

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.262 OF 2000

JUDGMENT:

This Second Appeal is filed by the appellants assailing the judgment and decree dated 30.09.1999 in Appeal Suit No.36 of 1994 on the file of the Court of the III Additional District Judge, Warangal, wherein and whereby the judgment and decree dated 24.02.1994 in O.S.No.714 of 1984 on the file of the Court of the II Additional District Munsif, Warangal, dismissing the suit filed by the plaintiffs for mandatory injunction and perpetual injunction, was reversed.

2. At the time of arguments, the learned counsel for both parties submitted that the respondents-plaintiffs ought to have filed a suit for declaration and mandatory injunction. For one reason or other, the plaintiffs did not ask the relief of declaration. Learned counsel for both parties, with one voice, submitted that it is a fit case to remand the matter to the trial Court so as to give an opportunity to the respondents-plaintiffs to file an application for amendment of plaint after following the due procedure.

3. In view of the submissions made by the learned counsel for both parties, this Court is not inclined to go into the merits of the main case.

4. Having regard to the facts and circumstances of the case and also the submissions made by the learned counsel for both parties, I am of the considered view that it is a fit case to set aside the judgment and decree dated 30.09.1999 in Appeal Suit No.36 of

1994 on the file of the Court of the III Additional District Judge, Warangal, and remand the matter to the trial Court.

5. Accordingly, the Second Appeal is allowed setting aside the judgment and decree dated 30.09.1999 in Appeal Suit No.36 of 1994 on the file of the Court of the III Additional District Judge, Warangal, and remanded the matter to the trial Court. The trial Court is hereby directed to give an opportunity to both parties to file fresh pleadings and adduce evidence. There shall be no order as to costs.

6. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

Date: 19.12.2017
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T.SUNIL CHOWDARY, J

