

**EQUITABLE RULE OF DAMDUPAT APPLICABLE IN THE STATE OF  
ANDHRA PRADESH ALSO : DECISION REPORTED IN 2009 (5) ALT 574  
IS AGAINST RULE OF LAW**

*By*

**—VARAHAGIRI PRASADA RAO,**  
B.Sc., (Hon.), B.L.  
BOBBILI, VIZIANAGARAM DISTRICT

1. The Rule of damdupat is a branch of the Hindu Law of debts. According to this rules, the amount of interest recoverable at any one time cannot exceed the principal. It applies not only to unsecured loans but also to loans secured by a pledge of movable property and those secured by a mortgage of immovable property.

Before the Act Transfer of Property Act 1882 was enacted, the Rule of damdupat was used to be applied in Bombay State and in the City of Calcutta but not in any other part of Bengal and it was not given effect in the state of Madras and in the erstwhile Berar; it was applied if both the debtor and the creditor are Hindus. It also did not apply to a Muslim.

Whiles, Transfer of Property Act 1882 was enacted in 1882. Section 2 of the said Act is as follows :—

“2. *Repeal of Acts* :—In territories to which this Act extends for the time being, the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect —

Saving of certain enactments, incidents, rights, liabilities, *etc* —

- (a) The provisions of any enactment, not hereby expressly repealed;
- (b) any terms or incidents of any contract or constitution of property, which are

consistent with the provisions of this Act, and are allowed by the law for the time being in force;

- (c) any right or liability, arising out of a legal relation constituted before this Act came into force, or any relief in respect of any such right or liability; or,
- (d) save as provided by Section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of a decree or order of a Court of competent jurisdiction;

and nothing in the second chapter of this Act shall be deemed to effect any rule of Hindu Law”.

The Transfer of Property Act 1882 was amended by Act 20 of 1929, according to which Section 2 was amended as follows :

“Section 2. . .

and nothing in the second chapter of the Act shall be deemed to effect any rule of Muslim Law”.

In this context, it is pertinent to note that Chapter-II of the Transfer of Property Act, 1882 deals with “Transfers of Property by Act of Parties”, whereas Chapter-IV deals with “Mortgages of immovable property and charges”.

2. Coming to the application of rule of damdupat in the erstwhile Madras Province,

before the passing of Amendment Act 20 of 1929, there is a reported decision *Madhwa Siddhanta Onachini Nidhi v. Venkataramanujulu Naidu*, (1903) ILR 26 Mad. 662, wherein it was held that the rule of Damdupat was inapplicable to cases of mortgages governed by the Transfer of Property Act. The principal reason for the decision is that in Section 2 of the Transfer of Property Act, before it was amended by the Amendment Act 20 of 1929, it was provided in its concluding para, “and nothing in the second chapter of this Act shall be deemed to affect any rules of Hindu Law”. It was inferred in the said decision that as the rules of Hindu Law were saved only with regard to transfer of property as contained in the second chapter, it was not saved with mortgages of immovable properties and charges as provided in Chapter IV of the Transfer of Property Act.

3. A contrary view was expressed by Bombay High Court in *Jeewanbai v. Manordas Lachmondas*, (1911) ILR 35 Bom. 199, in which it was held that it was not proper to infer that, because it has been expressly enacted that nothing in Chapter II of Transfer of Property Act shall be deemed to affect any rule of Hindu Law, the Legislature has deprived a Hindu mortgagor of the protection afforded to him by the rule of Damdupat. The Calcutta High Court refused to follow the decision of Madras High Court in *Madhwa Siddhanta's* case referred to above in (1903) ILR 26 Mad. 662.

In AIR 1946 Nag. 210, a Division Bench of Nagpur High Court held that the rule of Damdupat is applicable to a mortgage and that it does not in any way affect the provisions of Transfer of Property Act, inasmuch as it merely prevents recovery of interest on the loan in excess of the principal.

4. In *Madhwa Siddhanta's* case, the main reason to hold that the rule was inapplicable to mortgages governed by the Transfer of

Property Act was that in view of Section 2 of the Transfer of Property Act, before it was amended by Act 20 of 1929, the rules of Hindu law were not saved with regard to mortgages of immovable properties and charges as contained in Chapter IV of the Act. By the Amendment Act 20 of 1929, Section 2 has been amended and after such amendment, it reads in the last two lines as follows :

“.... and nothing in the second chapter of this Act shall be deemed to affect any rule of Mohammdan law”. So Supreme Court in AIR 1988 SC 1200 (Para 21 at page 1205) held that “the inference that was drawn in *Madhwa Siddhanta's* case from the provision of Section 2 about the non-applicability of the rules of Hindu Law including the rule of Damdupat to mortgages cannot now be drawn from the amended provision with regard to any rule of Hindu Law. Moreover, we are of the view that the law was not correctly laid down in *Madhwa Siddhanta's* case (supra) and the Calcutta, Bombay and Nagpur High Courts have rightly held in the decision mentioned above that the rule of damdupat is applicable to the mortgages...” So, the law laid down by Supreme Court way back in 1988 is rule of damdupat is applicable in the erstwhile Madras State, that is, including State of Andhra Pradesh.

