

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.519 OF 2012

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 17.03.2011, passed in A.S.No.01 of 2006, by the IV Additional District Judge, (Fast Track Court), Tanuku, whereby and whereunder the learned Additional District Judge has dismissed the appeal confirming the judgment dated 23.08.2005, passed in O.S.No.275 of 1997, by the Principal Junior Civil Judge, Tanuku.

The appellant herein is defendant No.2, respondent No.1 herein is plaintiff and respondent Nos.2 & 3 herein are defendant Nos.1 & 5 in O.S.No.275 of 1997. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

Originally, respondent No.1/plaintiff Sri Someswara Swami Temple, Tadiparru, represented by its Executive Officer filed the suit O.S.No.275 of 1997 for permanent injunction restraining defendant No.1 Gram Panchayat, Tadiparru, represented by its Executive Officer and four others from interfering with the peaceful possession and enjoyment of the suit schedule property and from encroaching into it to lay roads. The Executive Officer of the plaintiff temple in the plaint stated that the temple itself is the absolute owner of the property to an extent of Ac.5.16cents in R.S.No.252 and Ac.3.01cents in R.S. Nos.247/5, 47/6 and 252 situated in Tadiparru village. The land admeasuring Ac.5.16cents was given under lease to one Gannamani Chandraiah and subsequently after his death his wife defendant No.4 is continuing the lease as legal representative. Defendant No.3 is the sub-

tenant under defendant No.4 and the land to an extent of Ac.3.01cents was given to defendant No.5 for his service as Archaka. Defendant No.1/Gram Panchayat, Tadiparru, passed a resolution to lay a gravel road through these lands belonging to the plaintiff temple and defendant Nos.2 to 5 having colluded with defendant No.1 has not raised any objection for laying the said road. No permission was obtained from the temple authorities i.e., plaintiff and the defendants started doing earth work to lay the road and hence the plaintiff temple filed the present suit seeking permanent injunction.

The second defendant filed the written statement and defendant Nos.1 and 3 to 5 filed a memo adopting the same. The second defendant contended that the suit is not maintainable as the plaintiff temple has to prove its ownership in respect of the land and further stated that on 26.04.1994 a Gramsabha was conducted which resolved to do earth work from Teeparru Branch canal upto the site of Chitturi Narasimhamurthy and the said road passes through the land of the plaintiff temple and at the time of "Prajalavaddaku Palana Programme" the Executive Officer of the plaintiff temple was present. He also agreed that plaintiff temple could contribute half of the amount of estimated cost of the work and the Sarpanch of Gram Panchayat was called upon to deposit Rs.5,000/- and balance of Rs.10,000/- was contributed by "Sramadanam" and from 27.05.1997 to 03.06.1997 about 25 owners on either side of the road dug earth from their fields and put the same for the formation of the road and 70 to 80 persons worked to complete the road. At that time, the plaintiff temple never raised any objection for laying the road as the road is now well formed and after formation of the said road, the plaintiff filed the present suit making a false representation to the Court and

plaintiff temple has no case for seeking the relief and finally prayed the Court to dismiss the suit.

Basing on the pleadings, the trial Court framed two issues. On behalf of the Plaintiff PWs.1 & 2 were examined and no documentary evidence got marked. On behalf of the defendants DWs.1 to 3 were examined and no documentary evidence was produced. After considering the oral and documentary evidence, the trial Court held that the plaintiff temple can protect the property from being encroached by others by laying the road etc. and plaintiff temple got the *prima facie* case, and granted injunction in favour of the plaintiff against the defendants from interfering with the peaceful possession and enjoyment of the plaint schedule property. Aggrieved by the judgment of the trial Court defendant Nos.1, 2 & 5 filed A.S.No.01 of 2006 on the file of IV Additional District Judge, (Fast Track Court), Tanuku. But, on 17.03.2011, the appellate Court dismissed the appeal confirming the judgment of the trial Court. Aggrieved by the concurrent findings of the trial Court as well as the first appellate Court the second defendant filed the present Second Appeal before this Court by raising the following substantial questions of law in the memorandum of appeal.

1. Whether a suit for injunction restraining the defendants from interfering with the possession after plaintiff was maintainable when the plaintiff was not in possession of the property?
2. Whether an injunction could lie against the defendants who were admittedly in possession of the property?
3. Whether a party who had acquiesced to the building of a road through the property could maintain a suit for injunction?
4. Whether the burden of proving that he is in possession of property is on the party who approaches the court seeking injunction?

5. Whether the suit was maintainable in respect of lands belonging to the Temple in view of the provisions under Section 151 of A.P Charitable of Hindu Religious Endowment Act?

