
(2010) 04 AP CK 0043
In the Andhra Pradesh High Court
Case No : AS No. 2712 of 1992

The State of Andhra Pradesh

APPELLANT

Vs

Prabhala Hemalatha Devi and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Andhra Pradesh Revenue Recovery Act, 1864 — Section 11, 18, 22, 27, 4
Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 120

Citation : (2010) 6 ALD 171 : (2010) 5 ALT 424

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Assistant Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The State of Andhra Pradesh represented by the District Collector, Krishna, the first defendant in O.S. No. 54 of 1983 on the file of the Subordinate Judge, Machilipatnam, had preferred the present appeal being aggrieved by the decree and judgment made therein.

2. The first plaintiff Prabhala Subrahmanyam died during the pendency of the suit O.S. No. 54 of 1983 and plaintiffs 2 to 4 were added as per the orders dated 11-09-1990 in I.A. No. 944 of 1990. The said plaintiffs 2 to 4 are shown as respondents 1 to 3 herein. The defendants 4 to 9 in the said suit are shown as respondents 4 to 11 in the present appeal. The appeal was dismissed for default as against R-7 to R-10 by virtue of an order made by this Court dated 27-07-2000.

3. The learned Assistant Government Pleader for appeals representing the appellant had taken this Court through the respective pleadings of the parties, the evidence available on record, and the findings recorded by the trial Court and would maintain that even if such attachment to be taken as illegal, the Government cannot be fastened with liability. The learned Assistant Government

Pleader for appeals also would maintain that no evidence was adduced on behalf of the plaintiffs to establish that the heaps harvested would fetch the amount as claimed. The only witness - 4th plaintiff had no knowledge about the same and no documents had been filed by the plaintiff in this regard. The learned Counsel also would submit that the learned Subordinate Judge, Machilipatnam could not approve the legal position in proper perspective.

4. The learned Assistant Government Pleader for appeals also would submit that the provisions of Section 80 of the CPC also had not been complied with and at any rate the suit is barred by limitation. The learned Assistant Government Pleader for appeals ultimately would conclude that in the light of the specific grounds raised this appeal shall be allowed. None represents the contesting respondents 1 to 3. As afore said the appeal was dismissed for default as against R-7 to R-10. R-4 to R-6 and R-11 also are not represented by any counsel.

5. Heard the learned Assistant Government Pleader for appeals.

6. Before taken up further discussion on the points which may arise for consideration in this appeal, it may be appropriate to have a glance at the respective pleadings of the parties, the issues settled, the evidence available on record and the findings recorded by the trial Court, the learned Subordinate Judge, Machilipatnam, in brief.

7. Pleadings of the parties:

Averments made in the plaint:

The plaintiff is the absolute owner of Ac.9.00 of wet land in patta Nos. 1011, 304, and 443 bearing R.S. No. 549, 552, 552 and 566/2 and 566/3 in the village of Peda Thummidi within the jurisdiction of Kaikaluru Taluk and the plaintiff is always in possession and enjoyment of the said lands and he is personally cultivating the lands with the assistance of the farm servants and also casual labourers. One Bolla Venkanna, son of Kanakayya of China Thummidi was functioning as the Nigaman of the plaintiff regarding the agricultural operations etc., in respect of the afore mentioned lands during the absence of the plaintiff who was employed as Senior Lecturer in English is the Sir C.R.Reddy College at Eluru. The plaintiff owned and possessed a thatched shed in China Thummidi village wherein the mother of the plaintiff was then residing and with who the plaintiff was staying during his visits to his lands in the village in connection with the effective carrying out of his cultivation and personal supervision of the agricultural operations whenever it become necessary. During Fasli 1390, the Plaintiff raised Dalva crop in an extent of Ac.8.00 out of his Ac.9.00 of land and he got the said crop harvested under his personal supervision and got the same heaped in five heaps in the said lands and accordingly to the most modest estimate, the total quantity of paddy contained in the said five heaps was not less than 130 bags of 75 kgs., of the 4-14 variety of paddy. After the heaping of the paddy, was completed the plaintiff unfortunately had a number of calamities including the simultaneous visitation of illness and disease on his mother and son

