

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.541 of 1997

JUDGMENT:

This Appeal Suit, under Section 96 of the Code of Civil Procedure, 1908, was originally filed by the unsuccessful plaintiff (since died), assailing the decree and judgment, dated 19.08.1991, of the learned Additional Senior Civil Judge, Narasaraopet, passed in O.S.No.101 of 1983.

2. Be it noted that on the death of the said plaintiff/ sole appellant during the pendency of this Appeal Suit, the appellants 2 to 4 are brought on record as per orders, dated 24.10.1994, in C.M.P.No.11844 of 1993. Be it also noted that the sole respondent died during the pendency of this Appeal Suit and his legal representative/ 2nd respondent was brought on record as per orders, dated 08.10.2013, in A.S.M.P.No.1861 of 2013.

3. I have heard the submissions of Sri *O.Manohar Reddy*, learned Senior Counsel appearing for the appellants, and of Sri *S.Jagadish*, learned counsel appearing for the 2nd respondent. I have perused the material record.

4. The parties shall hereinafter be referred to as the plaintiff and the defendant as arraigned in the original suit for convenience and clarity. If necessary the legal representatives of the deceased sole appellant and the deceased sole respondent will be referred to as the appellants 2 to 4 and the 2nd respondent.

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

6. The averments in plaint, in brief, are as follows:-

The plaintiff was originally the owner and the rightful title holder of land admeasuring Ac.4.22 cents in Survey No.453/ 12, morefully described in the schedule annexed to the plaint. The said land was acquired by the Government as it was liable for submersion in the Nagarjuna Sagar Project. The plaintiff is an illiterate and ignorant person. He has no other property except the said land, which was acquired. The defendant is an intelligent merchant of Vysya (business) Community and is well-versed in Court affairs. He was attending to the proceedings before the Land Acquisition Officer and the Land Acquisition Court in matters related to claims for compensations and enhancements of compensations of various land owners whose lands were acquired for the said project. He undertook to look after all the necessary Court affairs on behalf of such persons, whose lands were acquired, including that of the plaintiff and to pay to them the amounts that may be realised from the Government. Most of such persons are illiterates without any capacity and means to personally attend to the affairs related to acquisition of their lands. The agreement between the plaintiff and the defendant was that the defendant shall be entitled to keep 1% of the net realisation as his remuneration from out of the amount likely to be realised, which is a heavy amount. The said understanding was oral. But, such understandings were acted upon in innumerable cases by the defendant on the one hand and the ryot/s concerned on the other. The defendant was, thus, constituted as an agent on behalf of the plaintiff, as in the cases of several others, and he stood in a fiduciary relationship with the plaintiff and others. The defendant secured from the concerned ryots, including the plaintiff, signed blank and stamp papers representing that they were necessary for use in the said proceedings. The plaintiff and other ryots simply and *bona fide* believed him and trusted his *bona fides*. The land acquisition proceedings started as early as in the year

1967; and, now and then, the defendant was receiving small sums of money from the parties concerned towards expenditure. However, till the date of the institution of the suit, the defendant has not paid even a single pie to the plaintiff though the Government took possession of the acquired land of the plaintiff even as on 22.11.1967. The defendant did not render account of the monies received though requests in that regard were made several times. He was evading almost every ryot on some pretext or the other. The plaintiff got alarmed by the evasive replies of the defendant and made enquiries. Such enquiries revealed the following facts: “(a) that the Land Acquisition Officer passed an Award No.140 of 1970, dated 28.12.1970, in the case; (b) that towards compensation for the suit lands acquired from the plaintiff, an amount of Rs.1,100/- was awarded by the awarding officer; (c) that the defendant received the same under protest; (d) that an enquiry was held by the Subordinate Judge, Narasaraopet, under Sections 18 and 19 of the Land Acquisition Act in O.P.No.144 of 1973 and a judgment was rendered enhancing the total compensation for the said land to Rs.94,765/-; and, (e) that out of it, the defendant withdrew an amount of Rs.41,545/- on 15.12.1976.” The defendant has no right to the monies in question and is bound to render account for the monies realised and pay whatever is found due and is payable to the plaintiff. The plaintiff is further entitled to a declaration of his title to the balance amount lying in the Court to the credit of O.P.No.144 of 1973, on the file of the learned Additional Senior Civil Judge, Narasaraopet.

