

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.593 of 2000

Dated 11-4-2016

Between:

P.Hanumanthappa.

...Appellant.

And:

K.V.Narayana Murthy & Co., Registered,
represented by its Managing Partner K.V.Narayana
Murthy (since dead), by its present Managing Partner,
K.N.Sreenivasa Murthy.

...

Respondent.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.593 of 2000

JUDGMENT:

This appeal is preferred against judgment and decree dated 20th September, 1999 in A.S.No.3 of 1996 on the file of Additional District Judge, Hindupur whereunder judgment and decree dated 30th September, 1994 in O.S.No.137 of 1987 on the file of District Munsif (Presently Junior Civil Judge) Hindupur is confirmed.

Appellant herein is defendant in the above referred O.S.No.137 of 1987 which is filed for recovery of money.

Parties are hereinafter referred to as plaintiff and defendant as arrayed in the suit for convenience and better understanding.

Plaintiff filed suit contending that the defendant borrowed a sum of Rs.4,200/- for his business purpose promising to repay the same with interest at 18% pa., and executed the suit promissory note on 7-5-1981 and that defendant himself is the scribe of suit promissory note, defendant paid Rs.10/- on 26-4-1984, another Rs.10/- on 15-7-1986 and endorsed the same on the reverse of promissory note in his own handwriting, thereafter defendant in spite of repeated demands did not pay any

amount and as the defendant is the agriculturist, interest is claimed only as per the Amended Act 4 of 1938 and Act 7 of 1977 has no application as the suit promissory note is executed subsequent to the Act.

Defendant resisted the claim disputing the plaint averments and contended that he is not a business man and he is only an agriculturist and the description of defendant as trader in the cause title is only made for the purpose of suit. He also denied payment endorsement dated 26-4-1984 and 15-7-1986 and contended that they are forged. He further contended that he is a small farmer protected by the provisions of Act 45 and Act 7 of 1977 and plaintiff is businessman and he is not a small farmer and the suit debt is deemed to have been discharged and is liable to be dismissed.

Trial court framed the following issues and additional issue on the basis of pleadings of both parties.

ISSUES:

- 1) *Whether the suit promissory note is true, valid and binding on the defendant.*
- 2) *Whether the endorsement dt.26.4.84 and 15-7-1986 are true and binding on defendant.*
- 3) *Whether the suit is barred under the provisions of Section 69 of Partnership Act.*
- 4) *Whether the plaintiff is not entitled to file the suit.*
- 5) *To what relief.*

Additional issue:

Whether the defendant is a small farmer.

On these issues, trial is conducted during which P.Ws.1 and 2 are examined and Exs.A.1 to A.5 are marked on plaintiff's side whereas D.Ws.1 and 2 are examined and Exs.B.1 to B.3 are marked on defendant's side. On a consideration of evidence, trial court negated the objection raised on behalf of defendant and decreed the suit for Rs.7,280/- with interest at 6% pa., from the date of plaint till realization. Aggrieved by the judgment and decree of the trial court, defendant preferred appeal to the

District Court and Additional District Court, Hindupur on a reappraisal of entire evidence confirmed the judgment and decree of trial court. Aggrieved by the same, present appeal is preferred.

This court admitted the appeal treating the following as substantial question of law.

- (1) *Whether the finding of courts below that the defendant is not a small farmer is correct in law, when the defendant has Ac.6-50 cents of land under Ex.B-1 partitioned and he having four undivided sons and a daughter when notional partition is effected between them.*
- (2) *Whether the view of the courts below on the point of Small Farmer is correct in law, when it is quite contrary to principles decided in cases reported in A.I.R.1979 A.P.25 and 1979 A.P.85?*

Heard both sides.

Advocate for appellant mainly contended and both trial court and appellate court have not properly dealt with the plea of Act 7 of 1977 and a notional partition was not taken into consideration and if that is taken, the defendant would get less than Ac.5-00 cents and thereby, he would fall under the definition of small former and debt deemed to have been discharged.

On the other hand, advocate for respondent submitted that defendant is not an agriculturist and he is a contractor and doing business and even the recital in promissory note would disclose that the money is borrowed for business purpose. He further submitted that burden is on the defendant to plead and prove except making a vague pleading that he is entitled for benefits of Act 7 of 1977, no details are given and no specific plea is taken and as the statutory requirements are not fulfilled, as the defendant has not discharged the burden, both the courts have rightly not accepted the contentions of defendant and that the second appeal is devoid of merits.

Now the point that would arise for my consideration

in this appeal is whether the findings of the courts below on the issue of small farmer is correct or not. If so is defendant entitled for the benefits of Act 7 of 1977.

POINT:

It is the specific case of plaintiff that the defendant borrowed Rs.4,200/- for his business purpose and executed promissory note on 7-5-1981 promising to repay the same with interest at 18% p.a., and that defendant has not repaid the amount but only made two part payments on 26-4-1984 and 15-7-1986 of Rs.10/- each. Though defendant contended that both payment endorsements are forged one, both courts on evidence found that the said plea is not correct and both the endorsements are made by defendant in his own hand writing, even in this appeal also, nothing is argued about the execution and passing of consideration, part payments etc., and the only point argued is about small farmer. Both trial court and appellate court have considered the issue of small farmer but negated the contention of defendant on the ground that he failed to establish that he owns less than Ac.5.00 cents of land and would fall within the definition of small farmer.

As seen from the pleadings, it is the contention of defendant that defendant has sons by name Ramanjappa, Gopalappa, Chandrappa and Sreeramappa and there was a division among themselves and after that partition, defendant is left with only Ac.4.55 cents of land and therefore, he is a small farmer. But as seen from the evidence, in family partition, defendant got Ac.6.86 cents of land of dry land and all the daughters are married daughters who are living separately and even the sons got some property in the partition. The revenue records also show this Ac.6.86 cents of land is in the name of defendant. So considering the same, both trial court and appellate court have not accepted the plea of defendant with regard to small farmer.

The issue of small farmer is a mixed question of law and fact. Only if the facts are established attracting the definition of small farmer, then only the provisions of Act 7 of 1977 would come into operation, and it is not a pure question of law.

Here in this case, defendant though contended that he is a small farmer, he failed to establish the same, on the other hand evidence produced by him would disclose that he got more than the prescribed land in the partition and that he is in possession and enjoyment of that land as per revenue record and therefore, both trial court and appellate court have rightly negated plea of defendant. Further the very recital in the promissory note disclose that the money is borrowed for business purpose and considering these aspects, I am of the view that both trial court and appellate court have not committed any error in applying Act 7 of 1977 and that no question of law is involved much less substantial question of law and that the appeal is devoid of merits.

For these reasons, this Second Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI

KUMAR

Dated 11-4-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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