Now the point that arises for consideration in this appeal is whether the appellant proved that there is any substantial question of law involved for admitting this appeal?

The learned counsel appearing for the appellant/second defendant argued that the Executive Officer of the first respondent/plaintiff temple agreed for laying the road in the suit schedule property and a Gramsabha was conducted on 26.04.1994 and after laying the road, the plaintiff temple is estopped from seeking injunction. Further, defendant Nos.3 & 4, who are the tenants are not in possession of the property, as such the plaintiff temple is not entitled for grant of any injunction. It is further argued that as the road was already laid, plaintiff temple is not entitled for any injunction as it lost possession over the property and it ought to have filed the suit for recovery of possession and prayed the Court to allow the second appeal by admitting the same.

On the other hand, the learned counsel for the first respondent/plaintiff temple vehemently opposed for the contentions raised by the appellant/second defendant on the ground that the temple is the owner of the lands given to the tenants and the tenants are having no right to give consent to the Gram Panchayat as the lands belong to the temple. No permission was obtained by the Gram Panchayat, Tadiparru, from the Endowments Department or the plaintiff temple to lay the road and the Executive Officer of the plaintiff temple has never given any consent to the Gram Panchayat for laying the road as such

the plaintiff temple filed the suit for grant of permanent injunction restraining the defendants from interfering with the peaceful possession over the suit schedule property and thus, the concurrent findings of both the Courts below needs no interference and prayed the Court to dismiss the appeal.

A perusal of the record shows that the plaintiff temple filed the suit for grant of permanent injunction restraining the defendants from interfering with the plaintiff schedule property and from laying the road. The plaintiff is the temple represented by its Executive Officer. Plaintiff temple is the owner of the land admeasuring Ac.5.16cents and Ac.3.01cents in R.S.No.247/5, 47/6 and 252 situated at Tadiparru village and the said land was given on lease to one Gannamani Chandraiah and M. Gopalakrishnamurthy who is the Archaka of the temple. After the death of G. Chandraiah, his wife was cultivating the lands.

Thereafter, it was given to the sub-tenant defendant No.3. It is also an admitted fact that the title and ownership of the above lands belong to the plaintiff temple. The first defendant Gram Panchayat along with other defendants without the consent of the plaintiff temple and Endowments Department started laying the road in between the lands. The fact of laying the road was not informed to the Endowments Department or the Executive Officer of the temple. No written permission was obtained from the Endowments Department by the first respondent Gram Panchayat, Tadiparru. First defendant did not choose to enter into the witness box and did not produce the alleged resolution of Gram Panchayat for laying the road. The first defendant, which is a statutory body, is supposed to act in a lawful manner without affecting the legal right of the plaintiff temple. Further, being the Gram Panchayat, Tadiparru, it is the duty of the first defendant to protect the

property of the public and the plaintiff temple. Admittedly first defendant has not filed any written statement and not contested the suit. The first defendant only adopted the written statement filed by the second defendant, who is a private party. Admittedly, the other defendants have no right over the temple land and they are only cultivating the land as tenants and defendant No.5 is cultivating and enjoying the land because he is rendering Archaka service. Thus, the trial Court as well as the first appellate Court considered the oral evidence produced by both the sides and rightly granted injunction in favour of the plaintiff temple.

The main contention of the appellant/defendant No.2 is that as the road was already laid suit for permanent injunction is not maintainable. A perusal of the record shows that an Advocate Commissioner was appointed by the trial Court to note down the physical features of the schedule property. He visited the property and filed the report into the Court. He categorically stated in his report that road was laid about 15 to 20 days ago before his visit. It is a katcha road and no gravel was laid on the road and it is not a pucca road. The first defendant being a statutory body ought to have taken permission from the Endowments Department for laying the road in the land belonging to the plaintiff temple. The defendant Nos.3 to 5 are not the owners of the land and they are cultivating the land and they have no absolute rights over it. The plaintiff temple is the absolute owner of the property and is having every right to protect its property from the encroachers. It is also argued by the appellant counsel that Executive Officer of the plaintiff temple gave consent for laying the road. But there is no evidence placed before the Court that the Executive Officer of the plaintiff temple gave consent and he has knowledge about laying the road. Further, the first defendant being the Gram Panchayat is

also not having any right over the property as such the trial Court rightly granted permanent injunction against the appellant herein and the same was confirmed by the first appellate Court. Therefore, the concurrent findings of both the courts below need no interference and the appellant has not made out any substantial question of law to frame in this second appeal and the appeal is devoid of merits and is liable to be dismissed.

Accordingly, the second appeal is dismissed at the stage of admission. No order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

Date: 15.07.2016
sr