

**HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO**

**APPEAL SUIT Nos.1289 and 1476 of 1998**

**COMMON JUDGMENT:**

Both the suits arise out of a common judgment in O.S.No.268 of 1986 on the file of the II-Additional Senior Civil Judge, at Vijayawada.

2. The suit was filed for enforcement of a mortgage deed alleging that the 1<sup>st</sup> defendant is a registered firm of which defendants Nos.2 to 4 are partners. The 2<sup>nd</sup> defendant is the managing partner and he is said to have borrowed several amounts from the plaintiff and executed promissory notes and also created an equitable mortgage of the schedule property including the share of his minor children, who are defendant Nos. 5 and 6. Defendant Nos. 2 to 4 did not seriously dispute about the borrowings and also the payments pleaded by the defendants. Defendant Nos.5 and 6 contended that they are not aware of the partners of the

1<sup>st</sup> defendant firm and they have nothing to do with the business and they have got 2/3<sup>rd</sup> share in the plaintiff schedule property and creation of equitable mortgage by the 2<sup>nd</sup> defendant does not bind them. There is no legal necessity or benefit of estate by the minors. Consequently, they pleaded that their share can not be proceeded with.

3. After framing necessary issues, the Court below has passed a preliminary decree for a sum of Rs.1,91,031-75 ps with future interest on the principal sum of Rs.1,47,056-25 ps against all the defendants.

4. Aggrieved by the said judgment, defendant Nos.5 and 6 have preferred A.S.No.1289 of 1998 and the plaintiff has preferred A.S.1476 of 1998 questioning the quantum of interest which has been granted by the Court below after the decree.

The points that arise for consideration are:-

- i) Whether defendant Nos.5 and 6 can be held liable for the suit amount? And
- ii) Whether the plaintiff is entitled for a higher rate of interest from the date of suit?

**POINTS:**

5. Evidently, as can be seen from the findings of the Court below under issue Nos.1 to 3 in the paragraph No.22 of the judgment, a special finding has been given that defendant Nos.5 and 6 are in no way concerned with the borrowing of the 1<sup>st</sup> defendant firm or his business. It was also further found that the personal borrowings made by the 2<sup>nd</sup> defendant for the 1<sup>st</sup> defendant firm will never extend to defendant Nos.5 and 6. There was also a positive finding recorded by the Court below that the debt is not contracted by the 2<sup>nd</sup> defendant for the benefit of the alleged joint family and consequently, defendant Nos.5 and 6 cannot be made liable in such circumstances. But, however, taking into consideration the general principles of law that the natural guardian has got power to create a mortgage over the share of the minor sons, the Court below has fastened the liability to defendant Nos.5 and 6. The liability of defendant Nos.5 and 6 can only be extended when the natural guardian i.e., the father has contracted any debt for the benefit of the family or they contracted any debt to discharge any liability of the joint family debts or for the benefit of the joint family. It is also not the plea of the plaintiff

that the business done by the 2<sup>nd</sup> defendant as a partner of the 1<sup>st</sup> defendant is a joint family business. Therefore, in the absence of any such finding by the Court below and the plea made by the plaintiff and in view of the positive findings of the Court below about the nature of the transaction, even if the 2<sup>nd</sup> defendant has got a right to deal with the properties of the minor as a natural guardian, still so far as this transaction is concerned, his dealings does not bind defendant Nos.5 and 6 and consequently there cannot be a valid decree against the share of defendants 5 and 6 and the appeal filed by defendant Nos.5 and 6 has to be allowed and the mortgage decree shall be enforceable only against the 1/3<sup>rd</sup> share of the 2<sup>nd</sup> defendant in the schedule properties.

6. So far as the other claim of the plaintiff for enhancement of the interest is concerned, as can be seen from the plaint allegations, the interest was claimed at 15% p.a., and it was granted by the Court prior to filing of the suit. In fact, granting of the subsequent interest is discretion of the Court and there is sufficient security for the loan and prior to the suit, interest was granted as per the contract rate. I, therefore, find no reason to interfere with the discretion expressed by the Court below in granting interest at 6% p.a.

7. Accordingly, A.S.No.1476 of 1998 is dismissed and A.S.No.1289 of 1998 is allowed. Miscellaneous petitions, if any, in these Appeal Suits shall stand closed. Each party do bear their own costs.

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**N.R.L.NAGESWARA RAO, J**

Date:11-03-2013

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