7. Per contra, the averments in written statement, in brief, are as follows:-

The material allegations in the plaint are false. The allegation that the defendant was the constituted agent of the plaintiff or any other ryot of the village is false. The allegation that the defendant secured signed blank and stamp papers from the plaintiff or anybody else during the land acquisition proceedings is a dare devil falsehood. It is absurd to say that the defendant is

in a fiduciary relationship with the plaintiff. The defendant never undertook to render account to the plaintiff or anybody else for the amounts awarded and the amounts allegedly withdrawn by this defendant. In fact, the plaintiff heard that the suit property is remunerative and that it is not useful for him and, hence, sold the said property to the defendant as such sale is remunerative. In pursuance of that sale, the plaintiff executed a hand letter and the Revenue Department, after taking statistical details that the plaintiff is "Bhukthadar", changed the name of the plaintiff and incorporated the name of the defendant in the revenue records in respect of the said land sold by the plaintiff to the defendant. The Land Acquisition Officer concerned, who is to be guided by the revenue record, has paid the compensation to the defendant. The said hand letter was written by the Village Karanam and attested by the Village Munsif. OP No.144 of 1973 relates to three demarcation numbers i.e., 453/ 12, 453/ 24/ 2 and 453/ 25/ A2. For all these D.Nos., this defendant was the rightful registered holder as well as occupier and the compensation was awarded to be paid to this defendant and it was, accordingly, paid in December, 1970. The defendant protested for the valuation given for the land; and so, the matter was referred to the Senior Civil Court, Narasaraopet, and the OP was numbered as OP No.144 of 1973. After enquiry, the compensation was enhanced. The Government preferred an appeal in A.S.No.839 of 1976 and the High Court confirmed the order enhancing the compensation passed by the Civil Court. The plaintiff has no cause of action against the defendant on any counts mentioned in the plaint. The plaintiff is fully aware of all the proceedings before the Land Acquisition Officer as well as the Senior Civil Court, Narasaraopet, and the High Court. The plaintiff ought to have sought a relief to set aside the order awarding compensation to the defendant; without seeking the said relief, he has no *locus standi* to claim any relief against this defendant. The Government are a necessary party, since compensation was

awarded and paid by the Government to the defendant. This suit, without impleading the Government as a party, is not maintainable. The suit is barred by law of limitation, as the plaintiff did not file the suit within the time allowed under law. Hence, the suit may be dismissed with costs.'

8. The plaintiff filed a rejoinder alleging *inter alia* as follows:-

The plaintiff never sold the suit property either to the defendant or to anybody. He was actually in possession and enjoyment of the suit property up to 21.11.1967, i.e., till the date the land was taken possession by the Public Works Department on behalf of the Government. After the acquisition, the defendant obtained plaintiff's thumb impressions on blank white papers representing that they are necessary for the land acquisition proceedings. The defendant might have concocted the hand letter on one of such papers. The defendant played fraud not only upon the plaintiff but also upon the Government and withdrew the amount from the Court without the knowledge and consent of the plaintiff. The hand letter neither represent the true state of affairs nor does it take away the plaintiff's right over the suit property, that is, the acquired land, or upon the compensation payable in respect of the same.'