respectively which necessitated the plaintiff to proceed to Madras on 31.3.1980 and made him a victim of much physical suffering as well as mental agony and unrest. In spite of his condition the plaintiff returned to Eluru on 15.5.1980 from Madras, from where he had to proceed expeditiously to Waltair to attend an urgent meeting of the Board of Studies and could be back to Peda Thummididi only on the night of 22.5.1980 at 8 P.M. with a view to continue the harvesting operations of the paddy heaped by him in the five heaps as mentioned above. To the surprise and shock of the plaintiff, the paddy heaps including the hay were not in the fields as they were when he left for Madras. Enquiries revealed that the defendants 2 to 7 and late Shaik Davood the then Deputy Tahsildar and the father of 8th defendant, removed the heaps and took away the same high handedly both paddy and the hay, taking advantage of the absence of the plaintiff and his mother. The first defendant is the State of Andhra Pradesh, while the second defendant is the concerned Revenue Inspector; the 3rd defendant is Karnam of the village while the fourth defendant is the village Munsif. 5th defendant is the vetty and the defendants 6 and 7 are participants. The 8th defendant is the son of the then Dy. Tahsildar. Further enquiry by the plaintiff revealed that the staff of the Revenue Department consisting of the Dy. Tahsildar, and the defendants 2 to 7 invented a story that the five heaps of the paddy which belonged to the plaintiff were attached for the arrear of the Revenue due to the Government and sold on 28.5.1980 and that the same was purchased by the 9th defendant herein. The plaintiff further submitted that the entire version is also and is an imaginary invention. The plaintiff was not served with any notice what so ever either for the payment of the alleged arrears or any notice of attachment of the paddy heaps or of any proceedings intended to be taken or taken under the Revenue Recovery Act., which is mandatory and which alone creates jurisdiction in the Government to take proceedings under the said Act. The alleged auction of the paddy heaps to the 9th defendant on 28.5.1980 is palpably false and an impossibility as the paddy heaps have been removed from the land of the plaintiff and were not there, even by 8 P.M., on 22.5.1980 when the plaintiff visited the fields. The utter falsity of the alleged auction and purchase by the 9th defendant during enquiry by the Revenue Divisional Officer, Gudivada made a wrong statement that there was no auction and he never purchased the paddy heaps in the land of the plaintiff on 28.5.1980 or at any time. In view of the above facts, and circumstances, the plaintiff filed a petition before the first defendant on 11.6.1980 and receiving no response, the plaintiff filed a number of petition for relief and justice. The repeated petitions made the Revenue Department move, though belatedly and the Revenue Divisional Officer, Gudivada commenced enquiry on 13.6.1981 and two witnesses were examined on behalf of the plaintiff and the matter was adjourned to 20.9.1981 on which date eleven more witnesses were examined by the Revenue Divisional Officer, Gudivada on that date and adjourned to 9.8.1981 and 18.9.1981 when the evidence was closed. After hearing the arguments on 19.10.1981, the Enquiry Officer re-opened the case about an year later and several witnesses were recalled and further witnesses were examined and the matter was closed on

19.11.1982. In spite of the same, the Enquiry Officer did not pass any order, obviously because the entire evidence disclosed serious fraud, and conspiracy on the part of the Government Servants throwing serious stigma on several officers of the Revenue Department. As justice has not been done and nothing has transpired in spite of the long and protracted enquiry, the plaintiff got issued notices to the defendants 1 to 8 on 11.4.1983 and in spite of the receipt of the same by the defendants 1 to 3 and 5 to 8 and 4th defendant refused the said notice, none of the defendants send any reply to the plaintiff and therefore, the plaintiff filed the suit against the defendants towards the value of the paddy heaps as the delivery of the same cannot be had now. The plaintiff begs to submit that the defendants 1 to 7 and the father of the 8th defendant are jointly and severally liable to the plaintiff to pay the value of the crop contained in the heaps which were not in existence now kept on the plaintiff's land and also interest at the rate of 6% p.a., from 22.5.1980 till the date of plaint and also subsequent interest till the date of payment. The plaintiff had to spend an amount of Rs. 1,525.00 for his expenses at the time of the enquiry before the Revenue Divisional Officer, Gudivada including fee of Rs. 525.00 paid by the plaintiff to his advocate which the defendants 1 to 7 and the father of the 8th defendant are liable to pay the same.

8. Averments in the written statement of the first defendant are as hereunder:

The material allegations in the plaint are not true and correct and the suit is not maintainable in Law. The suit is barred by limitation under the provisions of the Andhra Pradesh Revenue Recovery Act and therefore, the suit is liable to be dismissed in limine. The first defendant acted in exercise of its sovereign function of collecting the Land Revenue and Drainage Cess etc., and no suit lies against it. It is true that the plaintiff owns Ac.9.04 cents at Pedathummidi and he also owns lands at China Thummidi. The said lands are not under the self-cultivation of the plaintiff as he is working as Lecturer at C.R.R. College, Eluru and the lands being poor are not worthwhile for self-cultivation. He leased out the said lands to 1) Bolla Venkanna, 2) Vemula Pentaiah, 3) Ekula Ramaiah, 4) Arju Pentayya and 5) Garikimulla Venkata Reddy who have been in possession and cultivating the said lands. It is false to state that the plaintiff has been cultivating the lands personally under the Supervision of Bolla Venkanna with the assistance of four servants and casual labourers B.Venkanna of Chinatummidi, has been a lessee since several years upto Fasli 1389. It is not true to say that he is Nigaman of the plaintiff, as he expressed his inability to cultivate the entire extent of the land with Dalwa during Fasli 1389, the lands of the plaintiff have been leased out to the above five lessees. The plaintiff has neither house nor the house site at Chinatummidi or any other surrounding villages. He has been residing at Eluru and working as Lecturer in C.R.R. College for the last 15 years and his mother is also is putting up with him. His brother, P.Lakshminarayana Sastry is working as Village Development Officer at Meturu Panchayat Samithi and he has no house either at China Tummidi or at any other surrounding villages. He is residing at Gudivada. Thus the plaintiff and his brother are absentee landlords of the lands.

