(1994) 06 AP CK 0001

Andhra Pradesh High Court

Case No: Appeal No''s. 1731 of 1982 and 969 of 1985

Bollini Bhogeswara Rao and Others		APPELLANT
	Vs	
Palakurthi Ramakrishna Rao		RESPONDENT

Date of Decision: June 24, 1994

Acts Referred:

- Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1987 - Section 3, 4(1)
- Evidence Act, 1872 - Section 114

Citation: (1994) 3 ALT 240

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: J. Chalameswar, in A.S. No. 1731/82 and J. Chamanthi, in A.S. No. 969/85, for the Appellant; J. Chalameswar in A.S. No. 969/85 and J. Chamanthi in A.S. No. 1731/82, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Somasekhara, J.
These two appeals arise out of the judgment and decree in O.S.No. 79 of 1979 on the file of the learned Subordinate Judge, Machilipatnam dated 24-3-1982.

2. For the sake of convenience, the parties will be referred to as the plaintiff and defendants as arrayed in the trial Court.

3. A.S.No.969 of 1985 was filed by the plaintiff whereas A.S.No. 1731 of 1982 was filed by the defendants. Since the two appeals involve common questions of law and fact, they are heard together and being disposed of by means of this common judgment.

4. The suit O.S.No. 79 of 1979 was filed by the plaintiff for the recovery of Rs. 30,880/- on the foot of a promissory note dated 27-6-1973 said to have been

executed by the defendants and further based on an equitable mortgage said to have been created by the defendants by deposit of title deeds. The defendants contested the suit. Therefore, during the trial, the plaintiff examined himself as P.W. 1 and examined a witness as P.W.2 whereas the 1st defendant examined himself as D.W.I and examined a witness as D.W.2. The parties have also produced documentary evidence. Exs. A-l to A-16 were marked for the plaintiff whereas Exs.B-1 to B-11 were marked for the defendants.

5. The learned Sub-Judge, after hearing both the sides and on the basis of the 35 material produced before him decreed the suit for recovery of Rs. 30,880/- with costs of Rs. 3611-75 against the 1st defendant personally and as against the joint family properties in the hands of defendants 2 and 3 with interest on Rs. 15,000/- at 6% per annum and the suit was dismissed regarding the relief of a preliminary decree on the basis of equitable mortgage of the plaint schedule property. That is how both the parties to the suit have filed the appeals stated above.

6. The admitted facts may be recorded in brief: Defendants 2 and 3 are the sons of the 1st defendant. The defendants are said to be the members of the Hindu Undivided Family and the 1st defendant is the Manager. The 1st defendant borrowed a sum of Rs. 16,000/- from the plaintiff on 27-6-1973 and executed the suit promissory note with even date agreeing to repay the same with interest at the rate of 12% per annum with yearly rests. It is alleged that on the date of borrowing, the 1st defendant agreed to give the plaint schedule immovable property as security towards the loan amount covered under the promissory note and accordingly he is alleged to have deposited the title deeds with the plaintiff at Machilipatnam. Therefore, it is alleged that the 1st defendant created an equitable mortgage in regard to the plaint schedule property by deposit of title deeds. It is alleged that in spite of demand the 1st defendant did not pay the amount to the plaintiff and therefore, a registered notice was issued and in answer to which the 1st defendant made a payment of Rs. 500/- on 24-6-76 as a part payment and made an endorsement on the suit promissory note. It is alleged that in spite of repeated demands thereafter both oral and by registered notices the first defendant did not pay the amount as claimed in the notice. It is alleged that defendants 2 and 3 being the members of the joint family and due to doctrine of pious obligation are liable to pay the suit debt. It is further alleged that the defendants are not entitled to the benefits of Act IV of 1938 or Act 7 of 1977.

