

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.1015 of 1998

JUDGMENT:

The unsuccessful plaintiff had filed this appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 26.06.1998 of the learned District Judge, East Godavari at Rajahmundry passed in AS.No.32 of 1994 whereby the learned District Judge while dismissing the appeal had confirmed the decree and judgment dated 15.04.1994 of the learned Principal District Munsif, Rajahmundry in OS.No.821 of 1990.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff, for brevity) and the learned counsel for the 3rd respondent/3rd defendant ('the 3rd defendant', for brevity). The respondents 1 and 2, who are the defendants 1 and 2 had died during the pendency of the second appeal and the appeal is being prosecuted against the 3rd defendant only. I have perused the material record.

3. At the time of admission of this second appeal, this Court has taken note of the following substantial questions of law mentioned in ground no.2.

a) The findings of the appellate Court that the original debtor was a small farmer on the date of the contracting the debt i.e., 02.01.1985 was sufficient to get the benefits under the Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1987 when admittedly she was not small farmer on the date of the commencement of the Act i.e., 01-01-1988 whether sustainable? Whether the observations of the learned District Judge are not contrary to Section 3(1) of the Andhra Pradesh Agricultural Indebted (Relief) Act, 1987 and the judgment of the Division Bench of the Hon'ble Court in M. Pullaiah v. B. Thimma Reddy reported in 1989 (1) A.L.T. Page No.86?

b) Whether the finding of the Courts below that the property to which the 3rd respondent became entitled under the registered settlement deed exhibit A7 was not liable to discharge the debt of the donor, whether sustainable in the light of Section 128 of the Transfer of Property Act?

c) Whether the estate of the deceased debtor in the hands of the 3rd respondent was not liable to satisfy the debt of the debtor?

d) The findings of the Courts below that the Ex.A-2 endorsement was not that of the deceased debtor by comparing her thumb impression by the Court without referring the same to an expert whether sustainable?

[reproduced verbatim]

4. To answer the substantial questions and adjudicate the *lis*, it is necessary to refer to the pleadings.

4.1 The plaintiff had brought the aforementioned suit against the defendants 1 to 3 for recovery of Rs.21,750/- with subsequent interest and costs *inter alia* alleging as follows: - 'The mother of the defendants 1 and 2 by name Adabala Satyvathi had borrowed from the plaintiff an amount of Rs.9,000/- on 02.01.1985 for the purpose of meeting her medical expenditure and had executed exhibit A1 promissory note on the said date agreeing to repay the said sum with interest at the rate of 24% per annum simple either to the plaintiff or her order on demand. She had later paid Rs.100/- on 14.12.1987 and made exhibit A2 part payment endorsement. Subsequently, she did not pay any amount despite repeated demands made by the plaintiff. Later, she had died leaving behind her the defendants 1 and 2. She had settled her immovable property in an extent of Ac.2.10 cents on the 3rd defendant under a registered settlement deed dated 06.05.1986 i.e., under the original of exhibit A7; and, the estate of the deceased-A.Satyavathi had devolved upon the defendants 1 to 3; hence, all the defendants are liable to pay the suit debt to the plaintiff with interest and costs.'

4.2 The 1st defendant had remained ex parte. The defendants 2 and 3 resisted the suit by filing separate written statements. The 2nd defendant had denied the averments in the plaint that her mother borrowed the amount and had executed the suit promissory note and had *inter alia* pleaded that movable properties of a meagre value of Rs.1,000/- only came into her hands after the death of her mother Satyvathi and that as the estate of her deceased mother did not come into her hands, the plaintiff has no cause of

action against her and that her mother, late Satyavathi, who was the owner and possessor of Ac.2.10 cents of land at the time of the alleged suit debt was personally getting it cultivated and that therefore, the said Satyavathi is a small farmer and is entitled to the benefits of Act 7 of 1977; and hence, the suit is liable to be dismissed.

