

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

SA.No.927 of 2016

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree dt.04.07.2016 in A.S.No.306 of 2011 of the IX Additional District Judge, West Godavari at Kovvur, confirming the judgment and decree dt.29.07.2011 passed in O.S.No.327 of 2004 of the I Additional Junior Civil Judge, Kovvur.

2. The appellants are the legal representatives of the deceased-1st plaintiff by name Elapolu Satyanarayana.

3. The respondent is none other than the brother of the 2nd appellant, who is the wife of the deceased-1st plaintiff.

4. The dispute between the parties relates to land marked as 'ABCD' in the plaint plan and 'W' marked bore-well together with electricity service connection.

5. It is not in dispute that 'ABCD' site belongs to the 1st plaintiff and the bore-well 'W' is in that property. It is also an admitted fact that due to relationship between the parties, the deceased-1st plaintiff used to supply water from the said bore-well to the land of the respondent.

6. It appears that disputes arose between them when this was discontinued. It is alleged by 1st plaintiff that on 18.04.2004 the respondent clandestinely took away starter box of the electricity service connection No.604 for the said bore-well in order to cause loss to the 1st plaintiff and that he also issued a registered legal notice dt.19.04.2004 to the respondent, and then filed the suit for perpetual injunction restraining the respondent from interfering with his possession of the 'ABCD' land and 'W' marked bore together with service connection in any manner.

7. The respondent contended that his father had come to the village as *illatum* son-in-law, and after his death, his mother was living with the 1st plaintiff and the 2nd plaintiff. He contended that since his father died when he was very young, his family and that of the 1st plaintiff lived together jointly till he got married, that himself and the 1st respondent separated about 18 years back; that at the time when he and the 1st plaintiff were living together jointly, the disputed 'W' marked bore-well was dug, but service connection no.604 was obtained in the name of 1st plaintiff since he was elder in the family. He contended that the said bore-well was dug by both parties jointly and he was enjoying his half right in the bore-well and was paying necessary electricity bills, repairs and drawing water to his fields. He stated that after receiving the legal notice dt.19.04.2004 issued by the deceased-1st plaintiff he raised a dispute before elders, that it was resolved on 25.04.2004 and reduced on white paper which was signed

by himself as well as 1st plaintiff, and that under the said settlement both parties were to enjoy the bore water in service connection no.604 jointly and the 1st plaintiff was liable to pay Rs.13,342/- to the respondent. He contended that to avoid the liability to pay the said amount the suit was filed by the deceased-1st plaintiff. He contended that 1st plaintiff took away the starter box highhandedly.

8. Based on these pleadings, the Trial Court framed the following issues :

“1. Whether the plaintiff is in possession and enjoyment of the plaint schedule as on the date of filing of the suit ?

2. Whether the plaintiff is entitled for perpetual injunction as prayed for ?

3. To what relief ?”

9. The 1st plaintiff, after filing chief-examination affidavit as PW.1, died before his cross-examination. So his evidence was eschewed. The appellants were then impleaded and they examined PWs.2 and 3, and marked Exs.A.1 to A3. The respondent examined himself as DW.1 and two of the elders, who were there at the time of execution of Ex.B.1 as his witnesses, and he marked Exs.B.1 to B.6.

10. By judgment and decree dt.29.07.2011, the Trial Court dismissed the suit. After going through the evidence of the parties, it opined that even according to PW.2 (2nd plaintiff / 2nd appellant), for 18 to 20 years, prior to the filing of the suit, relationship was cordial between the parties and that the respondent was using water drawn

from the bore-well in the land of 1st plaintiff for cultivating his coconut garden. Though she denied Ex.B.1, the Trial Court noted that she stated that she cannot identify her husband's signature and that she did not know his signature. From this, the Trial Court opined she had knowledge of the signatures on Ex.B.1 but did not allow the counsel for the respondent to show the signatures of her husband on Ex.B.1 and this indicates that she wanted to avoid the same. It also took note of the fact that PW.3 admitted that for the previous 20 years, the 2nd appellant had court experience. It compared the disputed signature of the 1st plaintiff on Ex.B.1, which is the admitted signature available in the chief-examination affidavit and in the plaint, and came to the conclusion that the deceased-1st plaintiff did execute Ex.B.1, and that it was also acted upon. It therefore concluded that Ex.B.1 is binding on all the appellants and since the respondent has a joint right in the bore-well as per Ex.B.1, and since the appellants had not approached the Court with clean hands, they are entitled to the relief of injunction.

11. Challenging the same, the appellants herein filed A.S.No.306 of 2011 before the IX Additional District Judge, West Godavari, at Kovvur.

12. By judgment and decree dt.04.07.2016, the said Appeal was also dismissed with costs. It took note of the fact that though the electricity connection for the bore-well is in the name of the 1st plaintiff, Ex.B.2 electricity charge payment receipts for the said

service connection were in the possession of respondent, and this was not explained by the appellants. It also held that under Ex.B.1 no rights were created and that only joint rights were accepted and the period to draw water from the bore-well was worked out between the parties and so it did not require registration and stamp duty. It held that since the 1st plaintiff had died before he could be cross-examined his evidence was eschewed, and since PW.2 stated that she cannot identify the signature of her husband-1st plaintiff, the respondent could not have confronted PW.2 with the signature appearing on Ex.B.1. It relied on the evidence of PWs.2 and 3 that Ex.B.1 was executed by the 1st plaintiff and the respondent and confirmed the judgment of the Trial Court.

13. Though the counsel for appellants sought to contend that the findings of both the Courts are perverse by taking me through the depositions of all the witnesses, I am of the opinion that the concurrent findings of facts of the Courts below are based on assessment of evidence, and cannot be said to be perverse.

14. While the right of the appellants in the property 'ABCD' is not in dispute, from the admission of the 2nd appellant in her evidence that her husband-1st plaintiff used to supply water to the respondent to his coconut garden free of cost, it is clear that the relationship between the parties was to some extent cordial, prior to suit since the respondent was none other than the brother of the 2nd appellant. It may be that PW.2 denied Ex.B.1, but she admittedly had experience

in Court litigation of more than 20 years as stated by her sister-PW.3. So, it is difficult to believe that she does not know how her husband signed the papers and that she cannot identify her husband's signature. Obviously, this stand was taken by the 2nd appellant to avoid being confronted with the signature appearing on Ex.B.1. Also, as rightly held by the lower appellate court, Ex.B.1 merely recognizes the joint right of both parties in using the bore-well together and did not create any right in the respondent for the first time, and therefore, it did not require registration and stamp duty.

15. Therefore, the concurrent findings arrived at by both the Courts below cannot be said to be perverse warranting interference by this Court under Section 100 C.P.C.

16. Accordingly, the Second Appeal fails and it is dismissed at the stage of admission. No order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-02-2017
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