7. The defendants resisted the suit. The 1st defendant filed a separate written statement and defendants 2 and 3 together filed a written statement. In his written statement, the 1st defendant admitted the execution of the suit promissory note and the passing of the consideration of Rs. 15,000/-. He admitted the execution of the suit promissory note but pleaded that he did not receive the entire amount of consideration of Rs. 16,000/-. It appears, according to him, that there were khata dealings between him and the plaintiff and after settling the account, including the

interest an amount of Rs. 16,000/- were arrived at and an amount of Rs. 5,500/- was added as interest at the rate of 12% per annum yearly compounded and thus the suit promissory note was obtained. Therefore, the 1st defendant contended that he did not receive the entire amount of Rs. 16,000/-. It is contended by the 1st defendant that in view of the benefits under Act IV of 1938 the interest stipulated in the suit promissory note should be scaled down. It is further contended that there is no valid cons ideration for the suit promissory note. In regard to the equitable mortgage of the plaint schedule property by deposit of title deeds, the 1st defendant has not only denied it but also contended that the plaintiff managed to get possession of the title deeds by representing that he would verify the title deeds of the 1st defendant in regard to the plaint schedule property and therefore, he had to produce them before the plaintiff and not by way of deposit of title deeds. It appears that when the 1st defendant made a part-payment of Rs. 500/- the plaintiff insisted and obtained a letter from the 1st defendant as if the title deeds have been given to him as security. It is contended that the said letter dated 24-6-1976 is brought out by collusion, and undue pressure on the 1st defendant and therefore, it is contended that such a document is not valid and cannot have any legal effect. It is further contended that the suit is not maintainable on the basis of the alleged equitable mortgage. The 1st defendant has pleaded that he is a small farmer and therefore, he is entitled to the benefits of Act 7 of 1977. He has pleaded that he owns Ac. 5.13 cents of land in Velanjeri village in Tiruthani Taluk, Chengulput district in Tamil Nadu. It is further pleaded by him that defendants 2 and 3 have got an undivided 2 /3rd share in the property that his principal means of livelihood is agriculture from 1973, that he is receiving the rents on his house which is situated within the municipal limits of Machilipatnam and therefore, he is not liable to pay any amount to the plaintiff as claimed in the suit.

8. Defendants 2 and 3 in their written statement contended that they have learnt that the suit promissory note is not supported by consideration, that there was no deposit of title deed s in regard to the plaint schedule property, that the plaintiff managed to succeed in getting possession of the title deeds as pleaded by the 1st defendant, that the 1st defendant had no authority or power to enter into any mortgage transaction with the plaintiff in regard to their shares in the plaint schedule properties, that the alleged equitable mortgage is not valid and binding on them as they have got 2/3rd share in the plaint schedule property and that these defendants are also entitled to the benefits of Act 7 of 1977. All the defendants pleaded that the suit is liable to be dismissed with costs. 9. The following issues were settled in the suit:-

1. Whether the suit promissory note is not supported by consideration to an extent of Rs. 5,500/-?

2. Whether the 1st defendant did not execute equitable mortgage by deposit of title deeds in respect of schedule property to secure the promissiory note debt?

3. Whether the defendants are agriculturists ?

4. Whether the defendants are small farmers ?

5. If the defendants are small farmers - Whether the defendants are not entitled to the benefit of Act 7 of 1977 ?

6. Whether the interest on suit debt is liable to be scaled down in accordance with M.A.R.Act ?

7. Whether defendants 2 and 3 are not liable for the suit debt ?

8. To what relief?

10. The learned Sub-Judge held issued No. 1 against the defendants, held issue No. 2 against the plaintiff, held issue Nos. 3 to 7against the defendants and consequently decreed the suit for recovery of the amount claimed by the plaintiff from the defendants.

11. On behalf of the respondents, who were defendants in the suit, it was reported before this Court that the entire amount has been recovered by the appellant-plaintiff by executing the decree. In paragraph-5 of the counter affidavit filed by the 1st respondent-1st defendant, the appellants-defendants have pleaded payments on several occasions and as a whole the payment of the decree amount. It is reported that the appellant in A.S.No. 969/85 and the respondent in A.S.No. 1731/82 has executed the decree and recovered the decretal amount. In view of that, it is conceded by both the sides that A.S.No.969/85 has become infructuous. Therefore, there is no need to formulate the contentions or the grounds of appeal raised in this appeal and they need not be considered.

