

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

ORIGINAL SIDE APPEAL Nos. 8 & 9 OF 2016

COMMON JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

These Original Side Appeals are filed under Clause 15 of the Letters Patent Appeal read with Section 483 of the Companies Act, 1956 against the common order, dated 29.04.2016, passed by the learned single Judge of this Court in Company Application Nos.1676 & 1677 of 2008 in Company Petition No.128 of 2005.

2. Appellant herein is the applicant in the aforesaid Company Applications, whereas the respondent herein is the respondent.

3. For the sake of convenience, the parties are referred to as arrayed in the aforesaid Company Applications.

4. The applicant is the resident of Pallamalli Village, Cheemakurthi Mandal, Prakasam District, filed the Company Application No.1676 of 2008 praying the Court to declare and hold that the agricultural lands admeasuring Ac.2.46 cents in Survey No.51/1, Ac.1.34 cents in Survey No.51/2, Ac.3.76 cents in Survey No.51/3, Ac.2.15 cents in Survey No.52/1 and Ac.2.30 cents in Survey No.53/1 totally admeasuring Ac.12.02 cents situated in Narasimhapuram Village, Markapuram Mandal, Prakasam District, as her personal

property and consequently direct the Official Liquidator to lift the attachment.

5. The applicant also filed the Company Application No.1677 of 2008 praying the Court to stay the auction notice dated 04.12.2008 published in 'Eenadu' Telugu newspaper on 07.12.2008 and 'Saakshi' Telugu newspaper on 08.12.2008 and all consequential auction proceedings in so far as they affect the applicant's lands admeasuring Ac.2.46 cents in Survey No.51/1, Ac.1.34 cents in Survey No.51/2, Ac.3.76 cents in Survey No.51/3, Ac.2.15 cents in Survey No.52/1 and Ac.2.30 cents in Survey No.53/1 totally admeasuring Ac.12.02 cents situated in Narasimhapuram Village, Markapuram Mandal, Prakasam District.

6. The brief averments made in the applications filed before the learned single Judge of this Court are as follows:

The applicant is claiming right and title to the aforesaid agricultural lands totally admeasuring Ac.12.02 cents situated in Survey Nos.51/1, 51/2, 51/3, 52/1 and 53/1 of Narasimhapuram Village, Markapuram Mandal, Prakasam District. According to the applicant, her brother Jamili Prasada Rao has gifted her the aforementioned property towards 'Pasupu Kumkuma' under a registered Settlement Deed dated 26.10.2006. It is stated that her brother Jamili Prasada Rao entered into an agreement with Vijetha Agro Farms (India) Limited, the Company in liquidation (for short,

‘the Company’) on 08.07.2002 and in terms of the said agreement, he undertaken to repay a sum of Rs.1,56,130/- being the amount paid to the deposit holders of the Company and offered the aforesaid property as security. The Company also offered to execute a regular Sale Deed in favour of her brother Jamili Prasada Rao, but failed to do so. Hence, her brother filed C.D.No.240 of 2002 on the file of the District Consumer Forum, Ongole, Prakasam District, and the same was allowed on 11.03.2003. Later on, her brother filed P.P.No.23 of 2003 seeking a direction to the Managing Director of the Company to execute a Sale Deed in favour of her brother. As the Company failed to execute the Sale Deed, the President, District Consumer Forum, executed a registered Sale Deed in favour of her brother on 29.03.2003. After execution of the Sale Deed, a Pattadar Passbook was issued. Thereafter, her brother executed the Settlement Deed in her favour. Since then the applicant is the absolute owner and has been in peaceful possession and enjoyment of the aforesaid property. The applicant also stated that the deposit holders of the Company filed a Company Petition in C.P.No.128 of 2005 seeking winding up of the company and this Court appointed the Official Liquidator on 04.12.2006 and the Official Liquidator, in the process of attaching the properties of the Company, attached the property belongs to her and also sealed the gate on 07.05.2007 without any intimation. The applicant also addressed a letter on

10.05.2007 to the Official Liquidator bringing to his notice all the facts in respect of the said lands and requested him to delete the same from the list of Company's properties under attachment, but he did not give any reply. Thereafter, as per the request of the Official Liquidator, the applicant sent the Sale Deed to him and without intimating to the applicant, the Official Liquidator has moved an application before this Court and obtained permission to sell the assets of the company including the land belongs to the applicant. A paper notification was also published. After coming to know about the same, the applicant approached this Court and filed the present applications. The applicant further stated that the lands attached are her personal properties and sought direction to the Official Liquidator to lift the attachment.

