

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

S.A.No.1231 of 2017

JUDGMENT:

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This second appeal is directed against the judgment and decree in A.S.No.12 of 2015 on the file of the VII Additional District Judge, Gudur dated 28.04.2017, confirming the judgment and decree in O.S.No.328 of 2006 filed before the Junior Civil Judge, Sullurpet.

3. The appellant herein is the plaintiff and the respondents are defendants in the suit. The suit was filed for permanent injunction in respect of the land to an extent of 1 acre 66 cents, situated in Pellakuru village and mandal, Nellore district.

4. The case of the plaintiff is that the suit schedule property originally belonged to late Korrapati Venkata Subba Naidu and after his death, it was inherited by his son Korrapati Seshama Naidu, who settled in Srikalahasthi. The plaintiff purchased the suit schedule property from the said Seshama Naidu under an agreement of sale on 26.04.2005 and, subsequently, the registered sale deed was executed on 28.12.2005. Thus, he has been in possession and enjoyment of the suit schedule property by raising crops and paying cist to the Government.

5. The case of the defendants is that, the plaintiff is the Sarpanch of the village and he never did any agricultural activity. He is a full time Politician, having high political clout. The suit schedule land originally belonged to one Korrapati Venkata Subba Naidu and during his life time, he sold the same to Sali Rajarathnam under a registered sale deed dated 27.06.1983. During the life time of Venkata Subba Naidu, the father of the 4th defendant purchased the property in the name of the 4th defendant with the knowledge of both Venkata Subba Naidu and also the plaintiff in the year 1999 from Sali Raja Rathnam and, that, they have been in continuous possession of the property since then. The plaintiff is the neighbouring land owner and had an evil eye over the suit schedule property. The defendants belong to lower strata of the society. The plaintiff initially approached the 4th defendant with a proposal to purchase the suit schedule property and when he refused, the original suit was filed by creating some documents. There were criminal cases also with regard to the property between the plaintiff and the defendants.

6. The plaintiff filed exhibits A1 to A8, besides examining PW1 to PW3, whereas on behalf of the defendants side, DWs1 to 5 were examined and exhibits B1 to B39 were marked. The Trial Court framed the following issues:

- “1. Whether the plaintiff is in possession and enjoyment of the plaint schedule property?
2. If so, whether it is lawful?

3. Whether there is cause of action to file the suit?

4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

5. To what relief?

7. The Trial Court on the basis of oral and documentary evidence, held all the points against the plaintiff and dismissed the suit with costs by its judgment and decree dated 15.12.2014. Against the same, the plaintiff preferred A.S.No.12 of 2015 before the Court of VII Additional District Judge, Gudur, and he confirmed the judgment and decree of the trial court.

8. This Court carefully considered the judgment and decree of the lower appellate court dated 28.04.2017. The lower appellate court framed the following issues:

“1. Whether the appellant/plaintiff is entitled for permanent injunction as prayed for? and

2. Whether the trial court judgment is true, valid and legal?

3. To what relief?”

9. While dealing with the issues No.1 and 2, the lower appellate court in paras 13 and 14, after considering the oral evidence of the plaintiff in one sentence, dealt with the oral evidence of defendants in para 15 and without discussing the evidence and drawing conclusions from the said evidence, the lower appellate court recorded the findings in para 16, which is not a satisfactory disposal of the appeal by the lower

appellate court. The lower appellate court should have independently examined the evidence on record and come to a finding based on the evidence adduced. But the findings were recorded, without discussing about the evidence. In view of the same, this Court is constrained to set aside the judgment and decree in A.S.No.12 of 2015 dated 28.04.2017 and remands the matter to the lower appellate court for fresh disposal according to law, on the basis of evidence already available on record, within a period of 3 months from the date of receipt of this order. In the interests of justice, it is observed that both the parties shall cooperate for disposal of the case.

10. The 2nd appeal is accordingly, allowed, at the stage of admission. With regard to the possession, status quo of the parties who are in possession as on today, shall be maintained, till the disposal of the appeal.

11. As a sequel, miscellaneous petitions, pending if any, shall stand disposed of as infructuous.

(A.Ramalingeswara Rao,J)

Date: 08.12.2017

msb

