

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.648 of 2015

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 09.09.2005 in A.S.No.174 of 1987 on the file of II Additional District Judge, Rajahmundry, whereunder, decree and judgment dated 22.08.1987 in O.S.No.546 of 1980 on the file of III Additional District Munsif (presently Junior Civil Judge), Rajahmundry is confirmed.

2. Appellant herein is first defendant in O.S No.546 of 1980. First respondent herein filed the above referred suit for declaration of her right in ABCDEF joint lane from her house to municipal road located at point EF of the plaint plan and for permanent injunction restraining appellant herein from interfering with her possession and enjoyment of the said joint lane and for other incidental reliefs. Trial court on a consideration of oral and documentary evidence of both parties decreed the suit and granted relief as claimed by plaintiff. This suit O.S.No.546 of 1980 and the suit filed by appellant herein in O.S.No.668 of 1980 were tried together and the suit of plaintiff was decreed and the suit of appellant herein was partly decreed. Questioning the common judgment, appellant herein preferred two appeals in A.S No.174 of 1987 and A.S.No.175 of 1987 on the file of II Additional District Judge, East Godavari. First appellate court on a

consideration of material on record and also on a reappraisal of the entire evidence, allowed both appeals questioning the same, plaintiff herein filed S.A.No.606 of 1993 and S.A.No.615 of 1993 before this Court and this Court on a consideration of material remitted back the matter to lower appellate Court to reconsider the relief claimed in O.S.No.546 of 1980 and also in O.S. No.668 of 1980 and the first appellate Court on a reconsideration of the material dismissed both appeals filed by appellant herein. Now aggrieved by the dismissal of appeal in A.S.No.174 of 1987 against the suit filed by 1st respondent herein, present Second Appeal is preferred.

3. Learned advocate for appellant submitted that following are the substantial questions of law that would arise for consideration of this Court in the second appeal.

“a. Whether a party to a suit basing his title on registered title deeds of the predecessors in title is entitled to succeed with regard to easementary rights by adducing evidence contrary to the recitals of the predecessors title deeds and against the principles laid down under Sec.92 of Evidence Act.

b. Whether the physical features disclosed non-existence of a lane for want of two boundaries on either side, the court can presume the existence of an imaginary lane in open space, which forms part of the appellant's backyard.

c. Whether the Lower Appellate court which gives a clear finding that the construction of ventilators and doorways are new is entitled to hold that the infringing party is entitled to violate the law of privacy on the ground of laches.

d. Whether the Lower appellate court which

finds that the opening of ventilators and doors and also vents for letting out sewage water are done at one single point of time and directed the vents for letting out sewage water from the lavatory be stopped as it would infringe the rights of the respondent, his right in holding that the opening of the ventilators and doors done at the same time can be accepted under law.”

4. I have perused the material papers including judgments of both trial Court and first appellate Court and other material papers. The first contention of advocate for appellant is that the boundaries mentioned in Exs.A3 and A4 i.e., the title deeds of the plaintiff are not tallying and that the title deeds of plaintiff predecessor's do not provide any easementary right. He submitted by adducing evidence contrary to the recitals of title deeds plaintiff is not entitled for the relief claimed and the same is contrary to the principles under Section 92 of Indian Evidence Act (for short “the Act”) and the first appellate Court has not considered this aspect, therefore it is the substantial question of law that would arise for consideration of this Court.

5. As seen from the material, objection raised by appellant herein is not at all tenable and the first appellate court has thoroughly examined the boundaries mentioned in both documents i.e., Exs.A3 and A4 and rejected the very same objection now raised on behalf of appellant, therefore it cannot be termed as contrary to the provisions of Section 92 of the Act. Therefore the point urged on behalf of appellant has no force. The other grounds

pointed out by learned advocate for appellant are in respect of factual aspects and no law is involved to be considered by this Court in the second appeal. Further as seen from the material, when the suit filed by appellant herein was also tried jointly and judgment in that suit had become final the appellant has not questioned the same. Therefore, appellant cannot now complain with regard to findings of facts which are self-same in both the suits.

6. On a scrutiny of the material, I am of the considered view that no law is involved much less substantial question of law to be considered by this Court in a second appeal. Therefore there are no grounds for admission.

7. For these reasons, this Second Appeal is dismissed at admission stage. No costs. Miscellaneous petitions, if any pending, in this Appeal shall stand closed.

S. RAVI KUMAR, J

Date: 01-02-2016.
gvl