9. Taking into consideration the above pleadings, the trial Court framed the following issues and additional issue for trial:

1. Whether the defendant was constituted as an agent of plaintiff at any time as stated in the plaint?
2. Whether the defendant received the amount as an agent of plaintiff in O.P. 144/73?
3. Whether there is any fiduciary relationship between plaintiff and defendant?
4. Whether the plaintiff is entitled to declaration and compensation amounts awarded in O.P. No.144/73?
5. Whether the defendant is liable to account to plaintiff for the amounts awarded to the defendant in O.P.No.144/73?
6. Whether the suit is barred by time?

7. Whether the suit is bad for non-joinder of the Government and Land acquisition Officer?
8. Whether this suit is maintainable without getting the orders in award No.140/70 set aside?

Additional Issue No.1:

1. Whether the sale of the plaint schedule property as stated by the defendant is true, valid and binding on the plaintiff?"

[Reproduced Verbatim]

10. At trial, the plaintiff and his supporting witnesses were examined as PWs.1 to 4 and exhibits A-1 and A-2 were marked on his side. The defendant and his supporting witnesses were examined as DWs.1 to 4. Two other witnesses were examined as Court witnesses, CWs.1 & 2. Exhibits B-1 to B-11 were marked on the side of the defendant. Exhibits X-1 to X-14 were marked through the Court witnesses.

11. On merits and by the judgment impugned in this First Appeal, the trial Court dismissed the suit of the plaintiff. Therefore, the plaintiff preferred this instant Appeal Suit.

12. Learned counsel appearing for the plaintiff contended as follows:-

The evidence of PW1 and exhibit A1 clearly disclose that the plaintiff is the owner of the plaint schedule property, which was acquired and that, therefore, he is entitled to receive compensation from the Government in respect the plaint schedule land. The trial Court ought to have seen that the defendant obtained the thumb impressions of the plaintiff, who is an ignorant and illiterate person, on blank papers and stamp papers stating that the same are required for land acquisition proceedings and misused the same and that the defendant took advantage of the confidence reposed by the plaintiff upon the defendant and committed breach of trust and withdrew the compensation receivable by the plaintiff in respect of the acquired land and failed to pay

even a single pie to the plaintiff. The trial Court ought to have seen that as per the arrangement, which is oral, the defendant is only entitled to 1% of the compensation amount towards his remuneration and the plaintiff is entitled to receive the rest of the compensation amount payable by the Government in respect of the plaint schedule land of the plaintiff, which was acquired. The trial Court came to a conclusion that the plaintiff surrendered his rights in suit schedule land under exhibit B2 ignoring the fact that exhibit B2 does not convey any right over the plaint schedule land in favour of the defendant and that it is only a hand letter, which does not represent true state of affairs and that it does not take away the plaintiff's rights over the plaint schedule property and the compensation payable to the plaintiff by the Government pursuant to acquisition of the same. The trial Court erred in placing reliance on exhibits X-12 and X-13, which are subsequent documents. The same do not establish the alleged title of the defendant to the plaint schedule land or his right to receive compensation in respect of the plaint schedule land, which was acquired. The findings of the trial Court on all the issues are incorrect. The trial Court ought not to have invoked the presumption under the provision of Section 114 of the Indian Evidence Act, 1872, as the same is inapplicable to the facts of the present case. The finding that the Government are a necessary party and that the suit is liable for dismissal for not impleading the Government is an erroneous finding. The further finding that the suit, without seeking declaration of title to the suit schedule land, is not maintainable is also erroneous and not correct. The trial Court misread the evidence and failed to properly appreciate the facts and the evidence. The finding of the trial Court that the suit is barred by law of limitation is not correct. The said finding was arrived at misreading of the evidence. Article 58 of the Limitation Act has no application to the facts of the case. The finding that the defendant is the owner of the suit schedule property, which was acquired, is unsustainable as

the defendant cannot acquire any right over immovable property worth more than Rs.100/- by means of a hand letter. The trial Court ought to have given specific findings on issues 1 to 3 and ought not to have merely brushed aside the case of the plaintiff by merely recording findings on issues 4, 6 & 7. The said approach of the trial Court is not factually and legally correct.

