

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.355 of 2000

JUDGMENT:-

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful defendant is directed against the decree and judgment dated 13.12.1999 of the learned Principal Senior Civil Judge, Gudur of Nellore District passed in A.S.No.22 of 1995. The learned Senior Civil Judge had partly allowed the said appeal and modified the decree and judgment dated 17.07.1995 of the learned District Munsif, Gudur in OS.No.460 of 1986. The said suit was brought by the plaintiff for a perpetual injunction restraining the defendant and his men from (i) interfering with the construction of the room in 'EFGH' portion of the plaint plan; (ii) using the private lane shown as 'MNOPIE' in the plaint plan and (iii) for costs.

2. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for brevity). In spite of granting sufficient time, no submissions were made on behalf of the respondent/plaintiff ('the plaintiff' for brevity). Therefore, it is treated that there are no submissions to be made on behalf of the plaintiff. I have perused the material record.

3. At the time of admission of this appeal on 28.04.2000, this Court had formulated the following substantial questions of law.

- 1. Whether the judgment and decree of the lower appellate court is vitiated due to mis interpretation of Exs.A1, A11 and A12 and also due to non consideration of admissions of plaintiff and his witnesses regarding the user of the lane by the defendant/appellant?**
- 2. Whether the lower appellate court erred in failing to consider while interpreting the Exs.A.11 and A12 (judgment reported in 1984(2) APLJ page 84 wherein the Division Bench of this Court held that the attestation by itself is not sufficient to impugn (impute) the knowledge of the contents much less consent of the document.**
- 3. Whether the finding of the lower appellate court that as the appellant got a way earmarked during the partition with his brother disprove the contention of the appellant that the lane is**

joint lane is perverse inasmuch as there is no pleading and evidence adduced by the plaintiff?

[reproduced verbatim]

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to refer to the pleadings of the parties.

4.1 The averments in the plaint, in brief, are as follows: - 'Vakati Venkata Subbareddy and Vakati Subbaramireddy are brothers. The house shown in the plaint plan as 'ABCD' is that of Vakati Venkata Subba Reddy and the house shown as 'BCEF' is the house of Vakati Subbarami reddy. The said houses have fallen to their respective shares in their family partition. The plaintiff is the grand son of Vakati Venkata Subbareddy. The plaintiff had purchased the house of Vakati Subbaramireddy on 17.03.1986, under registered sale deed, from Vakati Sridevamma, the wife of Subbaramireddy, and their children. Both the brothers have got cattle sheds and site on the South-East corner of their houses. To reach the cattle yard and backyard of the plaintiff's house, there is a lane shown in the plaint plan as 'EFGH'. The plaintiff's vendor, Sridevamma, had obtained permission from the Gudur Municipality about 10 years ago, with an intention to construct a room on the South-East corner shown in the plaint plan as 'EFGH'. She had constructed the said room in that place to a height of 4 feet on the basement; and, she could not complete the construction of the room due to lack of money. After purchasing the plaint schedule site and house, the plaintiff's father had tried to complete the said room after getting permission and approval of plan from the Gudur Municipality. Meanwhile, the defendant had filed a suit in OS.No.346/86 on the file of the District Munsif, Gudur against the father of the plaintiff and had prayed for an interim injunction. The said Court had refused to grant interim injunction as prayed for in the interlocutory application filed in the said suit. Subsequently, the said suit was dismissed on 25.08.1986 for non prosecution. The plaintiff is repairing the house purchased from Vakati Sridevamma. When the plaintiff had proposed to construct the room on the walls already raised in 'EFGH' portion, the defendant and his men had threatened to stop the work and caused inconvenience to the plaintiff in

completing the construction of the room. The defendant, who is having numerical strength, is causing obstructions for constructing the room in 'EFGH' portion of the plaintiff and is causing much inconvenience and trouble. The defendant has no right, title and interest over the site covered by 'EFGH' portion. The defendant and his men also are threatening the plaintiff's people from proceeding in the lane shown as 'MNOPIE'. Hence the suit is filed.'

