

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.710 of 2008

AND

SECOND APPEAL No.881 of 2015

COMMON JUDGMENT:

These two appeals are preferred by same plaintiffs, who filed O.S.No.522 of 1995 and O.S.No.238 of 1995 against two different set of defendants claiming exclusive right over passage shown as 'ABCD' in one suit and 'CDEF' in another suit towards North of plaintiffs residential building. The trial Court dismissed both the suits holding that plaintiffs have no exclusive right as claimed. Aggrieved by which, two separate appeals were preferred in two different Courts against dismissal of these two suits and the appeals were also dismissed confirming the judgments of trial Court. Challenging the same, plaintiffs preferred these two appeals contending that the following are the substantial questions of law:

"S.A.No.710 of 2008:

- (i) Whether the lower Appellate court can ignore the documents Exs.A.10 to A.14 while allowing the marking of the said documents on 12.02.2008 under a separate application and wrongly giving finding that the applications are dismissed.
- (ii) Whether in a suit for declaration of title, the courts are duty bound to consider the oral and documentary evidence of the plaintiffs in detail in contra distinction to the oral and documentary evidence of the defendants.
- (iii) Whether the lower appellate court can hold that O.S.No.238 of 1995 which is a suit for injunction in respect of a portion of the same item of the property can observe that it has nothing to do with the

dispute before it.

- (iv) Whether in the facts and circumstances of the case, the observations recorded in paras 6 and 7 of the lower Appellate Court can be taken as Judgment of the Appellate court when the same does not discuss anything with regard to the oral and documentary evidence adduced on behalf of the Plaintiffs/Appellants.

S.A.(S.R) No.34087 of 2006

- (i) Whether the courts below can dismiss a suit for permanent injunction when the Plaintiffs proved prima facie title, possession and balance of convenience in their favour?
- (ii) Whether a suit for permanent injunction can be dismissed when the Plaintiffs proved their possession and use and disuse by the defendants?
- (iii) Whether a suit for permanent injunction can be dismissed without properly considering the documents produced before the court?"

2. Heard both sides.

3. As seen from the material all the grounds urged in these two appeals are only on factual aspects and no question of law is involved in this matters leave alone substantial question of law. Considering the material on record, I am of the view that as there is no substantial question of law involved in these two appeals, second appeals against concurrent findings of trial Court and appellate court cannot be entertained.

4. Accordingly, these two second appeals are dismissed at admission stage.

5. Miscellaneous Petitions, if any, shall stand closed.
No costs.

S. RAVI KUMAR, J

Date: 09.12.2015.
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