

**IN THE HIGH COURT OF JUDICATURE AT
HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADERSH
Appeal Suit No.276 of 2008**

Between:

State of Andhra Pradesh, represented by its
District Collector, West Godavari District and
another

.....Appellants

And:

Srimat Kandala Raghavacharyulu and another

..... Respondents

**JUDGMENT PRONOUNCED ON :
13-10-2015**

**HON'BLE SRI JUSTICE : A.
Rajasheker Reddy**

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? :
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals?
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? :

***THE HON'BLE SRI JUSTICE A. RAJASHEKER
REDDY**

+ A.S.No.276 of 2008

% 13-10-2015

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State of Andhra Pradesh, represented by its
District Collector, West Godavari District
And another

.... Appellants

AND

Srimat Kandala Raghavacharyulu and another

.... Respondents

! Counsel for Appellants: G.P. for Appeals

^ Counsel for respondents: Sri M. Vidya Sagar

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1972 Andhra Pradesh 1
- 2) 2014 (4) Andhra Legal Decisions 358
- 3) 2007 (10) SCC 779
- 4) 1972 AP 1 (V.59 C1)
- 5) 2006 (6) ALD 353

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

A.S.No.276 of 2008

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State of Andhra Pradesh, represented by its
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.. Appellants

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

A.S.No.276 of 2008

JUDGMENT:

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This appeal is directed against the judgment and decree dated 25-07-1996 in O.S.No.9 of 1992 on the file of Subordinate Judge, Tadepalligudem, whereby and whereunder the Court below decreed the suit declaring the plaintiff as absolute owner of items 1 and 2 of the plaint schedule properties against the defendants and granting injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule properties.

2. For the sake of convenience, the parties will be referred to as they are arrayed before the Court below.

The plaintiff filed the suit for declaration and for consequential injunction against the defendants 1 and 2 from interfering with his peaceful possession and enjoyment over items 1 and 2 of the plaint schedule properties. The plaintiff and his predecessor-in-title are owners of the plaint schedule properties and by the time of Inams Abolition Act, 1956, as amended by Act 20 of 1975 came into force with effect from 14-12-1956 and 29-03-1975 respectively, the plaintiff and his predecessor-in-title have perfected their title to items 1 and 2 of the plaint schedule properties by enjoying the same for more than the statutory period, and for the last more than 100 years or so, neither the defendants nor anybody on their behalf questioned the plaintiff's possession and enjoyment over the plaint

schedule properties with absolute rights. The plaintiff and his ancestors used to lease out the fishing rights in the plaint schedule tanks to the villagers of Donthavaram and other villagers in and around Donthavaram. The plaintiff and his ancestors used to provide water for seed bed purposes, usually raised in the month of May when canals are closed from time to time on the terms of payment of some 3 or 4 bags paddy per one bag seed-bed to the plaintiff and his ancestors. The plaintiff and his ancestors, who were original inamdars of the Donthavaram, have been using the water in the said two tanks for the purpose of raising seed beds for their lands to the extent of more than 20 acres around tanks situated in items 1 and 2 of plaint schedule properties even before the advent of delta. The plaintiff has been digging and effecting necessary repairs etc., to the tanks from time to time. Ever since the partition took place, the plaintiff's father Srimath Kandala Narasimhacharyulu and after his death the plaintiff has been managing the plaint schedule tanks for more than the statutory period. The defendants never exercised any rights whatsoever in items 1 and 2 of the plaint schedule properties for all those years till the date of filing of the suit. In the year 1940, the District Collector, West Godavari District, Eluru ordered elimination of certain survey numbers of lands of Donthavaram from R.S. registers of the village stating that the Government was not interested in them either directly or as reversioner and previously penalties levied on certain lands were cancelled by the

then District Collector, West Godavari in the year 1967. Even with regard to the plaint schedule properties, the defendants never issued any "B" memos to the plaintiff or to his father. When some third parties forcibly and illegally threatened the plaintiff's peaceful possession and enjoyment of the plaint schedule properties, he filed O.S.No.22 of 1991 on the file of Principal District Munsif Court, Tadepalligudem for permanent injunction and during pendency of the suit, the 2nd defendant filed certified copy of Adangals relating to Fasli 1393 only in which in column No.6 it was denoted that the nature of the plaint schedule properties is poramboke. Later, the plaintiff applied for certified copies of Adangals for faslies 1398 and 1399 to get confirmed the truth and veracity of the certified copies of the Adangals filed by Seereddy Koteswara Rao in the said suit. But, to his surprise, the plaintiff found in Column No.6 of Adangals obtained by the plaintiff for faslies 1398 and 1399 also as poramboke. The plaintiff issued a registered notice dated 14-08-1991 under Section 80 of CPC to the defendants 1 and 2 and the defendants failed to give any reply notice and as the defendants are now contemplating to dispossess the plaintiff illegally from the plaint schedule properties, he filed the present suit.

