

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

S.A.NO.616 OF 2016

JUDGMENT

The present second appeal is filed against the judgment and decree dated 23.8.2005 passed by the court of Additional Senior Civil Judge, Tenali in A.S.No.12/2001, whereby, the appeal filed by the respondents/plaintiffs has been allowed.

The appellants/defendants have raised the following grounds:

- (a) Whether the 1st appellate court is justified in granting injunction against the defendants, without considering and setting aside the finding on issue No.3 of lower court. In fact the contention of the plaintiffs is that the encroachers already encroached road margin. So by the time of filing the suit, the plaintiffs were not enjoying the entire ABCD.
- (b) Whether the suit is bad for non-joined of necessary parties i.e., the encroachers who are in actual possession of the subject matter of the suit in the light of Order 1, Rules 9 and 10 of CPC.

It is settled principle that second appeal can be admitted if any substantial question of law is involved. The first ground as noted above, is not a substantial question of law and it is a disputed question of fact. However, the second ground is concerned, the counsel for the appellants state that the encroachers upon the land have not been made impleaded, thus on the ground of non-joinder of necessary parties, the suit is liable to be rejected.

The admitted fact is that this land belongs to the Government, the appellants herein. The suit is filed against the Government. In such a situation, neither encroachers came forward and sought for

their impleadment in the suit, nor they have title in their favour. Thus, the encroachers are not necessary parties.

Therefore, the present appeal is dismissed at the stage of admission, as no substantial question of law is involved. No costs.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

DATE:07—12—2016

AVS