5. Recently in 2005 (2) ALD 134, the A.P. High Court, following AIR 1988 SC 1200, held that the rule of damdupat is applicable to all transactions including Bank transactions and recovery of amounts under mortgage deed. The same decision was also reported in 2008 (1) ALT 665.

6. But in 2009 (5) ALT 574, A.P. High Court held at Page 577 at Paragraphs 19, 20 and 21 as follows :

“19. Similarly it is equally true that in *Viswanadham Bala Subbarayadu v. Lakkireddi*

*Chennamma*, 2008 (1) ALT 665; 2005 (2) ALD 134 the learned Judge held that the Principle of Damdupat applies to all transactions including mortgage transactions. The learned Judge, of course, observed about the extension of the principle to all transactions including mortgage transactions, by the decision of the apex Court in *M.R. Patil v. S.B. Rainade*, AIR 1988 SC 1200 over ruling *Madhwa Siddhanta Conatana Nidhi v. Venkataramanujulu Naidu*, (1903) ILR 26 Mad. 662. But his Lordship was not considering the territorial application of the rule of Damdupat in that case.

However, the Apex Court itself observed in *M.P. Patil v. S.B. Rainade* (supra), in Para 21 that admittedly the rule of Damdupat was never applicable to Madras and the overruling of *Madhwa Siddhanta's* case (supra) was not with reference to the extension or exclusion of the applicability of the rule to any territory but with reference to the applicability of the rule even to mortgages governed by the Transfer of Property Act (the case before their Lordships having arisen from Bombay, to which territory, the rules of Damdupat applies.

In fact, in *Syndicate Bank v. I. Gurava Reddy* 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 Honourable Sri Justice B. Sudershan Reddy (as his Lordship then was) 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 of Andhra Pradesh but on the otherhand, 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 Siddhanta'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. Raghavachari's* 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 Lordships has been pleased to place on record the appreciation for the assistance rendered by Sri T.S. Anand, learned *amicus curiae* in that case.”

7. So, His Lordships, who delivered judgment reported in 2009 (5) ALT 574, had before him all the above referred three judgments, to wit, (1) AIR 1988 SC 1200 (2) 2008 (1) ALT 665 = 2005 (2) ALD 134 and (3) 1998 (1) ALT 705. The latter two decisions referred to the first decision and holding that apex Court decision is being followed, each of the later two decisions inter-pretted the Supreme Court decision in diametrically opposite manner. The second decision held that rule of damdupat applies in Andhra Pradesh and the third decision held that the rule of Damdupat has no application in Andhra Pradesh 1998 (1) ALT 705. Both are decisions of Single Judge only under such circumstances, the Honourable Judge whose judgment was reported in 2009 (5) ALT 574, has to refer the matter to the Chief Justice of A.P. High Court for constitution of a Division Bench to have an authoritative pronouncement about the application or non-application of the rule of damdupat in the State of Andhra Pradesh.

8. Even otherwise, the decision reported in 2009 (5) ALT 574 is not in accordance with the preposition of law laid down by Supreme Court in AIR 1988 SC 1200. In para 20, His Lordship observed that the apex Court itself observed in *M.R. Patil v. S.B. Rainade* (supra), in Para 21 that “admittedly, the Rule of Damdupat was never

applicable to Madras”; again at Para 20, the learned Judge observed “.....but His Lordship was not considering the territorial application of the Rule of Damdupat in that case”. No doubt, Paragraph 21 of AIR 1988 SC 1200 (1205) starts as follows : “21. Admittedly the rule of damdupat was never applicable to Madras”. But, the said judgment proceeded further and held from line 18 to line 30 as follows “...The inference that was drawn in *Madhwa Siddhanti's* case (supra), from the provision of Section 2 of Transfer of Property Act about the non-applicability of the rules of Hindu Law including the rule of Damdupat to mortgages cannot now be drawn from the amended provision with regard to any rule of Hindu Law – Moreover we are of the view that the law was not correctly laid down in *Madhwa Siddhanti's* case (supra) and the Calcutta, Bombay and Nagpur High Courts have rightly held in the decisions mentioned above that the Rule of Damdupat is applicable to mortgages....” with due respect to the learned Judge, I have to say that the learned Judge did not go into its depth as to what is the intention of the Supreme Court in Para 21 at Page 1205 of AIR 1988 SC 1200 but was simply carried away with the opening sentence in Para 21, to wit.

