

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

APPEAL SUIT No.828 of 2015

JUDGMENT:

This First Appeal, under Section 49 of the Agency Rules, filed by the unsuccessful defendant is directed against the order, dated 07.02.2015, of the learned Agent to the Government and District Collector, West Godavari District, Eluru, passed in O.S.No.1/2015/F2.

2. I have heard the submissions of Sri *Ch.Dhanamjaya*, learned Senior Counsel appearing for the appellant/defendant ('defendant' for brevity); and of Sri *S.Balamohan*, learned counsel appearing for the respondent/plaintiff ('plaintiff' for brevity). I have perused the material record.

3. Learned Senior Counsel appearing for the appellant/defendant would submit that on the appearance of the father of the defendant before the Agent to the Government, an order was passed on admissions made by him, which are not binding on the defendant, and that no other reasons, except the admissions of the father of the defendant are recorded in the impugned order and hence, the order impugned is unsustainable under facts and in law.

4. Learned counsel appearing for the respondent/plaintiff submitted that the debt, which is the subject matter of the suit, is of the year 2012 and that on the instructions of the daughter, the father appeared before the primary authority/Agent to the Government and made admissions on her behalf and, therefore, the order has come to be passed and that in the event the defendant wanted to contest, her father ought to have sought for time for filing written statement or counter on her behalf, but

he did not do so, and that he admitted the suit claim as he was instructed so to do; and hence, the order impugned is sustainable both under facts and in law.

5. I have given earnest consideration to the facts and submissions.

6. A reading of the order impugned shows that on the date fixed for hearing, the father of the defendant appeared before the Agent to the Government/primary authority and admitted the suit debt related to his daughter and on that, the said order has come to be passed. Admittedly, the father of the defendant is not the Power of Attorney holder of his daughter, the defendant. Therefore, he did not make the admissions as an agent of his daughter. No evidence of the plaintiff was taken on record. Further, when the matter is posted for appearance of the defendant and the defendant did not appear, the learned Agent to the Government ought to have set the defendant *ex parte* and ought to have examined the plaintiff and the plaintiff's witnesses, if any, and ought to have decreed the suit *ex parte* instead of taking on record the admissions of the father of the defendant, which are not binding on the defendant. In that view of the matter, the order, which is passed on the admissions said to have been made by the father of the defendant, who is not authorised by the defendant, in accordance with procedure established by law to make any such admissions on her behalf, has no legal sanction and is, therefore, unsustainable and is liable to be set aside.

7. In the result, the Appeal Suit is allowed and the order impugned is set aside and the suit is remitted to the Agent to the Government and District Collector, West Godavari District, Eluru, for disposal afresh, in accordance with the procedure established by law, however, after giving an opportunity of filing a written statement to the defendant.

Considering the fact that the matter is a sufficiently old matter, the said authority is directed to endeavour to dispose of the suit as expeditiously as possible and preferably within two (02) months from the date of receipt of a copy of this judgment.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 10th December, 2018

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