13. Per contra, the learned counsel for the contesting 2nd respondent, who is the legal representative of the deceased sole defendant, supported the decree and judgment of the trial Court, and contended that the trial Court appreciated the facts correctly and evidence in proper perspective. He further submitted as follows: 'The trial Court arrived at correct findings on all the issues. The plaintiff, having sold the property long time back for the reason that the land is not useful and that the sale of the land was more remunerative, made a false claim to make a wrongful gain, as the land is likely to fetch and in fact fetched huge compensation. To support such false claim, the plaintiff created the false story stated in the plaint and brought a frivolous and vexatious suit. The trial Court rightly held that the plaintiff has no cause of action and that the suit is barred by limitation and that the suit is liable for dismissal for not impleading the Government, which is a necessary party, and for not seeking the relief for declaration of title in respect of the suit land. None of the contentions that are raised by the plaintiff merit consideration. Hence, the Appeal Suit, which is devoid of merit, is liable for dismissal.'

14. I have carefully gone through the material record and I have given earnest consideration to the facts and submissions.

15. Now, the points that arise for determination in this appeal suit are -

1. Whether the plaintiff is entitled to seek a relief of declaration that he is entitled to the compensation awarded in respect of the plaint schedule land, which was acquired for Nagarjuna Sagar Project and seek the further

relief of accounting directing the defendant to account for the monies received by him from the Government as compensation for the said land?

2. Whether the suit is not maintainable for not seeking the relief of declaration of title in respect of the acquired land?
3. Whether the Government are a necessary party to the suit? And, if so, the suit is liable for dismissal for non-joinder of the Government as a party defendant to the suit?
4. Whether the decree and judgment of the trial Court are unsustainable under facts and in law, as being contended by the plaintiff?
5. To what relief?

16. POINTS 1 to 3:

16.1 The pleadings are already stated supra, in detail. To being with, it is necessary to sum up the pleadings.

16.2 Admittedly, the plaintiff was the original owner of the plaint schedule land, which was acquired by the Government under the Land Acquisition Laws for Nagarjuna Sagar Project, as the said plaint schedule land was coming under submersion. The crux of the case of the plaintiff is this: 'The plaintiff was not only the owner but also the possessor of the plaint schedule land till it was acquired and possession was taken pursuant to the acquisition. He is an illiterate and ignorant ryot. Along with several other ryots, whose lands were also acquired for the same project, he also constituted the defendant as his agent to look after the acquisition proceedings on his behalf for realization of just compensation. He did so as the defendant undertook to look after all the necessary Court affairs on behalf of all such persons whose lands are acquired including that of the plaintiff and pay to them the amounts that may be realised from the Government and on the oral understanding that the defendant shall take 1% of the net compensation realisable for the acquired

land. At that time the defendant obtained his signatures on white blank and stamp papers and misused the same and concocted the hand letter and withdrew the compensation without giving a single pie to him. The plaintiff trusted and *bona fide* believed the defendant. The defendant, who is in a fiduciary relationship with the plaintiff, is liable to render account. But, the defendant failed to do so inspite of requests. Hence, the suit is filed.' The plaintiff reiterated his pleaded case in his evidence.

16.3 On the contrary, apart from the denial of the plaintiff's case, the precise defence of the defendant is that the plaintiff having realised that the subject land was not remunerative and that the sale of the said land would be more useful, sold the said land to the defendant for consideration as such sale is remunerative and that in pursuance of the said sale, the plaintiff executed a hand letter of sale and that the same was scribed by the Village Karanam and attested by the Village Munisif and that the revenue department, after taking statistical details changed the name of the plaintiff and incorporated the name of the defendant as 'Bhuktedar' in the revenue records related to the subject acquired land and that the defendant was the owner in possession and enjoyment of the acquired land and that the Government acquired that land of the defendant and that at that time the land acquisition officer concerned having been guided by the revenue record treated and considered the defendant as the owner/ claimant and paid the compensation to the defendant after an award has been passed in the year 1970 and that not being satisfied with the compensation awarded by the Land Acquisition Officer, the defendant raised a protest and that on such protest, a reference was made to the Civil Court and that the Civil Court enhanced the compensation by its judgment, dated 08.04.1976 (after review), in OP no.144 of 1973 and that in the appeal preferred by the Government in A.S.No.837 of 1976, this Court partly modified the said judgment of the Civil Court and confirmed the enhancement of

