

HONOURABLE SRI JUSTICE S.RAVI KUMAR

S.A. No.30 OF 2016

Dated 1-2-2016

Between:

Md.Zahoor Jani and others.

...Appellants.

And:

M.Rupesh and another.

...Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

S.A. No.30 OF 2016

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 14-9-2015 in A.S.No.30 of 2013 on the file of Principal District Judge, Medak at Sangareddy whereunder judgment and decree dated 3-6-2013 in O.S.No.111 of 2008 on the file of Principal Junior Civil Judge, at Sangareddy, is confirmed.

Appellants herein are defendants 1 to 7 and respondent/plaintiff filed suit in O.S.No.111 of 2008 claiming relief to restrain defendants, their agents and anybody claiming through them by way of perpetual injunction from causing any sort of interference in peaceful possession and enjoyment of plaintiff over the plaint schedule property and also from laying road.

Trial court, on a consideration of oral and documentary evidence adduced on behalf of both parties, decreed the suit and aggrieved by which, defendants preferred appeal to the District Court and District Court on a reappraisal of evidence, confirmed the findings. Now the present second appeal is filed contending that the following are the substantial questions of law.

1. *Whether the plaintiff is entitled for relief of which no material fact is pleaded as required under Order VI Rule 2 of the Civil Procedure Code, 1908.*
2. *Whether the plaintiff showed in the plaint the*

defendant's interest and liability in the subject matter, as required under Order 7 Rule 5 of the Civil Procedure Code, 1908.

3. *Whether the plaintiff has discharged the burden of proof as laid down in Sections 101 and 102 of the Indian Evidence Act, R/w Order XVIII Rule 3 of the Civil Procedure Code, 1908.*

Heard arguments.

The main contention raised on behalf of appellants is that both courts below erred in granting relief which is contrary to the pleadings. He submitted that in the entire plaint, there is no pleading with regard to laying road, but the courts below granted relief of injunction even from laying road.

As seen from the material papers, on the basis of pleadings, plaintiff claimed relief of permanent injunction from laying of road and causing any sort of interference in peaceful enjoyment of the suit property. Both courts on a consideration of material evidence granted relief in favour of plaintiff. When there is a specific prayer in the plaint when the same is granted by courts, it is not now open to the appellants to question it in the second appeal contending that it is a substantial question of law. Therefore, the contention raised by appellants with regard to provisions of order 6 Rule 2 C.P.C. Order 7 and Rule 5 C.P.C. and Sections 101 and 102 of Indian Evidence Act are no way attracted and there is no law involved in this matter leave alone substantial question of law.

For these reasons, I am of the view that there are no grounds to admit the second appeal, therefore, this Second Appeal is dismissed at admission stage. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI

KUMAR

Dated 1-2-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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