12. Now only A.S.No. 1731 of 1982 has remained for consideration before this Court. The grounds of appeal have been formulated in brief: The learned Sub-Judge erred in holding that the 1st defendant failed to prove that is holding any land in spite of the documents Exs.B-2 to B-9 showing possession of the agricultural land with the 1st defendant, that the learned Sub-Judge erred in holding that the defendants are not entitled to the benefits of Act 7 of 1977 in spite of the documents produced by them, that the learned Sub-Judge erred in not observing that the burden of proof shifted to the plaintiff to prove that the defendants are entitled to the benefits of the Act and that the plaintiff had failed to discharge such a burden, that the learned Sub-Judge failed to observe that the explanation given by the plaintiff for not discharging the burden was not satisfied, that the learned Subordinate Judge erred in drawing adverse inference against the 1st defendant for not producing cist receipts and for not examining his parties and that the learned Sub-Judge erred in decreeing the suit as against the defendants for recovery of the amount claimed by the plaintiff. The appellants-defendants have sought for setting aside the judgment and decree passed by the learned Sub-Judge and to dismiss the suit with costs.

13. The following points arise for consideration in this appeal:

1. Whether the appreciation of evidence by the learned Sub-Judge in regard to Issue No. 1 is correct ?

2. Whether the learned Munsif was justified in recording the findings on issues 3 to 6 against the defendants ?

3. (a) Whether the findings of any of the issues deserve to be set aside or modified ?

(b) If so, which issue and to what extent ?

4. Whether the jugment and decree passed by the learned Subordinate Judge are liable to be set aside ?

5. To what relief ?

14. Point No. 1:- The execution of the suit pronote is admitted. Only a part consideration to an extent of Rs. 5,500-00 is challenged. The contention of the defendants is that the suit pronote was obtained in discharge of antecedent debts and while doing so, Rs. 6,000/- was added extra. It is in evidence and admission that the 1st defendant borrowed Rs. 3,000/- on 16-8-69 and Rs. 9,000/ - on 19-8-1969 from the father of the plaintiff and in all he executed a pronote for Rs. 12,000/-and another pronote he executed on 29-6-90 borrowing Rs. 13,000/ - in favour of the father of the plaintiff; the payments by him were given credit towards the pronote debts and ultimately the suit pronote was taken for Rs. 16,000/- by calculating the earlier dues and interest although he was not paid the full consideration. The learned Sub-Judge while examining the evidence in the case and the conduct of the parties, has negatived the contention of the defence about non-supporting of the suit pronote with the part consideration of Rs. 5,500/-. During the exchange of notices between the parties the defendants did not come out with such a theory. Even the theory of executing two pronotes at different times in the manner stated above, is found to be not true. The defendants did not even reply the demand notices of the plaintiff issued at least four times. Defendant No. l is the scribe of the suit pronote and he knew the contents of the same and it can not lie in the mouth to say some thing which is against his own authorship. As rightly pointed out by the learned Sub-Judge, the burden of proving want of consideration or part consideration for a pronote in view of the presumption in law, has not been satisfactorily discharged by the defendants. Therefore, not only the appreciation of evidence by the learned Sub-Judge in regard to Issue No. 1 but also the finding thereon is totally justified.

15. The relationship between the parties is not in dispute. Defendants 2 and 3 are the sons of defendant No. 1. They constitute a Hindu Coparcenery Joint Family of which defendant No. 1 is the Manager. Since the suit pronote was executed to discharge the antecedent debt, admittedly and since there is no plea or proof of Avyavaharika debt etc., the debt under the suit pronote is binding not only on