3. The 2nd defendant filed his written statement stating that when Inams Abolition Act, 1956 came into force, the said Donthavaram village was taken by the Government as the said Donthavaram village is an Inam village and by the time of taking over the village the

plaint schedule properties to an extent of Ac.6.32 cents are classified in the village accounts as Punta Tank Poramboke and in R.S.No.28/1 to an extent of Ac.3.31 cents classified as "Tank canal" and no ryotwari patta was issued for this land to anybody. It is not correct to state that the plaintiff or his ancestors used to lease out these tanks in the above R.S. numbers for seed-bed purpose of fish as they have no right over the lands because they were not granted ryotwari patta to these lands in the above R.S. numbers. It is false to allege that the plaintiffs or his ancestors are enjoying the plaint schedule properties for more than 100 years or more than the statutory period and the plaintiff or his ancestors never applied for patta for the plaint schedule lands at any time. The Settlement Officer is the competent officer to make enquiry of the plaint schedule property for issuing patta. It is false to allege that the plaintiff or his ancestors are the original inamdars of Donthavaram village and they have been using the water in the said two tanks for the purpose of raising seed-bed for their lands to the extent of more than Ac.20.00 around tanks situated in items 1 and 2 of plaint schedule property. Under the Inams Abolition Act, all the tanks vested in the Government and no patta will be granted to anybody for the "tank poramboke" and as per the revenue records, the plaintiff and others are encroachers and the revenue authorities also booked them as encroachers as per No.2 Adangals and the said inamdars partitioned their joint properties in the year 1938, which is null and void

and the alleged partition list is not registered one and the list of their shares not recognized by the Government and the plaintiff has not completed the statutory period for acquiring title and Donthavaram village was taken over by the Government in the year in or around 1962 or so and the copies of adanagals from faslies 1391 to 1400 shows the truth of the case. The plaintiff has not produced any evidence to prove his contention that he was in possession and enjoyment on previous occasions prior to 1940 or 1956. The plaintiff has not produced any evidence how he succeeded the property as heritable and the plaintiff is not in possession and enjoyment of the land as the title owner. The plaintiff is an encroacher and once the plaintiff or his ancestors are booked as encroachers in No.2 Adangal, that itself shows that B-memos were issued by previous Tahsildar. The plaintiff filed O.S.No.22 of 1991 against one Nakka Suryarao and Seereddy Koteswararao in which he filed I.A.No.589 of 1991 to add the Government as party to the suit, but the same was rejected and the Government was not added as party in that suit. The plaint schedule property is a Government property i.e. tank punta, canal, poramboke which are being used for public purpose and the plaintiff has no right over the lands. Ever since the Government converted the Inam village into Government village and the schedule property is a tank poramboke and the plaintiff encroached the same and made it as fish tank and hence, the defendants sought for dismissal of the suit. The 1st defendant

adopted the written statement of the 2nd defendant.

4. Basing on the above pleadings, the trial Court framed the following issues.

- 1) Whether the plaintiff has title over the schedule property, if so to what extent?
- 2) Whether the plaintiff has got any adverse possession against the State of Andhra Pradesh?
- 3) Whether the plaintiff is successor of the schedule properties to his predecessors, if so, at what capacity?
- 4) Whether the suit for permanent injunction against the defendants is maintainable without declaration of title?
- 5) Whether the plaintiff is entitled for any permanent injunction against the defendants?
- 6) Whether the plaintiff is entitled for declaration and for consequential injunction against the defendant as prayed for in respect of plaintiff schedule properties?
- 7) To what relief?

5. On behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.17 were marked and on behalf of the defendants, DW.1 was examined and Ex.B.1 was marked. After considering both oral and documentary evidence of both parties, the trial Court decreed the suit declaring the plaintiff to be the absolute owner of items 1 and 2 of the plaintiff schedule properties against the defendants and granting permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the plaintiff schedule properties. Aggrieved by the said decree and judgment, the present appeal has been filed.