They used to lease out their lands to riots. It is false to state that the Dalva crop during Fasli 1389 was raised under the Supervision of Bolla Venkanna, harvested and heaped in five heaps and total quantity yield is not less than 130 bags of paddy at 75 kgs, per bag. The paddy crop was heaped in five heaps by lessees as stated above. The lands are poor lands subjected to vagaries of nature and the plaintiff neglected the lands without providing necessary funds to lessees and there are no proper irrigation facilities, the yield of land was very poor and meager. The lands in question and surrounding lands in the village are of poor fertility and with low yield in view of the lack of irrigation facilities at opportune time. Naturally late transplantation or lack of water or want of manures and want of funds and seasonal conditions and posts may result in low yield in Dalva Crop. The cultivation accounts of the lands in question and other surrounding lands would reveal the correct position of the crop. In any view of the matter, the lands were not capable of yielding and did not yield 130 bags of paddy for Dalva Crop during the fasli 1389 and the lands in question and other riots lands suffered from poor yield of crop for lack of water and other reasons. The position of the yield of the plaintiff's lands are simple revealed by cultivation accounts from the last 9 seasons i.e., from 1383 to 1391 faslis. The estimated yield never exceeded to 10 bags of paddy per acre. As per the estimate of the Village Officer, the yield of the land in question as per Adangals was 27 bags of paddy, which was more than the actual yield. The value of the estimation of crop was duly noted in the demand notice No. 2 as Rs. 1500.00. The plaintiff is a chronic defaulter to pay the Government dues and he is always irregular in payment of the Government cist etc. By the time of the attachment, the amount reached to Rs. 4032.88 Ps. towards the arrears of the Land Revenue from Fasli 1384 to 1389 including Drainage cess etc., the details of which are as follows

(for which the demand notice was served on all the fire lessees)

Land Revenue	Rs. 3131.88	Ps.	Drainage Cess	901.00	Ps.
----- Rs. 4032.88 Ps. -----					

The plaintiff has been negligent in cultivating his lands and he has not provided funds to the lessees as and when they require for manures etc. He used to keep follow some of the extent of the land every year in this village and in Chinatummidu. He is willfully negligent without paying the Govt. dues. The paddy heaps have been attached by the Revenue Officials after observing all formalities under Law to recover the Govt. Arrears of the land revenue and other cess. As the plaintiff was not available, the persons in possession being lessees were duly served with all demand notices Nos. 1 and 2. The sale notice under No. 3 was also duly served and the sale was adjourned for two occasions. Finally the sale of the heaps was held in open auction at the Gram Panchayat Office on 28.5.1980 and the 9th defendant had been declared as highest bidder in the auction. He was put in possession of the paddy heaps. On account of the Village politics the 9th defendant turned hostile and supported the plaintiff during the enquiry before the R.D.O., Gudivada. He was estopped to deny the auction as he

signed on the sale list at the time of auction when it was knocked down in his favour. The auction amount of Rs. 1,000.00/- realized was duly credited towards the arrears of Government dues from the plaintiff. The attachment of the paddy heaps and the auction of the same is proper, legal and valid and in accordance with the provisions of Law. The defendants 2 to 8 being govt. servants have properly and legally conducted themselves in discharging duties according to Law. They bona fide and in good faith acted in discharging their official duties. The elaborate enquiry of Revenue Divisional Officer, Gudivada revealed that all the actions of plaintiffs are false and incorrect and the defendants have not committed any wrong. The suit is bad for misjoinder of parties and 8th defendant is not proper and necessary party to the sale. They are not jointly and severally liable for the suit amount or to interest on the said amount from 22.5.1980. The allegations that the plaintiff spent Rs. 1525.00 for expenses at the time of the enquiry before the Revenue Divisional Officer, Gudivada and he is not entitled to claim the said amount or interest thereon. The plaintiff is not entitled to claim Rs. 13,000.00 towards the value of the crop Rs. 1,000.00 for value of hay Rs. 2572.50 ps. Towards interest and Rs. 1525.00 towards the expenses. The Value of the paddy as claimed in the suit is highly excessive and the plaintiff is not entitled to claim the same or any amount against the defendants and therefore, he prayed to dismiss the suit with costs.

9. Defendants 2 to 4 filed memo of adoption adopting the writ petition of the first defendant. The averments made in the written statement of defendants 5 to 7 are as hereunder:

Defendants 5 to 7 filed a written statement alleging that the plaintiff has leased Ac.4.00 of land for three years and the land is not a fertile land and remission was also granted for one year. The government has attached the crop in Ac.4.00 of land under the cultivation of these defendants, for the fasli 1390 towards the land revenue due to the Government. When the crop was attached, the fifth defendant watched it as he is the vetty of the village. Defendants 5 to 7 have nothing to do with the attachment or sale of the property. The auction purchaser Penumala Seshayya took away the crop but the said Penumala Seshayya turned hostile to the plaintiff and gave false statement and therefore, these defendants are not liable to pay the suit amount and the suit may be dismissed with costs.