compensation @ Rs.7,000/- per acre for all the lands including the subject acquired land and that the defendant/ claimant, who alone is entitled to receive the compensation withdrew the same as and when released by the civil Court and that the land acquisition proceedings have attained finality and that, therefore, the suit of the plaintiff without seeking declaration of title to the plaint schedule lands and without questioning the land acquisition proceedings which attained finality and without impleading the Government as a party defendant is not maintainable and is liable for dismissal. The defendant, in his evidence, reiterated his defence.

16.4 Thus, the basis for the suit claim is that the plaintiff is the owner of the acquired land and that along with several similarly placed land owners, the plaintiff approached the defendant, who is an intelligent merchant of Vysya community, and entered into an oral understanding with him and constituted him as his agent for looking after the affairs of the acquired land and that there was an understanding between them that out of the net compensation realizable, which would be a heavy amount, the defendant shall keep 1% as his remuneration and pay the balance amount to the plaintiff and that the defendant stood in a fiduciary relationship with the plaintiff and that eventually the defendant withdrew the compensation and did not account for the same to the plaintiff. Nevertheless, what is to be noted is that at all stages of the land acquisition proceedings, that is, right from the stage of Notification for acquisition and till the release of the final part of compensation by the civil Court to the defendant, the name of the defendant alone appeared in the land acquisition proceedings as the claimant and the defendant was considered and recognised as the owner of the acquired land but not the plaintiff and the defendant's name also did not figure as the agent of the plaintiff in the proceedings.

16.5 In this backdrop of contentions and the admitted factual matrix, it is necessary to refer to the oral and documentary evidence. As noted, the plaintiff having reiterated his pleaded case, exhibited A1 and A2. Even exhibit A2, which is an entry dated 31.03.1969, at page no.476 of 10 (1) Account evidences the transfer of patta in favour of the defendant/DW1. The old original register running into several hundred pages containing the above said entry, dated 31.03.1969, showing that the defendant is the 'Bhukhtadar' of the acquired land, which inspires confidence, does not support the case of the plaintiff. In the same original register at page no.421, the name of the defendant was entered in the 10(1) Account after deleting the name of the plaintiff for Fasali 1350. The said entry also does not support the case of the plaintiff. Though the plaintiff contends that for the sake of acquisition proceedings, his signatures were obtained on blank papers and that the same might have been pressed into service for creating the hand letter and that the defendant is only his agent, the said oral evidence also does not inspire confidence firstly for the reason that the plaintiff did not execute any power of attorney in favour of the defendant appointing him as his agent and nextly for the reason that the land acquisition proceedings reflect the defendant as the claimant entitled to the compensation for the acquired land. Dealing with the other evidence, it is to be noted that exhibits B2 and B3 are the statements said to have been respectively given by the plaintiff and the defendant at the time of mutation of the subject land in the name of the defendant in the revenue records, that is, at the time of entering the name of the defendant as the 'bhuktadar' of the plaint schedule/ acquired land. The Village Munsif of Duggirala village from the year 1964, who was examined as DW4, deposed that, after the abolition of the Village officers posts, he worked as Village Assistant till January, 1991, and that he knows the defendant and that he attested exhibit B2 and that the then Karanam scribed it and that the plaintiff affixed