6. Learned Government Pleader for Appeals

submits that admittedly the plaint schedule properties are inam lands situated in tank area and as per Section 2-A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, the land stands transferred to the Government and vested in it free from all encumbrances. He also submits that when once the plaint schedule properties are inam lands, the Civil Court has no jurisdiction to entertain the suit and that as per Section 85 of the A.P. Gram Panchayat Act, 1964, the suit tank vests in the Gram Panchayat and that as per the Adangals for the faslies 1398 and 1399, the suit land was described as Poramboke as such the respondent-plaintiff is not entitled for any declaration of title. He further submits that the authenticity of Ex.A.4 is very much in doubt and it does not confer any title on the respondent-plaintiff and that the trial Court has misread the same. He further contends that the trial Court erroneously held that the respondent-plaintiff had perfected title over the plaint schedule properties by adverse possession without considering the provisions of the Inams Abolition Act and the A.P. Gram Panchayat Act. In support of his contention, he relied on **Pamidimarri Chenchulakshmma v. The Estate Abolition Tribunal, Nellore and others**^[1] and **C. Radhakrishnama Naidu and the Government of Andhra Pradesh**^[2].

7. Learned counsel for the respondent-plaintiff submits that the respondent-plaintiff and their

predecessors are in possession of the plaint schedule properties for the last 100 years, as such, they acquired title by adverse possession over the plaint schedule property. He submits that by way of Ex.A.4, the plaint schedule properties were deleted from A-register, as such, it cannot be said that the suit schedule properties was Government land and the appellants-defendants failed to show any proof that the plaint schedule properties are Government lands. He further contends that the respondent-plaintiff sold some of the lands adjacent to the plaint schedule properties to several persons and the defendants have not objected the same.

8. Basing on the above pleadings and the rival contentions, the following points that arise for consideration in this appeal are -

- 1) Whether the respondent-plaintiff has title over the suit schedule properties?
- 2) Whether the respondent-plaintiff has perfected title by adverse possession?

9. **Points 1 and 2:**

Though Exs.A.1 to A.17 are marked, none of the documents show that the plaintiff derived title from the said documents. Ex.A.1 is the suit notice, Exs.A.2 and A.3 are postal acknowledgments regarding sending of suit notice, Ex.A.4 is the certified copy of the Government order dated 06-04-1940 showing deletion of the lands from the Government A-register, Ex.A.5 is the certified copy of A-register, Exs.A.6 to A.17 are registered extracts of sales said to have been executed by the plaintiff's ancestors. None of the documents show that the respondent-plaintiff had acquired title to the suit schedule properties by adverse possession,

except the oral evidence of PWs.1 to 3. For acquiring title by adverse possession, it has to be proved that the possession is continuous, peaceful and without any interruption and adverse to the owner for a period of 30 years before institution of the suit, if it is a Government property. In this case, no documentary evidence was filed to show that the respondent-plaintiff was in possession for about 30 years adverse to the Government. Admittedly, the suits lands are all agricultural lands and no pattadar pass books or pahanais are filed to show that the plaintiff was in possession of such lands for more than 30 years. The burden lies on the plaintiff to prove that he had acquired title by adverse possession. The Court below presuming that the Government has not objected for sales and has not issued memos, came to the conclusion that the plaintiff had acquired title by adverse possession.

In Karnataka Board of Wakf v. Government of India and others^[3], the Apex Court held as follows:

“.....Now we will turn to the aspect of adverse possession in the context of the present case. Appellants averred that the plea of the respondent based on title of the suit property and the plea of adverse possession are mutually exclusive. Thus finding of the High Court that the title of Government of India over the suit property by way of adverse possession is assailed.

In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property

and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : [S M Karim v. Bibi Sakinal](#) AIR 1964 SC 1254, [Parsinni v. Sukhi](#) (1993) 4 SCC 375 and [D N Venkatarayappa v. State of Karnataka](#) (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. ([Dr. Mahesh Chand Sharma v. Raj Kumari Sharma](#) (1996) 8 SCC 128).

Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: [S M Karim v. Bibi Sakinal](#) AIR 1964 SC 1254). In [P Periasami v. P Periathambi](#) (1995) 6 SCC 523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with [Mohan Lal v. Mirza Abdul Gaffar](#) (1996) 1 SCC 639 that is similar to the case in hand, this Court held:

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest

and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on [Section 53-A](#), it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant....."

The respondents/plaintiffs have taken contradictory pleas one stating to be owners basing on Ex.B.4 and another acquiring title by adverse possession which is not permissible as held by this Court in **K. Ramabrahmam v. G. Narsingh Rao** [\[4\]](#) wherein it held as follows:

"..... As regards the second question, it may be noted that once the appellant had based his claim on Ex. A-1, he can be said to have acquiesced in the title of the executant thereof, i.e., the mother of the respondent. Adverse possession is a concept, that emerges, when a person, not vested with the title, is in possession of the property, in derogation of the title of the rightful owner. If the possession is traceable to any permission or an act, emanating from the actual owner, it cannot be treated as adverse. To adopt the words of the Supreme Court in [Achal Reddi v. Ramakrishna Reddiar](#) AIR 1990 SC 553.

Adverse possession implies that it commenced in wrong, and is maintained against right. When the commencement and continuance of possession is legal and proper referable to contract, it cannot be adverse.

17. Therefore, an individual who claims to have transacted with the rightful owner, in relation to a property and claims possession, vis-a-vis the property, on the basis of such a transaction, he cannot be permitted to plead adverse possession.

18. In the instant case, apart from basing his claim on Ex. A-1 and other documentary evidence, the appellant has taken the alternative plea of adverse possession, as the basis for declaration of his title. It is true that the adverse possession, which, till recently, used to be a mere defence for recovery of possession; was recognized as a basis for declaration of title. However, once the origin of the possession is traceable to an incomplete transaction, with the rightful owner, the resultant possession, even if true, cannot be treated as adverse, and in that view of the matter, the appellant cannot be granted the relief of declaration of title on the plea of adverse possession, assuming that he had been in possession, for a fairly long time....."

It is not clear from Ex.A.4 whether the ancestors of the respondent-plaintiff have any title to the property and it is also not clear under which enactment the said lands are deleted from A-register. It is also not explained what is A-register and under which statute it is maintained. Merely basing on the entries made in Ex.A.4, it cannot be said that the respondent-plaintiff is having title over the property and admittedly, even according to the plaintiff the suit land was declared as Poramboke, which was admitted by the plaintiff in his plaint and that he came to know about the same in a suit filed by the plaintiff in O.S.No.22 of 1991 in which the defendants filed some Adangals and it is found that the suit land was mentioned as Poramboke and it is not known as to why the suit lands are deleted in 1940 why the Government was not interested in such properties. Even in the Adangals relating to 1393 and even in subsequent years also, the suit schedule lands are described as Kunta Poramboke. The trial Court without any basis held that the respondent-plaintiff had perfected title by adverse possession, though factors laid down by Apex Court in the above-referred decision are not proved by respondents/ plaintiffs. When once the plaintiff had title over the suit lands, question of acquiring title by adverse possession would not arise. There is no sufficient evidence to show that the respondent-plaintiff was in possession of the suit properties for prescribed period for acquiring the title by adverse possession. There is no documentary evidence to show that the respondent-plaintiff was the

owner of the suit properties. Since DW.1 admitted that the respondents-plaintiffs are in possession, the respondents-plaintiffs are entitled for injunction and the respondent-plaintiff cannot be evicted from the suit properties without following due process of law. Admittedly, the suit lands are described as tank poramboke lands and according to the defendants, the plaint schedule properties are described in village accounts as kunta tank poramboke and tank canal and their case is that no ryotwari patta was issued to anybody in respect of the same. It is also their case that the respondent-plaintiff had never applied for patta in respect of plaint schedule properties at any time and the appellants-defendants also denied that the plaintiff was the original inamdar of Donthavaram village. It is also their case that the tank is vested with the Government and no patta was granted. As per the revenue record, the respondent-plaintiff and others are shown as encroachers and the Government also booked a case against the respondent-plaintiff as an encroacher.

Once the plaintiffs have asserted title on their own, question of again claiming adverse possession does not arise as both pleas are mutually exclusive. Point Nos.1 and 2 are answered accordingly.