4.2 The averments in the written statement, in brief, are as follows: - 'The plaintiff plan is incorrect. The lane shown as private lane of the plaintiff is not his private lane. It is a joint lane of the defendant and the plaintiff. The predecessors of both the parties used the lane jointly to reach their respective cattle sheds on the South Eastern side. The lane was also being used by the predecessors of the defendant to carry water by means of a drum cart. The water that was used to be fetched by a drum cart through the joint lane was used to be poured through *kasi stone* into a storage tub which was existing by then. That *kasi stone* was fixed in the Western house wall of the defendant. After introduction of the protected water system by the Municipality, a water connection was obtained by the defendant's father and a tap was fixed in the place of the said tub i.e., inside the house. The pipes connected to the tap are lying underneath the lane. The lane extends up to the point 'G' and it is of 10 feet width. The plaintiff's vendor-V.Sridevamma had encroached into the joint lane of 7 feet towards East from her Eastern house wall and had started constructing the rooms. This defendant's father had protested against the said encroachment. By use of force, Sridevamma and her men had constructed two rooms starting from South and had also constructed 3 feet height wall in respect of the proposed 3rd room about 10 years ago. A report was lodged with the Municipal Commissioner complaining about the high handed construction. The Municipal Commissioner with the aid of the police had stopped the construction. Hence, no further constructions were made. Therefore, the contention that Sridevamma had stopped the construction due to lack of finances is false. The defendant's house was constructed about 40 years ago; and, there is a

verandah and then a hall, with two windows on the West of the hall, adjoining the lane on the East of the unfinished construction. And the verandah and the hall in the defendant's house are receiving air and light through the windows of the hall from the open lane including the unfinished construction. If the unfinished construction is allowed to be completed by the plaintiff, it will cause obstruction for passage of air and light to the verandah and hall of the defendant's house and their property will be engulfed in darkness causing distress, inconvenience and health hazard. Even assuming for a moment that the plaintiff has right to finish the unfinished portion of construction, the defendant and his predecessors in interest, having acquired easement right by prescription to receive light and air through the open lane including the unfinished portion of construction, are entitled to continue to receive light and air through the lane and the unfinished portion of construction and the said right of easement cannot be disturbed by now allowing the plaintiff to proceed with further construction by granting an injunction against the defendant. The plaintiff having not removed the constructions had come to Court with unclean hands and wants to perpetuate the wrong already committed by him in not removing the encroachments made into the joint lane. The plaintiff now wants to take advantage of the wrong committed by his predecessor by obtaining a perpetual injunction against the defendant.'

4.3 Having regard to the above pleadings, the trial Court had framed the following issues.

- 1. Whether the plaintiff plan is not correct?**
- 2. Whether the lane is the private lane of the plaintiff?**
- 3. Whether the defendant and his predecessor acquired easementary right to light and air through the open lane?**
- 4. Whether the plaintiff is entitled for permanent injunction?**
- 5. To what relief?**

4.4 At trial, the plaintiff and his supporting witnesses were examined as PWs1 to 5 and exhibits A1 to A19 were marked. On the side of the defendant, the defendant and his supporting witnesses were examined as DWs1 to 3 and exhibits B1 to B11 were marked. Exhibits C1 and C2 were also marked.

4.5 After full fledged trial and on merits, the trial Court had dismissed the suit with costs. As already noted, the Court below had partly allowed the appeal and had modified the decree and judgment of the trial Court. The decree and operative portion of the judgment of the Court below read as follows:

- ‘1. That the appeal be and the same is hereby partly allowed, modifying the decree and judgment passed in OS.No.460/86 dated 17-7-95 on the file of District Munsif, Gudur;**
- 2. That the decree of the lower court dismissing the suit with costs by partly confirming the judgment in dismissing the suit for granting permanent injunction in respect of constructions of E F G H wall;**
- 3. that it is also partly allowed granting permanent injunction in respect of appellants/plaintiffs restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the land which is shown as M N O P I E in the suit plan;**
- 4. that the suit in OS.No.460/86 on the file of District Munsif, Gudur be and the same is hereby partly decreed restraining the respondent/defendant and his men from interfering with the appellant/plaintiff’s peaceful possession and enjoyment of the private lane which is shown as M N O P I E in the plaint plan;**
- 5. that the suit in regard to relief of permanent injunction so far construction of wall E G F H by the appellant/plaintiff be and the same is hereby dismissed;**
- 6. that the appellant/plaintiff do bear his own costs.’**

