

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.1270 of 1998

JUDGMENT:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful defendant is directed against the decree and judgment, dated 21.03.1996, of the learned Principal Senior Civil Judge, Narasaraopet, passed in OS.No.7 of 1985 filed by the State represented by Executive Engineer, Roads & Buildings Department, Narasaraopet.

2. I have heard the submissions of Sri V.S.R.Anjaneyulu, learned counsel appearing for the appellant-defendant, and of the learned Government Pleader for Appeals representing the respondent/plaintiff. I have perused the material record.

3. The parties in this appeal shall hereinafter be referred to as the plaintiff and defendant as arraigned in the suit for convenience and clarity.

4. Since this is a first appeal and as this Court is the last Court of fact, it is necessary to refer to the pleadings of the parties.

5. The plaint averments, in brief, are as follows: - 'A public auction relating to the right to collect tolls to Dharnikota Ferry was held, on 09.04.1983, according to the rules, by the Roads & Buildings department. The defendant participated in the auction and became the highest bidder. The auction was confirmed and accordingly the defendant was licensed and permitted to be in possession of the said Ferry with its associated property. The entire transaction and the conditions of auction sale are reduced into writing in the registered agreement, dated 14.03.1984, entered into between the parties. The defendant

has thus been in possession of the said Ferry and in enjoyment of rights during the stipulated period of eleven months from 01.05.1983 to 31.03.1984 having agreed to fulfill and abide by the terms and conditions. The defendant agreed to pay Rs.63,100/- and sales tax of Rs.2,682/-, that is, Rs.65,782/-, in monthly installments prescribed. On failure to pay the prescribed installments, he agreed to pay interest at 12% per annum from the due dates till date of payment. The defendant, in all, made a total payment of Rs.31,500/-. The defendant is liable to pay the balance amount with interest. Hence, the suit is instituted for recovery of the balance amount, interest and future interest. The plaintiff is having first charge on the property of the defendant mentioned in the schedule of the plaint. Hence, a decree may be granted for recovery of the suit amount with costs and future interest at a rate not less than 12% per annum with first charge on the suit schedule property and all other properties of the defendant.'

6. The averments in the written statement filed by the defendant, in brief, are as follows: - 'The material averments in the plaint are false. A public auction relating to the right to collect tolls to Dharanikota Ferry was held by Road & Buildings department. However, the said auction was not held in accordance with the rules. While putting the rights to collect tolls to auction, the Executive Engineer, R & B Department, Narasaraopet, misrepresented the limits of Dharanikota Ferry. The Executive Engineer wrongly included Munnalur village on the North without the sanction of the Government. In-fact, the limits notified by the Collector, Guntur, are Chevitikallu and Kunikinapadu villages of Nandigama taluk. Likewise on the South, the notified limit is Dharanikota, but, the Executive Engineer wrongly included Amaravathi

without the sanction of the Government. Similarly, on the East, the notified limit is Amaravathi whereas he added Dharanikota and Vykuntapuram. He further included Didugu village within the limits, on the West without any sanction. Thus, the Executive Engineer acted illegally and in excess of powers vested in him and fraudulently notified wrong limits. The defendant was made to believe that the limits notified by the Executive Engineer are correct. Believing the representations of the Executive Engineer regarding the limits, the defendant participated in the auction and became the highest bidder. After the auction, when the defendant began to exercise his rights to collect tolls, there was obstruction from other lessees; as a result he could not collect the tolls. Hence, he made a complaint about the same to the authority concerned. There was lot of correspondence between the Collector, Guntur, and DDO, Zilla Parishad, Krishna. Then, the Executive Engineer in order to save his skin threatened and influenced the defendant by saying that he will be given next year's collections also in order to recoup the losses and made him to execute an agreement at the fag end of the auction period. Such an agreement is unenforceable. The defendant is not liable for the suit amount. The deposit amount of this defendant is still with the Government. In-fact, the Government has to pay damages to this defendant. He is not liable to pay any amount much less the suit amount or interest to the plaintiff. Hence, the suit may be dismissed.'

7. Having regard to the above pleadings, the trial Court framed the following issues for trial.

1. Whether the plaintiff is entitled for the recovery of the suit amount?
2. Whether the plaintiff is entitled for the interest as prayed for?