4.3 The 3rd defendant having denied the plaint averments that Satyavathi had borrowed the amount and had executed the suit promissory note in favour of the plaintiff as alleged in the plaint had *inter alia* contended that she is not liable to discharge the suit debt as the defendants 1 and 2 are the legal heirs of Satyavathi and that the estate of Satyavathi had devolved not on upon her, but, on the defendants 1 and 2 and that late Satyavathi owned and possessed Ac.2.10 cents of land and that, therefore, she is a small farmer and hence, the suit debt stood abated in view of the provisions of Act 7 of 1977 and that, therefore, the suit is liable to be dismissed.

4.4 Having regard to the pleadings, the trial Court had framed the following issues for trial.

- 1. Whether the suit pronote is true, valid and binding on the defendants?**
- 2. Whether the estate of Satyavathi was devolved on the defendants?**
- 3. Whether the defendants are entitled to the benefits of Act 7/77 and Act 4/38?**

[Reproduced verbatim]

4.5 At trial, PWs1 to 3 were examined and exhibits A1 to A7 were marked on the side of the plaintiff. On behalf of the defendants, the 3rd defendant and a supporting witness were examined as DWs1 and 2. No documentary evidence was adduced on her side.

4.6 On merits the trial Court had dismissed the suit of the plaintiff. Aggrieved of the decree and the judgment of the trial court, the plaintiff had preferred the first appeal. In the first appeal preferred by the plaintiff, the Court of first appeal had framed the following points for determination.

- 1. Whether the endorsement exhibit A2 dated 14.12.1987 is valid and binding?**
- 2. Whether the defendants are entitled to the relief provided under Act 7 of 1977?**
- 3. Whether the defendants are entitled to the benefits provided under Act 4 of 1938?**
- 4. Whether the 3rd defendant being a donee of the landed properties of late Satyavathi is liable to discharge the debt from out of the properties settled on her?**

4.7 The Court of first appeal having held against the plaintiffs on points nos.1, 2 and 4 had dismissed the appeal confirming the decree and judgment of the trial Court. Therefore, the aggrieved plaintiff is before this Court.

5. The learned counsel for the plaintiff would contend that the original borrower Satyavathi having paid Rs.100/- on 14.12.1987 had acknowledged the suit debt and made an endorsement under exhibit A2 on the reverse of exhibit A1 promissory note and that the present suit was brought admittedly within three years from the date of the said acknowledgement and that, therefore, the suit is well within the time allowed under law and that the suit is not barred by law of limitation as erroneously held by the Courts below. He would further contend that the plaintiff had examined her husband as PW1 and also an attester-PW3, who had attested the said endorsement having witnessed the payment of Rs.100/- by the promisor to the promisee, and that the Courts below had wrongly discarded his evidence merely on the ground that he is a colleague employee of PW1 and that the Courts below had erroneously relied upon the evidence of DW2, the scribe of exhibit A2 endorsement, and that the Courts below without properly appreciating the oral evidence of the witnesses brought on record in regard to the truth and validity of the exhibit A2-endorsement had erred in holding that the said endorsement is not true and that the suit promissory note is barred by law of limitation.

6. On the other hand, the learned counsel for the 3rd defendant had supported the concurrent findings of the Courts below stating that the Courts below had rightly appreciated the evidence; and, had placed reliance on a

decision in **Tapas Kumar Samanta v. Sarbani Sen and another**^[1] in support of the proposition that the decisions of the Courts below which are based on concurrent findings and which are based on proper appreciation of the evidence cannot be interfered with in the second appeal by this Court. He had also relied upon the decision in **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others**^[2] in support of the proposition that the second appeal cannot be decided on equitable grounds and that the concurrent findings of fact based on evidence which was accepted by the trial Court as well as the first appellate court cannot be disturbed more particularly when the first appellate court has given satisfactory reasons for accepting the same evidence which was accepted by the trial Court and that in a case where from the evidence on record even if two inferences are possible, the one drawn by the trial court and accepted by the appellate Court is binding on this Court in the second appeal and that this Court cannot substitute its opinion for the opinion of the first appellate Court and that the appellant had failed to show that the conclusions drawn by the Courts below which are concurrent were erroneous on any ground.