(Reproduced verbatim)

5. The learned counsel for the defendant would contend as follows:

The trial court having considered the facts, the oral and the documentary evidence in the correct perspective had rightly dismissed the suit with costs after recording findings supported by valid and cogent reasons. The said findings on the issues framed by the trial Court are unassailable. However, the Court below had un-necessarily partly allowed the appeal and had erroneously modified the decree and the judgment of the trial Court though there is no material calling for interference with the decree and judgment of the trial court. The Court below ought to have seen that heavy burden lies upon the plaintiff to show that the lane shown as MNOPIE is a private lane and that any construction permitted over EFGH of the portion

of the plaint plan would interfere with the right of easement of the defendant to receive light and air to the verandah and hall of his house; and, that the defendant and his predecessors are accordingly receiving light and air to their property through the lane and the unfinished construction portion of EFGH in the plaint plan. The Court below ought to have seen that the documentary evidence under exhibits A1, A11 and A12 does not support the case of the plaintiff and that in exhibit A1 of the year 1986 the land is described as a joint lane of the plaintiff and his vendor, but, this document came into existence after the dispute had arisen between the plaintiff's vendor and the defendant and that, therefore, the recitals in the said document are not genuine and are not binding on the defendant. The court below had erroneously placed reliance on exhibits A1, A11 and A12 without considering the material evidence including the admissions of the plaintiff and his witnesses. The Court below had erroneously held that the father of the plaintiff used to put his signatures on documents upto 1977 and that thereafter he became a marksman and had started affixing thumb impressions on various documents. The recitals in exhibits A11 and A12 do not advance the case of the plaintiff any further. The court below had failed to take into consideration the crucial evidence regarding the transportation of water in the past through the lane by means of a drum cart and storage of such transported water in a tub as pleaded in the defence and the subsequent event of taking water connection and fixing a water tap in the place of the then existing water tub and the use of the lane since a long time by the defendant and his predecessors. The court below ought to have seen that the water pipes leading to the water tap fixed in the place of the tub are laid underneath the lane and that, therefore, the decree and judgment of the Court below are liable to be set aside.

6. In the memorandum of grounds of appeal and in the submissions made, certain contentions are raised in regard to construction of EFGH wall. However, there is no need to advert to the said aspects in this second appeal as the Court below had dismissed the suit of the plaintiff and had refused to grant a permanent injunction in respect of construction of EFGH wall.

Therefore, the determination of the questions involved in this second appeal shall be confined to the lane MNOPIE in the plaint plan, hereinafter referred to as the suit lane, however, keeping in view the scope of the substantial questions, which are formulated in this second appeal.

7. The plaintiff relies upon exhibits A1, A11 and A12, apart from the overwhelming oral evidence and the other evidence brought on record, in support of the claim in respect of the suit lane. The submission of the defendant is that the said documents are not helpful to advance the case of the plaintiff and that the Court below had wrongly placed reliance on the said documents without considering the admissions of the plaintiff and his witnesses in the evidence. Therefore, it is necessary to first examine the contents of the said documents. The contention of the plaintiff is that the suit lane is a private lane of the plaintiff and his predecessors; and, the defendant has no concern or right over the said lane. Exhibit A11 is the registration extract of the partition deed dated 17.08.1956 executed at the time of partition of the properties between the grand father of the plaintiff by name Vakati Venkata Subbareddy and his brother Vakati Subbaramireddy. According to the plaintiff, the plaintiff had also purchased the share of Vakata Subbaramireddy from his wife Sridevamma/PW2 and her children by virtue of a registered sale deed dated 15.03.1986 i.e., exhibit A1. In the partition deed of the year 1956, while mentioning the boundaries of the sharers, the Eastern boundary is mentioned as 'Dari sthalam kontha varaku, Duvvuru Tulasiramreddy konthavaraku' (transliteration). This document was attested by D.Tulasiramreddy, who is no other than the father of the defendant. In exhibit A1 also the lane was described as 'Vakativari sandu' (lane of Vakati people) and in the schedule of the document, the Eastern boundary is described as 'mana iddari ummadi dari' i.e., joint lane of the vendor and the vendee. This recital would clearly indicate that it is a joint lane of the plaintiff and his vendor under exhibit A1 i.e., PW2 and her family members. The copy of the partition deed under exhibit A11 on a careful perusal would show that the existence of the private lane was mentioned as early as in the year 1956, i.e., at the time of partition between the predecessors in interest of the plaintiff and PW2 and that at that

