

ANDHRA PRADESH HIGH COURT

Wangapally Latchiah

Vs

Peddi Laxmiah

(Manohar Pershad and S Chari, J.)

10.09.1959

JUDGMENT

Manohar Pershad, J.

1. This appeal has come up before us on a reference made by one of us. The suit was by an endorsee of a promissory note. Besides other defences raised on the merits, one plea that was taken was that the assignee was a money lender within the meaning of the Hyderabad Money Lenders Act and not possessing a licence, the suit was liable to be dismissed. It appears that this question was raised before the trial Court also. That court relying upon an earlier decision of the Hyderabad High Court, *Shamshir Ali v. Ratnaji*² decreed the suit. On appeal, the lower appellate Court relying upon the case of *Hanmantrao v. Nalliah*¹, dismissed the suit. In Second Appeal, Sri Venkatachar, learned counsel for the appellant argued before the Single Judge that the provisions of the Hyderabad Money Lenders Act do not apply to an endorsee of a promissory note. His further contention was that under the Negotiable Instruments Act, an endorsee of a promissory note became entitled to recover the amount of the promissory note by virtue of the endorsement. The learned counsel further argued that this provision in the Money Lenders' Act was in conflict with the provisions of the Negotiable Instruments Act relating to the right of an endorsee and the Negotiable Instruments Act being a Central Act, the provisions of that Act alone would prevail as against the Hyderabad Money Lenders' Act.

2. We do not wish to go at this stage into the other point raised by the learned counsel Sri Venkatachar that the provision in the Money Lenders Act was in conflict with the provisions of the Negotiable Instruments Act relating to the right of an endorsee, as, in our opinion, this case has to go back to the trial Court. As stated earlier, the appellate Court dismissed the suit on the ground that the plaintiff has failed to prove that he was not a money lender, relying on ILR 1952 Hyd 17 : (AIR 1952 Hyd 98)(Supra), but this matter has been set at rest by a Bench of this Court in *Munagala I'adgiri v. Pitrala Veeriah*,³ and a subsequent decision of this Court in *Ram Cowd v. Ganga Reddy*, F. A. No. 70/1 of 1954, DY- 31-8-1959, holding that the onus would be on the

defendant to prove that the plaintiff was a money lender; in terms this Bench as well as the other Bench disagreed with the view taken by Qamar Hasan, J. in ILR 1952 Hyd 17 .- (AIR 1952 Hyd 98)(Supra).In view of these Bench decisions, it is for the defendant to prove that the plaintiff was a money lender. But it appears that the defendant has not produced any evidence. On behalf of the appellant, it is contended by Sri Venkatachar, the learned counsel that the first defendant had refused to adduce any evidence in the lower court and therefore he is not entitled to any further opportunity to adduce evidence, We are not inclined to accept this contention. It is true that the first defendant had stated in the lower court that he was not going to produce any evidence.It may be, as is argued here, that since the evidence produced on behalf of the appellant was not sufficient to prove that he was not a money lender the defendant may have thought it unnecessary to produce any evidence and thus he may have stated so. As the burden of proving that the plaintiff is a money lender has been placed on the defendant, it is just and proper that he should be given an opportunity to adduce evidence. All the points sought to be raised by the parties are left open and are not dealt with in this appeal,

3. The appeal is therefore allowed, the judgment and decree of the appellate court as well as of the trial Court are set aside and the case is remanded to the trial court with A direction that it should recast the issues in view of the observations in the judgment and after giving an opportunity to the parties and recording the evidence produced by them, dispose of the case according to law. Costs to abide the result in the lower court.

Cases Referred.

1ILR J953 Hyd 17 ; (AIR 1952 Hyd 98)

2ILR 1952 Hyd 95 : (AIR 1952 Hyd 58)

31958-1 Andh WR 413