

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.185 OF 2007

JUDGMENT:

This Civil Miscellaneous Appeal is filed challenging the Judgment and Decree in A.S.No.5 of 2002, dated 19.04.2006 passed by the learned Senior Civil Judge, Darsi, in remanding the case to the trial Court for fresh consideration by setting aside the Judgment and Decree in O.S.No.22 of 1991, dated 13.03.2002 passed by the learned Junior Civil Judge, Darsi.

The appellants herein are defendants in O.S.No.22 of 1991. The said suit was filed by the plaintiffs for declaration of title and perpetual injunction and also for mandatory injunction to remove the 'EF' wall shown in the plaint plan and the suit was filed in respect of property of an extent of Acs.0.04 cents of lands situated in Survey No.798/5 of Darsi Village and Mandal, Prakasam District, within specific boundaries. Before the trial Court, P.Ws.1 to 4 were examined on behalf of plaintiffs and D.Ws.1 to 4 were examined on behalf of defendants, apart from examining C.Ws.1 and 2. The plaintiffs marked Exs.A.1 to A.12 and defendants marked Exs.B.1 to B.7 and Exs.X.1 to X.5 were also marked before the trial Court. The trial Court framed issues as to whether the plaintiffs are entitled for declaration and possession of the suit schedule property and whether the relief of possession and mandatory injunction are barred by limitation.

The trial Court came to the conclusion that the plaintiffs failed to prove their title and consequently they are not entitled for mandatory injunction, and accordingly dismissed the suit by Judgment and Decree date 13.03.2002. When an Appeal was preferred before the learned Senior Civil Judge, Darsi, the learned Senior Civil Judge did not consider any specific points for consideration except considering the point whether the lower Court committed any error in giving finding to the issues framed. He remanded the case mainly on two points, i.e., non-consideration of the

Commissioner's report and not giving a specific finding with regard to adverse possession claimed by the defendants.

It is submitted by the learned counsel for parties that the Commissioner died and not available when the trial was going on. In any event, the report of the Commissioner is not conclusive and it is a piece of evidence. With regard to the plea of adverse possession set up by the defendants, it is not necessary for the trial Court to give a finding in view of the dismissal of the suit. If the lower appellate Court thought it fit to consider the case of the defendants also, in the light of the case set up by the plaintiffs, the lower appellate Court should have framed appropriate issues. In view of the same, this Court feels that the Judgment of the remand passed by the lower appellate Court on both the grounds is unsustainable and accordingly, the Judgment dated 19.04.2006 passed by the learned Senior Civil Judge, Darsi, in A.S.No.5 of 2002 is set aside and the matter is remanded to the learned Senior Civil Judge, Darisi, for consideration of the Appeal on its merits by framing appropriate points for consideration.

The Civil Miscellaneous Appeal is accordingly allowed. It is needless to observe that in view of the Appeal being of the year 2002, the learned Senior Civil Judge, Darisi, shall dispose of the Appeal as expeditiously as possible, but not later than twelve months from the date of receipt of a copy of this Order. The parties before the Senior Civil Judge, Darsi, shall cooperate for disposal of the Appeal.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

10.08.2017
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