his thumb impression on exhibit B2 in his presence and that the acquired land was in possession of the defendant and that the defendant was paying tax in respect of that land and that the defendant applied for loan and that he signed on the loan application of the defendant and that loan was granted to the defendant. He denied the suggestion that he, the said Karanam and the defendant colluded and created exhibit B2, to defraud the land owner. Exhibit B3 is the corresponding statement of the defendant. As regards the loan, the Loans Deputy Tahasildar, Gurazala, for the period from June, 1969, to June, 1970, who was examined as DW2, deposed that the defendant applied for loan called as 'Takkavi loan' under exhibit X6-application and that the Revenue Inspector made an enquiry on the instructions given by him and that the said Inspector published a notice in the village under the original of exhibit X7 and that the Village Officer gave a statement, which is exhibit X8, with the details of facts mentioned by the person, who applied for the loan, and that he (DW2) passed sanction orders on receipt of exhibit X9, report of the RI, and that the statement given by defendant at that time is exhibit X10 and that the encumbrance certificate pertaining to the loan of the defendant is exhibit X11 and that 10(1) account of the land of the defendant is exhibit X12 and that the no.2 account of the said land of the defendant is exhibit X13. He further deposed that generally, on satisfying with the documents, viz., 10(1) account and no.2 account, loans will be sanctioned and that there are Rules governing 'Takkavi loans'. He admitted in his cross examination that he did not personally visit the lands and that he could not say as to who scribed exhibit X6 and that he is the loan recommending authority. He denied the suggestion that the lands covered by exhibit X7 were already acquired by the Government in the year 1967 and the loan documents were created in the year 1970. The then Special Revenue Inspector for the loans during the year 1969-70 in Durgi Mandal, who was examined as DW3, deposed that he recommended for the loan

as per exhibit X10 and it contains his signature and that there was mutation in favour of the defendant and that the patta was transferred in favour of the defendant. He stated that exhibit B3-statement is not the basis for granting the loan and that he checked 10(1) and no.2 entries before he recommended for the loan and that the Karanam supplied the extract of 10(1) account. He, however, stated that he does not know whether the land was acquired even by the year 1969. All these documents referred to above apart, what is important to note and reiterate is that the land acquisition proceedings proceeded on the basis that the defendant is the owner and, therefore, the defendant is the eligible claimant to receive the compensation.

16.6 Since it is noted that the defendant was recognised as the owner of the acquired land as per the revenue records and that, therefore, the acquisition of the land was notified treating him as the owner and the eligible claimant, it is now necessary to refer to the oral and documentary evidence related to the acquisition proceedings as the claim of the plaintiff is that the defendant acted as his agent in the land acquisition proceedings for realisation of the compensation on the understanding to receive 1% of the net compensation that may be awarded requires further examination.

16.7 In the first place, it is to be noted that the plaintiff is not disputing the fact that the defendant's name is shown as the owner of the acquired land, but, not as an agent of the plaintiff right from the inception of the acquisition proceedings till the payment of the last part of the compensation amount by the civil Court to the defendant and that the plaintiff did not participate in the land acquisition proceedings at any stage including the award enquiry in respect of the land acquired. Be it also noted at this stage that the plaintiff states that the delay in coming to Court is only because of the defendant keeping him in darkness about the proceedings from time to time. The fact of the matter is that the plaintiff is aware that the subject land was acquired. In-

