

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

APPEAL SUIT No. 1609 of 2018

JUDGMENT:

This is an appeal by the unsuccessful defendant under Section 96 of the Code of Civil Procedure, 1908 assailing the judgment, dated 23.06.2018, of the learned Agent to the Government-cum-District Collector, West Godavari, Eluru, passed in O.S.No.8/2018/F2.

2. I have heard the submissions of learned counsel for the appellant/defendant ('the defendant', for brevity) and of the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record including the impugned judgment and the grounds urged in the memorandum of appeal.

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

4. On perusal of the material record, including the impugned judgment, and on consideration of the submissions made by both sides, it is apparent that the Agent to the Government, having served the suit notices on the defendant for appearance before him, on 23.06.2018, passed the impugned judgment on the same day directing division of the properties, however, without following the procedure established by law. In the light of the said fact it is fairly stated that though the Agent to the Government has power to pass the judgment, he did not follow the procedure contemplated under the Agency Rules before passing the impugned judgment and that for not following the procedure and not

giving a reasonable and fair opportunity to the defendant to contest the suit by filing the defence, the impugned judgment is unsustainable under facts and in law.

5. On the above analysis, this Court finds that the impugned judgment is liable to be set aside.

6. In the result, the appeal is allowed and the impugned judgment is set aside and the suit O.S.No.8/2018/F2 is remitted to the Agent to the Government-cum-District Collector, West Godavari, Eluru, for disposal afresh on its merit and in strict accordance with the procedure established by law, particularly the Rules governing the disposal of the suit. It is made clear that the learned Agent to Government shall endeavour to dispose of the suit as expeditiously as possible and preferably within four months from the date of receipt of a copy of this judgment.

No order as to costs.

As a sequel, pending miscellaneous petitions, if any, stand closed.

M. SEETHARAMA MURTI, J

Date: 19.12.2018

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