

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO.549 OF 2018

JUDGMENT:

The plaintiff in O.S.No.300 of 2012 filed the present second appeal under Section 100 of Civil Procedure Code (for short "C.P.C"), challenging the decree and judgment passed in A.S.No.43 of 2016 by the IV Additional District Judge, Kadapa, reversing the judgment of III Additional Junior Civil Judge, Kadapa in O.S.No.300 of 2012.

The appellant herein is the unsuccessful plaintiff before the appellate Court. The plaintiff filed the suit for grant of permanent injunction restraining the defendant, his men, agents, associates and the persons claiming right or interest through him from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property alleging that the suit schedule property is described as joint lane measuring East-West 3 ½ feet, North – South 57 ½ feet situated at B.K.M.Street, Kadapa Municipal Corporation, Kadapa city within the boundaries mentioned in the schedule annexed to the plaint.

The plaintiff also asserted in the plaint that ADEF shown in the plaint plan is the joint lane and the specific assertion in paragraph No.3 of the plaint is as follows:

“Since then the plaintiff being the only son of the plaintiff's father had been in peaceful possession and enjoyment of the same including the suit schedule joint land without anybody's objection.”

In the same paragraph, in last four lines, the plaintiff further asserted that ADEF is joint lane. Thus, the undisputed fact is that

the schedule property is a joint lane, hence, the plaintiff and the defendant are entitled to enjoy the right in the lane.

It is also asserted in paragraph No.6 of the plaint that the family of the plaintiff is Muslim by religion, his family members are observing “Gosha” and if the defendant is allowed to succeed in his attempt, the privacy of the family members of the plaintiff will be affected.

But this will have no bearing on the issue to claim perpetual injunction against the defendant since the plaintiff himself admitted that the disputed property is a joint lane. However, the dispute is with regard to right in joint lane and the same was disputed by the defendant by filing written statement, which needs no consideration at this stage.

As the pleadings in the plaint disclosed that the suit schedule property is joint lane, both the plaintiff and defendant are entitled to enjoy the same without any obstruction by the other and the question of plaintiff's continuous possession does not arise and in such case, the defendant cannot be restrained from interfering with enjoyment of the joint lane by the plaintiff since the defendant is also entitled to enjoy the right in the joint lane.

The Apex Court in “**Sakhahari Parwatrao Karahale v. Bhimashankar Parwatrao Karahale**¹” held that grant of permanent injunction in favour of one co-owner against other co-owner is inconceivable.

In view of the law declared by the Apex Court in the judgment (referred supra), I find no substantial question of law to be decided in the present appeal as the second appeal is confined

¹ (2002) 9 SCC 608

to substantial question of law. Consequently, the present second appeal is liable to be dismissed

In the result, the second appeal is dismissed at the stage of admission. However, liberty is given to the plaintiff to file any further proceedings with fresh cause of action.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

31.08.2018
Ksp

