

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.649 of 2013

JUDGMENT :

This second appeal is preferred challenging judgment and decree dated 05.01.2013 in A.S.No.28 of 2004 on the file of

IV Additional District Judge, Kadapa, whereunder judgment and decree dated 06.02.2004 in O.S.No.593 of 2000 on the file of

III Additional Junior Civil Judge, Kadapa, is confirmed.

2. Appellant herein is the unsuccessful plaintiff in both the Courts. Appellant herein filed O.S.No.593 of 2000 for declaration of title and permanent injunction in respect of suit schedule property, which is vacant site in an extent of 10 cents out of Ac.2.20 cents in Sy.No.77/1 of Jamalpalle Village, Chintakommadinne Mandal of Kadapa District. Trial Court on a consideration of oral and documentary evidence of both parties dismissed the suit holding that decision in O.S.No.433 of 1998 and O.S.No.460 of 1999 operate as res-judicata. Plaintiff preferred appeal to the District Court and IV Additional District Judge, Kadapa, on a reappraisal of entire material on record confirmed the findings of trial Court and dismissed the appeal. Now, aggrieved by the same, present second appeal is preferred.

3. Heard arguments.

4. According to advocate for appellant, appellant herein is not a party to O.S.No.433 of 1998 and O.S.No.460 of 1999 and giving finding that those judgments operate as res-judicata is not at all correct and that the same is the substantial question of law involved in this second appeal.

5. I have perused the material papers including the judgments of trial Court and lower appellate Court. As seen from the record, appellant herein claims to have purchased the suit schedule property from plaintiff in O.S.No.433 of 1998, which decision has become final in respect of the same schedule property. The Courts below considering the same held that as the plaintiff is claiming title to property through plaintiff in the earlier suit and as such that judgment binds him and held that it operates as res-judicata. As seen from the record, there is no dispute that plaintiff is claiming title only from PW.2, who is plaintiff in O.S.No.433 of 1998. Both the courts are right in holding that decision in O.S.No.433 of 1998 operates as res-judicata in view of the fact that plaintiff claims title to suit property from PW.2, who is plaintiff in O.S.No.433 of 1998. Further, advocate for appellant submitted that plaintiff also sought for cancellation of decree in O.S.No.969 of 1988, but as seen from judgment of appellate Court an appeal is preferred against the judgment in O.S.No.969 of 1998 and that appeal was allowed and decree in O.S.No.969 of 1998 was set aside.

When decree in O.S.No.969 of 1988 is set aside the question of cancellation of the decree does not arise. On a consideration of the material, I am of the considered view that no question of law is involved, much less substantial question of law to admit second appeal.

6. For these reasons, second appeal is dismissed at admission stage.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

28th January 2016

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