



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FIRST DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
FIRST APPEAL NO: 84 OF 2012

Between:

1. Yeleti Sridevi @ Manikumari, W/o. Sreenivas
R/o. Vadlamuru Village, Peddapuram Mandal,
E.G.District.
2. Masina Udayakumari, W/o. Sreenivasu,
R/o. D.No. 10-19, Tapeswaram Village,
Mandapeta Mandal, E.G.District.

...PETITIONER(S)

AND:

1. Malireddy Krishnaveni, W/o. jagannadha Prasad,
R/o. H.No. 10-67, G.Medapadu Village,
Samalkot Mandal, E.G.District.
3. Gummella Veerabhadram, S/o. Ramarao,
Business,
R/o. D.No. 10-77, Peda Veedhi,
G.Medapadu Village, Samalkot Mandal,
E.G.Disatrict.

...RESPONDENTS

Counsel for the Petitioner(s): GUDURI VENKATESWARA RAO

Counsel for the Respondents:

The Court made the following: ORDER

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI****Appeal Suit No. 84 of 2012****JUDGMENT:**

This appeal is preferred against the judgment and decree, dated 15.09.2011, passed in O.S.No.699 of 2009 on the file of the Court of the Principal Senior Civil Judge, Kakinada.

2. The suit is filed by the 1st respondent herein against respondent No.2/1st defendant and the appellants 1 and 2/defendants 2 & 3 for recovery of amount under four promissory notes, dated 18.05.2007, 21.05.2007, 22.05.2007 and 01.11.2007, all for an amount of Rs.1,54,000/- each allegedly executed by the 1st defendant agreeing to repay the same with interest @ 18% per annum. The plaintiff fastened the liability against the defendants 2 and 3 who are the daughters of the 1st defendant, on the ground that they have full knowledge of the debts of the 1st defendant, yet created a partition deed, dated 06.12.2008 to defeat and delay the debts lawfully due to the plaintiff; and, as such, the partition deed is illegal, invalid and not binding on the plaintiff. It is the further case of the plaintiff that the 1st defendant executed two gift deeds, dated 06.12.2008, in favour of defendants 2 & 3 and thus, they are universal donees since there is no other property to the 1st defendant and liable to the suit claim.

3. The 1st defendant filed written statement denying the suit claim and the alleged promissory notes including borrowal of any amount and further contended that Uppuluri Subba Rao who is the uncle of the plaintiff lent Rs.1,50,000/- in 1998 and renewed the promissory notes for higher amount by including compounded interest at his choice and



further that Uppuluri Subba Rao obtained such promissory notes in the name of his family members and relatives and thus, the suit promissory notes are not fully supported by consideration. It is also further pleaded that the 1st defendant agreed to settle the debts due to the plaintiff, but as this defendant sustained loss in the rice mill business, the plaintiff filed the suit under an apprehension that the defendants may avoid discharge of the debt and got attached the properties of the defendants 2 & 3 intentionally knowing that this defendant had given the properties to them at the time of their marriages and since then they have been in possession and enjoyment of the same and pattadar passbooks were also issued in their favour long back and they have been paying land revenue in their names, but no registered document was executed at that time. The 1st defendant further contended that in the gift deeds, it is recited that the property was already delivered and thus, the gift deeds are valid and not executed to defeat the debt. Thus, the 1st defendant contended that the defendants 2 & 3 are not liable to the suit claim. It is further pleaded that after receipt of notice, there was a settlement between the plaintiff and the defendant. The plaintiff intended to purchase the rice mill or the land of this defendant, but subsequently, she turned round and filed this suit only to cause loss to this defendant.

4. The 2nd defendant filed a separate written statement stating that this defendant got married to Sri Yelati Srinivasu on 15.04.1992 and at the time of her marriage, her father/1st defendant and her mother gave item No.2 of the schedule property as pasupu-kumkuma to her and subsequently, in the year 1995, she obtained pattadar passbook and has been in possession and enjoyment of the property with



absolute rights and that she has been residing with her husband since the marriage and the debts incurred by the 1st defendant do not bind her. It is further pleaded that on 13.11.2008, the 1st defendant and 3rd defendant executed a gift settlement deed in respect of item No.2 of the suit schedule property in favour of this defendant and thus, the 1st defendant has no interest or right in this item of property. However, knowing fully well of all these facts, the plaintiff got filed the suit and illegally pressurizing for payment of the suit debts. She prayed to dismiss the suit.

