

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

SA.No.213 of 2016

ORDER :

This Second Appeal is filed challenging the judgment and decree dt.26.11.2015 in A.S.No.84 of 2014 on the file of Principal District Judge, Warangal confirming the judgment and decree dt.14.08.2013 in O.S.No.543 of 2010 on the file of Principal Junior Civil Judge, Warangal.

2. The appellants herein are defendants in the said suit.

3. The 1st respondent herein filed the said suit for grant of temporary injunction restraining defendants from encroaching over the 5 feet common passage and directing 2nd respondent/3rd defendant to remove the obstruction caused by defendants over the suit schedule property with a common passage.

4. The 1st respondent contended that defendants are owners of property adjoining to his property; that they obtained permission from 2nd respondent for construction; and made constructions in deviation of sanctioned plan and started encroaching common passage in between their properties; and therefore, he sought the above reliefs.

5. These contentions were refuted by appellants

who stated that there was no common passage existing as contended by 1st respondent. They contended that the compound wall in the alleged common passage was already in existence, but 1st respondent got it demolished on 15.05.2010, and he has no right to use the common passage as it is not his property.

6. Before the Trial Court, the 1st respondent examined PW.1, and marked Exs.A.1 to A.7. The appellants examined no witness, and did not mark any document.

7. By judgment dt.14.08.2013, the Court below decreed the suit. Placing reliance on Ex.A.1, certified copy of a Gift Settlement Deed dt.11.09.2009, (which showed the existence of a joint passage in between the properties of appellants as well as 1st respondent), Ex.A.2, another Gift Settlement Deed dt.11.09.2009, executed by one Pabba Jagadeeshwaraiah in favour of 1st respondent and also the link document to these two documents, and held that there was in existence of a common passage leading to the main road. It held that appellants did not plead that there is an alternative way to 1st respondent's property and Exs.A.1 to A.3 submitted by 1st respondent to 2nd respondent shows that appellants obstructed the common passage by raising a compound wall.

8. Challenging this judgment, the appellants filed A.S.No.84 of 2014 before the Principal District Judge, Warangal.

9. By judgment and decree dt.26.11.2015, the said appeal was also dismissed confirming the findings of the trial court.

10. Aggrieved by the same, the appellants have preferred the present Second Appeal.

11. Although the counsel for appellants contended that the Courts below have erroneously decreed the suit filed by 1st respondent, I am unable to agree with the said submission. Although reliance in the 1st appeal was placed upon a judgment dt.22.11.2010 in O.S.No.1177 of 2009 obtained by appellants therein, neither the plea that the judgment therein binds the 1st respondent herein is taken nor is the judgment copy itself marked. Therefore, the plea of *res judicata* raised by counsel for appellants on the basis of judgment in O.S.No.1177 of 2009 cannot be countenanced.

12. The Courts below have rightly relied upon Exs.A.1 to A.3 in coming to the conclusion that there is a common passage between the properties of the appellants as well as 1st respondent and that the appellants have tried to encroach upon it without having any right, title or interest therein.

13. In this view of the matter, I am of the opinion that there is no question of law, much less, any substantial question of law arising for consideration in this Second Appeal. Accordingly, the Second Appeal fails and it is dismissed at the stage of admission. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-03-2016

Ndr/*