

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

SECOND APPEAL Nos.447 & 1158 OF 2017

COMMON JUDGMENT:

Second Appeal No.447 of 2017, under Section 100 of the Code of Civil Procedure, 1908, (for short, "C.P.C.") is filed by defendant Nos.1 to 3 in O.S.No.522 of 2002 challenging the judgment and decree, dated 29.12.2016, passed in A.S.No.10 of 2010 on the file of the Principal District Judge, Chittoor, in confirming the judgment and decree, dated 23.12.2009, in O.S.No.522 of 2002 on the file of the I Additional Junior Civil Judge, Chittoor.

2. Second Appeal No.1158 of 2017, under Section 100 C.P.C. is filed by the plaintiff in O.S.No.490 of 2002 challenging the judgment and decree, dated 29.12.2016, passed in A.S.No.9 of 2010 on the file of the Principal District Judge, Chittoor, in confirming the judgment and decree, dated 23.12.2009, in O.S.No.490 of 2002 on the file of the I Additional Junior Civil Judge, Chittoor.

3. Aggrieved by the common judgment, dated 23.12.2009, in O.S.No.490 of 2002 and O.S.No.522 of 2002 on the file of I Additional Junior Civil Judge, Chittoor, whereby the suit in O.S.No.490 of 2002 was dismissed and O.S.No.522 of 2002 was decreed, the unsuccessful plaintiff in O.S.No.490 of 2002, who is defendant No.2 in the other suit, along with his wife and son, who are defendant Nos.1 and 3 in it and who suffered decree, filed A.S.Nos.9 and 10 of 2010.

4. Hereinafter, the parties are referred to as arrayed in O.S.No.490 of 2002 for convenience sake and also in view of the fact that both suits were clubbed and common evidence was recorded in O.S.No.490 of 2002.

5. The plaintiff in O.S.No.490 of 2002 by name M.Chengalrayan filed the said suit for permanent injunction restraining the defendant by name Smt V.Saraswathi and her men and agents from interfering with his peaceful possession and enjoyment of plaint "A" schedule property described as "DEHIM1D" in rough sketch which is shown as part of "B" schedule by describing the said "B" schedule property as "ABCDEFGHijklma" within the specified boundaries.

6. The contentions of the plaintiff, in brief, are as follows:-

Plaintiff's father late M.Narayanaswamy Naidu purchased the plaint "B" schedule mentioned property under a registered sale deed, dated 04.02.1944, for true and valid consideration and ever since he continued in possession and enjoyment of the same. He executed an unregistered will, dated 20.02.1990, bequeathing the plaint "B" schedule property to the plaintiff and subsequently, died on 21.03.1990. Since his death, plaintiff has been in possession and enjoyment of the same. Plaintiff, under a registered settlement deed, dated 10.04.2002, gave the house site to his wife by name Smt. Thulasi, which is described as "IJKLMM1" in the plaint "B" schedule. There were houses in plaint "B" schedule and there is a residential house shown as "EFGH" in the rough sketch. The plaintiff along with his family members has been residing in the

said house which is partly covered with RCC roof and partly with Madras terraced roof. Plaintiff wanted to construct a terraced house in the vacant site shown as “DEHIMM1D”. This is shown in plaint “A” schedule which is part of plaint “B” schedule property. In the plaint “A” schedule, there was very old thatched house aged more than 80 years and it became dilapidated and the plaintiff removed it and wanted to construct a terraced house in plaint “A” schedule property. There is a wall along “HIJ”, which is constructed by removing the stone slabbed wall. He got a plan approved by the Chittoor Municipality for construction of a terraced house in plaint “A” schedule mentioned property.

(i) The defendant has a house site to the south of plaint “A” schedule property shown as “GG1G2G3J” and the said site of defendant is towards eastern side of Kichidisha Makan’s lane. On 12.06.2002, at about 8.00 P.M., the defendant attempted to trespass into the plaint “A” schedule property and also attempted to demolish the wall “HIJ”, but the plaintiff thwarted the same with the help of neighbours. Plaintiff has gathered all the building materials such as white cut-stones, bricks, steel, cement etc., for construction of terraced house in plaint “A” schedule property. Since defendant has been threatening, he is obliged to file the suit for permanent injunction.

7. This was resisted by the defendant by filing written statement denying the contentions of the plaintiff and contending, *inter alia*, as follows:-

The alleged will, dated 20.02.1990, and alleged settlement deed, dated 10.04.2002, are created before filing of the suit with an intention to knock away the “common sandhu dova”. In fact, the wife of plaintiff by name Smt. Thulasamma is residing in D.No.4-1738, Durga Nagar Colony, Greampet, Chittoor since long time and plaintiff is residing at Tirupati and plaintiff and his wife have never been in possession and enjoyment of the properties covered by the said documents.