7. The Official Liquidator filed a common report and opposed the prayer for deletion of the application schedule property and also contended that the ex-management of the Company diverted and misutilised the depositors' funds to its sister concerns. Further, the properties of the Company were already attached by the Government and the case in CC1/FD/2006 is pending before the Principal District & Sessions Judge, Guntur, and specifically pleaded that there is diversion of amount from the accounts of the Company to individuals and sister concerns, mismanagement of funds and assets of the Company.

8. After hearing both sides, the learned single Judge of this Court held that there is no legal entity as Vijetha Group of Industries, and once there is no legal entity, some unauthorized and clandestine understanding with Ramakrishna Singh does not take away the title of the Company to the schedule property and the applicant failed to discharge the burden cast on her and accordingly, the applications are dismissed.

9. Aggrieved by the said common order, the applicant filed the present appeals.

10. Learned counsel for the appellant argued that the single Judge of this Court ought to have seen under the powers vested under Section 25 of the Consumers Protection Act, 1986, to the District Consumer Forum, and cannot declare that the properties are Company properties. He further argued that the learned single Judge of this Court ignored that the orders passed by the District Consumer Forum attained finality, since no appeal has been preferred and finally argued that the applicant is the owner of the application schedule property having valid title, and therefore, prayed the Court to set aside the orders passed by the learned single Judge and allow the appeals.

11. On the other hand, the learned Official Liquidator argued that there is diversion of amount from the accounts of

the Company to individuals and sister concerns and mismanagement of funds and assets of the Company and prayed the Court to dismiss the appeals.

12. A perusal of the record shows that the applicant is the sister of one Jamili Prasada Rao, who filed the Company Application Nos.1676 & 1677 of 2008 claiming that she is the owner of some of the properties. The appellant also claiming that she is the owner of total extent of land admeasuring Ac.12.02 cents in Survey Nos.51/1, 51/2, 51/3, 52/1 and 53/1 of Narasimhapuram Village, Markapuram Mandal, Prakasam District on the ground that her brother executed a registered Settlement Deed on 26.10.2006 towards 'Pasupu Kumkuma' and since the date of execution of the Settlement Deed, she has been is in possession and enjoyment of the application schedule property. In the application, she admits that her brother filed C.D.No.240 of 2002 on the file of the District Consumer Forum, Ongole, Prakasam District, and also filed P.P.No.23 of 2003 and obtained a registered Sale Deed on 29.03.2003 for the schedule property, on the ground that her brother entered into an agreement with the respondent Company in liquidation and repaid a sum of Rs.1,56,130/- to the depositors and the Company offered the above property as security to her brother. The applicant herself admits that the schedule property originally belongs to the respondent Company and the case filed before the District

Consumer Forum was against one Ramakrishna Singh, Managing Director of Vijetha Group of Companies, Guntur, but not against the respondent Company, and the said Ramakrishna Singh not executed the Sale Deed in favour of the brother of applicant, but the District Consumer Forum executed the Sale Deed. After perusing the entire record, the learned single Judge of this Court rightly held that the agreement dated 08.07.2002 in favour of Jamili Prasada Rao was not executed by the respondent Company, but someone claiming to be the Managing Director of Vijetha Group of Industries executed the same and therefore, the transaction was completely unconnected with the business of the Company. Further, the consumer dispute was filed against Ramakrishna Singh, but not against the Company and there is no executable order passed against the Company and the present applications filed as if the Company suffered orders before the District Consumer Forum and it is also rightly held that the orders, execution and registration of the Sale Deed are all relatable to the individual, representing group of companies, and some unauthorized and clandestine person by name Ramakrishna Singh does not take away the title of the Company and the applicant failed to discharge the burden cast upon her. Therefore, the learned single Judge rightly dismissed the applications, filed by the applicant, and the findings of the learned single Judge, based on the record, do not want any interference by this Court.

13. With the above observations, these Original Side Appeals are dismissed by confirming the common order, dated 29.04.2016, in Company Application Nos.1676 & 1677 of 2008 passed by the learned single Judge of this Court.

14. Miscellaneous Petitions, if any, pending in these Original Side Appeals shall stand closed.

(SANJAY KUMAR, J)

(ANIS, J)

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MVA



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