10. Defendants 8 and 9 remained exparte.

11. Issues settled by the trial Court:

1. Whether the plaintiff is entitled for the amount as claimed in the suit and if so, from which of the defendants?
2. Whether the suit is in time?
3. Whether the plaintiff committed default in payment of the land revenue?
4. Whether the attachment of paddy heaps and their sale is proper, legal and valid?

5. Whether there is no proper notice u/s 80 CPC?
6. whether the suit is bad for mis-joinder of parties and cause of action?
7. Whether the 8th defendant is not a proper and necessary party to the suit?
8. To what relief?

12. Evidence adduced by the parties:

On behalf of plaintiff PW-1 was examined and Exs.A-1 to A-11 were marked. Likewise DWs.1 and 2 were examined and Exs.B-1 to B-7 were marked on behalf of the defendant.

13. Findings recorded by the trial Court:

The learned Subordinate Judge, Machilipatnam after referring to the relevant provisions of Madras Revenue Recovery Act and also Andhra Pradesh Revenue Recovery Act and further after referring to certain decisions came to the conclusion that the procedure was not followed in accordance with law and further came to the conclusion that the contention that the suit is barred by limitation also is not tenable. The learned Judge appreciated the evidence of PW-1 and also had taken into consideration the admissions made by PWs.1 and 2 as well and came to the conclusion that the plaintiffs would be entitled to recovery of amount of Rs. 9,000/- only towards value of the paddy. The learned Judge further recorded that Ex.A-1 notice is in accordance with law and the provisions of Section 80 of the CPC had been complied with. Further the learned Judge observed that the persons who participated either in attachment or in sale had been made as parties to the suit and hence, the suit is bad for mis-joinder of necessary parties. Thus, ultimately the learned Judge decreed the suit for Rs. 9,000/- with proportionate costs against the defendants 1 to 7 and against the estate of Shaik Dawood in the hands of D-8 if any with subsequent interest at 6% p.a. till realization and rest of the plaintiffs' claim is dismissed with costs.

14. Aggrieved by the same, the present appeal has been preferred. In the light of the submissions made by the learned Counsel on record the following points arise for consideration in this appeal are:

1. Whether the findings recorded by the trial Court can be set up in accordance with law and whether such findings are to be confirmed or to be disturbed in the light of the facts and circumstances and also the evidence available on record ?
2. If so, to what relief the parties would be entitled to?

15. POINT No. 1:

For the purpose of convenience the parties hereinafter would be referred to as shown in the original suit O.S. No. 54/83 on the file of the Subordinate Judge, Machilipatnam as aforesaid. The original plaintiff Prabhala Subrahmanyam died during the pendency of the suit and plaintiffs 2 to 4 who are respondents 1 to 3 in the appeal were brought on record by virtue of an order dated 11-09-1990

made in I.A. No. 944 of 1990. The respective pleadings of the parties, the issues settled, the evidence available on record and the findings recorded by the trial Court in nutshell already had been referred to above.

16. The evidence of PW-1, DWs.1 and 2 is available on record and apart from this oral evidence documentary evidence Exs.A-1 to A-11 and Exs.B-1 to B-7 also had been relied upon. The deceased first plaintiff was the owner of Ac.9-00 cents in R.S. Nos. 549, 552 and 566/2 and 566/3 of Pedathummidi village. It is the case of the plaintiff that these lands were under the personal cultivation of the deceased first plaintiff but however, the stand taken by the contenting defendants was otherwise to the effect that the lands were not under the cultivation of the first plaintiff and they were leased out to 5 persons. It is not in dispute that the paddy crop in Ac.8.00 gts., was got cut and heaped into 5 heaps. No doubt there is some controversy whether there were kept in 5 heaps or they were kept in small kuppas. The first plaintiff was a defaulter in payment of land revenue and he did not pay land revenue to the extent of Ac.4-88 gts., for F.1384 to 1389. It is also not in dispute that the said heaps were attached, however, the dispute is that there was no sale in accordance with law and the very attachment was not in accordance with law and inasmuch as the attachment and sale being in accordance with law and being illegal. The plaintiffs are entitled to the relief as prayed for.

17. The specific stand taken by the contesting defendants was to the effect that they discharged their official duties in accordance with law and hence, they cannot be fasten with any liability whatsoever.

18. Before taking up further discussion relating to the appreciation of evidence it will be appropriate to have a look at the relevant provisions of the Andhra Pradesh Revenue Recovery Act, 1864. The Andhra Pradesh Revenue Recovery Act (hereinafter in short referred to as "the Act" for the purpose of convenience) consolidated the law for recovery of arrears of revenue in the state of Andhra Pradesh.

19. Section 4 of the Act deals with the arrears of revenue and the same reads as hereunder:

Arrears of Revenue: When the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue.