(i) There is no wall along with “HIJ” and plaintiff has not constructed any wall by removing the stone slabbed wall as alleged. The plaintiff and his family members made an attempt to encroach the plaint schedule properties about 3 months back and illegally laid foundation in the suit property and immediately, the defendant filed objections before the Chittoor Municipality not to approve any plan with regard to the alleged property and resisted the illegal acts of the plaintiff's family members and making further construction of walls in the suit property i.e., common passage. Hence, misunderstandings arose between them and therefore, plaintiff filed the suit by suppressing all physical features and obtained *ex parte* interim injunction. Under the guise of said *ex parte* interim injunction, plaintiff and his family members with the help of coolies, highhandedly and illegally constructed pakka brick walls in the suit schedule property on 20.06.2002 by closing “common sandhu dova” by damaging the drainage channel by force which is in existence since times immemorial. Therefore, the defendant along with her husband filed O.S.No.522 of 2002 originally in the III Additional Junior Civil Judge, Chittoor, against

the plaintiff and his family members for mandatory injunction and also for permanent injunction and the said Court was pleased to grant temporary mandatory injunction directing the plaintiff and his family members to remove the illegal encroachments in a portion of the suit property. An Advocate Commissioner was appointed in the said suit and the Commissioner visited the suit locality and submitted his report.

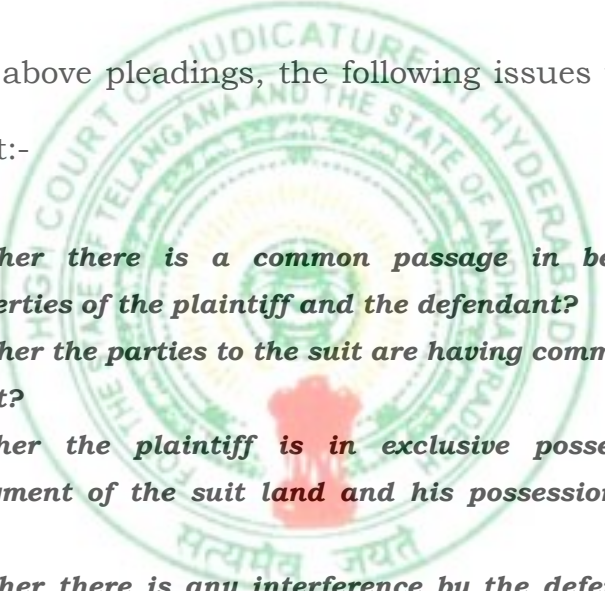
(ii) The Municipal Authorities, without any enquiry and without verifying the documents, approved the plan *vide* proceedings No.BA.No.63/2002/G. As per the said plan, there is no approval for making construction in the entire suit schedule property, as in the alleged approved plan on the eastern side, private site is shown. The plaintiff misrepresented before the Municipal Authorities showing the common passage as a private site and illegally constructed a brick wall in the common passage with an intention to obstruct defendant's family to reach the defendant's plot, which is situated on the southern side of the suit schedule property. The defendant also filed a rough sketch mentioning all the physical features. The allegations that on 12.06.2002, at about 8:00 P.M., the defendant attempted to trespass into the plaint "A" schedule property and attempted to demolish the wall "NIJ" etc., are false. The defendant is working as a Superintendent in the office of D.I.E.T., Rayachoti and attended her duties on 12.06.2002 and the Principal, D.I.E.T., Rayachoti has also issued a certificate to that effect and as such, the alleged trespass on that day is false.

8. There is old common passage existed in the suit schedule property on the western side of defendant's residential house and the defendant had purchased vacant house site under a registered sale deed, dated 29.01.1999, from Varadarajulu and others, which is situated on the southern side of common passage. The existence of common passage is shown in the registered sale deed. The ancestress of the defendant's husband constructed a tiled house on the eastern side of the above common passage and when the disputes arose in that regard, the defendant's father-in-law and his brother jointly purchased the property under two registered sale deeds, dated 06.12.1957 and 07.12.1957, and in the said sale deeds also, the common passage is shown. Due to illegal constructions of the plaintiff, there is no way to reach the defendant's plot and it is not possible for her to white wash on western side of residential house, and that air and ventilation is obstructed through the said wall and parapet wall is also damaged since the plaintiff had highhandedly projected the slab over the parapet walls without any right. The above said common passage is in existence since times immemorial, which is running from north to south. There is also old drainage channel underneath the common passage from south to north and the defendant has no alternative drainage channel. The defendant, her family members, their vendors and ancestors of her husband have been using the above said common passage since times immemorial. The defendant's father-in-law has also obtained municipal plan on 05.12.1940 for construction of residential house on the eastern side of the common passage and the municipal authorities have also shown the above said common passage as a way in the said

plan. The plaintiff, his father and wife have no manner of right or title over the common passage. The alleged will and settlement deed, which are created before filing of the suit, are not binding on the defendant.

