

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

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**A.S. No. 632 of 2016**

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**DATE: 30.06.2016**

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Between:

Kavala Mohana Rao

.. Appellant -  
2<sup>nd</sup> defendant

And

Nulakani Padmavathi  
and six others

.. Respondents

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**JUDGMENT:-**

The learned counsel for both the parties have submitted that this matter may be disposed of at the admission stage and with their consent this appeal is taken up for hearing and disposal.

The Appeal Suit is directed against the decree and judgment dated 02.06.2014 passed in O.S.No. 17 of 2011 on the file of the Court of Additional District Judge, Kovvur, West Godavari District whereby the trial Court directed the defendants to pay Rs.2,35,930/- towards costs of the suit.

The grounds raised in the appeal are that the trial Court erred in awarding the costs of the suit against the appellant – 2<sup>nd</sup> defendant while awarding the costs against the other defendants and it ought to have clarified in the decree with regard to the costs like other reliefs by specifying against which of the defendants the costs were awarded. Also, the trial Court has not given any finding against the appellant as to the right, title or possession of the plaint schedule properties.

The learned counsel for the respondents while opposing the appeal has submitted that the appellant –

2<sup>nd</sup> defendant has contested the suit and adopted the written statement filed by the 1<sup>st</sup> defendant. It is admitted by the appellant that he cultivated the land for about 28 years. Though at the time of passing the decree, the appellant was not in possession of the property *qua* defendant Nos.1, 3 to 5, however, defendant Nos.1, 3 to 5 including the 2<sup>nd</sup> defendant - appellant were directed to pay Rs.2,35,930/- towards costs of the suit.

Heard the learned counsel for both the parties and perused the material placed on record.

Vide decree dated 02.06.2014, the trial Court gave the following directions:

1. that the suit be and the same is hereby decreed with costs in favour of the plaintiffs declaring the vested remainder rights of the 1<sup>st</sup> plaintiff over item Nos.1 and 2 of the plaint schedule properties and the absolute title of the 2<sup>nd</sup> plaintiff over items 3 and 4 of the plaint schedule and the absolute title of the 3<sup>rd</sup> plaintiff over item No.5 of the plaint schedule;
2. that the defendants 1, 3 to 5 are hereby directed to deliver the possession of items 3 to 5 of the plaint schedule properties to plaintiffs 2 and 3 within one month from the date of this judgment failing which the plaintiffs 2 and 3 can take delivery of possession through the process of Court;
3. that the plaintiffs 2 and 3 are hereby entitled for future profits from the defendants 1 and 3 to 5 from the date of filing the suit till delivery of possession over item Nos.3 to 5 of the plaint schedule properties by way of separate enquiry to be initiated in that regard.

However, in the 4<sup>th</sup> direction, the trial Court observed that the defendants shall also pay a sum of Rs.2,35,930/-

towards costs of the suit. The 4<sup>th</sup> direction is consequent on the three directions given as above. Therefore, the 4<sup>th</sup> direction shall have to be read as direction issued *qua* the defendants

1 and 3 to 5. Moreover, it is nowhere stated in the impugned judgment/decreed that since the appellant-2<sup>nd</sup> defendant also contested the suit, he would also be liable to pay costs with other defendants.

In view of the above, the Appeal Suit is allowed at the stage of admission. Any proceedings against the appellant - 2<sup>nd</sup> defendant in pursuance of the decree dated 02.06.2014 passed by the trial Court are hereby quashed. No order as to the costs.

As a sequel to the dismissal of the Appeal Suit, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

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**SURESH KUMAR KAIT, J**

30.06.2016

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