

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.656 of 2015

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JUDGMENT:

This appeal is preferred challenging judgment and decree dated 31.03.2015 in A.S.No.24 of 2012 on the file of Additional District Judge, Kovvur, whereunder, judgment and decree in O.S.No.538 of 2009 dated 19.10.2010 on the file of Junior Civil Judge, Jangareddigudem, is confirmed.

2. Appellant herein is unsuccessful plaintiff in both the Courts. He filed above referred O.S.No.538 of 2009 for permanent injunction restraining the defendants from interfering with ABCD passage shown in the rough sketch attached to the plaint. Trial Court after considering the evidence of PWs.1 and 2 and documents Ex.A1 to A.16 on plaintiff side and evidence of DWs.1 to 4 on defendants' side, dismissed the suit holding that plaintiff failed to prove his claim over ABCD passage and that documents filed by plaintiff, which are marked as Exs.A1 and A2 (sale deed and settlement deed) would disclose existence of roads only on North and East and they do not disclose existence of any passage on North-West corner as claimed by plaintiff. Aggrieved by the dismissal of suit, plaintiff preferred appeal to the Additional District Judge, Kovvur and on a reappraisal of entire evidence, 1st appellate Court confirmed the findings of trial Court. While dismissing the appeal, 1st appellate Court observed that plaintiff as one of the persons of the locality, can exercise his right of passage through ABCD of the plaint plan to reach western side road. Now plaintiff preferred this Second Appeal contending that the following are the substantial questions of law that require adjudication by this Court:

“A) Whether non-mentioning of immaterial facts regarding passages on east and north side can be treated as material suppression?

B) Whether the courts below committed grave error in not granting the injunction order inspite of clear admission by the defendant regarding existing of ABCD passage by the date of suit?”

3. Heard both sides.

4. Advocate for appellant submitted that the evidence on record would clinchingly show that plaintiff has been using ABCD passage from 1969 onwards, but the Courts below on a wrong appreciation of evidence, dismissed the claim of plaintiff on the ground that plaintiff has suppressed some material facts. It is submitted that no material facts are suppressed and the road pointed out by defendants on North-East corner is their defence and that cannot be treated as suppression of facts, and thereby, the Courts below committed error in dismissing the suit.

5. On the other hand, learned counsel for respondent submitted that the trial Court relying on the recitals in Exs.A.1 and Ex.A2 and admissions of PW.1 with regard to existence of ABCD passage, dismissed the claim of plaintiff and there is no road on North-West corner and even registered documents relied on by plaintiff would only indicate existence of road on North and East. It is further submitted that both the Courts have not committed any error and this Court cannot interfere with the concurrent findings, which are based on material evidence.

6. I have perused the material papers including judgments of both the Courts. The trial Court while discussing the evidence of plaintiff with reference to settlement deed and sale deed, which are marked as Exs.A1 and A2 respectively, observed that plaintiff failed to prove the existence of ABCD passage and that he admitted in his cross-examination that the contents of Exs.A1 and A2 are true and correct. Admittedly, there is no recital either in Ex.A1 or in Ex.A2 about ABCD passage referred in the plaint plan. When such is the case, it is for plaintiff to prove both existence and enjoyment with convincing and acceptable evidence and without producing such evidence plaintiff cannot complain that the trial Court and appellate Court have committed error in appreciating the evidence on record.

7. Further as rightly pointed out by advocate for respondent all the points urged in the grounds of appeal and also during arguments are only on factual aspects and no law is involved leave alone substantial question of law to be decided by this Court under Section 100 of CPC.

8. For these reasons, I am of the view that no substantial question of law is involved in this case, and as such, the appeal is devoid of merits and liable to be dismissed.

9. Accordingly, the Second Appeal is dismissed at admission stage. No costs. Miscellaneous Petitions, if any pending, in this appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 02-11-2015.

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