(i) The suit is bad for non-joinder of the Commissioner, Chittoor Municipality and also the wife of plaintiff. Plaintiff has not come to the Court with clean hands and he is not entitled to any reliefs. There are no merits in the suit. The suit is liable to be dismissed with costs.

9. On the above pleadings, the following issues were settled in the trial Court:-

- 
- “1. Whether there is a common passage in between the properties of the plaintiff and the defendant?***
 - 2. Whether the parties to the suit are having common right to use it?***
 - 3. Whether the plaintiff is in exclusive possession and enjoyment of the suit land and his possession is lawful one?***
 - 4. Whether there is any interference by the defendant with the plaintiff's peaceful possession and enjoyment of the suit land, if it is so, whether such interference is justifiable or not?***
 - 5. Whether the plaintiff is entitled for the relief as prayed for?***
 - 6. To what relief?”***

10. **O.S.No.522 of 2002:-**

The sole defendant in O.S.No.490 of 2002 along with her husband Jayaram filed the present suit in O.S.No.522 of 2002 as plaintiff Nos.1 and 2 not only against the sole plaintiff in O.S.No.490 of 2002 but also against his wife and son describing them as defendant Nos.1 to 3 and the Commissioner, Chittoor

Municipality as defendant No.4, for mandatory injunction directing defendant Nos.1 to 4 to remove the illegal constructions laid in the plaint schedule mentioned property and for permanent injunction restraining them, their agents and servants from in any way interfering with their right and enjoyment over the suit property and for costs, with the following contentions:-

Originally, the ancestors of plaintiff No.1 Jayaram had constructed two Mangalore tiled houses on the eastern side of the suit property and they were in possession and enjoyment of the same. Disputes arose with regard to the above said house property between the father of plaintiff No.1 and one Paradesi Unnisa Begam and others and therefore, father of plaintiff No.1 and his junior paternal uncle purchased the right of Paradesi Unnisa Begam and others under a registered sale deed, dated 06.12.1957, and another sale deed, dated 07.12.1957, from S.M.Safi Saheb for valid consideration. The father of plaintiff No.1 and his brother have divided their joint family properties and in the said partition, “ABCDEF” portion as shown in the rough sketch appended to the plaint was allotted to the father of plaintiff No.1 and east of “AB” portion house was allotted to the junior paternal uncle long time back. Thereafter, father of plaintiff No.1 and plaintiff’s family have been residing in “ABCDEF” portion i.e., on the eastern side of the plaint schedule mentioned property. The above two registered sale deeds also clearly shows the western boundary as “sandhu dova” i.e., suit property which is shown as “FEDJIHG” in the rough sketch and the said “sandhu dova” is in existence since times immemorial.

(i) The father of plaintiff No.1 and plaintiff No.1 divided orally about 20 years ago and in the said division, the eastern side of the plaint schedule mentioned property was allotted to plaintiffs and since then, they are in continuous possession and enjoyment of the same without any hindrance or whatsoever from anybody else.

(ii) Plaintiff No.2 purchased the house property under a registered sale deed, dated 29.01.1999, from one Varadarajulu and others, which is shown as “C C1 J J1”. In the said sale deed also, the suit property has been shown as “sandhu dova” and also there is an underground drainage pipeline in the suit property running from south to north. The plaintiffs’ family and also the vendors of plaintiff No.2 used the said “sandhu dova” without any interruption from anybody else. After purchase by plaintiff No.2, the plaintiffs have been using the said “sandhu dova” to reach “C C1 J J1” property. Therefore, the plaintiffs have got right by way of easementary right over the suit property. Except suit sandhu dova, there is no any other alternative way from Kummara Street to Kichidi Makhan Street to ingress and egress into plaintiff No.2’s plot.

