

**THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI**

**SECOND APPEAL No.317 of 2021**

**JUDGMENT:**

The defendant is the appellant herein. The above second appeal is filed against the judgment and decree dated 04.01.2021 in A.S.No.3 of 2016 on the file of V Additional District Judge, Tirupathi, confirming the judgment and decree dated 09.08.2012 in O.S.No.35 of 2011 on the file of Senior Civil Judge, Puttur.

2. For the sake of convenience, the parties shall be referred to as they are arrayed in the O.S.No.35 of 2011.

3. Suit O.S.No.35 of 2011 was filed by the plaintiff for recovery of Rs.2,48,402/-, principal being Rs.70,000/- with interest @24% p.a. from 16.08.2000 to 30.03.2011, which comes to Rs.1,78,402/-, basing on a registered mortgage.

4. In the plaint, it was contended that defendant borrowed an amount Rs.70,000/- on 16.08.2000 and executed a registered mortgage deed and agreed to pay interest @24% p.a. Since the defendant failed to repay the amount, a legal notice dated 04.02.2011 was issued and filed the suit.

5. Defendant filed written statement and contended that he never borrowed any amount and executed mortgage deed. He further pleaded that he is entitled for the benefit of Act 4 of 1938.

6. During the course of trial, plaintiff examined himself as P.W.1, got examined P.W.2 and Exs.A-1 to A-3 were marked. On behalf of defendant, defendant examined himself as D.W.1 and no documents were marked.

7. The trial Court on consideration of oral and documentary evidence *vide* judgment dated 09.08.2012 passed preliminary decree fixing two months' time for redemption. Aggrieved by the said judgment and decree, defendant filed A.S.No.3 of 2016 on the file of V Additional District Judge, Tirupathi. The first appellate Court, being final fact finding Court, after framing necessary points for determination, dismissed the appeal *vide* judgment dated 04.01.2021. Aggrieved by the said judgment and decree, the present second appeal is filed.

8. Heard Sri V.Nitesh, learned counsel for appellant.

9. Learned counsel for the appellant would contend that the appellant is an agriculturist, as such he is entitled for the benefit of Act 4 of 1938. He would also contend that contractual rate of interest @24 p.a. is excessive and prayed the Court to allow the second appeal.

10. Whether the appellant is entitled to benefit under Act 4 of 1938?

11. Whether Doctrine of Damdupat applies in state of Andhra Pradesh?

12. To prove the execution of promissory note, creation of mortgage and passing of consideration, the plaintiff examined himself as P.W.1 and got examined one of the attestors of Ex.A-1 mortgage deed, as P.W.2. Nothing contra was elicited in the cross examination of P.Ws.1 and 2, contrary to the case pleaded by them.

13. Though the defendant pleaded that he is entitled for the benefit of Act 4 of 1938, he could not establish that he is an agriculturist and cultivating the land. Defendant having pleaded that he is entitled for the benefit of Act 4 of 1938, the burden lies on him to prove the same. However, he could not adduce any convincing and cogent evidence. Having pleaded that he was cultivating the land on lease, no document was filed. Hence, the defendant is not entitled for the benefit of Act 4 of 1938 to scale down the interest.

14. With regard to applicability of Rule of Damdupat in **Suryapaga Ravikumar Vs. Pakkela Ramarao and others**<sup>1</sup>, the composite High Court of Andhra Pradesh held thus:

“In fact, in Syndicate Bank Vs. Guravareddy 1998 (1) ALT 735, in which the learned counsel for the appellant herein Sri T.S. Anand was Amicus Curiae assisting the Court, His Lordship Hon'ble Sri Justice B. Sudershan Reddy (as His Lordship then was) specifically considered the territorial application of the rule of Damdupat. His Lordship made it clear that the Apex Court judgment in M.R. Patil v. S.B. Rainade (supra) is not an authority for the proposition that the rule of Damdupat is applicable throughout India including State

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<sup>1</sup> 2009 (5) ALT 574

of Andhra Pradesh, but on the other hand, it is held in categorical terms that the rule of Damdupat was never applicable to Madras. His Lordship also made it clear that the observations of the Apex Court about Madhwa Sidhanta's case (supra) are required to be understood in their context and the question dealt with was whether the rule of Damdupat is applicable only to simple loan transactions or even to mortgage transactions. With reference to the authoritative statement of the principle in N.R.Raghavachariar's Hindu Law (8th Edition) and Mulla on Principles of Hindu Law (15th Edition), His Lordship held that the rule of Damdupat has no application whatsoever to the State of Andhra Pradesh in respect of any transactions. His Lordship had been pleased to place on record the appreciation for the assistance rendered by Sri T.S. Anand, learned Amicus Curiae in that case.”

It was further held that

“Though there can be no interference with the interest up to the date of the suit, the grant of subsequent interest since the date of the suit up to the date of decree by the preliminary decree under appeal at the same contractual rate of 18 per cent per annum triennially compounded appears to be impermissible. Order XXXIV Rule 11 of the Code of Civil Procedure which applies to payment of interest under mortgage transactions, clearly lays down that the Court may order payment of interest to the mortgagee up to the date of redemption to be on the principal amount found or declared due on the mortgage, at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable. While the subsequent interest from the date of the decree granted at 6 per cent per annum on the principal sum of Rs.80,000/-is not under challenge by either party, learned counsel for the appellant Sri T.S. Anand has rightly relied on N.M. Veerappa v. Canara Bank 1998 (2) ALT 6 (SC), wherein the Apex Court held with reference to Order XXXIV Rule-11 of the Code of Civil Procedure as amended in 1929 that the new provision gives a

certain amount of discretion to the Court so far as pendente lite interest is concerned. The Apex Court made it clear that the discretionary power conferred on the civil Court under Order XXXIV Rule-11 to cut down the contract rate of interest for the period from the date of suit up to the date fixed for redemption by the Court is very much there, even if there was no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act, 1918. That discretionary power was held to be an independent power not traceable to Section 74 of the Contract Act or Usurious Loans Act or any State Statutes. Therefore, it is clear that the compound interest awarded by the preliminary decree in question from the date of the suit till the date of decree has to be necessarily interfered with in the interests of justice, further keeping in view that the teacher, aged about 52 years by now became liable to pay more than thrice the amount he borrowed even by the date of the suit, his liability having been further enhanced by many more times by now. After hearing the learned counsel for both sides and keeping in view the facts and circumstances of the case, the judicial discretion conferred on the Court under Order XXXIV Rule 11 of the Code of Civil Procedure can be justifiably exercised to fix the rate of interest at 12 per cent per annum simple from the date of the suit till the date of preliminary decree granting relief both in the rate and nature of interest further clarifying that the said interest is payable only on the principal sum of Rs.80,000-00 and not on the entire suit sum as calculated in the impugned preliminary decree.”

15. In view of the ratio laid down in the above judgment, the contention of learned counsel for the appellant is negatived.

16. The evidence on record clearly proved about borrowing of amount and execution of Ex.A-1 registered mortgage deed by

appellant. In the absence of any contrary evidence, perversity in appreciation of evidence by the Courts below, this Court does not find any irregularity and illegality in the findings of fact recorded by the Courts below. Thus, no interference of this Court under Section 100 of CPC is warranted. Thus, this Court is of view of that no questions of law much less substantial questions of law involved in the above appeal. Hence, the appeal is liable to be dismissed, however, without costs.

17. Accordingly, the second appeal is dismissed. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**SUBBA REDDY SATTI, J**

1<sup>st</sup> April, 2022

PVD

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