3. Whether the plaintiff is entitled to have charge on the properties of the defendant?

4. To what relief?

8. At trial, on behalf of the plaintiff-State, PWs1 & 2 were examined and exhibits A1 to A8 were marked. On behalf of the defendant, the defendant and his supporting witness were examined as DWs1 & 2 and exhibits B1 to B5 were marked.

9. On merits and by the judgment impugned in this appeal, the trial Court, while granting a decree for recovery of money, that is, the suit amount, from the defendant with interest and costs, however, refused to grant the relief of first charge over the plaint schedule properties of the defendant. Aggrieved thereof, the defendant is before this Court.

10. Learned counsel for the defendant would contend as follows: - 'The specific defence of the defendant before the trial Court is that the Executive Engineer, R & B Department, Narasaraopet, misrepresented the limits of Dharanikota Ferry by wrongly including Munnalur village on the North without the sanction of the Government while in-fact the limits notified by the Collector, Guntur, are Chevitikallu and Kunikinapadu villages of Nandigama taluk and that likewise on the South, the notified limit is Dharanikota, but, he included Amaravathi without sanction of the Government and that similarly, on the East, the notified limit is Amaravathi whereas he added Dharanikota and Veykuntapuram and that he further included Didugu village within the limits on the West without any sanction and thus, the Executive Engineer acted illegally and in excess of the powers vested in him and notified wrong limits fraudulently. The agreement was obtained at the fag end of the auction period under threat and undue influence by stating that the defendant would be given

the next year's collections also in order to recoup the losses. Since the limits were wrongly mentioned in the auction notification and as the defendant was prevented from enjoying the rights to collect the tolls due to the obstruction from other lessees, the defendant is not liable to pay any amount and the suit is liable for dismissal. The auction period is from 01.05.1983 to 31.03.1984 whereas the agreement was admittedly obtained at the fag end of the auction period, that is, on 14.03.1984, in the circumstances stated. Hence, it is unenforceable. Exhibits B3 & B4 support the contentions of the defendant that the limits are wrongly mentioned by the Executive Engineer. In the light of the contents of the said documents, exhibits A5 & A8 are of no avail to the plaintiff to claim the suit amount. On the other hand, the defendant is entitled to receive damages and also the refund of his deposit amount, which is with the plaintiff.'

11. Per contra, learned Government Pleader, while supporting the decree and judgment of the trial Court, contended as follows: - 'The defendant never made any complaints about the interference from any quarter. The variations in the limits of Dharanikota Ferry which the defendant is pointing out by placing reliance on exhibits B3 & B4 relate to a period subsequent to the subject auction period of the defendant, which is 01.05.1983 to 31.03.1984, as rightly held by the trial Court. There is no dispute with the limits of Dharanikota Ferry during the subject auction period. When a notice was issued to the defendant, he issued a reply under exhibit A5 *inter alia* stating that he was demanded to pay about Rs.40,000/- and that he is in financial difficulties and therefore he is unable to pay the said amount and that he would pay before 31.08.1983 a sum of Rs.20,000/- and the balance amount from September

onwards regularly and that on his failure to make the said payment as above stated, the department can take appropriate action against him. Had he suffered any losses on account of obstruction from any quarter, he would not have issued such a letter undertaking to pay the amount due and payable. In the said letter, he did not raise the issue of wrong mentioning of the limits of the Ferry and objections to collect tolls by the other lessees. The defendant also issued letter, dated 28.03.1984, admitting that he failed to pay the amount due and payable for the year 1983-84 though the term is coming to an end by 31.03.1984. In this letter, he further stated that if the department passes orders, he is willing to continue to exercise the lease-hold rights for the year 1984-85 also by paying the monthly installments prescribed. The said letter also discloses that he failed to pay the amount due for the year 1983-84 due to his financial difficulties; but, not for any alleged reasons. The defence raised in the written statement is an after thought and is untenable. Hence, the decree and judgment of the trial Court are sustainable both under facts and in law and need no interference.'

12. In this backdrop of facts and contentions, the points for determination in this appeal suit are:

1. Whether the plaintiff is entitled to recover the suit amount or any part thereof from the defendant? And, if so, what amount?
2. Whether the plaintiff is entitled to interest? And, if so, at what rate and for what period?
3. Whether the decree and judgment of the trial Court are unsustainable in the facts and circumstances stated by the defendant?

