

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**SA.No.702 of 2017**

**ORDER :**

This Second Appeal is filed challenging the judgment and decree dt.21.03.2017 in Appeal Suit No.19 of 2014 on the file of IV Additional District Judge, Tanuku confirming the judgment and decree dt.09.05.2014 in O.S.No.10 of 2009 on the file of I Additional Junior Civil Judge, Tanuku.

2. The appellant is plaintiff in the above suit.
3. He filed the suit against the respondents for a perpetual injunction restraining the respondents from ever interfering with the peaceful possession and enjoyment of 2 ½ yards passage 'ABCD' as shown in the plaint plan and also from making any construction in the area 'BB1 and DD1' of the suit schedule property.
4. In the plaint, the appellant contended that his father purchased the plaint schedule property under a sale certificate dt.29.07.1999 in O.S.No.42 of 1989 on the file of the Senior Civil Judge, Tanuku; that his father settled 'CDEFGH' on him under Settlement Deed dt.12.09.2009; there is also an easementary right of passage of ingress and egress; and he, his father and their predecessors were using the 'ABCD' passage and are entitled to use it.
5. According to him, the respondent nos.1 and 2 / defendants encroached Government site in 'BB1 and DD1' adjacent to this

property, constructed a thatched house and were residing there by running a tea bunk. The appellant alleges that they are proclaiming in the village that they would occupy the 'ABCD' lane by placing obstructions therein and hence he filed the suit.

6. The respondent nos.1 to 3 filed a written statement stating that there is only 2 ½ yards passage 'ABCD' to reach the shops of the appellant 'S.1 to S.5' on the western side for passage to reach the public road towards the south and that in the sale certificate dt.27.09.1999 and Settlement Deed dt.12.09.2009, there is no mention of the 2 ½ yards passage 'ABCD', as shown in the plaint plan. It is contended that there is a 10 feet southern side passage intended for use by the appellant and another person Tatina Praveen to reach the public street on the south. They contended that the site in their occupation is Government land and the appellant has no right to use the 2 ½ yards passage 'ABCD'.

7. The trial Court framed two issues : “(a) Whether the plaintiff is entitled to obtain permanent injunction as prayed for ? and (b) To what relief ?”

8. Before the Trial Court, the appellant examined PWs.1 to 4 and marked Exs.A.1 to A.12. The respondents examined DWs.1 to 5 and marked Exs.B.1 to B.13.

9. An Advocate-Commissioner was also appointed in the trial court, and he gave a report on 15.02.2009.

10. By judgment and decree dt.09.05.2014, OS.No.10 of 2009 was dismissed by the trial court. The trial court held that the appellant's version that the 2 ½ yards passage 'ABCD' is the only way for them to reach the 'DLK' road, is not correct since the Advocate-Commissioner's plan disclosed that there is a gate towards southern side for the appellant to reach the main road directly. It also held that Ex.A.1 does not show 2 ½ yards passage 'ABCD', and that the appellant has no right to claim use of the area 'ABCD' as a passage.

11. Assailing the same, the appellant filed A.S.No.19 of 2014 before the IV Additional District Judge, Tanuku.

12. The said appeal was also dismissed on 21.03.2017. The lower appellate court observed that there is no mention in Ex.A.2 of the right of passage, that it only shows that there is a *poramboke* as western boundary and that the southern boundary is shown therein as a road. It held that whenever properties are purchased easementary rights in respect of right of passage would normally be mentioned in the plan but no such thing is mentioned in Exs.A.1 and A.2. It held that once the appellant has a right of passage towards the south, they cannot insist on having a passage through the 'ABCD' marked portion in the plaint.

13. Assailing the same, the present Second Appeal is filed.

14. The counsel for appellant sought to contend that the appreciation of evidence by the Court below is perverse and

unsustainable, that the Advocate-Commissioner's report itself supports the case of the appellant, and that the evidence on record establishes the easementary right of the appellant over the 'ABCD' passage.

**15.** It is not in dispute that the property 'CDEFGH' was purchased by the appellant's father under a sale certificate dt.29.07.1999 in O.S.No.42 of 1989 on the file of the Senior Civil Judge, Tanuku, under Ex.A.2, and thereafter, Ex.A.1 Settlement Deed dt.12.09.2009 was executed by appellant's father in favour of the appellant. The suit itself has come to be filed in the year 2009. To establish an easementary right, the duration prescribed is twenty years. The oral evidence adduced by the appellant did not establish this right for the period of twenty years. Though the appellant also pleaded that there is no other access to his house except through the 'ABCD' passage, the Advocate-Commissioner's report rejects his plea and shows that he has a passage on the southern side to the main road. Also, neither the sale certificate dt.29.07.1999 nor the Settlement Deed dt.12.09.2009 mention about the right of the appellant to use the passage 'ABCD'. Merely because the respondents have got the neighbouring *poramboke* site and are using it for a tea bunk and residence, the appellants cannot claim the 'ABCD' passage without any right. It is for the State Government to evict the respondents from the area under their occupation, and the appellant who has no right in

the area under the occupation of respondents, cannot object to the same.

**16.** Therefore, I do not find any substantial question of law arising for consideration in the Second Appeal, and it is accordingly dismissed at the stage of admission. No costs.

**17.** As a sequel, miscellaneous petitions pending if any in this Second Appeal, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 08-09-2017

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