

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.396 of 1997

JUDGMENT:

This appeal is preferred challenging the decree and judgment dated 11.3.1997 in A.S.No.27 of 1994 on the file of II Additional District Judge, R.R. District, Hyderabad, whereunder, judgment in O.S.No.90 of 1989 on the file of District Munisif, Medchel is confirmed.

2. Appellant herein is unsuccessful first defendant in the above referred suit. First respondent herein filed the above O.S. No.90 of 1989 for the reliefs of perpetual injunction restraining appellant and another from making any constructions shown in RED shaded portion of the plaint plan and also preventing them from entering into his land by blocking the roads shown in RED colour leading to the land of plaintiff. Trial Court on a consideration of oral evidence of PWs.1 and 2 and evidence of DW.1 and documentary evidence of Exs.A1 to A26 and Exs.B1 to B3 decreed the suit in part granting perpetual injunction restraining appellant herein from closing passage of 30ft width from the public road situated on the western side up to the land of plaintiff. It is further decreed that the appellant has to leave 30ft width passage from west to east on the southern side of its land i.e., from the public road up to the land of plaintiff and if appellant herein wants to construct a wall on the southern side of his land, it has to do so by leaving 30ft width passage from the public road up to the land of the plaintiff. Suit in respect of perpetual injunction restraining appellant herein from closing six approach roads of 30ft width and mandatory injunction is refused. Aggrieved by the said decree and judgment, appellant herein preferred appeal to the District Court and the II Additional District Judge, Ranga Reddy on a reappraisal of oral and documentary evidence, dismissed the appeal confirming decree granted by the trial Court. Challenging the same, present Second Appeal is preferred.

3. This Court admitted the Second Appeal by framing the following as substantial question :

“Having regard to the fact that the effect of Section 16 of the A.P.Land Acquisition Act nullifies the right of way by way of easement, is required to be considered in this appeal, the appeal deserves to be admitted.”

4. Heard both sides.

5. Advocate for appellant submitted that subsequent to dismissal of this appeal, 40ft wide road was laid on the south side plots in Sy No.266, 267, 268, 269 and 270 of Rampalli village connecting road from Charlapally to Chengai cherla Gram panchayat limits and in view of the same the relief of the plaintiff has to be refused. He further submitted that a certificate is given to that effect by Sarpanch of Rampally which is also countersigned by Panchayat Secretary of the same village and in view of that additional document, the claim of the plaintiff for the relief of permanent injunction restraining appellant from closing passage of 30ft width public road situated on western side is not tenable. He submitted that as the plaintiff claimed that relief by way of easementary right and when there is alternative road such easementary right cannot be recognized.

6. I have perused the material papers including the judgment of trial Court and appellate Court. Trial Court mainly relied on the sanctioned lay out given by panchayat in the year 1967, which is marked as Ex.A3, whereunder six roads which appellant tried to close were shown. By considering that document, which is supported and corroborated with the evidence of PWs.1 and 2, trial court granted decree in favour of plaintiff and the same is confirmed by the appellate Court, on reappraisal of evidence of these two witnesses with reference to Ex.A3 lay out plan sanctioned by Sarpanch of Rampally village on 17.10.1967. Now the appellant obtaining another certificate from Sarpanch contrary to Ex.A3 contents contended that plaintiff is not

entitled for the decree granted by the trial Court as he has got alternative road on southern side. This contention cannot be accepted and the certificate produced by appellant would only show that as on 21.07.2008, there is a 40ft road. This Second Appeal is filed in the year 1997 and the suit is of the year 1989. Considering the same, contention of appellant with regard to the certificate now produced cannot be accepted.

7. The main contention of the appellant is that land was acquired under the Land and Acquisition proceedings and that plaintiff cannot have any right over that land. Though appellant contended that it has got a right over the suit schedule land also he has not produced any material to show that this is part and parcel of the land acquired under the Land the Acquisition proceedings. Both trial court and appellate court have considered this aspect and rightly decreed the suit as there was attempt by the appellant to close the approach road to the lands of plaintiff.

8. For these reasons, I am of the view that there is no substantial question of law involved, in this matter.

9. Therefore, Second appeal is dismissed. No costs. Miscellaneous Petitions pending in this writ petition, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 17-12-2015.

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