

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.304 of 2000

JUDGMENT:

This appeal is filed by the plaintiffs, under Section 100 CPC, assailing the judgment and decree dated 10.12.1999 passed in A.S.No.5 of 1998 on the file of Senior Civil Judge Court, at Siddipet, wherein and whereby the decree and judgment dated 31.01.1998 passed in O.S.No.142 of 1992 on the file of Junior Civil Judge Court, Siddipet, granting mandatory injunction directing the defendants to remove the constructions made at M-N and X-Y of plaint plan and consequential perpetual injunction, was reversed.

2. Heard the learned counsel appearing for both the parties and perused the record.

3. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

4. The facts leading to filing of the second appeal are briefly as follows: It is the case of the plaintiffs that they are residents of Srinagar Colony, Siddipet town. Vaddepalli Balaram sold plots within the vicinity to different persons including the plaintiffs. There is a public road in East West direction in front of the houses of plaintiffs. After passing the house of third plaintiff, the road went in little slant towards north. The said road was formed about a decade ago and is being used as a public way. The defendant almost completed the construction of house at 'A' point as shown in the plaint plan. The defendant obtained a bogus sale deed including the road. The defendant in collusion with the Executive

Officer, Lingareddypally Gram Panchayat, had obtained permission for construction of the house. The defendant illegally blocked the public road over night about a week ago. The defendant also constructed a wall across the road at X-Y point as shown in the plaint sketch. Hence, the plaintiffs are constrained to file a suit for mandatory and perpetual injunction.

5. The defendant filed the written statement denying all the averments made in the plaint *inter alia* contending that the plaintiffs are not entitled to file the suit without following the procedure as contemplated under Section 91 CPC. There is no existing road at M-N point as shown in the plaint schedule. The internal road, which is situated on the south of the defendant's plot terminate the southern boundary of the defendant. The vacant site of Smt.Kamamma is on the north side of the defendant's plot. The north end of the plot of Kamamma is the end point of internal road. There is a road in front of Shiva Shankarayya's rice mill, which leads to Ensanpally village. Hence, the suit is liable to be dismissed.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled for mandatory injunction directing the defendant for removal of the construction made at the points M-N and X-Y?
2. Whether the plaintiffs are entitled for permanent injunction against the defendant as prayed for?
3. Whether the suit is maintainable without seeking a declaration?
4. To what relief?

7. Before the trial Court, on behalf of the plaintiffs, P.Ws.1 to 4 were examined and Exs.A1 to A7 were marked. On behalf of the defendant, D.Ws.1 to 5 were examined and Exs.B1 to B7 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court decreed the suit as prayed for. Feeling aggrieved by the judgment and decree of the trial Court, the defendant preferred A.S.No.5 of 1998 on the file of Senior Civil Judge Court, Siddipet. The learned Senior Civil Judge after reappraising the oral and documentary evidence available on record, allowed the appeal. Hence, the present second appeal.

9. The substantial questions of law urged by the learned counsel for the appellants are as follows:

1. Whether Section 91 CPC is applicable to the facts of the case on hand?
2. Whether mere suit for mandatory and perpetual injunction is maintainable without seeking declaration?

10. The following admitted facts can be culled out from the pleadings. One Vaddepalli Balaram owned vacant land in Survey No.1597 of Lingareddypally Gram Panchayat, Siddipet. The said Balaram converted the vacant land into plots and sold the same to different persons. One Gundu Ramaswamy purchased the plots from Balaram under Ex.A2 registered sale deed dated 24.07.1980. The plaintiffs purchased plots from Gundu Ramaswamy under Exs.A3 to A5 sale deeds dated 03.03.1988, 15.02.1988 and 27.01.1992 respectively. One K.Rajesham purchased plot from Vaddepalli Balaram under Ex.B2 sale deed dated 10.02.1981 and sold the said plot to the defendant under Ex.B1 registered sale

deed dated 26.12.1991. The defendant after obtaining permission from Lingareddypally Gram Panchayat, constructed the house as shown as 'A' in the plaint plan.

11. The entire controversy revolves around whether the defendant constructed compound wall at M-N point as shown in the plaint plan without any right by occupying the road.

12. In order to succeed the suit, the plaintiffs have to establish the existence of road at point M-N as shown in the plaint plan and the same is being used by the villagers as a public road.

13. The record reveals that the defendant submitted Ex.B4 plan to Lingareddypally Gram Panchayat. A perusal of Ex.B5 reveals that the Gram Panchayat of Lingareddypally passed a resolution permitting the defendant to make constructions as per approved plan. Exs.B6 and B7 are the receipts. D.W.2 is the competent person to certain extent to speak about the lay out and other relevant aspects.

14. As seen from the testimony of D.W.2, he has not obtained lay out in respect of Survey No.1597. The testimony of D.W.2 reveals that simply he sold the property to different persons without approved lay out. As per the testimony of P.Ws.2 to 4, there is a slant road towards north of defendant house as shown in the plaint plan. The plaintiffs have taken a specific plea in the plaint that the defendant had obtained permission illegally in connivance with the Gram Panchayat officials. The plaintiffs having admitted about obtaining of necessary permission from the Gram Panchayat by the defendant for construction of house and compound wall,

ought to have examined the Panchayat officials to establish –
(a) the existing road is beyond the houses of defendant and
plaintiffs towards north; and (b) the defendant obtained permission
by playing fraud.