defendant No. 1 but also on defendants 1 and 2 (sic. 2 and 3), as it can be taken that the debt was for the family necessity and due to pious obligation imposed on defendants 2 and 3 under Hindu Law. The learned Sub-Judge has succinctly and satisfactorily dealt with Issue No. 7 and come to the correct conclusion affirmatively. Regarding the equitable mortgage created by defendant No. 1 in regard to the family property by deposit of title deeds, the learned Sub-Judge has held in the affirmative while dealing with Issue No. 2. They are to be found in paras 9 to 18. The learned Sub-Judge has dealt with the matter very elaborately supported by materials and it can be safely said to be unexceptionable. There are no reasons to disagree with him in this regard. At the same time, the finding on issue No. 2 which is challenged by the Plaintiff in A.S.No. 969/85 was not pursued at the time of arguments since the decree in question in A.S.No. 1731/82 for recovery of the money has been executed to the full satisfaction and therefore, the learned Advocate for the appellant in A.S. No. 969/85 who is the respondent in A.S. No.l731/82 submitted that his appeal has become infructuous and therefore, it can be taken as not pressed. Therefore, even on that account, the correctness or otherwise of the finding on Issue No. 2 does not require to be either examined or varied.

16. Point Nos, 2 and 3:- The learned Sub-Judge (Mr. P.B.P. Krishnam Raju) had dealt with Issues 3 to 6 together and recorded the findings against the defendants as they involve common questions of law and fact to have the common result. It is to be found in paras 19 to 22. The subject matter of these issues concern the plea raised by the defendants that they are the debtors within the meaning of Section 3(i) of the Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 (Act 7 of 1977) incorporated in Andhra Pradesh Agricultural Indebtedness (Relief) Act (Act 45 of 1987), to be called as ''the Act'' hereinafter and therefore, the suit debt gets discharged by virtue of Section 4(1) of the Act. The learned Sub-Judge rejected the plea and affirmed their liability to pay the suit debt as a whole. In fact Mr. J. Chalameswar, learned Advocate for the defendants made it emphatic that in this appeal he is mainly concerned with the plea stated above whereby the suit debt would be totally discharged as against the defendants by virtue of Section 4(1) of the Act and the findings on other issues are being not seriously pressed. The learned Advocate has postulated two segments of his contentions forming part of the plea viz., (1) the defendants are the debtors within the meaning of Section 3(j) of the Act and (2) atleast defendant No. 1 is a debtor within the meaning of the said provision and therefore, the learned Sub-Judge ought to have dismissed the suit. Smt. J. Chamanthi, learned Advocate for the plaintiff has repelled the above contentions and has totally supported the finding of the learned Sub-Judge against the defendants.

17. It is found from the admissions and the evidence in the case that the parents of defendant No. 1 originally belonged to Velenjali village, Tiruttani taluk, Chengalput district in Tamil Nadu state. Defendant No. 1 is the only son to his parents. He got

Ac.10.30 of land from his parents. The land is said to be a dry land covered by R.S.No.7/2. The defendants pleaded that they sold away a portion of the said land and now only they are having about Ac. 5.13 of land. Defendant No. 1 also specifically pleaded that having stopped his business, he has totally concentrated on the cultivation of the land in his village Velenjili and his principal source of income is only from the lands and nothing else. The learned Sub-Judge on appreciation of the evidence has found that the family of the defendants owns Ac. 10.30 of land and the theory of selling away a portion of the same and retaining only Ac. 5.13 has no basis. He has also found that the defendants are not agriculturists and on the other hand, they are the businessmen and contractors and their principal source of income is not proved to be from the lands which they are holding and therefore, they are not entitled to the benefit under the provisions of the Act for discharging the suit debt as against them. Exs.B-2 to B-7, the Adangals for the Faslies 1382 to 1389 (Exs.B-8 & B-9 are the translations) show that defendant No. 1 is still in possession of the entire extent of Ac. 10.30. The 1st defendant is an Income Tax payer. He has not produced the accounts. No document is produced in proof of the sale of a portion of the land. No document is produced to show that either defendant No. 1 or the other defendants are cultivating the said land at any time. Defendants 2 and 3 are now found to be businessmen doing contract work having phone etc., and therefore, as a whole the learned Sub-Judge found that the plea of defendants as above, is without substance. On a proper assessment of the evidence, the conduct of the parties and the circumstances of this case, there appears to be no reason to say anything different from what the learned Sub-Judge has said regarding these aspects. In substance, it can be concluded that the defendants have neither proved that they are cultivating the land covered by R.S.No. 7/2 of Velenjali village in Tamil Nadu State, nor the principal source of their income is from the said land.

