

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.608 OF 2000

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 17.09.1996 passed in A.S. No.82 of 1991 on the file of the II Additional District Judge, Nellore (for short, 'appellate court'), whereby and whereunder, the dismissal of O.S. No.338 of 1987, *vide* the judgment and decree dated 10.06.1991, on the file of the I Additional District Munsif, Nellore (for short, 'the trial court'), was confirmed.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court in the original suit.

3. Heard the learned counsel for the appellant-plaintiff and perused the material on record. Though, this appeal is posted to today under the caption 'For Orders', there is no representation on behalf of the respondent-defendant.

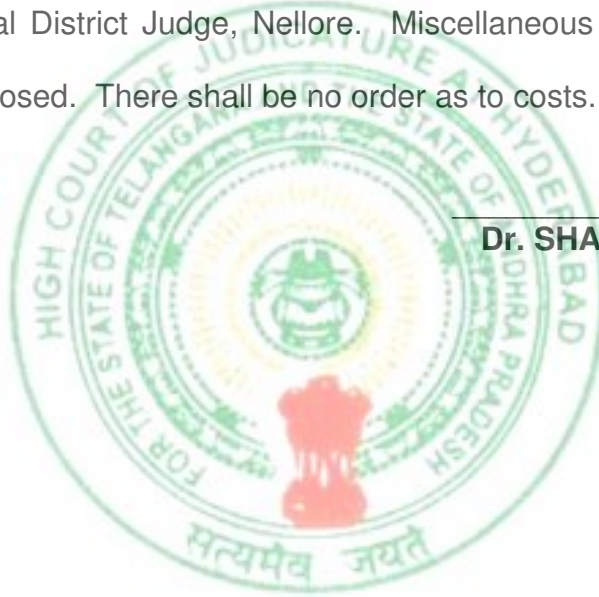
4. Learned counsel for the appellant-plaintiff would submit that both the Courts below held that the suit is not maintainable and the issues involved in this suit are required to be dealt by Land Grabbing Court; the defendant had encroached one foot of open space left by the plaintiff; the trial Court would have granted decree for declaration of title and mandatory injunction directing the defendant to remove the staircase constructed by the defendant; and ultimately, prayed to allow the appeal as prayed for.

4. Both the parties have claimed title to the disputed property and placed oral and documentary evidence in support of their contentions. There is no evidence on factual aspects that the plaintiff left one foot open space around his house, including towards the house of the defendant. No document is placed to substantiate the same. Both the Courts below have dealt the issues

elaborately and recorded findings to that effect. Concurrent findings of both the Courts below on factual aspects of the subject matter of the suit are not perverse. It is settled law that in exercise of power under Section 100 C.P.C., this Court cannot interfere with the finding of fact recorded by both the Courts below and the finding recorded with regard to the factual aspects of the case are final. There is no perversity. Under these circumstances, there is nothing to interfere with the findings of both the Courts below and the appeal is liable to be dismissed.

5. Accordingly, this Second Appeal is dismissed confirming the judgment and decree dated 17.09.1996 passed in A.S. No.82 of 1991 on the file of the II Additional District Judge, Nellore. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 21.06.2018
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Dr. SHAMEEM AKTHER, J