Section 2-A of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 reads as follows:

“Section 2-A:- Transfer to, and vesting in the Government of all commercial lands, Poramboke etc., in inam lands:- Notwithstanding anything contained in this Act all commercial lands and

Porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances.”

This Court in **Pamidimarri Chenchulakshmma v. the Estate Abolition Tribunal, Nellore and others** (1 supra), held as follows:

“.....The same exclusion was made in [Section 12](#) (b) (iii) also. The purpose behind including such classes of lands from the lands in respect of which the landholders are entitled to ryotwari pattas is obvious. These three classes of lands service general purposes and provide facilities and amenities to the community at large. Lanka lands in so far as they are private lands of the landholder or within the occupation of a ryot are dealt with in clause (a) of [Section 12](#) and [13](#) of clause (b) of [Section 11](#). The other lanka lands, the lands coming within the ambit of [section 3](#) (16) (a) (b) and (c) of the Estate Land Act and Forest lands re obviously intended to be kept at the disposal of the Government so that they could be dealt with by the State as the representative of the community, in a manner which would be most advantageous to the public at large. On abolition, the entire estate including all communal lands, non-ryoti lands, waste lands, lanka lands, forest, tanks and irrigation works vests in the Government by virtue of [Section 3](#) (b) Excepting those land sin respect of which ryots or land-holders are entitled to get ryotwari pattas, the rest of the estate continues to be the property of the Government. Because the three classes of lands are essential for the community's life. they are specifically excluded from the categories of ,lands in respect of which ryotwari pattas could be granted. It is generally well known what are lanka lands and forest lands. In so far as the lands specified in clause (a) (b) and (c) of [section 3](#) (16) of the Estate Land Act are concerned, a reading of that provision would make their communal character abundantly clear [Section 3](#) (16) says:

"Ryoti land" means cultivable a land in an estate other than private land but does not include:

(a) beds and bunds of tanks and of supply, drainage surplus

or irrigation channels:

(b) threshing-floor, cattle-stands, village-sites and other lands situated in any estate which are set apart for the common use of the villagers;

(c) lands granted on service tenure either free of rent or on favorable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

The Cl. (16) specifically excluded from the scope of ryoti land these three varieties of lands, such lands are obviously required for communal living and activities of the people who live in that locality....."

**In Pamidimarri Chenchulakshmma v. The
Estates Abolition Tribunal Nellore and others^[5],**
this Court held as follows:

"...The following principles emerge from the aforesaid discussion; Lanka Lands, lands of the description specified in [Section 3](#) (16) (a) (b) and (c) of the Estates Land Act, and forest lands re excluded from the purview of [Section 13](#) (b) (iii) of the Abolition Act and no ryotwari pattas could be granted to the land-holder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition Act came to be applied to the estate in which they are situate, they were lands coming within the description specified in [Section 3](#) (16) (a) (b) and (c) of the Estate Land Act. Despite the discuss to which they have fallen and despite the other users they have been unauthorisedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in [Section 3 16](#) (a) (b) and (c) of the Estates Land Act in the absence of any order under [Section 20-A](#) (1) (b) of the Estate Land Act....."

According to Section 2-A of the Act, 1956, suit land vested with the Government as it is shown as Kunta poramboke in revenue records and no patta can be granted as held by this Court in the above referred judgment.

10. In view of above facts and circumstances, the

judgment and decree dated 25-07-1996 in O.S.No.9 of 1992 on the file of Subordinate Judge, Tadepalligudem is liable to be set aside to the extent of declaring title in respect of the suit property in favour of the respondents-plaintiffs and the same is accordingly set aside. The said judgment and decree remain unaltered in respect of entitlement of respondent-plaintiff to the relief of granting of injunction, as the appellants-defendants admitted that the plaintiff is an encroacher and DW.1 also stated that the respondent-plaintiff was in possession of the suit properties. However, it is always open for the appellants-defendants to evict the respondent-plaintiff by following due process of law.

Hence, the appeal is partly allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

A. RAJASHEKER REDDY, J

Date: 13-10-2015

Note: L.R. copy to be marked.

B.O./Ksn

[\[1\]](#) AIR 1972 Andhra Pradesh 1

[\[2\]](#) 2014 (4) Andhra Legal Decisions 358

[\[3\]](#) 2007 (10) SCC 779

[\[4\]](#) 2006 (6) ALD 353

[\[5\]](#) AIR 1972 AP 1 (V.59 C1)