

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Second Appeal No.732 of 2017

Date: 04.08.2017

Between:

Perepu Subbalaxmi and another

... Appellants

and

Ayyala Somayajula Kanaka Rama
Sarma and 6 others

...Respondents

Counsel for the Appellants: Mr.ASC.Bose

The Court made the following:



Judgment:

This Second Appeal arises out of Judgment and Decree, dated 16-03-2016, in AS.No.4 of 2014 on the file of the X Additional District and Sessions Judge, Visakhapatnam at Anakapalle.

The appellants filed OS.No.6 of 1997 in the Court of the I Additional Junior Civil Judge, Anakapalle, for a Mandatory Injunction against the respondents for removing the drainage pipeline system installed by respondent Nos.3 to 7 in the plaint schedule property and for closing the window and other appurtenance in the southern wall of their house. The appellants also sought for a decree of Permanent Injunction restraining respondent Nos.3 to 7 from entering the plaint schedule site except for the limited purpose mentioned in settlement deed, dated 31-03-1926, by way of grant and also restraining them from causing any damage to the plaint plan red marked well and its water in any manner and for other reliefs.

It is the pleaded case of the appellants that one Nistala Upamaka Venkateswarlu was the ancestor; that he had four daughters *viz.*, Sanyasamma, Narayanamma, Appala Narasamma, Suramma and also a son *viz.*, Rama Surya Prakasa Rao; that he

had executed a gift deed in favour of one of his daughters Appala Narasamma in the year 1923 conveying the immovable property by retaining the life interest in himself; that subsequently, on 31-03-1926, the said Venkateswarlu had executed Ex.A.1- Settlement Deed whereunder Appala Narsamma was given limited right to use the suit schedule land to enable the scavenger to clean the toilets and for tethering the cattle; and that after the death of Appala Narsamma, her son Kannababu has alienated the properties to respondent Nos.3 to 7. That in the suit schedule land, the said respondents have constructed a drainage pipeline in the year 1997. With these averments, the appellants have filed the aforementioned suit.

Respondent Nos.3 to 7 contested the suit by filing the written statement wherein they claimed the right of laying pipeline and also reopening the windows in existence.

Considering the respective pleadings of the parties, the trial Court has framed the following issues:

- “1. Whether the plaintiffs are entitled for mandatory injunction against D3 to D7 as prayed for ?
2. Whether the plaintiffs are entitled for permanent injunction against D3 to D7 and their men from entering into the plaint schedule property in gift settlement deed dt.31-03-1926 ?

3. Whether the plaintiffs are also entitled for permanent injunction against D3 to D7 and their men from causing any damage to the plaint plan red marked well and its water ?

4. 'To what relief ?'

In support of their case, the appellants examined one Perapu Sri Rama Murthy and got Exs.A.1 and A.2 marked. On behalf of respondents, one AKR.Sarma was examined as DW.1 and no documentary evidence was adduced.

On consideration of both oral and documentary evidence, the trial Court has decreed the suit in part granting mandatory injunction directing respondent Nos.3 to 7 to remove the drainage pipeline system installed in the plaint schedule site and also granting permanent injunction restraining them from entering the plaint schedule property except for the purpose mentioned in Ex.A.1- settlement deed. The suit in respect of other claims was dismissed. Feeling aggrieved by the said judgment, respondent Nos.3 to 7 filed AS.No.3 of 2009 in the Court of the X Additional District & Sessions Judge, Visakhapatnam at Anakapalle, and the same was renumbered as AS.No.4 of 2014.

The lower appellate Court has framed the following points:

- “1. Whether there was previously in existence any open drainage channel adjoining the southern old house wall of the defendants 3 to 7 prior to construction of the disputed closed drain pipeline for discharge of the sullage waters and other waters from the newly constructed house of the defendants 3 to 7 in the place of the old drainage channel ?
2. Whether the construction of closed drain pipeline as described in the Point No.1 is causing any obstruction to the plaintiffs for usage of the suit disputed property as per the conditions and stipulations in the Ex.A.1 Gift Settlement Deed ?
3. Whether the plaintiffs/respondents are entitled to mandatory injunction as prayed for in the plaint ?
4. To what relief ?”

On points 1 and 2, the lower appellate Court has observed that when respondent Nos.3 to 7 have constructed the closed drainage pipeline in place of the old existing open drainage channel leading the same to western drainage canal of the municipality, there would not be any obstruction or inconvenience caused to the appellants due to such construction and that neither it is the pleaded case of the appellants nor it is reflected in the evidence of PW.1 that respondents 3 to 7 have occupied more site than what was originally occupied by the old drainage channel in the suit schedule site. Accordingly, the

lower appellate Court held that the appellants would not suffer any inconvenience or face hurdles due to laying of underground drainage pipeline. On the above reasoning, the lower appellate Court has allowed the Appeal and set aside the decree in the suit.

After hearing Mr.ASC.Bose, learned Counsel for the appellants, I do not find any substantial question of law arising for consideration in the Second Appeal. Though the appellants have succeeded before the trial Court, the lower appellate Court, on re-appreciation of the evidence on record, reversed the judgment of the trial Court by rendering proper and sound reasons. Therefore, I do not find any reason to interfere with the well considered judgment of the lower appellate Court.

The Second Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

Dt: 4th August, 2017
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