5. The 3rd defendant filed a separate written statement praying to dismiss the suit on the ground that she was married to Masina Srinivasa Rao @ Srinivasu, on 27.02.1994, and even by the date of the marriage, she had acquired the property mentioned in item Nos.1 and 3 of the plaint schedule as it was devolved on this defendant as her pasupu-kumkuma and later, she obtained pattadar passbook in the year 1995 from the government and has been in possession and enjoyment of the property as an absolute owner. She further submitted that in view of the gift of properties in item Nos.1 & 3 of the plaint schedule to her very long back and it is incorrect to state that defendants 2 & 3 have become universal donees of the suit schedule properties. She denied the suit claim stating it as false.

6. Basing on the above pleadings, the following issues are framed:

1. Whether the suit promissory notes dated 18.05.2007, 21.5.2007, 22.5.2007 and 01.11.2007 are true, valid, supported by consideration and binding on the defendants?
2. Whether the defendants 2 and 3 are proper and necessary parties for the suit and whether their properties are liable for suit claim?



3. Whether the plaintiff is entitled for recovery of suit amount from the defendants?

4. To what relief?

7. The plaintiff, apart from getting herself examined as PW1, one of the attestors to the promissory note, by name Morampudi Sreenivas, was examined as PW2. All four promissory notes were filed as exhibits A1 to A4 and Photostat copy of the auction notice was marked as exhibit A5 and Photostat copy of the partition deed, dated 06.12.2008, was marked as exhibit A6. On behalf of the defendants, all three of them were examined as Dws 1 to 3 respectively and no documentary evidence was filed.

8. After hearing both sides, the trial Court decreed the suit with costs against all the three defendants. Feeling aggrieved by the same, the defendants 2 & 3 preferred the present appeal mainly on the ground that since the properties were acquired by them as pasupu-kumkuma at the time of their marriages very long prior to the alleged date of borrowal of the suit amount, these debts do not bind them and the suit is bad for mis-joinder of parties and further that they are not universal donees since the 1st defendant has some other property.

9. Though notice was received by the 1st respondent/plaintiff and 2nd respondent, they have not entered appearance.

10. Heard *Sri P.Girish Kumar*, learned senior counsel appearing on behalf of Sri G.Venkateswara Rao, learned counsel for the appellants.

11. Learned senior counsel reiterated the contents of the written statement and the grounds alleged in the appeal. He further submitted that in Second Appeal No.82 of 2020 before this Court,



between the same parties, in the similar issue, the claim of the plaintiff that defendants 2 & 3 are universal donees and liability to the suit debt has been rejected. That apart, he has drawn the attention of this Court to the admission of PW1 that the 1st defendant has rice mill property at G. Medapadu which is being run by himself and also house at Medapadu where he is residing and further that she admitted that he has a Maruti Car bearing No.AP5L 5252 and the lands also in his name.

12. Section 128 of the Transfer of Property Act, 1882, states that subject to the provision of Section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein. In view of the admissions made by PW1, it is not 'whole' property of the 1st defendant which was transferred under the gift deeds which are admitted to have been executed in the year 2008. Of course, there is no document of the gift deeds or pattadar passbook adduced in evidence by either of the parties.

13. Therefore, irrespective of such absence of evidence, the learned counsel for the appellants contended that even as per the categorical admission of PW1, since there are some other properties of the 1st defendant, the plaintiff cannot take shelter under Section 128 of the Transfer of Property Act to mulch liability on the defendants 2 and 3 to the suit claim. Accepting the submissions in this regard, this Court is of the view that the trial Court ought not to have fastened liability against defendants 2 and 3 for the suit claim as universal donees.



Thus, the appellants succeeded in establishing their case and in defending the suit claim against them.

14. The decision in **Shaik Fathima Bi v. M/s. Sri Venkata Chalapathy Finance Corporation, Rayachoty**¹ referred in the judgment of the trial Court does not apply to the present case as the observations therein were made with regard to having property other than the salary; whereas, in the present case, the 1st defendant is admittedly having other properties. The trial Court failed to take into account the admission of PW1/plaintiff regarding the properties owned by the 1st defendant and has been carried away by the case of the defendants that the properties have been partitioned and some properties have been gifted to defendants 2 & 3.

15. Thus, the decree and judgment passed in O.S.No.699 of 2009 on the file of the Court of the Principal Senior Civil Judge, Kakinada, are partly set aside as against the appellants/defendants 2 & 3 and the suit against them is dismissed.

16. In the result, the appeal is allowed setting aside the decree and judgment in O.S.No.699 of 2009 on the file of the Court of the Principal Senior Civil Judge, Kakinada, as against the appellants/defendants 2 & 3. Both parties shall bear their own costs throughout.

Miscellaneous petitions pending, if any, shall stand closed.

B.S BHANUMATHI, J

01st July, 2022

Note:- L R Copy to be marked
(B/o)
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¹ AIR 1978 AP 401