time there were no disputes. In fact the defendant had denied the signature of his father on exhibit A11 as an attesor by stating that his father is not a signatory and that his father is an illiterate and used to affix thumb impressions only. However, the plaintiff had examined the Secretary of the Gudur Grama Samudaya Bhoomula Vicharana Samstha as PW5 and got marked exhibits A17 to A19. PW5 had testified that Duvvuru Tulasiramireddy, the father of the defendant, is a member of the said Samstha and that he used to attend the meetings and sign in the minutes books and also on resolutions. On the other hand, the defendant had got exhibited exhibits B1 to B11, the thumb impressions of the father of the defendant on the resolutions, to show that the father of the defendant had affixed thumb marks on the said resolutions. In the cross examination of PW5, it was elicited that in the meeting dated 21.10.1976 Duvvuru Tulasiramireddy had signed as 'D.Tulasiramreddy' in telugu without fully mentioning his surname and that there is a difference in the signatures made on 21.10.1976 and 15.01.1977 and that in the minutes of the meeting dated 01.02.1977 the said Tulasiramireddy had signed as 'Duvvuru Tulasiramreddy' in Telugu in full. In his further cross examination he had denied the suggestion that the father of the defendant by name Tulasiramreddy is an illiterate and he is not capable of signing and that somebody used to sign on his behalf on the resolutions. The evidence brought on record would lay bare that Tulasiramreddy is a member of the said Samstha and that he was attending to its meetings and signing on the documents like minutes books and resolutions of the said Samstha. The suggestion that on behalf of Tulasiramreddy somebody had signed in the minutes books and on the resolutions of the Samstha cannot be countenanced as the same is highly improbable. From the evidence brought on record in this regard, it is possible to infer that for some time Tulasiramreddy had subscribed his signatures to various documents and that later he had started affixing his thumb marks. As rightly observed by the Court below, the documents, upto 1977 bear the signatures and the documents of the later period bear the thumb impressions of Duvvuru Tulasiramreddy. It is also brought out in the evidence that the signatures and thumb impressions are of the very same person and that there is no other

person in Guduru town with the same name-Duvvuru Tulasiramreddy. Therefore, the contention of the defendant that his father is not a literate and was incapable of putting signatures and that the signature as an attesor on exhibit A11 is not that of his father cannot be countenanced. No doubt the law is well settled that there cannot always be an inference that the attesor of a document knows the contents of the document and that the attestation by itself is not sufficient to impute knowledge of the contents of the document to an attesor of the document. And, the question whether or not the attesor had knowledge of the contents of the document is always a question to be decided on the facts peculiar to the case. Be that as it may. The recitals in the partition deed (exhibit A11) to which the predecessors in interest of plaintiff and PW2 are parties would show that it is a passage common between the properties of the parties to the partition deed. Further, according to the defence, there was a partition between the defendant and his brother Sudhakar Reddy in the year 1982. But, that deed of partition was not produced by the defendant despite the fact that a notice to produce documents was served on the defendant. Hence the Photostat copy of the partition deed dated 09.05.1982 executed between the defendant and his brother was marked as exhibit A14 on the admission of the signature of the defendant on the said document. However, the contents of the same were not proved. The Court below had drawn an adverse inference against the defendant for not producing the original partition deed. The recitals in exhibit A14 do not support the case of the defendant that the suit lane is a joint lane. Further, a Commissioner was appointed by the trial Court and he had filed a report with a sketch showing the topographical details of the suit lane and the other properties of the locality. No objections are filed to the report of the Commissioner and the sketch, which are marked as exhibits C1 and C2. The Commissioner's report on a perusal would show that from the Eastern side Municipal Road, there is a separate lane for the property of the defendant to reach the house of the defendant and that adjacent to the suit lane that lane 'LMNOPQRS' is existing. Thus, the suit lane is adjacent to that lane, which is the separate lane from the house of the defendant to reach the road. Thus, the sketch of the Commissioner also shows that from the house of the

