

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.475 OF 2016

DATED:01-07-2016

Between:

Chandanala Elizibeth ... Appellant

And

Chandanala Samuel
and another ... Respondents

COUNSEL FOR THE APPELLANT: Mr. T.D. Phani Kumar

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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This Second Appeal arises out of judgment dt.5.10.2015 in A.S. No.155 of 2013, on the file of VII Additional District Judge (Fast Track Court), Visakhapatnam, whereby she has confirmed the judgment and decree dt.4.6.2013 in O.S. No.742 of 2011 on the file of I Additional Junior Civil Judge, Visakhapatnam.

I have heard Mr. T.D. Phani Kumar, learned counsel for the appellant, and perused the record.

The appellant filed the above mentioned suit for grant of permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit schedule property. It is the pleaded case of the appellant that her mother gifted the suit schedule property to her, which is 190 sq.yards of vacant site, on 12.1.1981. That, being a retired employee of the Greater Visakhapatnam Municipal Corporation (GVMC), the appellant sought to protect the property from encroachments of third parties by constructing a boundary wall and when she was proceeding with the construction, the respondents along with their men obstructed her not to proceed with the same.

The respondents have filed a written statement wherein they have pleaded that one Chandanala Naga Raju, father of respondent No.1 and father-in-law of respondent No.2, had three sons, namely respondent No.1, Elia, i.e., husband of respondent No.2, and Daniel, that during his lifetime, said Nagaraju acquired the plaint schedule property from the Government and that he has constructed a thatched house in the said site and used to reside therein. After his death, respondent No.1 has been residing in the property, that the house sites of the husband of respondent No.2 and Daniel are situated on the

southern and northern sides of respondent No.1's house respectively and that they used to reside therein by constructing thatched houses. That after sometime, the two houses have collapsed due to heavy rain and that the said sites on which the thatched sheds raised were kept vacant. It was further averred that the appellant, who is no other than the sister of the father of the defendants, has no right or title whatsoever in respect of the plaint schedule property.

Based on the respective pleadings of the parties, the trial Court has framed the following issues:

1. *"Whether plaintiff is in lawful possession and enjoyment of plaint schedule property or not?*
2. *Whether plaintiff is entitled for permanent injunction against the defendants as prayed for or not?*
3. *To what relief?"*

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On behalf of the appellant, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, D.W.1 was examined and Exs.B.1 to B.6 were marked. On appreciation of the oral and documentary evidence, the trial court has dismissed the suit. The judgment of the trial Court was confirmed by the lower appellate court.

In order to prove her title and possession over the property, the appellant sought to file a purported gift deed. Though the gift deed was impounded and stamp duty was collected, the same was not admitted into evidence as it was an un-registered document. None of the documents marked as Exs.A.1 to A.4 relates to any evidence pertaining to the possession of the appellant. Learned counsel for the appellant submitted that during the cross-examination D.W.1 admitted that his wife C.H. Yellamma was residing in the house, which was situated behind the house of the appellant, and that the same must be treated as an admission of the appellant's possession of the suit schedule property. As rightly pointed by the trial Court, the said part of the deposition of D.W.1 does not prove that he was referring to the suit schedule property bearing D.No.17-14-3. In the absence of the

documentary evidence conclusively proving the possession of the appellant, both the Courts below have rightly held against her. Therefore, in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, this Court is not inclined to entertain the second appeal in the absence of any substantial question of law arising therein.

For the above mentioned reasons, the second appeal fails and the same is accordingly dismissed.

As a sequel to dismissal of the second appeal, S.A.M.P. No.1157 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

01-07-2016

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