

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

SECOND APPEAL No.356 of 2015

03.07.2015

Between:

Sadineni Narasimha Rao

...Appellant

And

Manne Venkateswara Rao and another

...Respondents

Counsel for the appellant: Mr.G.V.S.Mehar Kumar

Counsel for respondents: --

The Court made the following:

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

SECOND APPEAL No.356 of 2015

JUDGMENT:

This Second Appeal arises out of the judgment and decree, dated 30.04.2014, in A.S.No.11 of 2013 on the file of the Senior Civil Judge, Sattenapalli, whereby he has reversed the judgment and decree, dated 02.07.2012 in O.S.No.386 of 2004 on the file of the Principal Junior Civil Judge, Sattenapalli.

Respondent No.1 filed the aforementioned suit for mandatory injunction for removal of a tub installed by the appellant and respondent No.2/defendants and also for permanent injunction restraining them from committing any wrongful acts or nuisance by the side of 'WW1' wall so as to cause damage to the said wall.

Respondent No.1/plaintiff pleaded that he and his father purchased vacant sites in D.No.447 of Pedakurapadu Village from one Chellamecherla Anka Rao under two registered sale deeds, dated 15.07.1992, which were marked as plots 'A' and 'B' in the plaint plan and the extents of the two sites are 291 sq. yards and 194 sq. yards respectively. That respondent No.1 constructed a *daba* house in plot 'A' with RC roofing about six years back from the date of filing of the suit and using it as his dwelling house. That he also constructed compound wall on all sides of the house and the western side compound wall is marked as 'WW1' in the plaint plan. He further averred that he raised 'WW1' by leaving site of 1½ feet belonging to himself as per *vasthu* and that the appellant, who is his neighbour and living by raising a thatched house, constructed a drain marked as 'P,Q' in the plaint plan and been discharging the sewage and sullage water besides letting the rain water passed through the drain at the length of 70 feet and as a result of the said act of the appellant, water

discharged through 'P,Q' drain was causing damage to the western side compound wall of respondent No.1 by way of cracks at three places.

The appellant filed a written statement, which was adopted by respondent No.2, denying the claim of respondent No.1 that the site over which the drain was constructed belongs to him. He further pleaded that the tub placed by him in his make shift bath room was for use of water and that the same is in no way causing any damage to the interests of respondent No.1.

In support of his averments, respondent No.1 examined himself as P.W.1 and also examined P.Ws.2 to 6. The Advocate Commissioner appointed by the Court was examined as P.W.7. He got Exs.A-1 to A-4 marked besides the two Advocate Commissioner's reports marked as Exs.A-5 and A-6. The appellant did not adduce any oral evidence, but he has got Exs.B-1 and B-2 marked on his side. Through P.W.7 - Advocate Commissioner, Exs.C-1 to C-5 were marked by the Court.

On appreciation of the oral and documentary evidence, the trial Court dismissed the suit by holding that the suit for mandatory injunction has become infructuous as the Advocate Commissioner has found that the tub was removed and the same was not in existence. As regards the relief of permanent injunction, the trial Court held that there was no evidence to show that the site over which the drainage pit was constructed by the appellant belongs to respondent No.1.

In the first appeal, the lower appellate Court reversed the judgment and decree of the trial Court and decreed the suit. At this stage, it needs to be observed that the lower appellate Court has not framed the decree properly. A perusal of its decree shows that it has allowed the appeal and set aside the judgment and decree passed in the suit. However, it has not decreed the suit. Though it is implied from the result of the appeal that the lower appellate Court intended to pass a decree in favour of respondent No.1, no such decree has been

expressly made. Though this constitutes a serious lacuna in the decree passed by the lower appellate Court, I feel this is a curable defect. The lower appellate Court is, therefore, directed to amend the decree appropriately.

Be that as it may, on a perusal of the judgment and decree of the lower appellate Court, I feel that the same is not liable to be interfered with. As per the Advocate Commissioner's report, it was not possible to ascertain as to whether the appellant dug the drainage pit over the land belonging to respondent No.1. Therefore, to this extent, the claim of respondent No.1 did not stand proved. However, as regards the right of the appellant to dig the drainage pit and use the same, the lower appellate Court has found with reference to the Advocate Commissioner's report that seepage of water has caused damage to the compound wall of respondent No.1 as it has developed cracks at least at two places. Even if respondent No.1 has not proved his title over the area on which the appellant has dug the drainage pit, assuming that the site over which the appellant has dug the pit belongs to himself, he cannot cause damage to the property of his neighbour by digging the pit in such a manner so as to allow seepage of water to cause damage to the compound wall of respondent No.1. Therefore, I do not find any error in the judgment and decree of the lower appellate Court to the extent of observing that the appellant shall not use the drainage pit so as to cause damage to the compound wall of respondent No.1.

For the aforementioned reasons, I do not find any substantial question of law arising in the Second Appeal. However, it needs to be observed that the appellant is entitled to institute a separate suit for declaration of title in respect of the site over which he has dug the drainage pit and also for exercising his right over the said site by using the same for the purpose of discharging the drain water in such a manner as not to cause any damage to the compound wall of respondent No.1.

Subject to the liberty given to the appellant as above, the

Second Appeal is dismissed.

As a sequel to dismissal of the Second Appeal, S.A.M.P.No.945 of 2015 filed by the appellant for stay shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

03rd July, 2015

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