APHC010663022009

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

THURSDAY, THE 6th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

APPEAL SUIT NO: 32/2009

Between:

Chinnam Venkata Rama Reddy and Others **...APPELLANT(S)**

AND

Nallamilli Satyanarayana Reddy **...RESPONDENT**

Counsel for the Appellant(S):

1. GVVSR SUBRAHMANYAM

Counsel for the Respondent:

1. T V JAGGI REDDY

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

APPEAL SUIT No.32 of 2009

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short '**the C.P.C.'**], is filed by the Appellants/Defendants challenging the Decree and Judgment, dated 29.10.2008, in O.S.No.133 of 2004 passed by the learned Senior Civil Judge, Ramachandrapuram [for short '**the trial Court'**].

2. The appellants herein are the defendants and the respondent herein is the plaintiff in O.S.No.133 of 2004, on the file of the Senior Civil Judge, Ramachandrapuram.

3. Originally, the plaintiff in O.S.No.133 of 2004 filed the suit against the defendants, seeking for recovery of Rs.9,99,500/- being the amount of principal and interest due on a mortgage debt dated 27.11.1999, executed by the defendants in favour of the plaintiff for Rs.3,00,000/- with subsequent interest and for costs.

4. Both parties in the appeal will be referred to as they were arrayed before the trial Court.

5. The case of the plaintiff as per the plaint averments in O.S.No.133 of 2004, in brief, is as follows:

I. The plaintiff pleaded that the defendants borrowed an amount of Rs.3,00,000/- from the plaintiff for the purpose of business investment of the defendant No.5 and also for family expenses of the defendant

Nos.1 to 5 on 27.11.1999 and executed the suit mortgage bond dated 27.11.1999, undertaking to pay the same together with interest @ Rs. 2.50 Ps per month per hundred. The plaintiff further pleaded that the defendants have to pay interest for every half year and if the defendants failed to do so, they have to pay compound interest till payment. The plaintiff further pleaded that the defendants did not pay the interest for every six months as per the contract, i.e. the conditions stipulated in the suit mortgage bond, and the plaintiff is entitled to recover the principal amount by adding the interest calculated for every six months and cumulating the same with the principal amount. The plaintiff further pleaded that the defendant No.1 is an Advocate by profession, the defendant No.5 is a businessman and the other defendants are also businessmen, and the purpose of borrowing the amount is also to invest the same in the business. The plaintiff further pleaded that he is entitled to recover the interest as per the contract rate with half-yearly compound interest.

II. The plaintiff further pleaded that the defendants failed to pay any amount towards the mortgage debt till now, despite the expiry of three yearly installments for discharge of the debt and, as such, the plaintiff got issued a notice on 21.11.2001 to all the defendants through the defendant No.1 demanding to discharge of the mortgage debt. The defendants issued a reply notice dated 25.11.2001, stating that they will take a loan from the Cooperative Bank and discharge the debt if the

plaintiff furnishes the pattadar pass book and title deed. The plaintiff further pleaded that even after handing over the title deeds and pass book, the defendants did not pay or discharge the debt due under the mortgage bond, and then the plaintiff again issued a notice dated 01.10.2002, and the defendant No.1 received the said notice and issued a reply dated 18.10.2002 through his counsel stating that he will repay the loan as early as possible immediately after the sanction of the loan from the Bank. The plaintiff further pleaded that the defendants did not discharge the debt and subsequently, handed over the original title deed and pass book to the plaintiff. The plaintiff further pleaded that all the defendants are not agriculturists and they are not entitled to the benefits of Act No.4 of 1938 or Act No.7 of 1977 or Act No.45 of 1987 or Act No.02 of 1990, or any other Act applicable to the agriculturists, which will not be applicable to the defendants, and the defendants are not entitled to any benefits and that the plaintiff was constrained to file the suit.

