

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

S.A. No. 124 OF 2016

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JUDGMENT:
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This Second Appeal is filed against Judgment and Decree dated 02.12.2015 in A.S.No.55 of 2011, wherein the lower appellate Court set aside the judgment and decree dated 13.04.2011 in O.S.No.862 of 2007 passed by the II Additional Junior Civil Judge, Kurnool, granting permanent injunction in favour of the appellants herein.

2. Learned counsel for the appellants submits that the defendants/respondents themselves have attested Exs.A1 to A5 executed by the mother of the appellants/plaintiffs, by virtue of which, appellants came into possession. As such, the trial Court rightly relied on the same and granted permanent injunction in their favour. He would further contend that without considering the effect of the documents relied on by the appellants, the lower appellate Court reversed the judgment and decree of the trial Court in the suit.

3 . On the other hand, learned counsel for the respondents/defendants submits that P.Ws.1 to 3 in their cross examination admitted that the respondents/defendants are in possession of the suit schedule property, as such, question of granting perpetual injunction does not arise and trial Court has misconstrued Exs.A1 to A5 and granted injunction.

4. Heard both sides.

5. Basing on the above rival contentions of both parties, it is to be seen that P.Ws.1 and 2 themselves clearly admitted in their cross-examinations that the respondents/defendants are in possession of the suit schedule property. The finding of the appellate Court is also basing on the said admission in their cross-

examination. The lower appellate Court after analyzing the deposition of D.W.1, found that the respondents/defendants are not the attestors of Exs.A1 to A5 and also held that the finding of the trial Court that the respondents/defendants were attestors to Exs.A1 to A5 is without any basis. These are findings of fact arrived at by the appellate Court basing on the evidence of appellants themselves. No contra evidence is shown before this Court to show that the findings of the appellate Court are erroneous. In fact, the appellants as P.Ws.1 and 2, admitted in their cross-examination that the respondents/defendants are in possession of the suit schedule property. In view of above, the findings of fact cannot be re-appreciated by exercising power under Section 100 of CPC by entertaining the Second Appeal. There is no question of law much less the substantial question of law involved in the Second Appeal.

Learned counsel for the appellants submits that the suit filed by them is only a suit for injunction and they may be permitted to avail appropriate remedy.

In view of above discussion, I do not see any merit in the Second Appeal and accordingly, the same is dismissed. However, it is open for the appellants to avail appropriate relief for prosecuting their rights. There shall be no order as to costs.

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

A.RAJASHEKER REDDY, J

01.04.2016.

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