7. In the well considered view of this Court, this court has to first consider as to whether the exhibit A2 endorsement dated 14.12.1987 is true and valid? And, it is also to be examined as to whether the suit debt is barred by law of limitation as held by the Courts below.

8. Now I shall refer to the evidence on this relevant point which is brought on record.

8.1 PW1 is the husband of the plaintiff. He deposed that the borrower Satyavathi paid Rs.100/- and endorsed the same on the reverse of the promissory note and had executed A2 payment endorsement at his residence and that he was present at the time of the transaction under exhibit A2 and that the said endorsement was attested by two attestors. PW3 who was one of the attestors of exhibit A2 endorsement had deposed that Satyavathi paid Rs.100/- to the plaintiff in his presence and that he had attested the payment endorsement under exhibit A2, which was made on the reverse of the

promissory note, and that at that time Satyavathi had affixed her thumb mark on exhibit A2 endorsement. He had admitted in his cross examination that he and PW1 are working in Irrigation Department and had testified that the said endorsement was made at the house of Ganpathi at Rajahmundry and that prior to exhibit A2 endorsement he does not know Satyavathi and that at that time he, Narasimha Rao, Appalaraju, Ganapathi and Satyavathi were all present and that he was taken to the house of Ganapathi by PW1 and that one Appalaraju scribed the endorsement under exhibit A2 and that after Satyavathi had affixed her thumb mark on exhibit A2-endorsement he and other attester had attested the endorsement and that the scribe had signed at the end. He had denied the suggestion that exhibit A2 endorsement did not take place in his presence and that the same is fabricated and that he is speaking falsehood. Placing reliance on this evidence, it is sought to be contended that exhibit A2 endorsement under which the suit debt is acknowledged is sufficient to establish that the suit is filed well within time and is not barred by law of limitation. The defendants, being not admittedly connected with the transaction, had examined the scribe of exhibit A2 endorsement as DW2. He had testified that he knows PW1 who is a resident of Rajahmundry and that at about 5 years prior to his giving evidence before the trial Court, PW1 had approached him and requested him to write an endorsement on the promissory note and that at that time PW2 also came to his house and that accordingly he had scribed exhibit A2 endorsement and that Satyavathi did not affix her thumb mark on exhibit A2 in his presence and that Satyavathi did not come to his house on that day and so also the attestors of exhibit A2 endorsement and that the attestors also did not attest exhibit A2 in his presence and that he had scribed exhibit A2 endorsement at the request of PW1 when he told him that he would obtain the thumb impression of A. Satyavathi later. He had further deposed that Satyavathi did not pay Rs.100/- under exhibit A2 in his presence. When it was suggested to him that he was a nominee of DW1's husband in the elections and that DW1's husband had run the entire election campaign, he had denied the said suggestions. Thus, PW3 one of the attestors of the exhibit A2 payment endorsement had corroborated the version of PW1, while DW2-the scribe of exhibit A2 did not

support the version of the plaintiff.

8.2 On a careful analysis of the evidence, which was discussed supra, the following aspects come to the fore. PW1 had stated that the payment of Rs.100/- was made and the endorsement under exhibit A2 was also made on the reverse of exhibit A1 promissory note at his residence whereas PW2 the attester had stated that he, Narasimha Rao, Appalraju, Ganapathi and Satyavathi were all present and that the said endorsement had taken place in the house of Ganapathi at Rajahmundry whereas PW1 is a resident of Dhavaleswaram. DW2 had also stated that when PWs1 and 2 came to his house, he had drafted exhibit A2 endorsement at the request of PW1 and that at that time PW1 had told him that he would obtain the thumb impression of Satyavathi later and that when he had drafted exhibit A2 endorsement neither the attestors nor Satyavathi were present and that no payment of Rs.100/- was made in his presence. Therefore, having noted the discrepancies in the evidence and considering the fact that PW2 is no other than the colleague employee of PW1, the Courts below gave due weight to the evidence of DW2, the scribe and had held concurrently that exhibit A2 endorsement is not true and valid and that, therefore, the suit that was brought beyond three years from the date of the suit promissory note is barred by law of limitation.