fact, in his deposition under exhibit B1, that is, the deposition in OP.No.189 of 1977 on the file of the Senior Civil Court, Narsaraopet, he admitted that the revenue officers came and made enquiries about his land and he told them that he was in possession of the lands being sought to be acquired and that the same belong to him; yet, he did not take care to see as to whether his name was mentioned in the notification as the owner of the acquired land. He kept quiet and slept over the matter till the acquisition proceedings attained finality and filed the instant suit belatedly and at the fag end. Exhibit B11, Award, dated 28.12.1970, passed by the Land Acquisition Officer reflects the name of the defendant under the column 'registered holder or occupier' and that compensation of Rs. 1,090.94 ps was awarded @ Rs.200/- per acre besides other benefits as per the then existing law. It is also borne out by record that not being satisfied with the compensation amount awarded, the defendant raised a protest and, therefore, a reference was made to civil Court and that OP.No.144 of 1973 was taken on file by the learned Senior Civil Judge, Narsaraopet. Exhibit B9 is a common judgment, dated 30.04.1975, passed by the learned Additional Senior Civil Judge, Narasaraopet, in O.P.no.144 of 1973 and batch, wherein, the name of the defendant appears as claimant/petitioner in respect of the subject land. By this common judgment, the award passed by the Land Acquisition Officer was confirmed insofar as the present suit land of Ac.4.22 cents in Sy.no.453/ 12. Exhibit B6 is the copy of the judgment, dated 08.04.1976 (after review) passed in OP.No.144 of 1973 & batch. By this common judgment, the market value of all the lands including the subject land was fixed at Rs.18,000/- per acre while granting other benefits as per the then existing law. Even this common judgment reflects the name of the defendant as the petitioner/ claimant and not that of the plaintiff. Aggrieved thereof, the Government preferred an appeal in A.S.no.839 of 1976. This Court partly allowed the appeal; and, by decree, dated 20.02.1978, modified the decree of

the Court of the Additional Subordinate Judge, Narasaraopet, and directed the Government to pay market value of the land @ Rs.7,000/- per acre besides damages towards crop @Rs.800/-per acre from 1967 to 1971 and Rs.1,000/- for improvement of the land. The High Court also granted solatium and other benefits as per the then existing law. Even in this appeal, the name of the defendant appeared as the respondent. All through the Government recognised the defendant as the owner & occupier of the acquired land and as the eligible claimant and in all the proceedings the defendant was shown as the claimant eligible for compensation in respect of the acquired land/plaint schedule land. This overwhelming documentary evidence sufficiently corroborates and lends support to the defence of the defendant. PW4 is said to be one of the ryots whose land was also acquired. He deposed that initially he was paid compensation of Rs.1500/- (part) and subsequently, defendant succeeded in seeing that he does not receive the remaining compensation and that the defendant took the compensation for his well in the name of his wife and that he gave complaints to superior officers and the Government and that he also lodged a private complaint against the defendant. He filed exhibit X5, copy of the said complaint, which shows that the same was not numbered and was returned, on 14.11.1977, by the learned Judicial Magistrate of First Class, Gurazala. From the material record, it is manifest that the document with the disputed thumb impression was also sent to an expert along with the standard thumb impressions of the plaintiff taken in open Court and that the expert, who furnished the opinion, was examined as Court witness and that his opinion also shows that the thumb impression, which is disputed is that of the plaintiff. In-fact, there was no need to advert to this aspect as the plaintiff admits his thumb mark by virtue of his pleading that the document might have been created on the blank paper containing his thumb impression which was obtained by the defendant at the inception. Thus, from the analysis of the

evidence, it is clear that the land acquisition proceedings culminated in favour of the defendant/claimant and that in the said proceedings, he was held entitled to receive the compensation in respect of the subject acquired land. Be it noted that this Court, under exhibit B10, passed the decree in A.S.no.839 of 1976, on 20.02.1978. Without approaching this Court, the plaintiff filed the present suit in forma pauperis in the year 1977 even without seeking a declaration that the plaintiff is the owner of the land and without assailing the land acquisition proceedings taken in the name of the defendant and without impleading the Government as a party to the suit. Be that as it may, the plaintiff's claim that he is an indigent person entitled to exemption from payment of court fee on the suit claim was negated by the trial Court. The said order was confirmed by this Court. Admitting this aspect, the plaintiff (PW1) stated in his evidence that he did not sell this land to anybody and that to pay the court fee he sold this land to Ramarao. If that is so, how the plaintiff is still entitled to prosecute the suit and claim the compensation for the land, which was sold away, remains unexplained. In the evidence, the plaintiff stated that he did not participate in the award enquiry and that he did not give evidence in the proceedings under Section 18 of the Land Acquisition Act before the civil Court and that having come to know that the defendant misappropriated the amount he approached the advocate and filed the instant suit. He further stated that he did not obtain certified copies of the relevant documents relating to the suit and that he does not know how much amount was received by the defendant. He, however, claimed Rs.1,00,000/- in the suit. His evidence also shows that he does not know how much amount was awarded by the Government as compensation and that he did not obtain any record to show the date on which the defendant received money and the amount of money that was received by the defendant. He also deposed that he does not know the basis for his claim of Rs.1,00,000/- and that he did not file

