

(1999) 06 AP CK 0009
Andhra Pradesh High Court
Case No: AS No. 3021 of 1985

S. Venkatarami Reddy

APPELLANT

Vs

Manchiraju Subba Rao and
others

RESPONDENT

Date of Decision: June 16, 1999

Acts Referred:

- Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 - Section 3, 4

Citation: (1999) 5 ALD 191 : (1999) 4 ALT 737

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: Mr. S. Suryaprakasa Rao, for the Appellant; Mr. D.R. Varma (amicus curiae), for the Respondent

Judgement

1. This appeal is preferred by the plaintiff against the judgment and decree dated 21-06-1985 in O.S.No.44 of 1983 on the file of Subordinate Judge, Kandukur, wherein the suit filed by the plaintiff for recovery of Rs. 37,779.50 ps. with interest basing on the promissory note dated 14-08-1980 was partly decreed for a sum of Rs. 11,189.24 ps. by giving benefit under Act IV of 1938 with future interest at 6% per annum.

2. The case of the plaintiff is that all the defendants borrowed a sum of Rs.24,500/-on 14-08-1980 from the plaintiff and executed the promissory note on the same day for valid consideration agreeing to repay the same with interest at 18% per annum on demand and inspite of repeated demands made by the plaintiff the defendants have not paid any amount and, therefore, he has got issued a notice dated 26-07-1983-Ex.A2 and the defendants who received the same sent a reply with false and untenable allegations. Therefore, the suit is filed to recover the suit claim with costs and subsequent interest.

3. The second defendant filed written statement which was adopted by defendants 1 and 2. It is admitted that the defendants have executed promissory note on

24-08-1980 in favour of the plaintiff but the amount of Rs. 24,500/- was denied. The suit promissory note came into existence on the existing debts of Rs.2,000/- on 9-9-1971, Rs.2,400/- on 12-09-1971 and Rs.1,000/- on 20-09-1971 from the mother of the plaintiff and executed the three promissory notes on the respective dates agreeing to pay the same with interest at the rate of 24% per annum. Since the said debts were time barred the plaintiff approached defendant No.2 and demanded for payment of entire amount due and proposed that all the defendants should execute a fresh promissory note for the amount due with interest at 24% per annum as calculated. The suit promissory note is a renewal of the earlier three promissory notes and, therefore, no such consideration of Rs.24,500/- was paid. The defendants have also referred several other debts and the suits filed against them to show that they are indebted to various other persons.

4. The lower Court has framed the following issues.

(1) Whether the suit promissory note is executed in renewal of three prior pronotes executed by the 2nd defendant in favour of the mother of the plaintiff, if so what is the interest to be scaled down as per the Act IV of 1938 from the dates of original borrowing?

(2) To what relief?

5. In support of the plaintiff PW1 was examined and Exs.A1 to A3 were marked and in support of the defendants DWs.1 and 2 and CWs.1 to 3 were examined and Exs.B1 to B11 were marked.

6. On appreciation of the evidence, the trial Court decreed the suit only for a sum of Rs.11,189.24ps. by giving benefit of Act IV of 1938 i.e., taking into account the earlier debts and holding that the suit promissory note was only a renewal of the earlier three promissory notes. It is found from the record that the attestors of either the suit promissory notes and that of the earlier promissory notes were examined by the parties.

7. Sri Surya Prakasa Rao, learned Counsel for the appellant has contended that the trial Court has erroneously upheld Act IV of 1938 in the absence of any specific pleading and the evidence to this effect to show that the defendants are agriculturists and, in fact, admittedly the defendants are possessing a rice mill which has been mentioned in the plaint cause title. Therefore, in the absence of such pleading and any evidence to show that the defendants come within the definition of agriculturist as contemplated u/s 3(ii) of the A.P. (Andhra Area) Agriculturists Relief Act, 1938 (for short "the Act") the trial Court especially in framing the issue and giving benefit thereunder is totally erroneous.

8. The respondents have not appeared through Counsel or in person even though notices were served on them. Therefore, this Court has appointed Sri D.R. Varma, learned Advocate, as amicus curiae to assist the Court.

9. The evidence of P.Ws. 1 to 2 show that Ex.A1 was accepted and the consideration was paid thereunder; whereas DW1 sought to prove the earlier transactions. D.Ws. 4 and 6 claim that the suit promissory note and the earlier three promissory notes are admittedly in the name of the mother of the plaintiff. It is evident from the pleadings and the written statement that no specific plea has been taken for claiming the benefit under Act IV of 1938 as no details of the agricultural lands owned or possessed by the defendants are given. In spite of the same the tower Court has framed the issue which straightaway takes in the question of the applicability of the said Act and the benefit to be given. Even in the evidence of D.W.1 no particulars or details are given and no documents are also filed to show the owning or possessing the agricultural lands. Prima facie in the absence of such pleadings or the evidence from the defendants side it becomes very difficult to consider the very question as to the benefit to be given under the Act IV of 1938.

10. It has been held by this Court in [Divvela Visweswara Rao Vs. Rayapudi Satyanarayana](#), that the burden lies in the first instance on defendant to prove that he is an agriculturist and thereupon the burden shifts to the plaintiffs to prove that the defendant is not owning and possessing agricultural lands. In view of the said principle laid down in the said decision it is but necessary to properly plead and lead evidence to show that as to why the defendants should be given the benefit under Act IV of 1938. In the absence of very issue as has been framed and the benefit given thereunder by applying the said Act is totally baseless.

11. This Court in J.L Sastry v. K. Kotiswamy, 1996 (2) ALD 948, while considering the very same issue has pointed out the necessity of proving all the principal amounts and had held that for proof of the party being an agriculturist the scaling down principle can be attracted.

12. In that case this Court has considered the principle and the Rules thereof and ultimately accepted the sum given; whereas in this case the basic issue is whether the defendants are agriculturists or not. Even though it was sought to be argued on behalf of the plaintiff that there is no renewal at all, even in this regard there is no evidence to link the earlier transactions to the suit. The entire evidence-as already recorded is sufficient to consider the said question, if it is to be held that the defendants are agriculturists and entitled the benefit under Act IV of 1938, the evidence is necessary.

13. In view of the above, it is necessary to frame an appropriate issue and take all steps as is necessary and hold an enquiry as to whether the defendants are agriculturists or not. Even otherwise, admittedly, the fact that the defendants are owning rice mill is another circumstance which casts some doubt as to whether they can claim as agriculturists. Therefore, this question needs proper enquiry.

14. In view of the above circumstances, the matter is remanded to the lower Court with a direction to frame a specific issue as to whether the defendants are

agriculturists or not and come within the definition u/s 3(ii) of the Act and consider the same after holding an enquiry by affording an opportunity to both the parties to lead evidence in this regard.

15. With the above direction, the appeal is allowed. However, there shall be no order as to costs.

16. The Court Fee paid on the Memorandum of appeal be refunded to the appellant.

17. This Court places on record the valuable assistance rendered by Sri D. R. Varma, learned Advocate, as amicus curiae.