13. **POINTS:**

To begin with, it is to be noted that the defendant is the highest bidder in the auction held with regard to the right to collect tolls at Dharanikota Ferry for the eleven months period from 01.05.1983 to 31.03.1984 and that he was put in possession of the ferry and associated property and that he executed an agreement though belatedly on 14.03.1984. There is also no dispute that the defendant made part payment and failed to pay the balance amount due and payable from out of the bid amount. According to the plaintiff, the defendant paid Rs.31,500/- and failed to pay the balance amount despite demands and undertaking to pay the amounts and hence, the suit is filed. The main defence of the defendant is that the limits of Dharanikota Ferry were wrongly mentioned by the Executive Engineer and that the misrepresentation of the limits was believed by the defendant to be correct and that after becoming the highest bidder, when the defendant was collecting the tolls, there was obstruction from other lessees on account of the wrong mentioning of the limits of the Ferry and that, therefore, he was prevented from collecting the tolls and hence, he made a complaint and that at that stage, by threatening him and by unduly influencing him that he would be given the next year's collections also to recoup the losses, the agreement was obtained at the fag end of the period and hence, the suit claim is untenable and is he is not liable to pay any amount to the plaintiff.

14. Thus, the first and foremost submission of the defendant that the defendant is not liable to pay the suit amount or any part thereof is based on the following set of contentions: - "The Executive Engineer in his auction sale notice has misrepresented the limits of Dharanikota Ferry. Believing the limits

mentioned therein as correct, the defendant participated in the auction rights. Later the defendant was obstructed by other lessees from collecting the tolls. Therefore, the defendant suffered losses and could not collect the tolls during the eleven months period, that is, from 01.05.1983 to 31.03.1984. Further, immediately after the auction, no agreement was entered into. However, when the defendant made a complaint about the above said fact, an agreement was obtained under threat and influence by stating that the defendant will be continued to exercise auction rights during the next year also. The agreement thus obtained at the fag end of the auction period is unenforceable.' However, the case of the plaintiff is that there is no dispute with regard to the Dharanikota Ferry limits for the subject eleven months period from 01.05.1983 to 31.03.1984 and that the dispute with regard to the limits of the Ferry related to a subsequent year and hence, the defence is untenable. It is the further case of the plaintiff that when demands were made, the defendant issued exhibit A5 & A8 replies pleading financial difficulties for non payment of the bid installment amounts and that he never complained about the wrong mentioning of the limits and the obstruction from other lessees from collecting the tolls and that this defence is an after thought. In this regard, it is necessary to refer to exhibits B3 and B4. Exhibit B3 is a letter, dated 27.09.1984, addressed by the District Development Officer, Zilla Parishad, Krishna, to a counsel in reply to his legal notices. Exhibit B4 is a copy of the proceedings, dated 08.07.1984, of the Collector, Krishna, to the Collector, Guntur District, in Rc.No.1127/8O-M1, wherein the attention of the Collector, Guntur, was drawn to the copy of the letter, dated 25.06.1984, of the Collector, Krishna, Chilakalapudi, addressed to the District Collector, Guntur. The limits of

Dharanikota Ferry which are notified in the auction sale are as follows: North: Kunikinapadu, Chevitikallu, Munnalur villages of Nandiana Taluk of Krishna District; South: Dharanikota and Amaravathi; East: Dharanikota, Amaravathi, Vykuntapuram upto 4 miles; West: Didugu 4 miles. However, under exhibit B4, it is specifically pointed out that the Executive Engineer, Narasaraopet, Guntur District, in the auction sale notice, dated 31.03.1983, has misrepresented the limits of the Dharanikota Ferry. The undisputed fact of the matter is that the defendant was put in possession of the Ferry and associated properties and he carried on the collection of tolls, as his defence is that when he is collecting tolls, some other lessees raised objection. Be that as it may. During the evidence of PW1, the following documents are marked.

Exhibit A1: office copy of notification, dated 31.08.1983 for auction of Dharanikota ferry from 1.5.1983 to 31.3.1984.

Exhibit A2: Agreement, dated 14.03.1984 executed by the defendant in favour of the plaintiff department.

Exhibit A3: statement of account, dated 31.12.1984.

Exhibit A4: office copy of demand notice, dated 22.08.1983, issued by the plaintiff department to the defendant.

