

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

APPEAL SUIT NO.881 OF 1999

JUDGMENT:

This appeal is directed against the Judgment and Decree in O.S.No.77 of 1978 passed by the learned II Additional Senior Civil Judge, Warangal on 28.8.1998.

2. The appellants are plaintiffs and they filed the present appeal to the extent of dismissal of the suit as against the 1st defendant. The suit was filed for recovery of Rs.2,25,311.50/- or in alternative to direct the defendants to render accounts of the money and for interest @ 12% p.a. on the decretal amount. The suit was decreed as against the defendants 3 to 11 with costs and were made jointly and severally liable to pay the said amount and it was dismissed as against 1st defendant. Now, the appeal is against the 1st defendant only. It appears that the 1st defendant expired and respondents 12 to 16 were brought on record as legal representatives of the deceased 1st defendant.

3. As per the plaint averments, the 1st defendant was a Clerk of the plaintiff's Society and the 2nd defendant appointed him without any authority of law. The 1st defendant was posted as in-charge Assistant of grant-in-aid Section. The 1st defendant was promoted as U.D.C and one Sampath Kumar was also promoted as UDC but was allowed to draw salary in the cadre of L.D.C. When Sampath Kumar took charge, he found that 1st defendant was not properly attending to the correspondence received from the District

Educational Officer, Warangal, as regards the utilization of the grants and he did not give proper charge of the Accounts. This came to light when Sampath Kumar found that 1st defendant was maintaining duplicate Treasury bill books. An enquiry was conducted against the 1st defendant and he was dismissed from service with effect from 4.3.1977. Since there was defalcation of amounts due to the acts committed by Defendants 1 to 3, the suit was filed.

4. The 1st defendant filed a written statement denying the plaint averments and he stated that he discharged his duties on the directions of the superiors only.

5. The Trial Court framed an issue with regard to the liability of the defendants 1 to 3 for the loss caused to the plaintiff Society by their omissions and commissions in dealing with the funds of the plaintiff's society and also framed another issue with regard to the defendants who are liable to render accounts. A separate issue was also framed to decide whether defendants 1 to 3 have defrauded the plaintiff's society and have appropriated the plaintiff's funds.

6. With regard to the issues, the Trial Court examined the evidence on record and gave a finding that the 1st defendant was not responsible for the loss caused to the plaintiff's society but the defendants 2 and 3 are responsible and accordingly, held that the suit claim has to be decreed against them.

7. In the light of the said findings, since the 1st defendant expired during the pendency of the appeal, even if it is held that the 1st defendant is also liable to pay the amount, the amount cannot

be recovered from the legal representatives of the deceased 1st defendant unless a finding is recorded with regard to the utilization of those funds for the joint family benefits.

8. It is incidentally pointed out by the learned counsel for the appellants that in view of the decree passed against the defendants 3 to 11, they paid the amount sought to be recovered under the suit. On this ground also, the appeal is liable to be dismissed and is, accordingly, dismissed, confirming the Judgment and Decree of the Trial Court in so far as the 1st defendant is concerned.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

A. RAMALINGESWARA RAO,J

Date: 21.3.2018

KPM