any document in support of the said claim. Had the plaintiff been diligent he would have obtained from the civil Court and filed the copies of the relevant records and registers evidencing the compensation amount finally awarded and deposited into Court and the amounts withdrawn by the defendant from time to time and the balance amount, if any, lying to the credit of the OP proceedings before the civil Court. He failed to do so. He merely testified that he does not know any details including the basis for his claim of Rs.1,00,000/- . From the evidence it appears that he is casual and not assiduous in his approach and that he came to Court without making minimum investigation and securing the required documentary evidence, even though such evidence is within his reach having been available in the OP proceedings before the civil Court. Hence, this is a fit case where the principle that law comes to the rescue of those who are diligent but does not aid those who are indolent squarely applies.

16.8 On the above analysis, this Court holds that the plaintiff failed to establish that he constituted the defendant as his agent and that there is an oral understanding between him and the defendant and that the defendant undertook to look after all necessary affairs for realization of the compensation from the Government in respect of the subject acquired land and that the defendant is in a fiduciary relationship and is liable to account for the compensation.

16.9 In the facts & circumstances of the case, when once the land acquisition proceedings were initiated showing the defendant as the owner-cum-the claimant eligible for the compensation in respect of the acquired land and when the said proceedings culminated in favour of the defendant holding that he is the eligible claimant to receive the compensation, there cannot be a decree in favour of the plaintiff in this suit for declaration of his title to the balance amount lying to the credit of OP.No.144 of 1973 on the file of

Additional Senior Civil Court, Narasaraopet, as any decree granted will be contrary to land acquisition proceedings, which attained finality with the disposal of the appeal suit by this Court. In the facts and circumstances, as the defendant was considered as the eligible claimant in denial of the claim of the plaintiff, the plaintiff ought to have sought a relief of declaration of title and ought to have assailed the land acquisition proceedings in the presence of the Government as party defendant as the Government are a necessary party to the proceedings of such nature. Even in the present suit, the plaintiff did not implead the Government as a party defendant, which in the considered view of this Court is a necessary and property party. Accordingly, this Court finds that the plaintiff's suit as framed and filed is not maintainable under facts and in law. The points 1 to 3 are accordingly answered.

17. POINT No.4:

Having regard to the afore-sated findings of this Court on point Nos.1 to 3 supra, it follows that the contentions of the appellant/ plaintiff that the decree and judgment of the trial Court are unsustainable under facts and in law are without merit and are liable for rejection. On carefully evaluating the oral and documentary evidence and after going through the judgment of the trial Court, this Court, for the reasons assigned in this judgment, finds itself in agreement with the findings recorded by the trial Court on the issues settled and accordingly, holds that the trial Court is justified in dismissing the Suit of the plaintiff and that the well considered judgment of the trial Court brooks no interference. For all the reasons, this Court holds that the Appeal Suit is without merit and is liable for dismissal. Point No.4 is, accordingly, answered against the appellant/ plaintiff.

18. POINT No.5:

In the result, the appeal suit is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

Date: 15th March, 2018
KL/ Vjl

