

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

SECOND APPEAL No.179 OF 2017

JUDGMENT:

The appellants in the present second appeal are the defendants in O.S.No.285 of 2005 on the file of the Principal Junior Civil Judge, Ongole. The said suit was filed by the respondent herein seeking permanent injunction in respect of property of an extent of Ac.1.47 cents situated in survey No.71/4 of Vengamukkapalem village, Prakasam District. The plaintiff and the defendants are residents of the said village. The revenue authorities issued pattadar pass books and title deeds in favour of the plaintiff and he has been in possession of the property, whereas the defendants are neighbours to the plaintiff. A vagu is intervening the land of the plaintiff and defendants. The allegation of the plaintiff is that the defendants encroached the vagu and are trying to encroach the schedule property also. When the defendants threatened to encroach the plaintiff's property, the suit was filed by the plaintiff. The second defendant filed the written statement, which was adopted by other defendants. They claimed title to the property. They stated that they have been in exclusive possession and enjoyment of the 'Y' marked extent and one Audi Reddy is in exclusive possession and enjoyment of the 'X' marked extent. The official records of the Revenue Department also support their case. The pattadar pass book filed by the plaintiff is recently secured and it cannot be looked into. On the basis of the pleadings, the trial Court framed the issue with regard to the entitlement of the plaintiff for permanent injunction and noticed that Ex.A.3, D.K.Patta, was issued in the name of the plaintiff in the year 1970, dated 18.03.1970, mentioning Ac.1.50 cents of Vengamukkapalem village. The plaint schedule property also is an extent of Ac.1.47 cents in the said survey number, which correlates Ex.A.3. Ex.A.1, pattadar pass book, supports the case of the plaintiff.

Exs.B.1 and B.2 filed by D.W.2 for the so called sub-division originally belonged to one Ilavala Venka Reddy in the same extent of land, but the trial Court observed that the defendants failed to explain how the sub-divided survey number could have different extents or mentioned the names of the defendants, when the adangals no way shows such sub-division or enjoyment in respect of survey No.71/4. It was also observed that the defendants failed to produce any other evidence in their favour. The trial Court also looked into other aspects relevant for the purpose of the case and granted permanent injunction in favour of the plaintiff by Judgment and decree, dated 22.04.2010 on the file of the Principal Junior Civil Judge, Ongole. Challenging the same, the defendants filed A.S.No.134 of 2010 before the II Additional District Judge, Ongole. Along with the appeal, the defendants filed I.A.Nos.512 and 513 of 2011 seeking permission to adduce additional evidence and to issue summons to the Tahsildar, Ongole, to produce the proceedings in RC/B2/5389/80, dated 20.03.1984 of the Joint Collector, Ongole and to give evidence. The applications filed by the defendants are considered by the lower appellate Court along with the appeal and by reasoned order, dismissed the appeal by Judgment and decree, dated 29.08.2011. Challenging the same, the present second appeal is filed.

A perusal of the detailed Judgments of both the Courts shows that they came to conclusion on the basis of the evidence adduced by the parties and it is a pure question of fact. The appellants failed to show any question of law for interference with the said findings of fact and in the absence of any question of law, muchless a substantial question of law, the second appeal cannot be entertained and is accordingly dismissed. However, this will not prevent the appellants/defendants from filing suit for declaring their rights over the property, if so advised.

The second appeal is accordingly dismissed. Miscellaneous petitions, if any in the second appeal, shall stand closed.

A.RAMALINGESWARA RAO, J

16.06.2017
pln

