

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SECOND APPEAL No.684 of 2015

JUDGMENT:

The present Second Appeal is preferred by the defendant in O.S.No.195 of 2010 on the file of the IV-Additional Junior Civil Judge, Kadapa, who is also the appellant in A.S.No.17 of 2013 on the file of the Principal District Judge, Kadapa. She suffered decree in the hands of the trial Court as well as the appellate court.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.S before the trial Court.

The dispute or controversy between the parties that is sought to be adjudicated before the Courts below was in regard to XYZF portion of the property shown in the plaint plan in an extent of 5 ½ feet East-West and 21 ½ feet North-South. According to the plaintiff, the said property constitutes part and part of the 'rastha' situated in the northern side of her house and western side of the property owned by the defendant and the said 'rastha' is shown as 'CDEFC' in the plaint plan.

The basis for resisting the contentions raised by the plaintiff was the so-called oral agreement made in a mediation said to have taken place in the year 2005. According to the defendant, in the alleged mediation, she was given liberty to construct a compound wall in the middle of the rastha marked as CDEFC. That has been the only plea raised by the defendant resisting the request for grant of mandatory injunction and to defend the constructed area to be retained.

The trial Court, in O.S.No.195 of 2010, by its judgment and decree dated 11.12.2012, decided all the three issues in favour of the plaintiff by appreciating the evidence let in by PWs.1 and 2 and Exs.A1 to A3 on behalf of the plaintiff and DWs.1 to 3 and Exs.B1 to B3 on behalf of the defendant. The trial Court, ultimately, held that the right to use the portion shown as XYZF, which is part and parcel of the passage shown as CDEFC in the plaint plan, is the joint right and the defendant shall remove the structure raised in the portion shown as XYZF in the plaint plan.

That was challenged before the Principal District Judge, Kadapa, in a regular appeal suit in A.S.No.17 of 2013 raising various grounds. The learned appellate Court formulated as many as four points in paragraph '8' of its judgment and, on re-appraisal of evidence, more particularly, the recital in ExA1, which was also extracted in vernacular language, assessed the evidence of PW1 and DWs.1 to 3 and probing on whom the burden of proof lies in regard to the mediation set up by the defendant, ultimately, recorded the finding disbelieving the so-called mediation set up by the defendant. Thus, recording findings on points 1 to 3 against the appellant-defendant and summing up the same, recorded the conclusion under point no.4 affirming the judgment and decree of the trial Court.

Heard Sri D.Kodanda Rami Reddy, learned counsel for the appellant-defendant, and Sri L.J.Veera Reddy, learned counsel for the respondent-plaintiff.

Though, the learned counsel for the appellant-defendant once again reiterated the pleas taken by the defendant, mainly on the oral understanding of the year 2005, when concurrent findings have been recorded based on appreciation of evidence in accordance with the evidential rule, as could be seen from the relevant issues and points framed and formulated in the judgments by both the courts respectively, it is to be said that the learned counsel for the appellant is unable to point out any patent illegality creeping in any of the judgments. In fact, Ex.A1 puts an end to the controversy herein, when the so-called mediation said to have taken place in 2005 falls to the ground. In that view of the matter, there is absolutely no question of law involved, much less substantial question of law. There is no merit in the present Second Appeal.

The Second Appeal is, accordingly, dismissed.

Miscellaneous applications, if any, pending in the present Second Appeal, stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

28.07.2017

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