8.3 On an analytical examination of the relevant evidence, this Court finds no grounds to reject the evidence of DW2, the scribe, and give credit to the evidence on the side of the plaintiff as both the Courts have given satisfactory reasons while appreciating the evidence and for giving credit to the evidence of DW2 in the facts and circumstances of the case. Therefore, even assuming for a moment that in the given set of circumstances another inference in favour of the plaintiff is also possible, the one drawn by the trial Court and accepted by the first appellate Court after assigning satisfactory reasons need not be interfered with by substituting the opinion of this Court as the conclusions drawn by the Courts below are not erroneous and are on the other hand possible and plausible and are based on proper appreciation of the evidence.

8.4 In view of the findings supra on this first question, there is no need to go into the other questions raised in this second appeal. However, it is apposite to note that the learned counsel for the plaintiff having placed reliance on a decision in **M. Pullaiah v. B. Thimma Reddy**^[3] and the provisions of the A.P. Agricultural Indebtedness Relief Act 7 of 1977 had contended that the relevant date for the purpose of deciding as to whether a person was entitled to the relief under Section 4(1) of the Act is the date of the commencement of the Act and that it is not necessary to establish that the said person continues to be a small farmer when he raised the plea claiming the benefits under the Act. He had further contended that the defendants 2 and 3 had failed to establish that the Satyavathi held any land as on the date of the commencement of the Act and that on the other hand, under the original of exhibit A7-the registered settlement deed dated 06.05.1986, the said Satyavathi, the borrower, had admittedly gifted Ac.2.10 cents of land to the 3rd defendant and that, therefore, she was not a small farmer on the date of the commencement of the Act 45/87 which came into force on 01.01.1988 and that the Courts below have erroneously held on the point of law that it would be sufficient if it is shown that a person is a small farmer by the date of the borrowal of the debt. This contention now advanced before this Court is correct since based on correct proposition of law. Even if it is to be accepted and it is to be held that the original borrower Satyavathi is not a small farmer and that she is not entitled to the benefit of Act 7 of 1977 (Act 45/1987), still the said finding will be of no avail to the plaintiff as it is already held supra that the suit debt is barred by law of limitation and that on that count the suit is liable to be dismissed irrespective of the answer to the question whether the deceased borrower/late Satyavathi is a small farmer or not.

8.5 Therefore, the question of the liability of the defendants 1 and 2 as legal heirs of Satyavathi to pay the suit debt having come into possession of the estate of late Satyavathi or the liability of the 3rd defendant having got Ac.2.10 cents of land under a registered settlement deed under the original of exhibit A7 executed by Satyavathi does not arise. Having thus analysed the facts

and the evidence, this Court finds that though on the question concerning the deceased borrower's entitlement to the benefits of the Act 7 of 1977 (Act 45 of 1987), it is to be held that she is not entitled to the benefits of the said Act and that the suit debt does not stand abated, still the plaintiff is to be non-suited for the reason that this Court found that the suit claim is barred by the law of limitation. Accordingly, this Court finds that there is no substance in the contentions raised and that the issue concerning law of limitation is not a substantial question of law.

9. Viewed thus, this Court finds that the second appeal is devoid of merit and is liable to be dismissed.

10. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

29th July, 2015
Vjl

[\[1\]](#) 2015 (2)CCC 117 (SC)

[\[2\]](#) AIR 1999 SC 2213

[\[3\]](#) 1989(1) ALT 86