“21. Admittedly, the Rule of Damdupat was never applicable to Madras....” But, the learned Judge ought to have seen that the said observation of the Apex Court in the above sentence is only with reference to the applicability of rule of damdupat in Madras before passing of Amendment Act 20 of 1929 to Transfer of Property Act and accordingly the Supreme Court ruled as stated above that the law laid down in *Madhwa Siddhanti's* case is no more good law after Amendment Act 20 of 1929 to Transfer of Property Act and that the law as laid down by other High Courts, which held that the rule of damdupat is applicable to mortgages, was accepted by the Supreme Court in the concluding sentences in para 21

of its judgment reported in AIR 1988 SC 1200.

9. So, I am of the honest opinion that the, proposition of law, to wit, the rule of damdupat is not applicable in the State of Andhra Pradesh, as laid down in 2009 (5) ALT 574, is not in accordance with the law laid down by Supreme Court in AIR 1988 SC 1200 and also for the reason, that, when there are two judgments of Single Judges, which are diametrically opposite to one another, the learned Judge ought to have requested the Chief Justice of Andhra Pradesh for constitution of a Division Bench to lay down the correct proposition of law or the learned Judge ought to have followed the later decision of the two decisions cited before him, to wit, 2008 (1) ALT 665, instead of following an earlier decision reported in 1998 (1) ALT 735, that two, when the same Supreme Court decision reported in AIR 1988 SC 1200 was referred to in both the decisions, but each of the Judges interpreted the said Supreme Court decision in his own way different from the other. Anyway I am of the view that the Supreme Court decision reported in AIR 1988 SC 1200 is crystal-clear in its observations about the applicability of rule of damdupat, when it said that the rule is applicable in Madras also after Amendment Act 20 of 1929 to Transfer of Property Act came into force, by way of over ruling the basic reason held in *Madhwa Siddhanti's* case and also in its further upholding that the Calcutta, Bombay and Nagpur High Courts have rightly held that the rule of damdupat is applicable to mortgages. Had it been the intention of the Supreme Court that the rule of damdupat is not applicable in the State of Andhra Pradesh, it would have so held in crystal clear terms while over ruling *Madhwa Siddhanti's* case but on the other hand, as stated supra, it held that “the inference that was drawn in *Madhwa Siddhanti's* case from the provision of Section 2 about the non-applicability of the rules of Hindu Law including the rule of

damdupat to mortgages cannot now be drawn from the amended provision with regard to any rule of Hindu law. Moreover we are of the view that the law was not correctly laid in *Madhwa Siddhanta's* case (supra), and the Calcutta, Bombay and Nagpur High Courts have rightly held in the decisions mentioned above that the Rule of damdupat is applicable to mortgages.....” The law as laid down by Supreme Court with regard to applicability of the rule of damdupat cannot be understood as being applicable to Hindus residing within the original jurisdiction of the High Courts of Calcutta, Bombay and Nagpur and does not apply to Hindus residing within the jurisdiction of High Court of Andhra Pradesh. If it is so interpreted after coming into force of Constitution of India, it would be definitely against the fundamental right of a Hindu residing in State of Andhra Pradesh under Article 141 of the Constitution, it is the law, that is declared by the Supreme Court of India, which shall be binding on all Courts within the territory of India. So, it is the law as declared by Supreme Court in AIR 1988 SC 1200, to wit, that the rule of damdupat is applicable in the State of erstwhile Madras State at any rate, after

Amendment Act 20 of 1929 to Transfer of Property Act came into force and also by holding, that the law as declared in *Madhwa Siddhanta's* case, basing on the premise that all rules of Hindu law including rule of damdupat are not applicable to Hindus as per Section 2 of Transfer of Property Act, was not correctly laid and also by further holding that the High Courts of Calcutta, Bombay and Nagpur have rightly held in their decisions that the rule of damdupat is applicable to mortgages, which is effective throughout the Country and the law, as declared by A.P. High Court in 1998 (1) ALT 735 and also in 2009 (5) ALT 574 shall be deemed to be against the constitutional mandate and hence not binding.

So I am of the honest opinion that the Rule of Damdupat is applicable to all Hindus throughout the country without any limitations and the law laid down in 1998 (1) ALT 735 and 2009 (5) ALT 574 is not correct and hence not binding and the law laid down in 2008 (1) ALT 665 is in accordance with the law laid down by the Supreme Court in AIR 1988 SC 1200 and hence binding.