15. For the reasons best known, the plaintiffs did not choose to
examine the Panchayat officials to establish the above said two
aspects. In the absence of positive evidence, it may not be possible
for the Court to arrive at a conclusion that the defendant obtained
Ex.B4 approval by playing fraud. Unless and until Exs.B4 and B5
are set aside by a competent authority, the Court can place
reliance on it. The trial Court has not given any specific finding
with regard to the existence of road. This Court is unable to
understand how the trial Court granted a mandatory injunction
and perpetual injunction without giving a specific finding about the
existence of public road as pleaded by the plaintiffs.

16. The predominant contentions of the learned counsel for the
defendant is that the suit as framed is not maintainable in view of
Section 91 CPC. The contention of the learned counsel for the
plaintiffs is that Section 91 CPC enables any individual to file a
suit without seeking the leave of the Court.

17. To substantiate the argument, learned counsel for the
plaintiffs has drawn the attention of this Court to the following
decisions:

1.RAMABRAHMA SASTRI AND OTHERS v. LAKSHMINARASIMHAM¹, wherein it was held at Para No.6 as follows:

“I am also of the opinion that the lane is not a public highway, but serves as a passage only for the residents of the few houses opening into the lane, ‘C-C1’, and the obstruction caused by the defendants is not a public nuisance within the meaning of S.91, Civil P.C. See – ‘Mt.Ramkali v. Munnala’, ILR (1939) All 754 (AIR 1939 All 586) (N). – ‘Dalgobinda v. Khatu Mahatha’, AIR 1948 Pat 183(O), - ‘Dashrathi Mahto v.Naraian Mahto’, AIR 1941 Pat 249 (P).”

18. As rightly pointed out by the learned counsel for the defendant that some amendments were made to Section 91 CPC in the year 1976. Therefore, this decision is not applicable to the facts of the case.

2.CHEPANA PEDA APPALASWAMY v. CHEPANA APPALANAIDU AND OTHERS².

19. As per the principle enunciated in the case cited supra, a mere suit for bare injunction without a prayer for declaration of title is maintainable.

20. Learned counsel for the defendant has drawn the attention of this Court to the following decisions.

¹ AIR 1957 Andhra Pradesh 44

² 1996(2) ALT 389

**1.NIMMAGADDA RAMABRAHMA SASTRI (DIED) AND
OTHERS v. NIMMAGADDA LAKSHMINARASIMHAM³.**

21. As per the principle enunciated in the case cited supra, a road or a street whose user is limited to the inhabitants of a particular village or people who visit them on business or otherwise is not a public road.

**2.CHAVALI RANGA REDDY v. CHAVALI SESA REDDY
AND OTHERS⁴** wherein it was held at Para 9 and relevant portion of Para 10 reads as follows:

“9. After amendment as above, the position is as follows: A suit for declaration and injunction or other appropriate relief can be instituted in the case of (i) a public nuisance; (ii) other wrongful act affecting or likely to affect the public. Such a suit can be instituted by two categories of persons, namely, the Advocate General of the State or, two or more persons even if no special damage is caused.

10. In this case, there are two plaintiffs, and therefore, there is compliance with Section 91(1)(b) of CPC. Even otherwise sub-section (2) of Section 91 of CPC does not take away the general right of every person to seek redressal in a civil Court if any right is affected. The plaintiffs' case before the trial Court was that they were in possession of land admeasuring Ac.0.12, that the land in Survey Nos.4/2B and 4/3B on the southern side of the land was being enjoyed as a road by all the villagers of Kuppuruvaripalli. Permission to fourth defendant for digging a channel would certainly affect their

³ 1956 ALT 492

⁴ 2007(5) ALD 552

right to use the suit schedule property. Therefore, a suit under Section 91(2) of CPC is certainly maintainable even if a suit under Section 91(1)(b) of CPC is not maintainable.”

22. As per the principle enunciated in the case cited supra, in order to claim right over the road, one has to seek leave of the Court as contemplated under Section 91(b) CPC.

23. As per the averments made in the plaint, the road in question is a public road. Admittedly, the plaintiffs have not obtained the permission of the Court before institution of the suit as contemplated under Section 91(1)(b). The plaintiffs have not followed the procedure as contemplated under Section 91(b) CPC. The first appellate Court gave a specific finding that the suit is not maintainable for non-compliance of Clause (1)(b) of Section 91 CPC.

24. Having regard to the facts and circumstances of the case and also the principle enunciated in the case Chavali Ranga Reddy's case (stated 4 supra), I am of the considered view that the suit is not maintainable for non-compliance of Section 91 CPC.

25. The plaintiffs have not established their title or right over the suit schedule property. The plaintiffs ought to have established their right or title over the alleged passage. As observed earlier, the plaintiffs failed to prove the existence of road at point M-N and X-Y as shown in the plaint plan. In the absence of existence of road, the question of using the same by the plaintiffs is something imaginary. The plaintiffs miserably failed to prove their right or title over the disputed passage. In the absence of establishment of

right, the plaintiffs are not entitled to seek the relief of mandatory and perpetual injunction. The plaintiffs ought to have filed a suit for declaration and consequential reliefs. Mere suit for bare injunction is not maintainable in view of peculiar facts and circumstances of the case. The findings recorded by the trial Court are not based on evidence much less legally admissible evidence. The findings recorded by the trial Court are not sustainable and liable to be set aside.

26. The first appellate Court considered the material available on record in right perspective and arrived at a conclusion that the plaintiffs are not entitled for the relief of mandatory injunction and perpetual injunction. The findings recorded by the appellate Court are based on evidence much less legally admissible evidence. The first appellate Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the first appellate Court.

27. Having regard to the facts and circumstances of the case, there is no question of law much less substantial question of law involved in this appeal. Hence, the second appeal is liable to be dismissed.

28. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

09.11.2018

Rns