

P. Lakshminarayan Etc. Etc.

Vs

K. B. Punnayya Etc. Etc.

Civil Appeals Nos. 745 of 1967 and 132 of 1971

(K. S. Hegde, A. N. Grover JJ)

03.05.1972

JUDGMENT

HEGDE, J. -

1. Both these appeals arise from a mortgage suit. The appellant in Civil Appeal No. 745 of 1967 is the father and the appellants in Civil Appeal No. 132 of 1971 are his sons. The appellant in Civil Appeal No. 745 of 1967 as the karta of his family mortgaged a house situate in Tenali municipality for a sum of Rs. 44,883.63 P. as per the registered mortgage deed Ex. A-1, dated July 9, 1953. The consideration for that mortgage included certain amounts borrowed by the mortgagor from the mortgagee in 1951 as per demand promissory notes Exs. A-2 to A-5.
2. To the mortgage suit the mortgagor as well as his sons were made parties. The mortgagor was ex parte. His sons resisted the suit on various grounds. It is not necessary to refer to the grounds raised by the contesting defendants in resisting the suit. The only question with which we are now concerned is whether the mortgage debt is liable to be further scaled down under the provisions of the Madras Agriculturists Relief Act, 1938 (to be hereinafter referred to as the Act).
3. The Trial Court awarded a preliminary decree for the entire amount claimed in the suit with costs as against the 1/3rd share of defendant No. 1 (the father). But it awarded a decree for Rs. 32,746.99 P. with proportionate costs as against the 2/3rd share of defendants 2 and 3. Defendant No. 1 did not appeal against the decree of the Trial Court but defendants 2 and 3 appealed against the same. The appeal filed by defendants 2 and 3 was dismissed by the Andhra Pradesh High Court. Meanwhile defendant No. 1 applied to the Trial Court under Section 151, C.P.C., to amend the preliminary decree by giving him the benefit of the provisions in Section 14 of the Act. That application was dismissed that order, he went up in revision to the High Court. The High Court dismissed his revision application. Thereafter he brought Civil Appeal No. 745 of 1967 after obtaining special leave from this Court. Civil Appeal No. 132 of 1971 was filed by defendants 2 and 3 against the decision of the High Court after obtaining special leave from this Court. Their grievance is that the debt due under the mortgage should have been scaled down further.
4. We see no merit in these appeals. We are unable to find out the basis on which the learned trial judge split mortgage security. Further we do not think that the debt in question could have been scaled down under the provisions of the Act. Anyway. It is not necessary for us to examine the correctness of the decision of the Trial Court in so far as it went against the plaintiff mortgagee as he had not appealed against it. Suffice it to say that the provisions of the Act do not apply to the proceedings before us. It is true that the mortgagors are "agriculturists" as defined in the Act. The debt with which we are concerned was contracted exclusive on the security of a house property

situate in a municipality. Section 4 of the Act to the extent relevant for our present purpose lays down :

"Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads :

#(a) X X X X(b) X X X X(c) X X X X##

(d) any debt contracted on the security of house property alone in a municipality, a cantonment, or a panchayat which was a union before the 26th August, 1930.

#(e) X X X X(f) X X X X(g) X X X X(h) X X X X(i) X X X X##

5. On behalf of defendants 2 and 3, relief was claimed under Section 9(1) of the Act. Such a claim is impermissible in view of Section 4 of the Act which says that "nothing in this Act shall affect debts..... contracted on the security of house property alone in a municipality". The scaling down of the debt was sought solely on the basis of the provisions of the Act.

6. In view of the above conclusion, it is not necessary for us to examine the true of Section 9(1), read with Section 13 and 14 of the Act.

7. In the result these appeals fail and they are dismissed with costs - One hearing fee. C.A. No. 132/71 was brought in forma pauperis. The Court fee shall be paid by the appellant herein.

</html