

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

**Second Appeal No.94 of 2015**

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**Dated 10.04.2015**

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**Between:**

M.Venkatamma

**...Appellant**

**and**

V.Srinivasulu and another

**...Respondents**

**Counsel for the Appellant: Mr.G.Vasantha Rayudu**

**Counsel for the respondents: ---**

**The Court made the following:**

**Judgment:**

This Second Appeal arises out of the judgment and decree, dated 26-09-2014, in AS.No.344 of 2010, on the file of the

Court of the learned IV Additonal District Judge, Ranga Reddy District at L.B.Nagar, whereby it has confirmed the judgment and decree, dated 18-11-2010, in OS.No.1365 of 2009, on the file of the Court of the learned III Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

The appellant filed the above-mentioned suit for perpetual injunction to restrain the respondents from interfering with her possession of the suit schedule property comprising H.No.1-87/1 with appurtenant land admeasuring 493 square yards in Survey No.44/1 of Miyapur Village, Serilingampalli Municipality, Ranga Reddy District.

The case of the appellant is that she is the owner and possessor of the suit schedule property for more than 30 years; that the Sarpanch of Miyapur Gram Panchayat gave permission for making construction therein; that the Serilingampalli Municipality issued No Objection Certificate (NOC) to her to apply for electricity supply; and that she has paid property tax under receipts, dated 20-07-2001 and 08-11-2001. She has further pleaded that she has obtained Encumbrance Certificate in respect of the said property; that on 22-11-2001 and again on 25-11-2001, the respondents highhandedly came to the suit schedule premises and tried to dispossess her therefrom; and that therefore, she has filed the suit.

On behalf of the defendants, defendant No.1 filed a written statement wherein he has denied the claim of the appellant that she is in possession of the suit schedule property for more than 30 years. While terming the alleged NOC issued by the Serilingampalli Municipality in favour of the appellant to apply for electricity supply as a fabricated document, it was averred that the suit schedule property does not fall in Survey No.44/1; that the same is covered by Survey No.47; that defendant No.1 purchased the suit schedule property under

registered sale deed, dated 13-04-1999, for a valuable consideration; that defendant No.1 is the absolute owner and possessor of the suit schedule property; that he has constructed a room and kept it vacant; that he has engaged the appellant to watch the suit schedule property; and that with a *mala fide* intention, the appellant has created forged documents and filed the suit.

Having regard to the respective pleadings, the trial Court has framed the following issues:

- “1. Whether the plaintiff is in possession of the suit property as on the date of filing of suit ?
2. Whether the plaintiff is entitled for the relief of perpetual injunction as prayed for ?
3. To what relief ?”

On behalf of the appellant, she examined herself as PW.1 and got examined one M.Yadagiri as PW.2 and got Exs.A.1 to A.6 marked on her side. On behalf of the defendants, defendant No.1 examined himself as DW.1 and got examined the husband of the appellant as DW.2 and got Exs.B.1 to B.6 marked on his side.

On appreciation of the oral and documentary evidence, the lower Court has dismissed the suit by rendering a finding that the suit schedule property claimed by the appellant is the property of respondent No.1 covered by Ex.B.1 and that in a suit for permanent injunction, though the title is secondary, when it is disputed by the defendant, the plaintiff has to file rebuttal evidence to prove her case. The trial Court further held that the appellant failed to establish that there is a *prima facie* case and balance of convenience in her favour. This judgment was confirmed in the appeal by the lower appellate Court.

After carefully considering the judgments of the Courts below, I am of the opinion that no substantial question of law arises for consideration in the Second Appeal. However, as the main ground, on which the trial Court has dismissed the suit, was that the appellant failed to establish her *prima facie* title, in the interests of justice, she deserves liberty to file a fresh suit for declaration of title and other consequential reliefs. Liberty is, accordingly, given to the appellant, by making it clear that the findings rendered by the Courts below on the title over the suit schedule property shall not influence the Court deciding the fresh suit that may be filed by the appellant.

Subject to the liberty given to the appellant as above, the Second Appeal is dismissed.

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**(C.V.Nagarjuna Reddy, J)**

**Dt: 10<sup>th</sup> April, 2015**

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