Exhibit A5: reply notice, dated 24.08.1983, given by the defendant to the plaintiff.

Exhibit A6: demand notice, dated 14.11.1983, issued to the defendant by the plaintiff.

Exhibit A7: postal acknowledgment, dated 15.11.1983.

Exhibit A8: reply, dated 28.03.1984, given by the defendant to the plaintiff.

In his oral evidence, PW1 maintained his stand in uncertain terms that the Ferry was handed over to the defendant immediately after the auction to avoid hardship to the passengers, though the defendant failed to deposit 1/4th of the auction amount. He denied the suggestion that the defendant did not run the Ferry during the year 1983-84. No specific suggestion is put to this

witness that on account of the obstruction by some other lessees, the defendant did not collect the tolls. Here itself it is to be noted that when PW2, the then Assistant Engineer, R & B was examined as PW2, a suggestion was put to him that the defendant did not run the Ferry as there was obstruction from the other lessees of the Ferry; however, he denied the said suggestion.

15. Now the short question, therefore, is – ‘whether the defendant ran the Ferry and collected tolls as being contended by the plaintiff?’ In his examination in chief, the defendant as DW1 asserted that during the year 1983-84 he was not allowed to run the Ferry by the Amaravathi Ferry people and Ganiatukuru people, which Ferries are leased out to people from Krishna. DW2 is the brother-in-law of the defendant. He supported DW1 stating that the contractors of other ferries did not allow the defendant to run the Dharanikota Ferry. But, he said that he cannot say who objected to run the Ferry during 1983-84. In this backdrop of oral evidence, it is necessary to examine the documentary evidence. Since the contents of exhibits B3 & B4 are already adverted to supra, it is necessary to turn to the other material documentary evidence. In this regard, it is apt to first refer to exhibit A5. Exhibit A5 is a reply given by the defendant to the Deputy Executive Engineer, R & B. The contents of the said reply reflect that in the said reply the defendant had stated that, on 24.08.1983, a demand was made to pay more than Rs.40,000/- towards auction rights of Dharanikota Ferry and that the defendant is not able to pay the said amount due to financial difficulties and that he would pay before 31.08.1983 a sum of Rs.20,000/- and the balance amount from September onwards in regular intervals and that on his failure to do so, action can be taken against him. When PW1 filed this document, there

is no cross examination disputing the genuineness of the said document. In his cross examination, PW1 stated that exhibit A5 is signed by the defendant, but, he does not know who scribed exhibit A5. Not even a suggestion was given to this witness that exhibit A5 is not genuine. Even in the evidence of DW1, he did not dispute the contents of exhibit A5. Another material document is exhibit A8. Exhibit A8 is another letter, dated 28.03.1984, addressed by the defendant to the Executive Engineer admitting that though the term for the year 1983-84 is coming to an end by 31.03.1984, he could not pay the total bid amount within the time due to certain of his difficulties and that he would pay the arrears shortly. In the said letter, the defendant further stated that if the department passes orders, he is willing to continue to exercise the lease-hold rights for the year 1984-85 also on the same terms of the year 1983-84 by paying the monthly installments prescribed. These two documents, which are admittedly signed by the defendant and which are sufficiently proved make it manifest that the defendant admitted that he fell in arrears and that he would pay the arrears as mentioned in the letters. In these two letters, the defendant did not even whisper about the wrong mentioning of the limits and the consequential obstruction, if any, caused by the other lessees for collection of Tolls by the defendant. In the light of these two documents, which clinch the issues in favour of the plaintiff, the contention of the defendant that on account of the wrong mentioning of the limits in the auction sale notice, he was prevented by the other lessees from collecting tolls and running the Ferry cannot be countenanced more particularly when it is sufficiently established that he was put in possession of the Ferry and the associated properties and ran

the Ferry and it is undisputed that the defendant made a part payment of a total sum of Rs.31,500/- towards the amount due and payable to the plaintiff.

16. On the above analysis of the evidence brought on record, this Court finds that the defence raised in the written statement and the contentions raised before this Court are devoid of merit and need no countenance. Therefore, the points are accordingly answered against the appellant-defendant.

17. In the result, the Appeal Suit is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

29.01.2018
Vjl



M. SEETHARAMA MURTI, J