

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.171 OF 2008

JUDGMENT:

Though, the present Appeal Suit relates to the year 2008, there is no representation for the appellant viz., M/s. Indian Bank, Vijayawada - 2 Branch, represented by its Chief Manager, Zonal Office, Hyderabad.

2. In fact, the appellant succeeded before the learned III Additional Subordinate Judge, Vijayawada, in getting the suit i.e., O.S. No.57 of 1994, decreed by the judgment and decree dated 16.05.1997, for Rs.1,06,675/- with costs, but, is aggrieved over the rate of interest at 10% per annum, simple, granted on Rs.36,000/- from the date of suit till realisation on the ground that contractual rate of interest is not granted despite the suit being a mortgage suit.

4. There is no representation for the appellant. In fact, the present appeal suit was dismissed against respondent Nos.1 and 3 viz., Ghantamneni Pattabhiramaiah and S. Madhusudana Rao, on 24.03.2006.

5. The relief claimed by the appellant, the plaintiff bank, was for a decree on the mortgage property and for sale of 'B' schedule properties and for costs being the arrears of loan amount.

6. In fact, the suit was contested by defendant No.2 viz., Gondi Nagabhushanam alone, who was subsequent purchaser, claiming that he is a *bona fide* purchaser of part of 'Plaint - A' schedule property for valuable consideration without the knowledge of mortgage in favour of the plaintiff bank and deposit of title deeds.

7. The learned Subordinate Judge settled the following five (5) issues for trial, based on the pleadings:

- “1. Whether the suit is bad for non-joinder of necessary parties ?
2. Whether the second defendant is not a necessary party?
3. Whether the suit claim is barred by limitation ?
4. Whether the plaintiff bank is entitled for a decree as prayed for ?
5. To what relief ?”

8. In order to substantiate the claim of the plaintiff bank, the manager, at the relevant time, was examined as PW.1 and marked Exs.A-1 to A-27, whereas, on behalf of the defendants, defendant No.2 alone was examined as DW.1, and no documents were filed.

9. The learned trial Judge, ruled out the plea of 'bar of limitation' holding that the fresh renewal dated 31.12.1991 cannot be scored out, and, therefore, the suit is within limitation, though, the loan transaction relates to the year 1971. Then the learned trial Judge

has taken up issue Nos.1 and 2 and relying on the reply notice dated 12.04.1991 issued on behalf of defendant No.2, marked as Ex.A-22 to the legal notice dated 14.03.1991 under Ex.A-17, extracted the relevant portion in vernacular language. The sum and substance of the extracted portion is that defendant No.2 came forward to discharge the debt requiring the bank to give details of the loan due and whatever the amount, defendant No.1 was due, he was preferred to pay. Of course, the learned trial Judge observed that there was no obligation on the part of defendant No.2 to discharge the amount due by defendant No.1. But, however, keeping in view that the property was purchased though, the original title deeds were in the custody of the plaintiff bank, held that defendant No.2 is necessary party to the suit. Simultaneously, the learned trial Judge also held that though, the other purchasers were not made as parties, but, that by itself cannot be said that defendant No.2 could wriggle out the liability cast on him, being the purchaser subsequent to mortgage. Defendant No.2, according to the learned Judge, is a necessary party and non-impleadment of other purchasers, is no ground to hold that the suit was bad for necessary parties and accordingly, held issue No.1 in favour of the plaintiff and so also issue No.2.

10. On issue No.4, the case of the parties is that the Government acquired the properties mortgaged and passed award No.10/93 dated 16.07.1993 making apportionment of the compensation amongst the different land owners and even there was

reference under Section 31(2) of the Land Acquisition Act, 1894, at the initiation of the Land Acquisition Officer and the amount was deposited in the Civil Court. Hence, the Court below opined that there is no need for the plaintiff in seeking the mortgage decree and thereby, it shall consider the request of the plaintiff only to the extent of passing a simple money decree and, thus, recorded finding on issue No.4 holding that the plaintiff is entitled to the decree for suit claim.

11. On issue No.5, in view of the findings recorded on issue Nos.1 to 4, decreed the suit for the aforesaid amount, with interest at 10%, simple, from the date of petition till realisation. Incidentally, observation was also made that the plaintiff is entitled to recover the decreetal amount from the compensation amount deposited in pursuance of the order in award No.10/93 dated 16.07.1993 lying to the credit of O.P. No.79 of 1993 on the file of Subordinate Judge's Court, Nuzvid.

12. Now the points that arise for consideration are:

- (1) Whether the appellant is entitled to interest at 10% per annum with quarterly rests?
- (2) Whether the interest awarded by the trial Court at 10% per annum, simple, on the principal amount of Rs.36,000/- is incorrect?

13. In the grounds of appeal, what all mentioned by the appellant is that contractual rate of interest ought to have granted and nothing more except stating that the mortgaged property was acquired by the Government and the proceeds of Rs.20,11,444/- was held by respondent No.4 as per the orders of the court below.

14. Since there is no representation for the appellant, the present appeal is disposed of on merits.

15. At the outset, it is to be mentioned that the plaintiff has not taken any pains to see that the dismissal order passed against respondent Nos.1 and 3, more particularly, against respondent No.1, who is the principal borrower, passed on 24.03.2006 got set aside. This itself is a ground to dismiss the appeal suit in its entirety.

16. Respondent No.4, who is no other than Special Tahsildar and Land Acquisition Officer, is, in fact, not a necessary party to the suit proceedings except to the extent that the land was acquired by the Government and the deposit of amount awarded towards compensation.

17. Then, remains respondent No.2 herein. Even there is no representation for respondent No.2. This apart, the decree was passed on 16.05.1997. Thereafter, the appeal was filed in 1997 itself i.e., on 11.11.1997, and, under these circumstances, whether the request of the appellant can be acceded to is the question to be answered.

18. As already stated above, the principal debtor, respondent No.1, herein, against whom, the appeal suit was already dismissed, and no steps have been pursued, certainly, it has to be held that the request made in the present appeal cannot be acceded to in the absence of the respondents.

19. Therefore, the Appeal Suit is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present appeal suit stand dismissed.

January 30, 2018.
PV

A. SHANKAR NARAYANA, J