18. Now coming to the legal aspects in regard to the said plea of the defendants, the provisions of the Act muchless Section 4(1) of the Act comes to their rescue, because they are not found to be the debtors within the meaning of Section 3(j) of the Act. The learned Advocate for the plaintiff has pointed out that the defendants can never be the debtors within the meaning of Section 3(j) of the Act whereas the learned Advocate for them has pleaded that they being the small farmers, would squarely come within the definition of Section 3(j) of the Act. There remains no doubt that if the defendants answer that description of ''small farmer'', they should come within the definition. ''Small farmer'' is defined in Section 3(t) of the Act the repetition of which would be useful to read us hereunder:

""Small farmer" means a person whose principal means of livelihood is income derived from agricultural land and who holds and personally cultivates, or who cultivates as a tenant or share-cropper or mortgagee with possession, agricultural land which does not exceed in extent,-

(i) in the case of persons other than the members of the Scheduled Tribes, one hectare, if it is wet, or two hectares, if it is dry;

(ii) in the case of the members of the Scheduled Tribes, two hectares, if it is wet, or four hectares, if it is dry; but does not include any person whose annual household income, other than from agriculture exceeds one thousand and two hundred rupees in any two years within three years immediately preceding the commencement of this Act.

Explanation:- For the purposes of computing the extent of land under this clause, one hectare of wet land shall be deemed to be equal to two hectares of dry land."

In a precedent rendered by a Division Bench of our High Court in A. Arumuga Nattar v. N. Rajendra Nattar, 1990(1) ALT 253 (D.B.) the implication of the above provision has been briefly recorded as follows:-

".....a person can claim to be a small farmer within the meaning of the Act only if (a) his principal means of livelihood is income derived from agricultural lands, (b) he holds and cultivates the lands personally either as owner or as tenant or share-cropper or mortgagee with possession and (c) the lands are within the specified limit and assessed to land revenue by the Government of Andhra Pradesh."

The evidence in the case which is properly assessed by the learned Sub-Judge cannot bring the defendants within any of the three ingredients stated above to bring them within the meaning of a ''small farmer'' under the provision, because there is nothing on record to hold that the principal means of the defendants'' livelihood is the income derived from the agricultural land situated in Tamil Nadu State, that they cultivated the lands personally as owners or that they hold or cultivate any land which is within the specified limit and assessed to land revenue. On the other hand, the land of the defendants situate in Velenjili village, Tiruttani Taluk, Chengalput District in Tamil Nadu State. It is neither the plea of the defendants nor proved that they hold or cultivate any land which is situate within the State of Andhra Pradesh. The learned Advocate for the defendants seriously contended that there is nothing to indicate in the above said provision that a ''small farmer'' should hold or cultivate the land situated within the limits of Andhra Pradesh only and as long as they satisfy the requirements of the provision, they can get the benefit of Selection 4(1) of the Act. This question has been authoritatively and conclusively considered and I decided in Arumuga Nattar''s case, 1990(1) ALT 253 to the effect that in order to get the benefit of the said provision, the lands should be within the specified limit and assessed to land revenue by the Government of Andhra Pradesh. In that case, the lands of which the person claimed the benefit as a debtor, situated in Tamil Nadu State as in the present case and such a plea was rejected. In Arumuga Nattar''s case (1 supra) this question in regard to the situation of the lands of a person claiming to be a small farmer for the purpose

of the ''debtor'' and the relief u/s 4(1)(a) of the Act has been considered in para-9, to hold in substance that the agricultural land within the meaning of Section 3(c) of the Act should be the one which is assessed by the Government of Andhra Pradesh to land revenue meaning thereby, that it must be assessed by the State Government of Andhra Pradesh and not by any other Government. Although the question was dealt with fully in the light of the provisions of the Act, this Court feels that the relevant provisions of the Act requires to be further elaborated by using the very provisions to remove all possible ambiguities which may be unnecessarily raised in future in this regard.

