

HONOURABLE SRI JUSTICE P. NAVEEN RAO

SECOND APPEAL No. 851 of 2017

Date :8.12.2017

Between :

Gaddam Radhakishan S/o late Gaddam Narsaiah
48 yrs
R/o 1-263/1/2 Bheemaram village
Hasanparthy mandal,
Warangal

Petitioner

And

Gaddam Chandramouli S/o Balaraju
64 yrs
R/o 1-164
Bheemaram village, Hasanparthy mandal
Warangal and another

Respondents

The Court made the following:



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ORAL ORDER:

Plaintiff is appellant. He filed suit for bare injunction against defendants in respect of property to an extent of 61 sq yards.

2. The trial Court framed the following issues for consideration:

- i) Whether the plaintiff is entitled to the relief of permanent injunction?
- ii) To what relief?

3. On evaluation of evidence on record, more particularly the depositions of prosecution witnesses, trial Court held that the schedule property is joint family property of plaintiff and defendants and that defendants are co-sharers and that plaintiff has no right over the suit schedule property. Having regard to this fact, the trial Court held that injunction cannot be granted for exclusive possession and enjoyment by the plaintiff.

4. On appeal, the first Appellate Court formulated the following points for determination:

- 1) Whether the appellant proved that he was in exclusive possession of the suit plot, on the date of the suit, with lawful right and interest and against the respondents?
- 2) Whether learned trial Judge was right in refusing the relief of perpetual injunction, sought by the appellant and against the respondents and if the judgment and decree under appeal are, proper?
- 3) To what relief?

5. First Appellate Court held:

“21. Therefore, when this property, as admitted by PW1, in an extent of four guntas, is in joint possession of all the sharers, entitled to it, belonging to ‘Gaddam Family’, including the appellant and the respondents, it cannot be stated that he had exclusive possession and enjoyment of the suit plot, as on date of filing the suit. In view of it, Ex.A4 to Ex.A6, as

already stated, cannot, assist the contention of the appellant, apart from Ex.A1.

....

23. Therefore, for the reasons stated above, it has to be held that the appellant failed to establish his claim of exclusive right and interest, in the suit plot, on the date of filing the suit and being in exclusive possession and enjoyment of it.”

6. Thus, concurrently the trial Court and first Appellate Court have held that there is no exclusive right of possession in plaintiff in a joint family property and all the sharers are entitled to possession and enjoyment of the suit schedule property. This finding is arrived at by trial Court and first Appellate Court on evaluation of evidence on record.

7. The possession and enjoyment of the property by cosharers is a question of fact determined by the trial Court and first Appellate Court on evaluation of evidence on record. There is no erroneous assumption of law and/or facts warranting interference by this Court. The decisions of Courts below are based on sound principles of law on the subject matter of the suit claim. In the facts of this case, no question of law, much less a substantial question of law arises for consideration. The second appeal fails and accordingly the same is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 8.12.2017
TVK