20. Section 5 of the Act deals with arrears of revenue how recovered and the said provision reads as hereunder:

Arrears of revenue how recovered: Whenever revenue may be in arrear, it shall be lawful for the Collector, or other office empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided.

21. Section 7 of the Act dealing with the interest on arrears specifies that arrears of revenue shall bear interest @ 6% p.a. Section 8 of the Act deals with rules for seizure and sale of movable property, which reads as hereunder:

Rules for seizure and sale of movable property: In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed....

First: Demand in writing: The Collector, or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The persons employed to distrain shall produce the writing which, if the arrear together with the batta due to him, u/s 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second: Writing to state that the distrained property will be sold:- The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount, with interest, batta, and all the expenses of the distress be previously discharged.

Third: Service when defaulter in absent:- When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress.

22. Section 11 of the Act deals with distrained crop, how dealt with and the said provision reads as hereunder:

Distrained crop, how dealt with: The distrainer attaching the crops or ungathered products of the land belonging to defaulter may cause them, to be sold when fit for reaping or gathering, or, at his option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case the expenses of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold. When crops or products belonging to a tenant shall have been sold, it shall be lawful for such tenant to deduct the value of the crops or products sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall also be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him, then or afterwards.

23. Further Section 22 of the Act proclamation of time of sale, and of property to be sold and the said provision reads as hereunder:

Proclamation of time of sale, and of property to be sold: The public officer,

empowered under Act VIII of 1839 to sell distrained property, shall cause to be affixed to the outer door of the defaulter's house, or on the premises where the property may have been distrained a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belongs; and in such places as the Collector or other officer empowered by the Collector in that behalf, may consider necessary to give due publicity to the sale. No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be so affixed.

24. Further Section 27 of the Act mode of attachment and the said provision reads as hereunder:

Mode of attachment: The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrears, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land, and by publication of the notice in the District Gazette.

25. Further Section 59 of the Act suits by persons aggrieved by proceeding-Limitation and the said provision reads as hereunder:

Suits by persons aggrieved by proceeding-Limitation: Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as herein before provided, from applying to the Civil Courts for redress; provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

26. The 4th plaintiff was examined as PW-1 and she deposed in detail the averments made in the plaint. This witness also deposed about Ex.A-1 office copy of the registered notice issued by the plaintiff's Advocate to the 1st defendant, dated 11-04-1983, Exs.A-2 to A-8 are the postal acknowledgments, Ex.A-9 is the returned registered cover, Ex.A-10 Photostat copy of the letter, dated 05-12-1990 and Ex.A-11 is the letter dated 04-11-1982. As against this evidence on behalf of plaintiffs", the defendants examined DWs.1 and 2 and also Ex.B-1 notice in form No. 1 dated 04-04-1980, Ex.B-2 form No. 2 notice dated 27-04-1980, Ex.B-3 form No. 3 notice dated 30-04-1980, Ex.B-4 Tomtom notice certificate give by V.M. dated 01-05-1980, Exs.B-5 and B-6 certificates issued by V.M., dated 16-05-1980 and 20-05-1980 respectively and Ex.B-7 auction proceedings dated 28-05-1980.

27. The principal contention of the learned Assistant Government Pleader for appeals is that since the procedure had been followed the appellant cannot be fasten with any liability whatsoever. Even otherwise the claim is barred by

limitation.

28. The learned Judge on appreciation of evidence available on record and also after discussing the evidence of PW-1 in elaboration and further taking into consideration the admissions made by DWs.1 and 2 came to the conclusion that the plaintiffs are entitled to decree for a sum of Rs. 9,000/- with proportionate costs against the defendants 1 to 7 and against the estate of Shaik Dawood in the hands of D-8 if any with subsequent interest at 6% p.a., till realization. The rest of the plaintiffs' claim is dismissed without costs.

29. Exs.B-1 to B-7 would go to show that an order of attachment was made and subsequent steps taken by the Village Munsiffs, Revenue Inspectors, Deputy Tahasildars and Tahasildars. There is nothing on record to show that prior to issuance of the demand, notices were issued to the first plaintiff, as he failed to pay the arrears of land revenue. DW-1 at the relevant time was working as the Head Assistant in the Special Deputy Collector's office at Nuzvid and previously he worked as the R.I. from 1979 to December, 1980 at Tummidu Village and the village Peda Tummidu was within his jurisdiction at the relevant point of time. According to this witness, the first plaintiff was due the land revenue from 1974 to 1980 and he issued Exs.B-1 and B-2 and other notices and steps were taken for proclamation to sell the attached property in public auction. In the cross-examination, this witness admitted that no notice was served on the first plaintiff before the attachment or sale. The first plaintiff was admittedly working as a Lecturer at Eluru.

30. DW-2 the third defendant in the suit deposed that he worked as Village Karanam of Tummidu village and this witness also deposed that he never served any notice on deceased first plaintiff, as he was not available in the village. Thus, the evidence of DWs.1 and 2 would clearly go to show that no demand notice was served on the first plaintiff prior to the attachment of the paddy heaps.