6. The defendant No.5 filed the written statement and the same was adopted by defendant Nos.1 to 4 and the case of the defendants as per the written statement is as follows:

The defendant No.5 pleaded that the plaintiff obtained the mortgage bond with an interest of 30% per annum with false and incorrect recitals in the mortgage bond and subsequently, after borrowing the amount from the plaintiff, the defendant No.5 sustained a loss in the business and could not

repay the same immediately. The defendant No.5 further pleaded that he and the plaintiff got into a mutual understanding and the plaintiff agreed to receive an amount of Rs.18,000/- per month towards monthly installments commencing from November, 2002. Accordingly, the defendants regularly paid Rs.18,000/- per month on the 7th day of every month and the defendant No.5 paid monthly installments of Rs.18,000/- to the plaintiff till 07.05.2004, thus the defendant No.5 paid an amount of Rs.3,42,000/- towards part payment of the principal and interest till 07.05.2004. The defendant No.5 further pleaded that the suit was filed only to harass the defendants and the plaintiff with a malafide motive got mentioned incorrect recitals in the mortgage bond and basing on those recitals, the present suit was filed and the defendants requested for dismissal of the suit.

7. Based on the above pleadings, the trial Court framed the following issues:

1) *Whether the mortgage bond dated 29.11.2009 (sic. 27.11.99?) is true, valid and binding on the defendants?*
2) *Whether the discharge of Rs.2,28,000/- is true and valid?*
3) *To what relief?*

On 18.07.2007, the trial Court framed the following additional issues:

1) *Whether the interest claimed by the plaintiff is agreed rate of interest and is payable at compound rate with half yearly rests?*

2) *Whether the interest claimed by the plaintiff is usurious and required to be scaled down?*

3) *Whether the defendants are entitled for the benefits of Act IV of 1938?*

4) *Whether the calculation of suit amount is correct?*

On 19.08.2008, the trial Court framed the following additional issues:

1) Whether the defendants discharged Rs.3,42,000/- due under suit mortgage?

2) Whether the plaintiff is entitled to recover the entire suit amount?

3) To what relief?

8. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-8 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-19 were marked and the evidence of D.W.2 and D.W.3 was eschewed.

9. After completion of the trial and on hearing the arguments of both sides, the trial Court decreed the suit with costs *vide* its judgment, dated 29.10.2008, against which the present appeal is preferred by the appellants/defendants in the suit.

10. Learned counsel for the appellants would contend that the judgment and decree passed by the trial Court are contrary to law and against the weight of the evidence, he further contended that the trial Court failed to consider that an amount of Rs.2,28,000/- was paid under receipts under Ex.B-1 to Ex.B-19, and the trial Court also failed to consider the aforesaid

receipts issued towards part discharge of the amount. He would further contend that the learned trial Judge failed to appreciate the evidence on record in a proper manner and decreed the suit, and the appeal may be allowed by setting aside the decree and judgment passed by the trial Court.

11. Per *contra*, learned counsel for the respondent/plaintiff would contend that, on appreciation of the entire evidence on record, the learned trial Judge rightly decreed the suit and there is no need to interfere with the findings arrived at by the learned trial Judge, and that the appeal may be dismissed by confirming the decree and judgment passed by the trial Court.

12. Heard Sri GVVSR. Subrahmanayam, learned counsel appearing for the appellants and Sri T.V. Jaggi Reddy, learned counsel appearing for the respondent.

13. Now, in deciding the present appeal, the points that arise for determination is as follows:

1. **Whether the recitals in Ex.A-1 registered mortgage deed are true and Ex.A-1 is proved?**
2. **Whether the alleged discharge of part-payments of amounts under Ex.B-1 to Ex.B-19 pleaded by the appellants is proved by the appellants?**
3. **Whether the trial Court is justified in decreeing the suit?**

14. **Point No.1:**

Whether the recitals in Ex.A-1 registered mortgage deed are true and Ex.A-1 is proved?

