

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

SECOND APPEAL NO.847 OF 2016

JUDGMENT:

This Second Appeal is preferred against the judgment and decree, dated 15.9.2015 in A.S. No.227 of 2011 on the file of IX-Additional District Judge, West Godavari at Kovvur, confirming the judgment and decree dated 13.7.2009 in O.S No. 3 of 2008 on the file of Junior Civil Judge, Nidadavolu.

2. The appellants herein are the defendants 1 and 2 in the suit.
3. The 1st respondent/plaintiff filed the suit for permanent injunction restraining the appellants from interfering with and from causing obstruction to alleged 10 feet width of ABCD plaint plan road situated in the village of Gowripalli and directing the 2nd respondent - Gram Panchayat to keep the said road in tact and not to allow the appellants to make or cause obstructions in the said road, and for costs.
4. According to the 1st respondent, the road in question is connected to Kovvur – Nidadavolou Zilla Parishad and his house is situated in the middle of the said road, which is also known as Talloorivari Road or Jayaprakash Road. He contended that the road was initially six feet width, but later it was widened to 10 feet by the 2nd respondent. He contended that he purchased the property on the side of the road from One Kotari Butchayya in 1997 and the site purchased by him is shown as 'EFGH' in the plaint plan, that this site is opposite to the site of the first appellant, that the first appellant intended to purchase EFGH site, and since he could not succeed in that effort, he developed grudge against him and started obstructing ABCD road by laying stones and fencing. He stated that once the said obstructions were removed by the

2nd respondent, the appellants are openly proclaiming that they would again obstruct ABCD road, which forced him to file the suit.

5. The appellants filed written statement disputing the correctness of the plaint plan, plaint schedule and boundaries mentioned therein and denied that they were obstructing ABCD by placing stones and fencing. They stated that the respondent/plaintiff intentionally failed to mention that the second appellant had purchased the site from K. Butchayya towards Eastern side of the first respondent EFGH site. He contended that the 1st respondent and others got constructed a fence towards North-South, that the first appellant lodged a complaint before the police and that the 1st respondent colluded with the 2nd respondent and was making false allegations against the appellants. They admitted that they had left some site, but the 1st respondent failed to leave any site for formation of the road. They also denied that the width of the road is 10 feet and contended that Talluri Satyanarayana and K. Butchaiah were necessary parties to the suit.

6. The trial Court framed the **issue**, “whether the plaintiff is entitled for permanent injunction as prayed for?”

7. Before the trial Court, the 1st respondent examined P.Ws.1 to 4 and marked Ex.A1 & A2. The appellants examined D.Ws.1 & 2.

8. By judgment dated 13.7.2009 the trial Court decreed the suit. It was held by the trial Court that the existence of ABCD passage is not disputed by the appellants, though the width of the said road is in dispute. It relied upon evidence of P.Ws.1 to 4 and held that the ABCD passage, though originally six feet of width, was later widened to 10 feet width. It also relied upon the admission of appellants in the written statement that they voluntarily surrendered some extent of site for the

purpose of formation of road, and that the said admission indicates that they intended to form a road for the purpose of ingress and egress of all inhabitants of the locality. It also referred to Ex.A3 Minutes Book produced by P.W.4, employee of the 2nd respondent- Gram Panchayat in coming to this conclusion.

9. Aggrieved thereby, the appellant herein preferred A.S. No.227 of 2011 before the IX-Additional District Judge, West Godavari at Kovvur. The said appeal was dismissed on 15.9.2015. The lower appellate Court again considered the evidence on record and in particular evidence of P.Ws.2 to 4, and held that the width of the ABCD passage was ten feet, and the appellants did not take steps to appoint a Commission for measuring the width of the road. It also took note of the admission of the appellants that when all the inhabitants of the area agreed to give two feet width of site on either side of the road, they cannot obstruct the passage on the ground that some others did not give any site from their property.

10. Assailing the same, the Second Appeal is filed.

11. Sri K. Chidambaram, learned counsel for the appellants firstly contended that the suit was filed by the 1st respondent under representative capacity under Order 1 Rule 8 of C.P.C. and therefore permission of the Civil Court should have obtained by the 1st respondent. He also contended that the suit in respect of public street against Gram Panchayat is not maintainable in view of bar under Section 138-A of the A.P. Panchayat Raj Act, 1994 and that the suit for bare injunction is not maintainable without seeking relief of declaration that the width of the disputed road is 10 feet since the same was seriously disputed. Apart from these, he also contended that the width

of the disputed passage was not established by any documentary evidence, such as village plan, etc.

12. Admittedly, the site purchased by the 1st respondent was in the middle of ABCD passage. Therefore, the 1st respondent/plaintiff is a person aggrieved directly, if the said passage is obstructed by the appellants.

13. Merely because other residents in the locality are also put to disadvantage by way of obstruction, it cannot be said that the grievance of the 1st respondent is a “public grievance”, that he is not personally affected and therefore he ought not to have invoked the procedure under Order 1 Rule 8 of C.P.C. In my considered opinion, the 1st respondent is directly affected by obstruction of the passage and is entitled to maintain the suit in his individual capacity, without seeking any permission of the Court under Order 1 Rule 8 of C.P.C. since his ingress and egress to his property is affected by obstruction of passage made by the appellants.

14. Further, the Gram Panchayat is impleaded as 3rd defendant, but remained *ex parte*. It never raised any objection that prior notice under Section 138-A of A.P. Panchayat Raj Act, 1994 was not given. The said provision is intended for the benefit of the said Gram Panchayat and it is entitled to waive noncompliance with Section 138-A of A.P. Panchayat Raj Act. Therefore, it is deemed to have waived the requirement of prior notice under Section 138-A of A.P. Panchayat Raj Act.

15. Even otherwise, the principal grievance of the 1st respondent is against the activities of the appellants and he wanted the 2nd respondent - Gram Panchayat to ensure that the appellants did not obstruct the passage. Therefore, non-compliance with Section 138-A of A.P.

Panchayat Raj Act by the 1st respondent did not come in the way of the trial Court entertaining the suit and granting the relief to the 1st respondent.

16. I am also of the opinion that the suit for bare injunction, certainly, is maintainable without seeking relief of declaration that width of passage is 10 feet because the 1st respondent is not seeking exclusively to use ABCD Passage by preventing the appellants and others from using it. He only wants his ingress and egress through the said passage, be not obstructed by the appellants.

17. As regards width of road is concerned, both Courts have concurrently held on appreciation of evidence on record that the width of passage is ten feet. If the appellants have any doubt about width, they ought to have got appointed an advocate commissioner to measure width of ABCD passage, but they have not chosen to do so. Therefore, the concurrent findings of the Courts below on the question of width of ABCD passage cannot be assailed by the appellants.

18. Therefore, I do not find any substantial questions of law arising for consideration in the Second Appeal, and accordingly 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. 31.01.2017
gbs

M.S. RAMACHANDRA RAO,J