhra Pradesh High Court - Amaravati**

**Case No:** Appeal Suit No. 515 Of 2008

Malla Vara Ganesh Apparao

APPELLANT

Vs

Kakarla Sitaramayya & Others

RESPONDENT

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**Date of Decision:** Jan. 25, 2024

**Acts Referred:**

- Code Of Civil Procedure, 1908 - Section 34, 96

**Hon'ble Judges:** V. Gopala Krishna Rao, J

**Bench:** Single Bench

**Advocate:** G L Nageswar Rao, Sreenivasa Rao Velivelu

**Final Decision:** Dismissed

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### **Judgement**

V.Gopala Krishna Rao, J

1. This Appeal, under Section 96 of the Code of Civil Procedure [for short '**the C.P.C.**'], is filed by the Appellant/plaintiff challenging the Decree and Judgment, dated 11.03.2008, in O.S.No.194 of 2006 passed by the learned X Additional District & Sessions Judge, (Fast Track Court), Visakhapatnam at Anakapalle [for short '**the trial Court**']. The Respondents herein are the defendants in the said Suit.

2. The Plaintiff filed the above said suit for passing Preliminary Decree against the defendants directing them to pay a sum of Rs.18,14,560/- being the principle and compound interest due on a mortgage deed dated 03.05.1995 from the defendants.

3. Both the parties in the Appeal will be referred to as they are arrayed before the trial Court.

4. The brief averments of the plaintiff, in O.S. No.194 of 2006, are as under:

The first defendant is the father of defendants 2 and 3 and they all have jointly borrowed an amount of Rs.90,000/- from the plaintiff on 03.05.1995 in cash at Anakapalle for their business investment and all the defendants executed registered mortgage deed in favour of plaintiff on the same day agreeing to repay the same with interest at 24% p.a. on monthly rests i.e., 5th of every month and further agreed to pay the principle amount within three years from the date of mortgage deed, failing which they further agreed to pay compound interest at 30% p.a. from the date of default of payment of interest. They mortgaged the plaint schedule property, which is in the name of first defendant. The defendants did not pay even single pie towards the principle or interest to the plaintiff inspite of demands by the plaintiff and they postponed the payment on some pretest or other. The plaintiff issued legal notice on 29.01.2006 demanding debt due under the mortgage deed. Defendants received the same but they did not give any reply or make any payment. Hence, the plaintiff is constrained to file the suit.

5. The defendants 1 to 3 filed common written statement by denying the averments of the plaint and further contended as follows:

The defendants never borrowed Rs.90,000/- from the plaintiff and executed registered mortgage deed for their business purpose. But the plaintiff approached the defendants for purchase of the schedule property at a cheaper price, for which they did not want to sell away the same to the plaintiff, due to that differences and ill feelings arose and the plaintiff bore grudge against the defendants and created the suit mortgage deed dated 03.05.1995 with the help of attestors and scribe who are his henchmen and filed this suit with false and baseless allegations with a view to grab the schedule property and prayed the Court to dismiss the suit.

6. Based on the above pleadings, the trial Court framed the following issues:

- (i) Whether the defendants 1 to 3 borrowed Rs.90,000/-from the plaintiff on 03.05.1995 and executed registered mortgage deed in his favour and the same is true, valid and binding on the defendants?**
- (ii) Whether the defendants are entitled to the benefits Act of 4 of 1938 and interest is to be scaled down?**
- (iii) Whether the plaintiff is entitled for preliminary decree for the suit amount as prayed for?**
- (iv) To what relief?**

7. During the course of trial in the trial Court, on behalf of the Plaintiff, PW1 to PW3 were examined and Ex.A1 to Ex.A6 were marked. On behalf of the Defendants DW1 was examined and Ex.B1 and Ex.B2 were marked.

8. After completion of the trial and on hearing the arguments of both sides, the trial Court partly decreed the Suit vide its judgment, dated 11.03.2008, against which the present appeal is preferred by the appellant/ plaintiff in the Suit, questioning the Decree and Judgment passed by the trial Court.

9. Heard Smt M.Sarada, learned counsel, representing Sri G.L.Nageswara Rao, learned counsel for appellant/plaintiff and Ms.Sireesha Rani Vallabhaneni, learned counsel, representing Sri Sreenivasa Rao Valivela, learned counsel for respondents/ defendants.

10. Having regard to the pleadings in the Suit and the findings recorded by the trial Court and in the light of rival contentions and submissions made on either side before this court, the following points would arise for determination:

**1. Whether the trial Court is justified in holding that the plaintiff is entitled suit claim of Rs.3,37,200/- with simple interest at 24% p.a. on the principle amount of Rs.90,000/- from 13.10.2006 till the date of decree and thereafter at 6% p.a. till the date of realization?**

**2. Whether the decree and judgment passed by the trial court needs any interference?**

**11. Point Nos.1 and 2:**

In order to prove the case of the plaintiff, the plaintiff relied on the evidence of PW1 to PW3 and got exhibited Ex.A1 to Ex.A6. PW1 is the plaintiff in the suit, PW2 is one of the attestor in the suit mortgage deed dated 03.05.1995 whereas PW3 is the scribe of the suit mortgage deed dated 03.05.1995. The suit is based on Ex.A1 registered mortgage deed dated 03.05.1995 said to have been executed by the defendants in favour of the plaintiff. In order to prove the case of the plaintiff, the plaintiff relied on the evidence of PW1. PW1 is none other than the plaintiff in the suit. His evidence testified about the borrowing of Rs.90,000/- from the plaintiff by the defendants by executing Ex.A1 registered mortgage deed in favour of the plaintiff. PW2 and PW3 are one of the attestors and scribe for Ex.A1 mortgage deed. Their evidence go to show about the borrowing of Rs.90,000/- and also execution of Ex.A1 mortgage deed on 03.05.1995 itself. In cross examination, nothing was elicited from PW1 to PW3 to discredit the testimony of PW1 to PW3. The evidence of PW1 to PW3 clearly goes to show about the borrowing of amount of Rs.90,000/- by the defendants and so also execution of Ex.A1 registered mortgage deed in favour of the plaintiff. Defendants 2 and 3 are none other than the sons of first defendant.