The undisputed facts are that the defendant Nos.1 and 2 are husband and wife and the defendant Nos.3 and 4 are the children of the defendant Nos.1 and 2 and the defendant No.5 is none other than the husband of the defendant No.4 and son-in-law of the defendant Nos.1 and 2. It is also undisputed that the defendant No.1 is a practicing advocate at Ramachandrapuram. The borrowing of Rs.3,00,000/- and the execution of Ex.A-1 registered mortgage deed before the Sub-Registrar is undisputed by the defendants. The defendant No.5/D.W.1 admitted in his evidence in cross-examination itself about the relationship of the parties. He further admits that all the five defendants borrowed Rs.3,00,000/- from the plaintiff and executed a registered mortgage deed under Ex.A-1. He also further admits that, as per the recital in Ex.A-1, they have to pay the interest @ 30% per annum for every six (06) months. Another crucial admission made by D.W.1 in his evidence in cross-examination itself is that, as per Ex.A-1, they have to repay the principal amount also within three installments @ Rs.1,00,000/- within one (01) year from the date of Ex.A-1, and another sum of Rs.1,00,000/- in another one (01) year period, and the balance amount is to be paid in another one (01) year. He also further admits that, as seen from Ex.A-1, they have to pay the entire principal amount with compound rate of interest payable for every six (06) months. If they fail to pay the interest as agreed upon expiry of six (06)

months, the interest will be added to the principal and the interest will be calculated on the said total sum.

15. The suit is based on the registered mortgage deed said to have been executed by all the defendants. To discharge his initial burden, the plaintiff relied on his self-testimony as P.W.1. P.W.1 narrated in his evidence about the borrowing of the amount and execution of Ex.A-1 registered mortgage deed by all the defendants in favour of the plaintiff. P.W.2 is one of the attestors to Ex.A-1 registered mortgage deed. P.W.2, in his evidence, specifically stated about the borrowing of Rs.3,00,000/- by all the defendants and execution of Ex.A-1 mortgage deed and also registration of the same before the Sub-Registrar, and he further asserted that the defendants also agreed to repay the same along with interest @ Rs.2.50 Ps per month per hundred, repayable within three installments on or before 26.11.2000. It is not at all suggested to P.W.2 in cross-examination by the learned counsel for the defendants before the trial Court that they have not agreed to repay the same with interest @ Rs.2.50 Ps per month per hundred repayable on or before 26.11.2000, 26.11.2001 and 26.11.2002 as stated in the chief-examination affidavit. As seen from the evidence of P.W.2, no suggestion was given to P.W.2 in cross-examination by the learned counsel for the defendants that the defendants agreed to repay the amount with interest @ Rs.2.00 Ps per month per hundred and not with interest @ Rs.2.50 Ps per month per hundred.

16. The learned counsel for the appellants would contend that the agreed rate of interest between both the parties is Rs.2.00 Ps per month per hundred,

but it was got manipulated as Rs.2.50 Ps per month per hundred by the plaintiff before the document was presented with the Sub-Registrar for registration. As seen from the written statement filed by the defendants as well as the evidence of D.W.1, it is not at all pleaded by the defendants either in the written statement or in the evidence of D.W.1 that the agreed rate of interest between both the parties is Rs.2.00 Ps per month per hundred only, but it was manipulated as Rs.2.50 Ps per month per hundred by the plaintiff before the document was presented with Sub-Registrar. For the first time, the appellants have taken the aforesaid stand of manipulation of interest in the document at the stage of arguments. Therefore, in the absence of any pleading and oral evidence as narrated supra, the aforesaid contention of the appellants cannot be taken into consideration.