defendant there is a separate lane on the Western side towards the South and it leads to the Municipal road after taking a turn towards East. If really the suit lane is a joint lane and the defendant has a right in the suit lane, there is no need to have another lane for the defendant's house adjacent to the suit lane. The existence of the lane noted in the Commissioner's report and the sketch probablise the contention of the plaintiff that since the defendant has no right in the suit lane, a separate lane is carved out in the partition of the properties between him and his brother to reach the Municipal Road from his house. Therefore, as rightly held by the Court below, if at all the suit lane is a common lane between the parties to the suit there is no necessity for the defendant to carve out a separate lane for ingress and egress from his house to the Municipal Road. Though, as rightly contended by the learned counsel, the lane which the Commissioner had noted is not shown in the plaint plan and there was no reference to the same in the pleadings, the said aspect is not going to affect the merit of the case of the plaintiff when the existence of such a lane as shown in the Commissioner's report and the sketch is not disputed by the defendant. Dealing with the aspect of the defendant's claim to receive light and air to the veranda and the hall of his house, the said claim does not create a right over the private lane of the plaintiff to the defendant to use the said lane; and, the defendant cannot have any grievance as long as the plaintiff uses the suit lane as a private lane without making any constructions over it. Admittedly, after obtaining the water connection and the fixation of a water tap in the house of the defendant, the defendant is no longer using the suit lane for transportation of water by a drum cart through the suit lane, as the said necessity ceased to exist with the fixation of the municipal water tap in the house of the defendant. Therefore, when transporting water by a drum cart through the suit lane had become unnecessary from the time a tap was fixed in the house of the defendant, there was an extinction of that right of the defendant to use the suit lane long prior to the institution of the subject suit. Therefore, placing reliance on the practice which is extinct, the defendant cannot claim joint rights in the suit lane which is a private lane of the plaintiff. Coming to the aspect of the water pipelines passing underneath the suit lane, what is to be noted is that the

plaintiff is not objecting for continuing the water pipe lines underneath the surface of the lane upto the tap in the defendant's house, as according to his evidence such pipelines were laid long time back even before he had attained the age of discretion and when the terms were cordial. The fact that the plaintiff is willing not to disturb such pipelines underneath the surface of the private lane of the plaintiff does not give a right to the defendant to use the private suit lane of the plaintiff and the defendant can at best continue to have such water pipe lines underneath the private lane of the plaintiff, but, cannot claim any other right when the suit lane is proved to be the private lane of the plaintiff. Nonetheless, it is made clear that the defendant can continue to have the water pipelines underneath the surface of the private suit lane of the plaintiff as the existence of the same since a long time is to the knowledge of the plaintiff and as it is evident from the material record that the plaintiff has no objection for the same remaining as such. However, the defendant shall not have any other claims or rights over the MNOPIE suit lane, which is held to be the private lane of the plaintiff.

8. Viewed thus, this Court finds that the Court below is justified in granting a perpetual injunction in favour of the plaintiff and against the defendant restraining the defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment of the private suit lane which is shown as MNOPIE in the plaint plan. Having regard to all the above reasons, this Court finds that there is no substance in the substantial questions of law and the appeal is devoid of merit and is liable to be dismissed.

9. In the result, the Second Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this appeal, shall stand dismissed.

M. Seetharama Murti, J

2nd September 2015

Vjl