

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.508 OF 2015

DATED:21-8-2015

Between:

Doragacharla Suneetha  
and another

... Appellants

And

Chirra Siva Reddy  
and another

... Respondents

... Respondents

COUNSEL FOR THE APPELLANTS: Mr. G.V.S. Mehar Kumar

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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This second appeal arises out of judgment and decree dt.27.2.2015 in A.S. No.51 of 2013, on the file of the learned Senior Civil Judge, Sattenapalli, whereby he has reversed judgment and decree dt.1.4.2013, in O.S. No.69 of 2007 on the file the learned Principal Junior Civil Judge, Sattenapalli.

2. I have heard Mr. G.V.S. Mehar Kumar, learned counsel for the appellants, and perused the record.

3. The appellants have filed the above mentioned suit for permanent injunction against the respondents. It is the pleaded case of the appellants that respondent No.1 and the husband of appellant No.2 are natural brothers, that about 35 years back, husband of appellant No.2, by name Tirupathi Reddy, was allotted the suit schedule property of Ac.0.60 cents as his share along with other properties in an oral family partition and since then the property was in his possession and enjoyment till he died and after his demise the appellants, being his only legal heirs, have been enjoying the said property. It is further averred that appellant No.2 executed a registered gift deed in favour of appellant No.1 on 19.2.2007 in respect of two items of the property, out of which item No.1 is the suit schedule property. That pattadar pass books and title deeds were issued in favour of appellant No.2 in respect of the suit schedule property.

4. It is the case of the respondents that after the death of the father of respondent No.1 and husband of appellant No.2, respondent No.1 has left the family on the instructions of his mother and lived as a farm servant under a rich farmer and he used to send some money to his brother and mother and that having saved certain money earned by him as farm servant, he has purchased an extent of Ac.1.19½ cents of

land of which the suit schedule property forms part, from Puthota Bhagyamma and Anthaiah under a registered sale deed dt.11.6.1962 and that since then respondent No.1 became title holder exclusively and has been in separate possession and enjoyment of the same, to the complete exclusion of his mother and brother.

5. Having regard to the pleadings of the parties, the trial Court has framed the following two issues.

- 1) *Whether the plaintiffs are in possession of the suit property as on the date of filing of the suit?*
- 2) *To what relief?*

6. On behalf of the appellants, appellant No.1 examined herself as P.W.1, appellant No.2 examined herself as P.W.2 and one Kolli Narasimha Reddy, a neighbouring land owner, was examined as P.W.3, and Exs.A.1 to A.21 were marked.

On behalf of the respondents, respondent No.2 examined himself as D.W.1 and one Chirra Seetha Reddy was examined as D.W.2 and Exs.B.1 to B.9 were marked.

The Tahsildar of Pedakurapadu Mandal was examined as C.W.1 and Exs.X1 and X2 were marked through him.

7. On consideration of the oral and documentary evidence, the trial Court has decreed the suit. However, the lower appellate Court has reversed the same. A perusal of the judgment of the lower appellate Court shows that though it has rendered a finding that the documentary evidence filed by the appellants in general and Ex.A.1, pattadar passbook, and Exs.A.4 to A.7, cist receipts, in particular, show that they are in possession of Ac.0.60 of the land, however, it has relied upon the admission in the cross-examination of P.W.1 to the effect that the respondents have forcibly occupied the plaint schedule property for which her mother, who is appellant No.2, has given a Police complaint. Based on this deposition, the lower appellate Court held that the appellants have failed to show that they are in physical possession of the property. More substantive finding rendered by the

Appellate Court is based on Ex.B.1, registered sale deed, the authenticity of which is not disputed by the appellants. The said document shows that the entire property stands in the name of respondent No.1 and on this premise the lower appellate Court held that even if the appellants are in possession of the property, no injunction can be granted against the real owner. Though the appellants have set up oral partition and filed documents to show their possession, the evidence adduced by them was not enough to prove such oral partition. In the light of the oral and documentary evidence discussed above, the lower appellate Court has reversed the judgment of the trial Court. Hence, I do not find any substantial question of law arising in this second appeal.

The second appeal is accordingly dismissed, however, leaving the appellants free to file a substantive suit for declaration of title and other appropriate reliefs.

As a sequel to dismissal of the second appeal, S.A.M.P. No.1363 of 2015 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

21-8-2015

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