

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

SECOND APPEAL NO. 326 OF 2013

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JUDGMENT:

The defendants in the suit are the appellants in the second appeal. The suit is filed seeking a declaration of right of passage of the plaintiffs through A,B,C & D marked pathway through the land situate in Sy.No.165, fully described in the plaint plan. They also prayed for a consequential injunction to restrain the defendants and their men from claiming any exclusive right or interfering with the right of passage of the plaintiffs through the aforementioned land. The defendants have contested the suit.

The plaintiffs and the defendants originally belong to the family of Sri Sathi Peda Surayya and after his death, his son Sri China Veera Reddy filed O.S.No.262 of 1930 on the file of the District Munsif Court, Ramachandrapuram, East Godavari for partition and for separate possession of his half share. That suit was decreed on 15.03.1935 and a final decree was also drawn on 06.02.1936 allotting respective shares amongst the sharers. The Commissioner appointed during the course of final decree proceedings has filed his report and also enclosed a detailed plan. In the final decree, easementary right of passage was created and the pathway was provided in the land situate in R.S.No.165, so that, through the said pathway land situate in Sy.No.171 to 173 can be reached. In view of this final decree drawn as long back as on 06.02.1936, the Trial Court did not find any hesitation to decree the suit.

The appellants herein have carried the matter in appeal by instituting A.S.No.1 of 2001 on the file of the learned Senior Civil Judge's Court at Peddapuram. The learned Senior Civil Judge, after proper analysis of the material available on record, has confirmed the finding of fact that the easementary right of passage through the land situate in Sy.No.165 so as to enable the parties to reach the land situate in Sy.Nos.171 to 173 has been confirmed.

Heard Sri M. Jagannadha Sharma, learned counsel for the petitioners.

An easementary right is depending upon the existence, in fact, of any such right of passage. When once both the Courts have perused the final decree drawn by the competent Civil Court as long back as on 06.02.1936 and found that the final decree did contain such an easementary right, it would be futile on the part of the appellants herein now to rake up a controversy about non-existence of any such right at this distant point of time.

I, do not find any infirmity in the findings of fact recorded by the Trial Court and approved by the learned Senior Civil Judge, Peddapuram. In view of the current finding of fact, the second appeal cannot be admitted for want of any substantial question of law to be passed by this Court.

Hence, the second appeal is dismissed at the admission stage, but however without costs.

Consequently, miscellaneous applications pending shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

21.01.2015

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