

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.710 of 2011

JUDGMENT:

This second appeal is preferred challenging judgment and decree in A.S.No.4 of 2001 on the file of Senior Civil Judge, Sompeta, Srikakulam District, whereunder judgment in O.S.No.116 of 1978 dated 14.09.2000 on the file of Junior Civil Judge, Ichapuram, Srikakulam District, is confirmed.

2. Appellant herein is 2nd defendant in the above referred O.S.No.116 of 1978. The suit is filed for specific performance of an agreement of sale executed by 1st defendant in favour of plaintiff in respect of plaint schedule property. Trial Court on consideration of oral and documentary evidence adduced on behalf of both parties, accepted the agreement of sale and granted decree of specific performance. Appellant herein challenged the said judgment and decree, before appellate Court and appellate Court on a consideration of the material remitted back the case to trial Court to answer the left over point as to whether the plaint schedule property is separate property of deceased appellant No.1 or the joint family property of deceased appellant No.1 and his sons with a specific direction to allow the parties to adduce further evidence both oral and documentary in support of that left over point. After remand, trial Court again decreed the suit

as parties have not adduced any fresh evidence either oral or documentary in support of the point as to the nature of the property. Appellate Court confirmed the findings of the trial Court, challenging the same, present second appeal is preferred.

3. Advocate for appellant contended that no finding is given on the left over point in spite of direction by the 1st appellate Court in the remand order and that is the substantial question of law involved in this appeal.

4. I have perused the material papers including the judgments of trial Court and appellate Court. No doubt, the matter was remitted back to the trial Court by 1st appellate Court. As per judgment dated 16.03.1994 in A.S.No.2 of 1984 trial Court has to decide whether the suit property was the exclusive property of defendant No.1 or it is the property of defendant No.1 and his sons by giving opportunity to both parties to adduce oral and documentary evidence. As seen from the record, both parties have not produced any evidence in support of that particular issue and therefore, trial Court granted decree of specific performance as no evidence is adduced to prove the nature of the property. The same is confirmed by appellate Court, therefore the contention of appellant that in spite of remand by appellate Court, the trial Court has not answered the issue relating to nature of the property cannot be accepted. On a scrutiny of material, I am of the view that there is no question of law involved in this

second appeal leave alone substantial question of law.

5. For these reasons, second appeal is dismissed at admission stage.

6. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

4th January 2016.

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