

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.160 of 2014

-

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 27.06.2012 in A.S.No.13 of 2009 on the file of II Additional District Judge, Karimnagar at Jagtial, whereunder, judgment and decree in O.S.No.129 of 2011, dated 02.06.2009 on the file of Principal Junior Civil Judge, Jagtial, is confirmed.

2. Appellant herein is unsuccessful plaintiff in both the Courts. He filed above referred O.S.No.129 of 2011 for declaration that he is entitled to use the suit passage shown on Northeast corner of the defendant's plot and to perpetually restrain the defendant from interfering with his peaceful possession and enjoyment of the said suit passage. Trial Court after considering the evidence of PWs.1 to 6 and documents Ex.A1 to A.9 on plaintiff side and evidence of DWs.1 to 3 and documents Exs.B1 to B.17 on defendant side, dismissed the suit holding that plaintiff is not entitled for the relief of declaration and injunction on the ground that he has got alternative passage on eastern side. Aggrieved by the dismissal of suit, plaintiff preferred appeal to the II Additional District Judge, Karimnagar and on a reappraisal of entire evidence, 1st appellate Court confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the same, plaintiff preferred present Second Appeal contending that the following are the substantial questions of law that require adjudication by this Court:

"A) Whether the findings of the trial Court with regard to the alternative way itself show that it has not come to a definite conclusion about the way available to the plaintiff?

B) Whether the judgments and decrees of the Courts below are justified without taking into consideration the evidence of PWs. 2 and 3 who spoke about the division of the plots and the existence of the suit passage on the plot of the defendant?

C) Whether the Courts below taken into consideration the fact that the appellant constructed his house in the year 1991 and ever since he has been using the suit passage and thus the plaintiff proved his absolute necessity, which is a condition

precedent to grant the relief of easement of necessity?"

3. Heard both sides.

4 . Advocate for appellant submitted that both PWs. 2 and 3 have supported the case of plaintiff and from their evidence, it is clear that the suit passage is the only passage for ingress and egress to the house of plaintiff, as the defendant abruptly closed that passage, plaintiff has no other way to reach his house, but both trial Court and appellate Court have not properly appreciated the evidence of these two witnesses, and therefore, findings of trial Court and appellate Court have to be set aside. He further submitted that as the plaintiff is absentee house owner, defendant took advantage of it and closed the passage and the findings of trial court and appellate Court in assessing evidence of PWs.2 and 3 is perverse, and therefore, Second Appeal would lie and it is to be admitted.

5. On the other hand, advocate for defendant submitted that as per the evidence on record, PW.3 conducted auction of this site, and in the auction sheet, which is marked as Ex.A9, it is clearly mentioned that plaintiff has got way on western side and it is the way for plaintiff, but for the purpose of 'Vastu', he is now claiming plaint passage and that plaintiff has no right and both the Courts have rightly dismissed the claim of plaintiff. It is further submitted that PW.2, who is the eastern side boundary owner of the defendant, clearly stated in his evidence that there is no reference about this passage in his sale deed, therefore Courts below have rightly accepted the evidence of PWs.2 and 3 and that there is no substantial question of law to be determined by this Court and that the Second Appeal is not maintainable.

6. I have perused the material papers including judgments of both the Courts. As seen from the record, plaintiff himself admitted in his cross-examination that in Ex.A9, the way shown on western side of the defendant's property is demarcated for him, and this aspect is supported and corroborated by PW.3, who conducted auction between plaintiff and defendant. Further the document Ex.A9 would clearly indicates that the way on the western side of defendant's property is the ingress and aggress to the house of plaintiff, therefore the contention of advocate for appellant that there is no alternative way for plaintiff to reach his house is not well founded. Both trial Court and

appellate Court have elaborately discussed the evidence of both parties, particularly evidence of PWs.2 and 3 who are the main witnesses with reference to Ex.A9 recitals and correctly held that the suit passage is not the only passage available for the plaintiff to reach his house and that those findings cannot be held as perverse as contended by advocate for appellant.

7. On a scrutiny of the material, I am of the view that there is no question of law involved, leave alone, substantial question of law to be determined by this Court, as such, appeal is devoid of merits and liable to be dismissed.

9. Accordingly, the Second Appeal is dismissed at admission stage. No costs. Miscellaneous Petitions, if any pending, in this appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 03-11-2015.

gvl