

Kaloji Talusappa Gangavathi,

Vs

Khyanagouda and Others

Civil Appeal No. 1621 of 1966

(J. C. Shah, K. S. Hegde JJ)

09.04.1970

JUDGMENT

SHAH, J. -

1. Against the decree dismissing his suit for recovery of the amount due under a mortgage and a promissory note executed by the defendants, the plaintiff has appealed to this Court with special leave.

2. The plaintiff carries on the business of a money-lender at Raichur which was formerly in the State of Hyderabad, but which is, since the States Reorganization Act, 1956, within the State of Mysore. The plaintiff instituted a suit in the Court of the District Judge, Raichur, against the defendants for a decree for Rs. 17,790/- claiming that the defendants were indebted to the plaintiff for Rs. 6,000/- and interest under a deed of mortgage executed by them on June 20, 1949; Rs. 3,000/- and interest under a promissory note, dated September 22, 1956; and certain sums of money under other transactions.

3. The defendants raised several contentions one of which alone is relevant. They contended that at the date of the transactions the plaintiff had not obtained a licence under the Hyderabad Money Lenders Act 5 of 1349 Fasli, and on that account he was not entitled to sue for the amounts due under the mortgage deed and the promissory note.

4. The Trial Court held that the plaintiff's suit for a decree for the amounts due under the mortgage deed and the promissory note was not maintainable. The decree of the Trial Court was confirmed in appeal to the Mysore High Court. The High Court of Mysore confirmed the decree of the Trial Court.

5. The plaintiff was at the date of the transactions in dispute a money-lender as defined in Section 2(7) of the Hyderabad Money Lenders Act 5 of 1349 Fasli. The relevant provision of the Act are as follows :

By Section 2(7) a "money-lender" means "a person including a pawn-broker, who, within the meaning of this Act, only advance loan in the ordinary course of his business or does so along with other businesses,"

By Section 3, insofar as it is relevant, it is provided :

##(1)##

(2) Every money-lender, in order to get his name registered, shall present an application in writing in the prescribed form to the competent officer and the said officer shall on such application being presented, register the applicant's name and grant a licence in the prescribed form and within prescribed period :

.. . . .##

(5) (a) No money-lender shall carry on in any district the business of money-lending without obtaining a licence provided for in sub-section (2).

(b) If any person contravenes the provision of clause (a), he shall be punished with rigorous imprisonment for a term which may extend to six months or with fine or with both, .. .

Section 9 provides, insofar as it is material :

"Notwithstanding anything contained in any law for the time being in force, in every suit relating to a loan -

#(1)##

(2) if it is proved that the plaintiff is a money-lender as defined in sub-section (7) of Section 2, but does to hold a licence granted under Section 3, the Court shall dismiss his suit;

.. . . . "##

The plaintiff had not obtained a licence when he advanced money to the defendants on the transactions of mortgage and promissory note. By virtue of sub-section (5)(a) of Section 3 of the plaintiff was prohibited from carrying on in any district the business of money-lending without obtaining a licence provided for in sub-section (2). Section 9(2) expressly provides that a suit filed by a money-lender who did not hold a licence granted under Section 3 shall be dismissed. In the present case the plaintiff did not hold any licence. There is no dispute that the amount advanced under the transactions of the mortgage and the promissory note constituted loans. Since the plaintiff was at the date of transactions carrying on business as a money-lender without a licence, the Court was bound to dismiss his suit for recovery of the amounts advanced in the course of his business as a money-lender.

6. It was urged by an application filed in this Court (C.M.P. No. 1744 of 1970) that the plaintiff should be allowed to raise in this Court a contention that the provisions of Section 9(2) of the Hyderabad Money Lenders Act 5 of 1949 were unconstitutional and contravened the fundamental rights guaranteed under Articles 19(1)(F) and (g) and 31 of the Constitution. In this case, no question of any rights to acquire, hold to dispute of property arises, not of any claim of deprivation of property. In the circumstances the plaintiff cannot obviously claim the guarantee of Article 19(1)(f) and 31. It is true that the Act places a restriction upon a money-lender in carrying on his business in money-lending. But the question whether the restrictions imposed by the Act are not reasonable was never raised in the Court of First Instance and the High Court, and we would not at this later stage be justified in allowing the plaintiff to raise the question which requires a fresh pleading on questions of fact. In order to curb malpractices of the money-lender in the course of his business and to protect unwary debtors, the Legislature has imposed stringent restrictions upon him in requiring him to obtain a licence, maintain and furnish accounts and carry out other obligations. Practically every State in India has enacted stated imposing restrictions upon money-lenders.

Whether the conditions in the State of Hyderabad when the Act was enacted were so different that it was not necessary to impose restriction upon the money-lenders can only be decided on a proper plea and on a full consideration thereof after hearing the State.

7. The appeal fails and is dismissed. The respondents have not filed their statement of case, but they have only appeared before this Court at the time of the hearing of the appeal. In the circumstance, there will be no order as to costs.

</html