12. In order to prove the defense, the first defendant examined himself as DW1. DW1 admitted in his evidence that the suit mortgage property belongs to him. As per the own admissions of the first defendant i.e., DW1, he executed Ex.A1 mortgage deed in favour of plaintiff and agreed to pay interest at 24% p.a. only but not agreed for

payment of interest at 30% p.a. in default. In cross examination when elicited, the DW1 admits about execution of suit mortgage deed under Ex.A1 in favour of the plaintiff. Therefore, the evidence of PW1 to PW3 coupled with the own admissions of DW1 clearly proves the Ex.A1 registered mortgage debt.

13. It is noteworthy to note that, there can be no straight jacket formula for appreciation of oral evidence of witness. The credibility of witness is paramount consideration for the Court. The Court has to consider various parameters so as to appreciate the oral evidence on the point by testing the same on the touchstone of important yardsticks namely probabilities and surrounding circumstances among various other parameters. It is well settled proposition of law that admitted facts need not be proved and the admission of a party is best piece of evidence to decide the issue, the unequivocal admission of DW1 about the signatures on Ex.A1 registered mortgage deed is *ipse dixit*. For the foregoing reasons Ex.A1 registered mortgage deed is proved by the plaintiff.

14. As seen from the grounds of appeal, the appellant, who is the plaintiff in the suit filed this appeal by questioning the rate of interest of 24% simple interest instead of awarding compound interest by the trial Court. The material on record reveals that the defendants borrowed Rs.90,000/- from the plaintiff on 03.05.1995 and executed Ex.A1 registered mortgage deed. As per the recitals of Ex.A1, the defendants agreed to pay interest of 24% p.a. every month on the principle amount of Rs.90,000/- to the plaintiff, failing which, the defendants are liable to pay at the rate of 30% as a penal interest per annum. Admittedly there is no recital in Ex.A1 registered mortgage deed that the plaintiff is entitled to claim compound rate of interest with yearly rests. As seen from the material on record, the amount borrowed by the defendants is Rs.90,000/- and the interest claimed by the plaintiff is Rs.17,24,560/-, so undoubtedly the claiming of interest at 30% with yearly rests is usurious. By giving cogent reasons, the trial Court awarded rate of interest of 24% simple interest per annum. As stated supra, as per Ex.A1 registered mortgage deed, the defendants agreed to pay interest at 24% p.a. for every month on the principal amount of Rs.90,000/- to the plaintiff and there is no recital in the mortgage deed that the plaintiff is entitled compound interest.

15. As seen from the material on record, the date of borrowing of amount is 03.05.1995, the plaintiff filed the suit in the year 2006 after a lapse of more than 11 years. The plaintiff approached the trial Court after 11 years from the date of institution of Ex.A1 registered mortgage deed. Admittedly, no notice was given by the plaintiff in the aforesaid 11 years by demanding the defendants to pay the amount with interest. As stated supra, the principal amount under the mortgage deed is Rs.90,000/- only, but the plaintiff is claiming interest of an amount of Rs.17,24,560/. By giving cogent reasons, the trial Judge awarded 24% simple interest per annum to the appellant/plaintiff.

16. The learned counsel for the appellant/plaintiff placed a judgment of this Court in A.S.No.666 of 2000. In the aforesaid judgment, this Court held as follows:

In view of the foregoing decisions, it is clear that even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of interest from the date of the suit till the date of recovery of the amount.

This Court further held as follows:

In the present case, the contractual rate of interest is 30% p.a. compounded annually. The contract was drawn up in the year 1992 and the suit has been filed in the year 1997. Permitting the said rate of interest would result in the debt being multiplied. Further, the rate of 30% p.a is not being charged as a simple interest, but is being compounded on an annual basis. In the circumstances, keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially.

As stated supra, the grounds urged by the appellant in the grounds of appeal is that the Court below restricted the rate of interest at 24% simple instead of 30% compound interest which is contrary to law. It is settled law the use of word may "in Section 34 of Civil Procedure Code confers a discretion of the Court to award or not to award interest or to award interest at such rate as it deems fit". On appreciation of the entire material on record and so also on considering the facts and circumstances of the case and also on considering the recitals of Ex.A1 registered mortgage deed, the trial Court is justified in awarding the rate of interest at 24% simple interest per annum on the principle amount of Rs.90,000/-accordingly awarded interest at Rs.2,47,200/-, in addition to that the plaintiff is also entitled principal amount of Rs.90,000/- and the trial Court by giving cogent reasons passed a preliminary decree for an amount of Rs.3,37,200/- and also by granting interest at 24% p.a. on principal amount of Rs.90,000/- from the date of suit till the date of decree and thereafter 6% p.a. till the date of realization. The said decree and judgment is not at all challenged by the defendants. No cross appeal or no cross objections are filed by the defendants. For the foregoing reasons the decree and judgment passed by the trial Court is perfectly sustainable under law and it requires no interference.

17. In the result, the Appeal Suit is **dismissed** confirming the decree and Judgment dated 11.03.2008, in O.S.No.194 of 2006 passed by the learned X Additional District & Sessions Judge, (Fast Track Court), Visakhapatnam at Anakapalle. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed.