

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.1060 OF 1999

JUDGMENT:

The appellant in the instant second appeal is the unsuccessful sole defendant in O.S. No.107 of 1987 on the file of I Additional District Munsif, Machilipatnam, and appellant in the first appeal i.e., A.S. No.28 of 1993 on the file of District Judge, Krishna, Machilipatnam, and, thus, he came before this Court seeking to set aside the judgments and decrees passed by both the Courts below.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed before the trial Court.

3. Turning to the facts, plaintiffs filed the suit for relief of perpetual injunction against the defendant by restraining him and his men from interfering with their possession and enjoyment over the plaint schedule land admeasuring Ac.0-50 cents in R.S. Nos.28, 29 and 30, situated in Rayavaram Village, Guduru Mandal, within the Sub Registry area of Machilipatnam, Krishna District.

4. The defendant resisted the suit on the ground that there has been a cart-track running through the subject land which is in possession of the plaintiffs being used as ingress and egress and it has been up to the hut laid by him for looking after the agricultural operations

which is adjacent to the plaint schedule land and thus, sought to dismiss the suit.

5. The trial Court, framed two issues; the first being a comprehensive issue as to 'whether the plaintiff is entitled to permanent injunction as prayed for,' and the second issue is residuary one stating as 'to what relief.'

6. To substantiate their respective cases, PWs.1 to 3 were examined and Exs.A-1 to A-57 were marked on behalf of the plaintiffs and DWs.1 and 2 were examined and Exs.B-1 and B-2 were marked on behalf of the defendant; and Advocate-Commissioner's report, dated 21-06-1988, in I.A. No.590 of 1988 was marked as Ex.C-1 through the Court.

7. The trial Court accepted the case of the plaintiffs and partly decreed the suit granting permanent injunction restraining the defendant from interfering with the subject land, but limited it to the extent of land in possession of the plaintiffs excluding the usage of the cart-track/passage of three feet width running through the land claimed by the plaintiffs, directing both the parties to bear their own costs. Aggrieved of the same, defendant preferred A.S. No.28 of 1993 on the file of the District Judge, Krishna, Machilipatnam.

8. The first appellate court, having noted that it was a strange case, where, in fact, the relief granted by the trial

Court, even touches counter claim as being laid by the defendant and, however, making observation that the defendant, having not satisfied with what was granted, though, there was no counter claim at all, sought to set aside the trial Court's decision, dismissed the appeal suit having found that the plaintiffs have been in possession of the plaint schedule property, leaving the cart-track. A definite observation was also made by the first appellate Court that the defendant while approaching it, expanded the relief granted by the trial Court seeking the benefit of twelve feet passage instead of three feet wide. It is also observed that there is a provision under the Code of Civil Procedure, 1908 (CPC) and, though, the relief ought not to have been granted to the defendant, still, the trial Court granted. In that view of the matter, assailing the same, the defendant is before this Court.

9. Leaving apart the other grounds agitated by the defendant in this appeal, he has raised questions of law, thus;

“1) Whether the claim of the defendant of easementary rights in a suit for injunction would amount to a counter claim ?

2) Whether a counter claim has to necessarily be in the form prescribed under the Civil Procedure Code ?

3) Whether the Court can consider a counter

claim on the basis of pleadings which are not in the form prescribed under the Civil Procedure Code ?

- 4) Whether the Appellate Court can dismiss an appeal on a point of law without considering any of the other facts in issue ?'

10. Heard Sri R. Raghunandan, learned counsel for the defendant (appellant), and Sri Kowturu Vinay Kumar, learned counsel for the plaintiffs (respondents), and perused the material on record.

11. Learned counsel for the plaintiffs placed reliance on the decision of the Hon'ble Supreme Court in **Jag Mohan Chawla and another v. Dera Radha Swami, Satsang and others**^[1] for the proposition that though, the counter claim is maintainable, when the counter claim is raised or laid, it should be strictly in accordance with the mandatory provisions prescribed under the procedures governed by Order - VIII Rule - 6A of CPC and since the claim laid by the defendant is not in accordance with the procedure, the instant appeal is not maintainable.

12. There is absolutely no need to refer to the factual aspect even concerning the questions of law finding place in the grounds of appeal. Only the third question is relevant. The question, in fact, relates to factual aspect. Both the Courts below held against the defendant. Certainly, there is no need to probe into the

factual matrix, but, suffice it to observe that the trial Court, somehow, deviated in granting relief to the defendant occasioning to prefer the first appeal as well as the instant second appeal. But, no counter claim at all has been laid in the written statement in accordance with the mandate of Rule - 6A of Order - VIII of CPC. The very fact that the trial Court has recognized easementary right by refusing to grant injunction so far as path-way is concerned in a width of three feet, still, the defendant approaching the first appellate Court by expanding the relief seeking the benefit of 'twelve feet wide passage' itself shows that he, in fact, intends to use the Forum of first appellate Court for the relief which, in fact, not at all sought in the original proceedings. Thus, it has to be held that the so-called question of law formulated by the defendant cannot be probed into at all, more so, it cannot be held that substantial evidence is let in for justifying the question/s of law formulated by the defendant.

13. Viewed from any angle, absolutely there is no ground to interfere with the concurrent conclusions arrived at by the Courts below.

14. The Second Appeal is, therefore, without any merit and consequently dismissed. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous

Applications, if any, pending stand closed.

A. SHANKAR NARAYANA, J

October 1, 2015.

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[\[1\]](#) AIR 1996 SC 2222