17. The plaintiff, to prove the recitals in Ex.A-1, examined one of the attestors of Ex.A-1 as P.W.2. To disprove the recitals of Ex.A-1 mortgage deed, the defendants did not adduce any cogent evidence except examining one of the borrowers, defendant No.5, as D.W.1. D.W.1 himself admitted about the execution and registration of the mortgage deed under Ex.A-1. As stated supra, no such suggestion was given to P.W.2 in cross-examination by the learned counsel for the defendants before the Court below that the recitals in Ex.A-1 are not true and the agreed rate of interest is @ Rs.2.00 Ps per month per hundred. As stated supra, the defendants are not illiterates and the defendant No.1 is a practicing advocate at Ramachandrapuram, at which place the suit is filed. For the reasons best known to the defendant Nos.1 to 4,

they did not enter into the witness box to disprove the evidence produced by the plaintiff and to prove the defence put forth by the appellants in the written statement. The defendants also relied on the evidence of D.W.2 and D.W.3. The evidence of D.W.2 and D.W.3 is eschewed by the learned trial Judge by narrating reasons in the judgment. In view of the aforesaid reasons, this Court is of the considered view that the recitals in Ex.A-1 registered mortgage deed are true and Ex.A-1 is proved.

Accordingly, Point No.1 is answered against the appellants.

18. **POINT No.2:**

Whether the alleged discharge of part-payments of amounts under Ex.B-1 to Ex.B-19 pleaded by the appellants is proved by the appellants?

It was contended by the appellants that they made part-payments under Ex.B-1 to Ex.B-19 to the plaintiff. Ex.B-1 to Ex.B-19 are vouchers said to have been issued by one Siva Reddy Computerized Weighbridge. The receipts under Ex.B-1 to Ex.B-19 are strongly disputed by the respondent/plaintiff. The defendants are individuals and they are not the Siva Reddy Computerized Weighbridge. There is no mention in Ex.B-1 to Ex.B-19 that those receipts are part-payment receipts to discharge part of the debt covered under Ex.A-1. D.W.1/defendant No.5, who is one of the borrowers, admitted in his evidence itself that there is a recital in Ex.A-1 that if any payment is made, it shall be endorsed on the back of Ex.A-1 mortgage deed only. He further admits that in none of Ex.B-1 to Ex.B-19 receipts is it found that the alleged payments were made by any one of the five defendants. He further admits that there is no

recital in Ex.B-1 to Ex.B-19 that the alleged payments under them are for discharge of the debt due under Ex.A-1 mortgage transaction.

19. The alleged Ex.B-1 to Ex.B-19 are vouchers in the name of Siva Reddy Computerized Weighbridge. It has to be explained by the appellants how Ex.B-1 to Ex.B-19 are to be connected with Ex.A-1 mortgage transaction, in view of the aforesaid admission made by the D.W.1 in his evidence in cross-examination. Therefore, Ex.B-1 to Ex.B-19 cannot be treated as part-payment receipts to discharge Ex.A-1 mortgage debt. Moreover, as stated supra, Ex.B-1 to Ex.B-19 alleged receipts are strongly disputed by the respondent/plaintiff, therefore, the burden heavily casts upon the appellants to prove the same. The said Ex.B-1 to Ex.B-19 receipts shown are said to have been issued by Siva Reddy Computerized Weighbridge and one clerk by the name of Rajesh signed the said receipts, and the said Rajesh was examined as D.W.3 before the trial Court. But the evidence of D.W.3 was eschewed by the trial Court by assigning reasons in its judgment. As stated supra, the execution and borrowing are admitted by the appellants, therefore, it is for the defendants/appellants to prove the alleged part-payment receipts under Ex.B-1 to Ex.B-19. But, they have failed to prove the same; therefore, Ex.B-1 to Ex.B-19 alleged receipts are not at all proved by the appellants.

19. **POINT No.3:**

Whether the trial Court is justified in decreeing the suit?

In view of my findings on Point Nos.1 and 2, there is no illegality in the decree and judgment passed by the learned trial Judge in its judgment dated 29.10.2008.

20. In the result, the present **Appeal Suit** is dismissed, confirming the decree and judgment dated 29.10.2008, in O.S.No.133 of 2004 passed by the learned Senior Civil Judge, Ramachandrapuram, East Godavari District. On considering the facts and circumstances of the case, each party shall bear its own costs in the appeal suit.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed

V. GOPALA KRISHNA RAO, J.

Date: 06.08.2026
SRT

Whether the order is:

Speaking	☑	Reasoned	
Reportable		Non-reportable	☑