

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

SECOND APPEAL NO.801 OF 2015

DATED:11-12-2015

Between:

Kolli Nuka Raju
and others ... Appellants

And

Posangulapati Ratnamba
and others

... Respondents

COUNSEL FOR THE APPELLANTS: Mr. I. Gopala Reddy

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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This appeal arises out of judgment and decree dt.24.07.2015 in A.S. No.37 of 2013, on the file of the Senior Civil Judge, Mangalagiri, confirming the judgment and decree dt.26.02.2013 in O.S. No.236 of 2011, on the file of the Principal Junior Civil Judge, Mangalagiri.

I have heard Mr. I. Gopala Reddy, learned counsel for the appellants - plaintiffs, and perused the record.

The appellants - plaintiffs have filed the above mentioned suit for perpetual injunction against the respondents - defendants. The respondents have filed a written statement taking the plea that they are landless poor persons and that they have occupied the suit schedule lands for eking out their livelihood. Based on the respective pleadings, the trial Court has framed the following issues.

1. *Whether the plaintiffs are having valid title and lawful possession over the respective items of the plaint schedule by the date of filing of the suit?*
2. *Whether the plaintiffs are entitled for decree of permanent injunction restraining the defendants, their men etc., from interfering with the plaintiffs' possession and enjoyment over the plaint schedule with costs?*
3. *To what relief?*

On behalf of the plaintiffs, plaintiff Nos.1 and 2 were examined as P.Ws.1 and 2, and one Mudraboina Sivabrahmam was examined as P.W.3, and they have got Exs.A.1 and A.2 marked on their side. On behalf of the defendants, defendant No.1 was examined as D.W.1 and one Pasangulapati Suryanarayana was examined as D.W.2, and Exs.B.1 to B.3 were marked on their side. On appreciation of the oral and documentary evidence, the trial Court has decreed the suit and the same was confirmed in appeal by the lower appellate Court.

At the hearing, Mr. I. Gopala Reddy, learned counsel for the appellants, submitted that the respondents have admitted in the written statement that as on the date of filing of the suit, they were not in

possession of the property and that therefore both the Courts below have committed an error in dismissing the suit and the appeal.

A perusal of the judgments of the Courts below would show that the main ground on which the suit was dismissed was that they failed to establish their *prima facie* title. The jurisdiction of the Court to grant injunction being discretionary in nature, the Court will not exercise such discretion in favour of the party who does not have *prima facie* title. Therefore, both the Courts below have rightly declined to grant decree of injunction to the appellants who failed to establish their *prima facie* title. In the light of the concurrent findings of facts rendered by both the Courts below, I do not find any substantial question of law arising in this second appeal and the same is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

11-12-2015

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