

HON'BLE SRI JUSTICE R.KANTHA RAO

S.A.NO.389 OF 2004

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DATE: 09.02.2011

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BETWEEN:

Kyasa Papaiah

.. Appellant

And

Makunoori Dharma Rao

.. Respondent

HON'BLE SRI JUSTICE R.KANTHA RAO

S.A.NO.389 OF 2004

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JUDGMENT:

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This second appeal is filed against the judgment and decree dated 19.09.2003 passed by the Senior Civil Judge, Jagtial in A.S.No.14 of 1999 confirming the decree and judgment dated 27.08.1999 passed by the Junior Civil Judge, Jagtial in O.S.No.89 of 1993.

Heard the learned counsel appearing for the appellant and the respondent.

The defendant is the appellant herein. The plaintiff filed the suit seeking relief of declaration of title and permanent injunction in respect of the land measuring Ac.0.06 guntas in Survey No.143/ . He claims to have purchased the land under Ex.A.1 sale deed from the original owner and the defendant is the neighboring land owner, whose land is situated on the northern side of the land purchased by the defendant and that the defendant also purchased the land from the same owner. Both the courts below held that the plaintiff as well as the defendant have title under Ex.A.1 and Ex.B.2, the respective sale deeds.

The crucial aspect arose before the trial Court for consideration was whether Ac.0.06 gunta of land i.e. suit schedule land is within the survey No.143 and is part of the land of an extent of Ac.1.00 purchased by the plaintiff under Ex.A.1-sale deed and it is in the

adjacent land of the defendant situate by the side of the said land. At the instance of the defendant, the commissioner was appointed for the purpose of noting down the physical features of the schedule mentioned land and in pursuance thereof the commissioner inspected the said land with the help of the qualified surveyor in the presence of both the parties and their counsel. Survey report -Ex.C.1 was submitted by the commissioner stating that the disputed land is in part of Survey No.143/ of Jagtial Village, Karimnagar District and part Ac.1.00 of land of the plaintiff i.e. land covered by Ex.A.1 sale deed. He also annexed the sale deed and plan to his report showing the respective portions of the land. The learned counsel appearing for the appellant contended that the survey was not properly conducted by the commissioner with the relevant revenue records and that the learned trial Court as well as the first appellate Court ought not to have decided the issue basing on the report of the advocate commissioner, since the commissioner cannot be appointed for the purpose of locating the land. I absolutely see no force in the contention of the counsel appearing for the appellant as the commissioner was appointed at the instance of the appellant/defendant and submitted his report. Though several allegations have been made against the commissioner in the grounds of appeal filed before the first appellate Court, it is a matter on record that the defendant did not take any steps for appointment of a second commissioner and now it is not for him to contend that no reliance can be placed on the report of the commissioner, who is examined as PW.2. The surveyor is examined as PW.3 and PW.2 in his evidence before the trial court stated that survey was conducted in the presence of both the parties with the help of surveyor and submitted the report stating that the land is part of the land covered by Ex.A-1. Since the commissioner was appointed at the instance of the

appellant/defendant, it is not open for the appellant/defendant to contend that the commissioner cannot be appointed for the purpose of locating the land. In fact, all the questions which have been raised now are pure questions of fact and no substantial question of law arises for consideration in the second appeal.

The findings recorded by the Courts below are based on evidence. The Courts have to decide the issue basing on the evidence available on record and it is not open for the appellant/defendant to contend that some more evidence is required to prove the case of the plaintiff.

For the foregoing reasons, I absolutely see no merit in the second appeal and dismiss the same. There shall be no order as to costs.

R.KANTHA RAO,J

Date: 09.02.2011
Kvrm

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