

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.1033 of 2016

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.26-07-2016 in A.S.No.32 of 2010 of the IV Additional District Judge, Tanuku reversing the judgment and decree dt.15-04-2010 in O.S.No.268 of 2005 of the I Additional Junior Civil Judge, Tanuku.

2. Appellant is the defendant in the suit. The respondent/plaintiff filed suit for permanent injunction restraining the appellant from in any way interfering with the usage of a joint lane BCDHI by the appellant or his people.

3. The respondent contended that he purchased ABCDEFG land as shown in the plaint plan under Ex.A-1 dt.31-11-1990 from Pamaraju Subbarao and others; that to the east of BCD, there is a joint lane of a width of 18' indicated as BCDHI in the plaint plan; since the time of purchase, he was using the lane as ingress and egress from his side to the road on the south for his business purpose; that he along with his vendor made it fit for use; that the appellant purchased ABHJKL portion of extent of Ac.0.60 cts from Gajjula Sati Savitri under Ex.B-1 dt.27-03-1999, who in-turn has purchased it under Ex.B-2 dt.21-02-1994 from P.Subba Rao and others; and that even the appellant was using the lane along with the respondent without any objection and obstruction. He contended the appellant started

proclaiming that he would arrange a gate at DI and also walls or fence on the east and west on the said lane and enclose it exclusively for their use and prevent the respondent from using it.

4. The appellant filed Written Statement admitting that the respondent was the owner of the ABCDEFG as shown in the plaint plan but denying that BCDHI is the joint lane. It contended that the respondent's property is adjoining to the main road on the south and he had no necessity to pass through the lane BCDHI. It contended that it had exclusive right to use the passage to reach its property shown as KLMBHJ; that it had constructed a hostel building for women and also laid the road; and unless the road is enclosed by walls, there would be no safety for inmates of the women's hostel building. It is further contended that the respondent had not objected when the appellant laid a road or erected electrical poles through the passage BCDHI and that the documents Exs.B-1 and B-2 filed by them reveal that it is their exclusive property, while respondent's sale deed dt.Ex.A-1 did not disclose about any joint right in the passage.

5. The trial Court framed the issue "whether the plaintiff is entitled for permanent injunction as prayed for."

6. Before the trial Court, the respondent examined P.Ws.1 and 2 and marked Exs.A-1 and A-2. The appellants examined D.Ws.1 to 3 and marked Exs.B-1 and B-2.

7. By judgment and decree dt.15-04-2010, the trial Court dismissed the suit with costs. It held that the recital in Ex.A-1, relied upon by the respondents, shows that the vendor of the respondent excluded a passage in their site in the same survey number for their joint purpose, that the vendor of the respondent and the appellant had got some other site on the north of Ex.A-1 schedule property and therefore the BCDHI lane was exclusively meant for the purpose of the vendor of the respondent. It is also held that the property covered by Ex.A-1 had a main road to its south and nowhere it specifically mentioned that the respondent had a right of passage in BCDHI lane situated to the east of Ex.A-1 property, and in the absence of a specific recital therein, it cannot be presumed that the lane is a joint lane and that the respondent had got a right of passage along with his vendor. It also held that the appellant's document Ex.P-1 shows BCDHI lane has the southern boundary and the link document, Ex.B-2 also shows that the southern side boundary is BCDHI lane.

8. Challenging the same, the respondent filed A.S.No.32 of 2010 before the IV Additional District Judge, Tanuku.

9. By judgment and decree dt.26-07-2016, the said appeal was allowed and judgment of the appeal was set aside.

10. The lower appellate Court held that both Exs.A-1 and A-2 show that the eastern boundary of the site of the respondent was a joint lane which is to the south; that Exs.A-1 and A-2 relied upon by

the respondent are of the year 1990 and 1993, while Exs.B-1 and B-2 relied upon by the appellant were of the year 1994 and 1999, and that nine years prior to the purchase of the property by the appellant under Ex.B-1, the respondent had purchased under Ex.A-1, wherein it was recited that eastern boundary was a joint lane. After considering the recitals in Ex.B-1, the lower appellate Court came to the conclusion that nowhere was it mentioned that only and exclusively the appellant had absolute right in the joint lane, that even prior to the filing of the suit, both parties were using the joint lane till the appellant started to obstruct the use by the plaintiff the joint lane. It therefore held that neither party can claim that the joint lane is exclusively theirs in order to prevent other party from using the same for ingress and egress.

11. Challenging the same, this Second Appeal is filed.

12. Learned counsel for the appellant contended that the recital in Ex.A-1 is not to the effect that the BCDHI lane was to be jointly used by both the parties and therefore the lower appellate Court was not correct in coming to the conclusion that the respondent also had a right of passage through the lane particularly when the respondent had main road adjacent to his property.

13. The lower appellate Court, I am of the considered opinion, has given valid reasons why the contention of the appellant that the lane is its exclusive property cannot be accepted by referring to the recitals in the documents filed by both the parties. It has

concluded on consideration of Ex.B-1, the document on the basis of which the appellant relies that to the south east corner of the land which was sold to the appellant an extent of Ac.0.07 cts was used by the vendors; that the appellant also would have the same right; these recitals do not indicate that BCDHI lane was intended to be exclusive for the use of the appellant; and that the right of the respondent to use it is not excluded.

14. This finding has been arrived at by the lower appellate Court on appreciation of evidence. The finding cannot be said to be perverse. Since no substantial question of law is argued by the learned counsel for the appellant other than this issue, I am of the opinion that it is not a fit case for exercise jurisdiction under Section 100 CPC to interfere with the findings of the lower appellate Court.

15. Therefore, the Second Appeal fails and the same is accordingly dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-01-2017
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