

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Second Appeal No.572 of 2017

Judgment:

This Second Appeal is filed against judgment and decree dated 20.03.2006 in A.S.No.36 of 2002, wherein the lower appellate Court reversed the judgment and decree in O.S.No.218 of 1996, which was filed by the appellant herein for declaration and also for mandatory injunction against the respondents herein.

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

Learned counsel for the appellant submits that though the trial Court decreed the suit, the lower appellate Court reversed the same on the ground that the declaratory relief is purely discretionary in nature.

In para 30 of the judgment in A.S.No.36 of 2002, it is observed as follows:

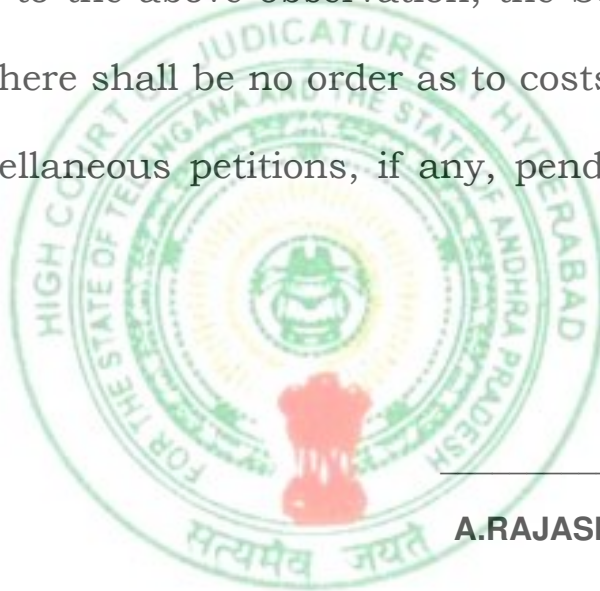
“30. Section 34 of Specific Relief Act deals with declaratory decrees. Now plaintiff filed suit for declaration that defendant has no right to make any construction in the red marked portion of the plaint plan. The declaratory relief is purely discretionary. However, such discretion cannot be exercised arbitrarily, but it shall be in accordance with well established principles of law. Therefore considering the evidence on record plaintiff cannot seek declaration as prayed against defendant. The lower Court erroneously decided this issue in favour of plaintiff. On the other hand, this issue is held in favour of deceased defendant and against the plaintiff.”

Admittedly, petitioner is not the owner of the passage through which he is seeking right of way, as such, this Court does not find any error in the judgment of the lower appellate Court by

holding so. The appellant always has a remedy of approaching the concerned Grampanchayat/civic authority for removal of the public encroachment, as such, he can agitate the same before the appropriate forum.

In view of the same, I do not see any illegality or irregularity in the judgment and decree passed by the lower appellate Court much less the substantial question of law in this appeal, warranting interference by exercising power under Section 100 of CPC.

Subject to the above observation, the Second Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.



A.RAJASHEKER REDDY, J

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kvs

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