

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.370 OF 2000

JUDGMENT:

This appeal is filed by the appellant-defendant under Section 100 of Civil Procedure Code, 1908, aggrieved by the judgment and decree, dated 11.02.2000, in A.S.No.11 of 1997, passed by the District Judge, Adilabad, in confirming the judgment and decree, dated 04.04.1997 in O.S.No.49 of 1996 passed by the District Munsif, Adilabad, wherein the suit filed for permanent injunction was decreed.

2. Heard both sides and perused the record.

3. Learned counsel for the appellant-defendant would submit that there is existing cart track in Survey No.42 belonging to the plaintiff and the same had been shifted by the plaintiff. There is admission to that effect in the cross-examination of plaintiff-P.W.1. The plaintiff suppressed the material facts and filed the suit. A person, who approaches the Court with unclean hands for an equitable relief, is not entitled for perpetual injunction as granted by the original Court and confirmed by the appellate Court and ultimately, prayed to set aside the same.

4. On the other hand, learned counsel for the respondent-plaintiff would contend that both the Courts below have gone through the legal and factual aspects and decreed the suit in favour of the plaintiff for grant of perpetual injunction in respect of the suit land covered in Sy.No.42, an extent of Ac.3.38 guntas situated at Sirsanna village of Bela mandal. There is no substantial question of law and ultimately, prayed to dismiss the appeal.

5. In view of submissions made by both parties, the point for determination is whether the judgments and decrees passed by the trial Court as well as appellate Court are liable to be set aside?

6. While dealing with this matter, this appeal was admitted by this Court on 04.07.2000 without framing substantial question of law. The suit was filed for perpetual injunction, which is an equitable relief. A person in possession of the suit schedule property is entitled for perpetual injunction subject to proving his possession as on the date of filing the suit. In the instant case, there is no dispute with regard to the ownership and possession of the plaintiff over the suit schedule agricultural land. The only dispute is with regard to cart track in between the suit land, which was being used for ingress and egress. Though the defendant filed Ex.B1-xerox copy of village plan to show that there is a cart track passing through the southern portion of Govinda Reddy's land in Survey No.54, he did not file any document to show that there is a cart track in Survey No.42. Further, the said Govinda Reddy was not examined to show the existence of path way as contended by the defendant in Survey No.54. Both the Courts below have rightly dealt with regard to non-existence of cart track in Survey No.42 belonging to the plaintiff and recorded factual finding in favour of the plaintiff and granted the relief of perpetual injunction. The findings of the Courts below are not perverse and they are based on record. Only factual aspect with regard to dispute over the suit land is raised in the second appeal. It does not survive for consideration. Further, the plaintiff did not suppress the material facts. There are no grounds to interfere with the

judgments of both the Courts below. Therefore, the second appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the Second Appeal is dismissed confirming the judgment and decree, dated 11.02.2000, in A.S.No.11 of 1997, passed by the District Judge, Adilabad. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 27-06-2018

Hsd