19. Both from the statements of Objects and Reasons and the Preamble of the Act, it is certain that the Act is intended to provide relief from indebtedness to agricultural labourers, rural artisans and small farmers in the State of Andhra Pradesh. In other words, the Act is meant to benefit such persons in the State of Andhra Pradesh and not in any other State. The expressions ''State'', ''State Government'', ''Government'', ''Andhra Pradesh'', ''State of Andhra Pradesh'' ''Government of Andhra Pradesh'' ''Central Government'' and ''any State'' are specifically and pointedly used in various provisions of the Act. In the Statement of Objects and Reasons, the expressions used are "State Government", "Andhra Pradesh" and "Government". In the Preamble, the expression used is "State of Andhra Pradesh". In sub-clauses (1) and (2) of Section 1, the expressions used are "Andhra Pradesh" and "State of Andhra Pradesh". In Section 3(f), the expressions used are "Central Government" and "State Government". In Section 3(g), the expressions are "Andhra Pradesh Cooperative Societies". In Section3(h) the expressions are "Central Government", ""any State Government", "State Government", "any Government Company" etc. In Section 3 (k), 3(q), 3(u), Section 8, Section 16 and Section 18(1) the expression is "Government". In Section 3(o) the expression is ''Andhra Pradesh Government". In Section 18(1), the expression is "Andhra Pradesh Gazette" and in Section 18(2) the expression is "State Legislature". Therefore, it follows without any doubt that "State" means, "State of Andhra Pradesh" and "Government" means, "Government of Andhra Pradesh" and "any State" means, "the State other than Andhra Pradesh". That is how in Arumuga Nattar''s case (1 supra) while dealing with the meaning and functioning of the ''State Government'' etc., under the Act, the ''Government'' is meant to be the "State Government of Andhra Pradesh" and that is also categoric and specific in Section 3(m) of the Act that the "Government" means "the State Government" and therefore, if cannot be any other Government. Thus, the assessment of the agricultural land by the Government should be by the Government of Andhra Pradesh and cannot be by any other Government, to make it an agricultural land within the meaning of Section3(c) of the Act regarding which a small farmer can fall back upon the principal source of income, personal cultivation etc., to come himself within the meaning of "debtor" u/s 3(j) of the Act. With this minute probing into the expressions used in the Act, we are reminded of the cannons of interpretation of statute. The most rudimental rule of interpretation of a statute is that no part of it is

read in isolation, and it should be read and interpreted as a whole, so as to derive the true meaning and purport of all its segments so that the true intention of the legislature may be understood and its full objective is achieved. Therefore, a simple analysis of the provisions of the Act leaves no ambiguity or doubt of its extrovert and introvert fervour intention to benefit the resident debtors of the State of Andhra Pradesh and not of any other State. In this case, the defendant No. 1 being the resident of Tamil Nadu State and defendants, not being small farmers, having no land within the State of Andhra Pradesh, cannot get the benefit of Section 4(1) of the Act.

20. The learned Advocate for the defendants incidentally contended that even assuming that the benefit of Section 4(1) of the Act cannot be extended to defendants 2 and 3, the share of defendant No. 1 or defendants 2 and 3 in the joint family agricultural land should be taken into consideration to quantify the same for the purpose of definition of ''small farmer'' and the ''debtor'' as above to extend the provisions of Section 4(1) of the Act. For the reasons stated above, such a contention loses its relevancy or the significance. The reliance of the learned Advocate for the defendants on a precedent of our High Court in P. Varahalamma Vs. Repeti Ramanna and Others, . in support of such a contention thus gains no strength. Consequently, the plea and the contentions raised by the learned Advocate for the defendants deserve to be rejected.

21. Point No. 4:- As a whole, the findings, the judgment and decree of the learned Sub-Judge deserve to be confirmed resulting in the dismissal of the appeal.

22. Point No. 5:- In the result, both the appeals are dismissed. Since the decree in favour of the plaintiff is already executed and the amount decreed thereunder has already been recovered, there is no need to pass any order as to costs in the appeals. The parties shall bear their respective costs.