

HONOURABLE SRI JUSTICE RAJA ELANGO

SECOND APPEAL No.469 OF 2016

JUDGMENT:

This Second Appeal is filed by the appellant – plaintiff aggrieved over order, dated 22.03.2016, passed in A.S. No.177 of 2012 by the III-Additional District Judge, Kakinada.

The brief facts of the case are that the appellant herein filed O.S. No.680 of 2007 before the I-Additional Junior Civil Judge, Kakinada, against the respondents 1 to 5 for the relief of permanent injunction restraining the respondents from interfering with the possession and enjoyment of the appellant over the plaint plan 'ABCD lane.' The appellant purchased item Nos.1 and 2 of the plaint schedule properties through registered sale deeds and there is a lane shown as 'ABCD' in the plaint plan to reach item Nos.1 and 2 properties and the respondents are obstructing the petitioner to use the said lane. Therefore, the petitioner filed the above suit. The respondents filed written statement stating that the petitioner has not right over the suit schedule properties and that the Item No.1 of the plaint schedule property belongs to Bhooloka Ammavari temple and item No.2 of the plaint schedule property is a government poramboku and that the vendors of the appellant created the documents in their favour and sold the same to the appellant, therefore, the appellant has no right to claim injunction with regard to the plaint plan 'ABCD' lane.

The trial Court allowed the suit by restraining the respondents from interfering with the enjoyment of the appellant over the plaint plan 'ABCD lane. Aggrieved over the same, the respondents filed A.S. No.177 of 2012 before the III-Additional District Judge, Kakinada. The first appellate Court allowed the said SA by setting aside the judgment

of the trial Court. Challenging the same, the appellant –plaintiff filed the present Second Appeal.

Heard and perused the material available on record.

The learned counsel for the appellant submitted that the learned first appellate Judge has proceeded on the impression that the appellant is seeking a right over the common passage on the ground of possession and enjoyment but, in fact, the appellant is claiming right in the passage as a common passage and she is not claiming any right over the passage.

Learned counsel for the respondents also submitted that if it is the claim of the appellant that she can use the said passage as a common lane of everyone, which leads to Bhooloka Ammavari Temple, the respondents have no objection for the same.

Considering the submissions of both the learned counsel, the Second Appeal can be disposed of with the following direction:

Both the parties are directed to use the suit schedule plan 'ABCD Lane' as a common passage without claiming any right over the same, since it is admitted by both the parties that it is a common passage, which leads to Bhooloka Ammavari Temple, and not only the appellant and the respondents, but the others can also use the same as a common passage.

Accordingly, the Second Appeal is disposed of. There shall be no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

September 28, 2016.
KTL