

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.703 of 2000

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Date:29.01.2016

Between:

Smt. B. Sakku Bai and another.

... Appellants.

AND

Smt. Droupathy Shekar and
another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.703 of 2000

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JUDGMENT:
-

This appeal is preferred against Judgment & Decree dated 30-08-1999 in A.S.No.101/1995 on the file of Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad whereunder Judgment & Decree dated 30-12-1994 in O.S.No.1192/1986 on the file of IX Assistant Judge, City Civil Court, Hyderabad was confirmed.

2. Appellants herein are unsuccessful plaintiffs in both the Courts. Plaintiffs herein filed O.S.No.1192/1986 to declare that the defendants are not entitled to make any constructions on the suit schedule open site belonging to plaintiffs and for a consequential mandatory injunction to direct the defendants to remove all the

constructions that have been made including bathroom. etc., in the suit schedule open space belonging to plaintiffs and also to grant consequential permanent injunction restraining the defendants from ever making any constructions. The trial Court, on a consideration of oral and documentary evidence, dismissed O.S.No.1192/1986 and also the connected suit O.S.No.1362/1986. Aggrieved by the dismissal of O.S.No.1192/1986, the plaintiffs preferred appeal in A.S.No.101/1995 and the first appellate Court, on a reappraisal of entire oral and documentary evidence, confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred and this Court admitted the second appeal on 05-08-2009 treating the following as substantial question of law:-

“The lower appellate Court ought to have seen that the respondents have admittedly not obtained any permission from the MCH either for the construction of their house of the ground floor or for raising pillars.”

3. Heard both sides.
4. Advocate for appellants submitted that lower appellate Court ought to have seen that the respondents have not obtained any permission from MCH for construction of their house both ground floor and other constructions and thereby, the findings of the appellate Court are erroneous.
5. Now the point that would arise for my consideration is whether the Courts below have committed any error in appreciating evidence on record and those findings require any interference by this Court in the second appeal?
6. **Point:-** It is the specific case of the plaintiffs that the defendants are not entitled to make any construction in the suit schedule open site on the ground that the said site belongs to them.

According to plaintiffs, they are absolute owners and possessors of suit property and the defendants are highhandedly trying to make constructions in the open site.

On behalf of plaintiffs, second plaintiff-husband was examined as P.W.1, whereas on behalf of defendants, second defendant was examined as D.W.1 and one Lalitha Devi was examined as D.W.2. Both sides marked documents in support of their respective contentions and the trial Court, on appreciation of both oral and documentary evidence, including the Commissioner Report, held that the plaintiffs failed to make out any case that the defendants made any constructions in the property belonging to plaintiffs and refused to grant the relief of declaration, mandatory injunction and perpetual injunction. The trial Court specifically held that the property situated to the South of plaintiffs is not their property i.e., suit schedule property and as per the Commissioner's Report, the constructions of WC and Bathroom are on the northern side and eastern point of the suit property, in which the plaintiffs have no right at all. The same findings are confirmed by the appellate Court considering the material on record including Commissioner's Report. As seen from the record, Advocate Commissioner's Report do show that there are two compound walls adjacent to each other one belonging to plaintiffs and the other belonging to defendants i.e., southern side wall belonging to plaintiffs and northern side wall belonging to defendants.

It is the contention of the plaintiffs that plaintiffs left two feet space in between their compound wall on southern side and the house of the defendants but from evidence, it is clear that no such space was left and the defendants made their constructions within their property. Now the substantial question of law raised under ground No.8 is that defendants have made this construction without any permission from the Municipal Corporation of Hyderabad. For this, there is absolutely no material on record and it is only on assumptions and

presumptions of plaintiffs such a contention is raised.

7. On a scrutiny of the entire material, I am of the view that both trial Court and appellate Court have rightly appreciated evidence on record and came to a right conclusion that there are no grounds to interfere with the concurrent findings, and that the substantial question of law raised by the plaintiffs is not at all tenable.

8. For these reasons, Second Appeal is dismissed as devoid of merits. No costs.

9. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:29.01.2016

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