31. In the light of the same, the findings recorded by the learned Judge that procedure u/s 8 of the Act had not been followed, cannot be found fault. The explanation given in this regard is to the effect that the first plaintiff was an absentee landlord. The evasive answers given by DWs.1 and 2 had been taken into consideration while recording the findings. It is no doubt true that except the evidence of PW-1, there is no other supporting evidence relating to the value of the property. But, however, PW-1 categorically deposed about the attachment auction not being preceded in accordance with the procedure.

32. In J. Kuppanna Chetty, Ambati Ramayya Chetty and Co. Vs. Collector of Anantapur and Others, the Division Bench of this Court, while dealing with the liability of the State and the extent of liability of a Government Servant in relation to a tort when illegal attachment was made by the Tahsildar, held that the Government cannot be made liable for such tort. Officer effecting illegal attachment cannot be sued in his official capacity. However, the learned Division Bench relying on AIR 1915 Mad 434 observed that the Government is not,

however, liable for a wrong done by its servants in the course of official duties, but if the wrong was expressly authorized or later ratified by it, the Government would be liable. The learned Division Bench also held that no suit in tort against Tahsildar and the Collector his superior officer, in their official capacity, for damages is maintainable. Where it was found that the illegal attachment was not authorized by the Collector, suit against him is not maintainable on this additional ground also.

33. In *Chegondi Venkataramadas Vs. Bonam Latchanna and Others*, the learned Judge of this Court at paragraph Nos. 8, 14, 15 and 16 observed as follows:

8. It may be stated at the outset that there was another appeal filed by the Government against the judgment and decree awarded against it, being Appeal No. 258 of 1958. But, my learned brother, Venkatesam, J., allowed that appeal on the ground that respondents 1 to 3 had no cause of action against the Government for torts committed by it. The contention of the learned Government Pleader in that case was that even granting that the acts attributed to the 2nd defendant, the village Munsif, are true they only amount to torts or civil wrongs committed by him. It was also contended that at the worst the inaction on the part of the superior Government officials, whose attention had been drawn to the high-handed action of the 2nd defendant, and also the fact that the crops seized were allowed to be deteriorated, would only amount to negligence, which again is a tort, and that in either view, it was submitted that for the tort of the village Munsif or of the superior revenue officers, the Government could not be made liable. This proposition was accepted as it was said that as it was too late in the day to question its correctness. The recent judgment of Satyanarayana Raju, J. (as he then was) and Venkatesam J. in Appeal No. 214 of 1960, dated 18.07.1964: AIR 1965 Andh Pra 457 was relied upon as also the observations of his Lordship Sihna, C.J. in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*,

14. Sri R.V. Rama Rao contends strenuously that the property which the appellant attached was in fact the property of Chitturi Ramanna because the tobacco was grown on the land leased out to Chitturi Ramanna, and if u/s 11 of the Revenue Recovery Act standing crop could be attached, the revenue arrears being recoverable from the land itself, then it makes no difference to that position even after the crop is cut and stored. It is difficult for me to accept this contention. The attachment of standing crop on the land is one thing and the crop being cut and severed from the land is another thing. In the latter case, the crop has been appropriated and has no further relationship with the land and cannot therefore be attached within the meaning of Section 11 of the Revenue Recovery Act. Section 11 is in the following terms:

The distrainer attaching the crops or ungathered products of the land belonging to a defaulter, may cause them to be sold when fit for reaping or gathering, or, at his option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case, the expense of reaping or gathering

and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold. When crops or products belonging to a tenant shall have been sold, it shall be lawful for such tenant to deduct the value of the crops or products so sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall also be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him, then or afterwards.

While it is true that where crops raised by the tenant are sold by distraining for arrears due from the lessor, the tenant has a right of set off against the amounts due from him to the lessor, but that is far from saying that Section 11 authorises the distrainer to attach the crops which are standing or which are ungathered. The very purpose of the section is to attach them and to watch them for a period when they are ripe to be sold, either without cutting them or to cut them and sell them and defray the cost of cutting from out of the proceeds of the sale. This section does not empower the distrainer to attach the property after the same has been cut and taken away. In interpreting this section, which has penal consequences, courts should give a strict interpretation and construe it within the terms specified therein. I do not therefore think that the analogy given by the learned Advocate, viz., that it makes little difference whether the crops are cut after the attachment is made or that the attachment is made after the crops are cut, is, in my view, warranted by the provisions of Section 11. I must therefore hold that the property, at the time of attachment, did not belong to Chitturi Ramanna, and to the knowledge of the appellant it belonged to respondents 1 to 3. The further defence that he was carrying out the orders of the superior officers and was acting within the provisions of the Revenue Recovery Act does not carry justification and there is no merit in the contention that his action was bona fide and without malice. The facts narrated or established amply prove that the appellant deliberately set in motion the machinery of Government for the purposes of gaining his personal ends and acted with mala fides and in a high-handed manner when he attached and removed the properties from the shed of respondents 1 to 3.

15. The next question that falls for determination is whether the suit is barred by limitation. Section 59 of the Revenue Recovery Act creates a special period of limitation, viz., six months within which a suit should be filed. It says:

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress; provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such causes of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

The first part of the section, though in the negative, empowers all persons

aggrieved to take such action as they deem fit in Civil Courts if they so choose, while the second limb of the section makes it abundantly clear that any such suit which they may file can only be taken cognizance of if it is filed within six months. There is ample authority for the proposition that where suits are filed in respect of any cause of action taken under the Revenue Recovery Act, the general law of limitation does not apply but only the provisions of Section 59 of the Revenue Recovery Act. It is however contended by the learned Advocate for the respondents that where there was no justification to act under the Revenue Recovery Act, such as for instance where there was no amount due or where the person whose property is attached is not liable for any arrears and action is taken against him, then there is no jurisdiction to invoke the provisions of the Revenue Recovery Act, and consequently the limitation prescribed in Section 59 will not apply but the period prescribed under the ordinary law of limitation.

16. A Full Bench of the Madras High Court in *Venka v. Chengadu* ILR (1888) 12 Mad 168 at p. 175 (FB), considered this question. There, a suit was filed in July 1885 to set aside a sale of land of the plaintiff sold in July 1884, as if for arrears of revenue under Act II of 1864, on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers. The plaintiff had knowledge of the alleged fraud more than six months before suit but did not file the suit within that period. It was held that Section 59 of the Revenue Recovery Act applied and that the suit was barred by limitation. Muttusami Ayyar, J., after pointing out the provisions of Section 18 of the Act XV of 1877 for allowing the time between the actual commission of fraud and the knowledge of its commission observed:

Though this provision is contained in the general Act of Limitations, and Act II of 1864 is a special law applicable to Revenue sales yet it applies to the case before us, as Section 6 of Act XV of 1877 directs only that the period of limitation, prescribed by the special Act, shall not be affected by that enactment.

The true import of the expression "Aggrieved by any proceedings under the Act" in Section 59 is, according to the Full Bench "not that the proceedings should be in accordance with the Act and therefore perfectly legal, but that the proceedings though defective and irregular and therefore not in strict conformity to the provisions of the Act, should be taken professedly under it. If the suggestion of the appellant's counsel were to prevail, there would be no grievance at all to be redressed by a Civil Court." Again, the question whether fraud makes any difference in the period of limitation was answered by a reference to the suggestion made by the counsel before them, Mr. Bhashyam Ayyangar, that "the cause of action would then arise from the date on which the fraud was discovered, but that the period of limitation would still be six months." Muttusami Ayyar J. pointed out at page 175:

The section presupposes that certain proceedings were professedly taken under the Act, and that there might possibly be a valid claim to redress on the ground that they were not in accordance with the provisions of the Act and then directs

that the claim shall not be adjudicated upon the merits, unless it is preferred within six months from the time when the cause of action arose.

It may be an open question whether the proceedings contemplated in Section 59 are those which are vitiated by mere errors of procedure or include those taken without jurisdiction and, therefore, not within the purview of the Act. For instance, there may be a sale when there are no arrears of revenue, or the land sold may not be included in the patta or holding liable to be sold for the purpose of liquidating them. Though in the case before us there was no arrear of revenue on the plaintiff's land, yet there was an arrear on other land included with it in one patta, and it has already been held that one part of a holding is liable to be sold for the arrear due on another portion of the same holding. It is therefore not necessary for the purposes of this reference to determine the question whether, when there are no arrears for which the land in dispute is liable to be sold under Act II of 1864, the sale is a proceedings under the Act.

It may be stated that these observations made in reference to the facts in that case show that where there is no jurisdiction to invoke the provisions of the Revenue Recovery Act such as where the sale is made when there are no arrears of revenue or that the land held is not included in the patta or held liable to be sold for the purposes of liquidating them, Section 59 becomes inapplicable.

34. The scope and ambit of Sections 8 and 59 of the Madras Revenue Recovery Act, 1864 had been dealt with by the Division Bench of this Court in *Pentela China Kotaiah v. Pentela Kotaiah* 1960 ALT 357.

35. In *Kalimili Radhakrishniah Vs. The Govt. of Andhra Pradesh and Another*, the learned Judge of this Court at paragraph Nos. 6 and 7 observed as follows:

6. It is an undisputed fact that the suit property was sold in exercise of the powers conferred by Section 5 of the Act, Learned Counsel for the appellant contends that this sale is void as the property admittedly belonged to the plaintiff and not to the defaulter at the date of sale. Section 5 of the Act lays down:

"Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and casts of process, by the sale of defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided." It is therefore clear that this section empowers the Collector or any other officer empowered by him in that behalf to proceed against property belonging to a defaulter alone. The learned District Judge did not however advert to this; aspect of the contention urged far the plaintiff. The reason which appears to have weighed with him in coming to the conclusion, "that there was nothing illegal about the sale of property belonging to the plaintiff for realisation of the amount due from Sankariah" is that the former had taken over all the liabilities of the family under Ex. B. 13 and that he is therefore in the position of a trustee. *Srirama Murthi v. Official Receiver, Krishna* 1957 1 Andh WR 216 referred to by him in this regard has absolutely no

application to the facts of this case as it related to a case of a partition that was sought to be questioned on the ground that no provision was made for payment to the creditors of the family. Even *Veeramma v. Appayya* 1956 Andh WR 476 does not seem to lend support to his conclusion as what all was held in that decision is that "persons not parties to partitions of family arrangements claiming benefits provided for them in such transactions really come under the category of beneficiaries and the arrangements conferring benefits on them are in the nature of trusts." The State cannot be regarded as coming within the category of beneficiaries since Ex. B.13 does not confer any such benefits on it to give rise to any trust. This apart, the question for consideration is whether the plaintiff is a defaulter within the meaning of the Act to validate the sale held by the 1st defendant in respect of the suit property. Even assuming for a moment that the plaintiff was in the position of a trustee and the State of a beneficiary, it would still not render the sale valid if it is not made in accordance with the requirements of the Act. It is no part of the defendant's case that the plaintiff is a defaulter nor can he be regarded as one such for the reason that he took over the liabilities of the family under Ex.B.13. The person to whom loan was advanced for sinking the well was Sankariah and so, he alone and not the plaintiff can be regarded as the defaulter for the purpose of this Act. Section 5 of the Act itself gives an indication of the meaning of "defaulter" though this term has not been defined in the Act as it provided for steps to be taken for the recovery of arrears of revenue by proceedings against movable or immovable properties of the defaulters. Almost every one of the relevant sections in the Act refers to defaulter alone and not to the persons other than the defaulter. If it is proposed to recover the amount from the plaintiff on the ground that he has taken over all the liabilities of the family, the proper remedy, if any, would be to file a civil suit against him but in no event property admittedly belonging to him could be validly attached and sold under the Act for realisation of arrears due from Sankariah who alone is the defaulter in this case. Reference may be made in this connection to an unreported decision of this Court in W.P. No. 6113 of 1973 rendered on 31-7-1975 in which it was held, among other things, that it was not open to proceed against the property belonging to the mother for recovery of arrears of excise revenue due from her son since she was not a defaulter. When the sale was admittedly held under the Act and there is no provision in the Act for proceeding by sale or otherwise against property belonging to any person other than the defaulter, it must be said that the sale of the said property in this case, which belongs to the plaintiff. For recovery of amount due from Sankariah is void and not binding on the plaintiff.

7. It was urged for the respondents that the suit is liable to be dismissed, as it was not filed within six months from the date of sale as required by Section 59 of the Act. I am however afraid that this section cannot be pleaded as a bar to the maintainability of the suit as the language employed in it would clearly show that it is applicable only to cases where the suit is instituted by one of the parties to the sale and not when the aggrieved person is a total stranger to the proceedings

held under the Act as in this case. The action refers to "parties" but the plaintiff was certainly not a party to the impugned sale. Further, as it was already seen that the sale is altogether void, the plaintiff can completely ignore it and need not even avoid the sale. So, the suit for declaration in such circumstances would, as rightly held by the Courts below, be governed by Article 120 of the Limitation Act of 1908, by which the suit is governed. I must therefore find that the suit is not barred by limitation.

36. No doubt strong reliance was placed on Ex.B-4. Even after Ex.B-4 to be taken into consideration the fact that the provisions of Section 22 of the Act had not been followed. This aspect cannot be put into any serious controversy as such.

37. The learned Judge, after referring to AIR 1966 Andhra Pradesh 277 already referred to supra and also after reckoning the period of limitation on the ground of cause of action and after referring to Section 59 of the Act, as well, came to the conclusion that the suit is within limitation. The learned Judge also recorded specific finding that in the absence of any other material, inasmuch as Ex.A-1 is available on record, it cannot be said that the provisions of Section 80 of the CPC had not been complied with. This Court had carefully gone through the findings recorded by the trial Court - the learned Subordinate Judge. The said findings were recorded on appreciation of evidence of PW-1, DWs.1 and 2, Exs.A-1 to A-11 and Exs.B-1 to B-7 as well. Certain submissions were made that even if the attachment and sale held to be invalid and not in accordance with the procedure, these being sovereign acts and since the contesting respondents discharged their official duties only, the appellant - first defendant cannot be fastened with any liability whatsoever.

38. This Court had carefully gone through the decision of the Division Bench aforesaid and also the relevant provisions of the Act specified supra. In the light of the admissions made by DWs.1 and 2 coupled with the evidence of PW-1, this Court is of the considered opinion that the findings recorded by the trial Court cannot be found fault, and accordingly, the said findings are hereby confirmed.

39. POINT No. 2:

In the result, the appeal being devoid of merits the same shall stand dismissed. However, in the peculiar facts let the parties bear their own costs.