

A. P. Coop. Central Agricultural Development Bank Ltd.

Vs

V. Venkateswar Rao and Another

Civil Appeals Nos. 4010 and 4010A-4010T of 1989

(B. N. Kirpal, V. N. Khare JJ)

13.01.1999

ORDER

1. The sole question which arises for consideration in these appeals is whether on a correct interpretation of Section 103 of the A.P. Cooperative Societies Act, 1964, the appellant-Bank can seize and sell the tractor of the respondents for realisation of the amount of loan payable by them to the appellant.
2. Briefly stated, the facts in civil appeal arising from Writ Appeal No. 136 of 1982 are that two loans of about Rs. 40,000 and Rs. 35,000 were taken by the writ petitioners from the appellant-Bank. These loans were disbursed for the purpose of purchasing a tractor. Repayment of loan was to take place by payment in yearly instalments. There was default in the payment of the same and demands were raised. When demands having been raised and the amount due to the appellant-Bank was not paid, the tractor in question was seized and distrained. Thereupon a writ petition was filed before the High Court of Andhra Pradesh in which the writ petitioners had contended that the tractor was an agricultural implement and as such was exempt from attachment. The other writ petitions which were disposed of by the common judgment of the High Court also raised the same question.
3. The High Court by its impugned judgment came to the conclusion that on a correct interpretation of Section 103 read with Rule 52(5)(o) of the A.P. Cooperative Societies Rules, tractors were agricultural implements of husbandry and, therefore, they could not be seized or sold by the appellant for the purpose of realisation of the amount due to it.
4. On behalf of the appellant, it is submitted that in interpreting the relevant provisions of the Act, the High Court erred in coming to the conclusion that the tractors in question were exempt from sale for the purpose of realisation of the dues to the appellant.
5. According to Section 85 of the said Act, the provision of Chapter XIII applies to the appellant-Bank for advancing loans for the purposes enumerated under the said section. According to sub-section (1), loan can be given for "purchase of tractors or other agricultural machinery". It is not in dispute that it was pursuant to the power so given under Section 85 that the loans in question were disbursed. It is the case of the appellant that on the loans being so advanced, the tractors in question were mortgaged in favour of the appellant-Bank and, therefore, it got the right to seize the mortgaged property in the event of there being default in the repayment of the loans.
6. Section 92 of the Act provides that the mortgage executed in favour of the bank shall have propriety over any other claim of the Government. Section 93 gives the bank the right to purchase the mortgaged property which can be sold under the Chapter. Section 100 provides that if any loan

has been granted by the bank including the interest thereon shall, whenever it becomes due, be recoverable by the bank. If there is any arrear of recovery, on an application being made by the bank, the Registrar issues a certificate under Section 101 for the recovery of the amount due and under Section 103 the Registrar can take recourse to distraint and sale of property for the purpose of realisation of the loan. The said Section 103 including the first proviso, with which we are concerned in the present case, reads as follows :

"103. Distraint and sale. - (1) If any instalment payable under a mortgage executed in favour of (an agricultural development bank) or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the committee, may in addition to any other remedy available to the bank, apply to the Registrar or such other person on whom the power of the Registrar to recover any amount due by attachment and sale of property has been conferred by the Government under Section 3 for the recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon and any other movable property of the defaulter. On receipt of such application, the Registrar or such other person may, notwithstanding anything in the Transfer of Property Act, 1882, direct distraint and sale of such produce and if necessary, also of such other movable property of the defaulter :

Provided that such implements of husbandry and such cattle of the defaulter as may in the opinion of the Registrar or such other person, be necessary to enable the defaulter to earn his livelihood as an agriculturist shall not be liable for such distraint and sale :

Provided further that no such distraint shall be made after the expiration of [twenty-four months] from the date on which the instalment fell due.

(2) The value of the property distrained shall be, as far as may be, equal to the amount due and the expenses of the distraint and the costs of the sale."

7. Section 104 gives the bank express power to sell the mortgaged property for the purposes of realising the amount due to it.

8. At this stage, we may also take note of Rule 52(5)(o) which reads thus :

"52. (5)(o) The movable properties exempted from attachment under proviso to Section 60 of the Code of Civil Procedure, 1908, shall not be liable to attachment or sale under these Rules."

9. This Rule makes the proviso of Section 60 of the Civil Procedure Code applicable. Clause (b) of the said proviso of Section 60 is somewhat similar to the first provide to Section 103 of the A.P. Cooperative Societies Act. Both of them provide that implements of husbandry cannot be attached or sold for the purpose of realisation of dues from the agriculturist.

10. As already noticed, the sole question which arises for consideration is whether a tractor can be regarded as an implement of husbandry referred to in the said proviso.

11. Section 85 enables the bank to give loan for the purposes specified therein. A reading of the said section shows that it does not contemplate granting of loan to an agriculturist for buying any

implement of husbandry. It does specify in clause (i) that loan can be advanced for tractors and/or agricultural machinery. The tractors which are purchased on taking of the loan stand mortgaged to the bank and the other provision of the Act referred to hereinabove clearly enables the selling of the mortgaged property in order to recover the dues in respect thereof. It is not possible for us to construe the proviso to Section 103 and the proviso to Section 60 CPC in such a way as to be in conflict with other provisions of the Act. The proviso to Section 103 was clearly not meant to refer to at least those items, movable or immovable, in respect of which the loans were advanced under Section 85 and mortgaged in favour of the bank. When entering into the question as to what is the meaning of the words "implements of husbandry", we are clearly of the view that the tractors in respect of which loans have been granted by the appellant would not fall within that description and the appellant would be entitled to take steps for distraint and sale of the same.

12. In our opinion, the High Court did not not correctly construe the provision of Section 103 and it erred in coming to the conclusion that the tractors which stood mortgaged with the appellant would not be seized or sold.

13. For the reasons stated hereinabove, we allow these appeals, set aside the judgment of the High Court and dismiss the writ petitions filed by the respondents. As the respondents are not represented, there will be no order as to costs.