

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Second Appeal No. 776 of 1998

Between:

Vuranduru Ayyalu Setty (died) per LRs

.. Appellant (s)

And

State of AP, rep. by the
District Collector, Nellore, Nellore District
and others

.. Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 31.07.2015

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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Second Appeal No. 776 of 1998

Judgment:

Aggrieved by the judgment and decree, dated 15.04.1998, passed in AS No.11 of 1993 by the Additional Senior Civil Judge, Gudur, setting aside the judgment and decree, dated 17.09.1991, passed in OS No.129 of 1988 by the District Munsif, Kota, the instant Second Appeal has been preferred.

2. One Vuranduru Ayyalu Setty was the plaintiff in OS No.129 of 1988, who died during the pendency of the instant second appeal and his legal representatives have been brought on record as appellants 2 to 4. He filed the said suit on the file of the District Munsif, Kota, Nellore District, seeking perpetual injunction against the respondents 1 to 4 herein, out of whom the respondents 1 to 3 herein are the officials of the State Government. The relief sought by the deceased plaintiff was to injunct the respondents 1 to 3/defendants 1 to 3 from proceeding with the provisions of

Revenue Recovery Act as the suit schedule property was put to auction on a specified date. The deceased plaintiff also arrayed one Kota Venkata Krishnaiah as defendant No.4 in the suit, who is said to have submitted solvency certificate showing the suit schedule property as belonging to him.

3. Before the trial Court, the deceased plaintiff, besides examining himself as PW.1, has examined two more witnesses as PWs.2 and 3 in order to substantiate his claim and marked Exs.A1 to A48. Whereas, on behalf of the defendants 1 to 3, one P. Sudhakar, Village Assistant, was examined as DW.1 and 10(1) account relating to Patta No.234 of Reddipalem village was marked as Ex.B1.

4. The trial Court, on appraisal of the evidence let in by both the parties, decreed the suit granting injunction. Aggrieved by the said judgment and decree, dated 17.08.1991, the defendants 1 to 3 preferred the appeal in AS No.11 of 1993 on the file of the Additional Senior Civil Judge, Gudur. The lower appellate Court, by judgment and decree dated 15.04.1998, reversed the judgment and decree passed by the trial Court by assigning certain reasons. Assailing the said judgment and decree, the original plaintiff preferred the instant second appeal. Since during the pendency of appeal he died, his legal representatives have been brought on record as appellants 2 to 4.

5. During the course of arguments, learned Government Pleader for Arbitration, while placing the instructions given by the Station House Officer, Prohibition and Excise Station, Vakadu, has submitted that the amount due to a tune of Rs.2,39,971/- was paid by the wife of the fourth respondent namely, Smt. K. Ratnamma and the said amount was the amount due after deducting Rs.750/- which was realized by sale of movables in accordance with the provisions of the Revenue Recovery Act. He further submitted that, in fact, the Government facilitated the defaulters with One Time Settlement during the year 2013 by preparing a scheme under G.O.Ms.No.320, Revenue (Ex.II) Department, dated 10.06.2002, for waiver of penal interest on past excise arrears for a period of six months from 01.07.2013 to 31.12.2013 and the wife of the fourth respondent, K. Ratnamma has availed the said opportunity by paying the entire arrears amount of Rs.2,39,971/-, in Sub-Treasury, Vakadu, vide challan No.2034, dated 11.12.2013. The learned Government Pleader represents that no action will be taken for auctioning the immovable properties attached, as the legal heirs paid the entire excise arrears amount and the attached properties are free from attachment.

6. In view of the instructions given by the concerned Station House Officer, Prohibition and Excise Station, Vakadu, along with copy of affidavit of Smt. Kota Rathnamma, the wife of the fourth respondent, learned counsel for the appellants fairly submits that no cause of action would survive in view of the payment of entire excise arrears amount and, since the defendants 1 to 3 do not have any right to proceed against the plaint schedule property, the second appeal is disposed of accordingly. There shall be no order as to costs.

7. The instructions of the concerned Station House Officer, Prohibition and Excise Station, Vakadu, and copy of affidavit of Smt. Kota Rathnamma, the wife of fourth respondent, submitted by the learned Government Pleader for Arbitration, are placed on record.

8. As a sequel thereto, miscellaneous applications, if any, pending in the second appeal, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 31.07.2015

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