

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

SECOND APPEAL NO.815 OF 2016

JUDGMENT:

This Second Appeal is preferred against the judgment and decree, dated 15.6.2016 in A.S. No.22 of 2011 on the file of IV-Additional District Judge, Tanuku confirming the judgment and decree dated 18.1.2011 in O.S.No.343 of 2005 on the file of Principal Junior Civil Judge, Tanuku.

2. The appellant is the plaintiff in O.S. No.343 of 2005.
3. He filed the said suit for recovery of possession of the plaint schedule property and profits for the period from 2002-03 to 2004-05 apart from interest thereon. The appellant filed the said suit on the ground that her father by name Deva Danam settled Ac.0-67 cents on her, which was a self-acquired property through Ex.A-1 – Settlement Deed, dated 4.12.2001, that the respondents 1, 3 and 4 and the husband of the 2nd respondent, who are her siblings, were in occupation of the plaint schedule property and refused to hand over the same to her.
4. The respondents contended that Deva Danam executed the said Settlement Deed when he was not in sound state of mind and to cancel the same they had filed O.S.No.357 of 2005.
5. Both the suits were clubbed together. Evidence was recorded in O.S. No.343 of 2005.
6. The appellant herein examined P.Ws.1 to 5 and marked Exs.A-1 to A-5. The respondent examined D.Ws.1 to 3 and marked Exs. B-1 to B-6.
7. The trial Court by common judgment dated 18.1.2011 dismissed O.S. No.343 of 2005, but granted declaration in O.S. No.357 of 2005 that

Settlement Deed Ex.A-1 dt. 4.12.2001, on the basis of which the appellant had filed the suit, was not proved in accordance with law.

8. Against the judgment in O.S.No.343 of 2005 only, the appellant preferred A.S. No.22 of 2011, but did not prefer any appeal against the judgment and decree in O.S. No.357 of 2005.

9. By judgment dated 15.6.2016, A.S. No.22 of 2011 was dismissed by IV-Additional District Judge, Tanuku. Challenging the same, the Second Appeal has been filed.

10. Counsel for the appellant contended that the judgment of the appellate Court in A.S. No.22 of 2011 confirming the judgment dated 18.1.2011 in O.S. No.343 of 2005 suffers from serious error of law and requires to be set aside.

11. In paragraph-9 of the Grounds of the appeal, several points of law are mentioned.

12. Be that as it may, admittedly the entire case of the appellant is based on Ex.A-1 Settlement Deed, dated 4.12.2001. The said settlement deed has been declared to be not proved in O.S. No.357 of 2005 on the file of Principal Junior Civil Judge, Tanuku, to which judgment the appellant is a party. The judgment in O.S. No.357 of 2005 has not been assailed by the appellant and it has attained finality. Therefore, the finding in O.S. No.357 of 2005 i.e., Ex.A-1 - Settlement Deed, dt. 4.12.2001 is not proved in accordance with law, operates as *res judicata* and binds the appellant herein. Consequently, no relief can be granted in this Second Appeal to the appellant.

13. Therefore, the Second Appeal is dismissed at the stage of admission. No costs.

As a sequel, miscellaneous petitions if any pending in the Appeal shall stand closed.

Dt. 31.1.2017
gbs

M.S. RAMACHANDRA RAO,J

