

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

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**SECOND APPEAL No.255 of 1998**

**Date:24.03.2015**

**Between:**

The District Collector,  
Prakasam District, Ongole.

... Appellant.

AND

Chilukuri Ramaiah

...Respondent.

The Court made the following :

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**SECOND APPEAL No.255 of 1998**

## **ORDER:**

This appeal is preferred against judgment dated 30-11-1996 in A.S.No.4/1995 on the file of Senior Civil Judge, Addanki whereunder judgment dated 06-12-1994 in O.S.No.226/1976 on the file of Additional Junior Civil Judge, Addanki is confirmed.

2. Brief facts leading to filing of this appeal are as follows:-

Respondents herein filed O.S.No.226/1976 contending that the suit tank was originally dug by ancestors of plaintiffs 1 to 3 for charitable purpose and it is being maintained and kept in proper condition by their families from generation to generation with hereditary rights of management. There is a public donka situated by the side of tank running between Pangulur and Nugendlapalli Villages and that the entire extent of tank will be spread with water for about nine months in a year and that the water being used for men, cattle and irrigation of lands in the vicinity. In the last week of March, 1976, plaintiffs came to know that due to village politics, some persons are misleading revenue officials to get a portion of the tank assigned in their favour and on that, plaintiffs issued a lawyers notice, but the defendants 1 & 2 did not take any action, on the contra, subordinates of first defendant have been attempting to assign portion of tank in invasion of customary, communal and easementary rights of the plaintiffs and therefore, they are constrained to file the suit for declaration of plaintiffs' communal, easementary and natural rights and for consequential permanent injunction. First defendant resisted the claim of plaintiffs by contending that the suit is bad for want of notice under Section 80 of CPC and that as per the revenue records, the land is classified as poramboke and does not belong to Bachina Kodanda Ramaiah or Bachina people and Government is the absolute owner. The suit tank is not a irrigation tank and the water spread area in the property is only Acs.5-00 cents and provisional assignment orders for cultivation were issued in favour of D2, D3, D4,

D5 & D6 in an extent of Ac.1-00 each by the Tahsildar and the same is no way detrimental to the needs of the public. So the claim of the plaintiffs as a customary and easementary rights is not tenable and the plaintiffs have no right in preventing first defendant from assigning the land to landless poor as the tank has been abandoned. Trial Court, after framing necessary issues, conducted trial during which, three witnesses are examined and four documents are marked on behalf of plaintiffs and one witness is examined and no documents are marked on behalf of the defendants. On a over all consideration of oral and documentary evidence, trial Court decreed the suit in favour of plaintiffs. Aggrieved by which, Government i.e., first defendant preferred appeal and the appellate Court, on a reappraisal of evidence, confirmed findings of the trial Court and dismissed the appeal. Now aggrieved by the same, present second appeal is preferred.

3. The following are the substantial question of law that are urged in the grounds of appeal:-

*“1. When the specific plea is raised that the suit is not maintainable for not issuing Section 80 CPC notice, whether the judgments are sustainable in law without framing any issue on that point and giving finding the reason?*

*2. When the suit tank is abandoned in view of passing through of Nagarjuna Sagar Canal, is the Government precluded from assigning the tank to the landless poor persons on the basis of Board standing orders which are not Statutory?*

*3. In the absence of evidence as to acquisition of Customary and Easementary rights for over the statutory period, whether the finding of the lower courts that the public acquired Easementary and customary rights to the tank is sustainable?”*

4. Now the point that would arise for my consideration in this second

appeal is whether there is any substantial question of law to be considered by this Court?

5. **Point:-** The first and foremost objection of the appellant is that suit is not maintainable for non issue of Section 80-notice. In fact, the very same objection is raised before the trial Court and appellate Court and both the Courts, on appreciation of material on record, discarded the objection, particularly in view of the notice dated 14-04-1976. I have perused the material papers and also oral evidence of both parties. The suit is filed in a representative capacity on behalf of all the villagers. Admittedly, suit property is a tank in an extent of Acs.16-54 cents in Survey No.237/1. Even as seen from the material, in the revenue records, this property is classified as a tank proamboke.

In the suit, an Advocate Commissioner is appointed to observe the physical features of the disputed property, who visited the suit property and submitted his report along with rough sketch, which are marked as Exs.C1 &

C2. The Advocate Commissioner is also examined as a witness who deposed about his observations during inspection of the suit property. He clearly mentioned in the report that suit schedule property is a tank poramboke and not even a little extent of the suit land was brought under cultivation and there was stagnated water in the property. Considering the evidence of Advocate Commissioner, which is supported and corroborated with the other evidence of the plaintiffs and documentary evidence, the objection of the first defendant was negatived by both the Courts.

6. As already referred, the main objection is that there was no notice under Section 80 of the CPC and therefore, suit is not maintainable, but as seen from the records, prior to suit, plaintiffs got issued a notice through their Advocate on 14-04-1976 and the postal acknowledgements for the said notice are also filed. Admittedly, no reply is given to the said notice and considering the same, both the

Courts held that as there is a notice prior to the suit and on that ground, objection of defendants was negated. On a scrutiny of the material, I am of the view that both the Courts have rightly negated the objection since Ex.A1 is a notice to the Collector prior to filing of the suit. Therefore, the contention that the suit is not maintainable for want of notice under Section 80 CPC is not at all tenable. The other grounds raised are in respect of factual aspects as already referred above, both the trial Court and appellate Court, on proper appreciation of oral and documentary evidence, granted decree in favour of plaintiffs, particularly relying on the evidence of Advocate Commissioner and his report. I do not find any wrong appreciation of evidence or any incorrect findings in the judgment of the Courts below.

7. For these reasons, I am of the view that the Second Appeal is devoid of merits and no substantial question of law is involved to be decided by this Court and that the appeal is liable to be dismissed.

8. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed. No costs.

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***JUSTICE S. RAVI KUMAR***

**Date:24.03.2015**

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