11. The contentions of defendant Nos.1 to 3 raised in the written statement filed by defendant No.2, which has been adopted by defendant Nos.1 and 3, are as follows:-

Defendant No.2 filed rough sketch showing necessary details in I.A.No.519 of 2002. He has shown the “ABCD” portion as plot No.1, “CDEF” portion as plot No.2, “EFGHI” portion as plot No.3 and “GHJ1 J J3 K L G3 G2 G1 G” as plot No.4 and these plot

Nos.1 to 4 belong to defendant Nos.1 and 2. The above plot No.4 is a passage to approach the house of the defendants situated in plot Nos.1 to 3. Plot No.5 shown as “I I1 I2 I3 I4 I5 I6 I7 I8 BD E I” in the above rough sketch belongs to plaintiff No.2 herein. Though letters are not given to plot Nos.6 and 7, they belong to Kummara Melpati Ponnappa Chetty and later, Kummara Melpati Munaswamy Chetty and his son Jayaram (plaintiff No.1) and his brother M.Damodaram and plot No.7 belongs to Kuppuswamy (junior paternal uncle of plaintiff No.1). “J J1 J2 J3” the old lavatory existing on the south-east corner of plot No.4 belongs to defendants. It is situated adjacent to the house of father of plaintiff No.1 for more than 40 years. “G G1 G2 G3” is a septic tank situated at the northern side of plot No.4 of defendants and it is in existence for more than 25 years. There is no lane as claimed in the plaint schedule at any time. Even the sale deeds relied upon by the plaintiffs in this regard belie their claim. The “sandhu dova” referred in the sale deed, dated 06.12.1957, relied on by the plaintiffs is an approach lane to reach the house of defendants situated in plot Nos.1 to 4 as shown in the rough sketch. As per the boundary recitals, the property sold to east of plaintiffs’ house did not describe any pathway as claimed by the plaintiffs. The document negatives the claim of plaintiffs’ “sandhu dova”. There are interpolations in the other sale deed, dated 07.12.1957, relied on by the plaintiffs. From the recitals in these two sale deeds, it cannot be said that the lane “sandhu dova” described therein is public one. It is a private passage arranged in plot No.4 for the use of defendants as an approach lane to reach the house situated in plot Nos.1 to 3 as shown in the rough sketch. These two sale

deeds make it clear that no lane existed to the east of house property of Kummara Kalavagunta Chinnabba, Gajula Venkatachalapathy, Tailor Narayanaswamy Naidu and so also, no lane existed on the south of plot No.5.

12. One Melpati Siddamma purchased plot Nos.6 and 7 from Sundaram Chetty under registered sale deed, dated 16.06.1924, and later, she executed a gift settlement deed, dated 15.04.1939, settling the said properties in favour of Melpati Munaswamy Chetty, who is the father of plaintiff No.1. The boundary recitals in the above documents make it clear that there is no lane to the west of plot Nos.6 and 7. As per the recitals in the above document, there is a tiled house measuring 3 ½ ankanams and there is no whisper about any sandhu dova. The western boundary recital in the sale deed, dated 29.01.1999, under which plaintiff No.2 claims to have purchased plot No.5 from Varadarajulu and others, was interpolated and it is an afterthought and that is why the plaintiff herein did not file the said document into the Court. The said document refers to an earlier title deed, dated 24.08.1939, by virtue of which Venkatachalapathi Naidu purchased plot No.5 from Raja Bai and in the said sale deed, no lane is shown in the eastern boundary or southern boundary for plot No.5. The above sale deed, dated 24.08.1939, was also suppressed maliciously by the plaintiffs in order to play fraud on the Court and also on the defendants. Therefore, the existence of the suit lane is not proved by any documents and earlier title deeds filed by the plaintiffs.

(i) One Shareefunnisa Begam and others filed O.S.No.142 of 1978 on the file of the Court of the I Additional District Munsif,

Chittoor, against Venkatachalam Naidu and others, who are the vendors of plot No.5 of plaintiff No.2. The decree and judgment in the suit and also appeal in A.S.No.19 of 1990 besides the suit register extract also negative the claim of the plaintiffs for the alleged suit lane since eastern boundary to plot No.5 is not shown as lane.

13. In the registered sale deed, dated 04.02.1944, under which, defendant No.2's father purchased plot Nos.1 to 4, no such lane is shown. As per the boundary recitals in the said document, the vacant site measuring East to West - 10 yards; North to South - 9 yards (this refers to plot No.1 in the rough sketch filed) and two five ankanams thatched houses (which are referred as plot Nos.2 and 3 in the rough sketch) and vacant site by the side of the street measuring East to West - 8 yards and North to South - 4 yards (this refers to plot No.4 shown in the rough sketch) are situated. Plot Nos.1 to 4 are also subject matter of a registered simple mortgage deed, dated 26.09.1993, executed in favour of Ramaswamy Chetty by Rajarathnamma and others and it also negatives the existence of suit lane.

14. The defendant herein filed O.S.No.490 of 2002 on the file of the Court of I Additional Junior Civil Judge, Chittoor, against plaintiff No.2 relating to plot Nos.1 to 4 and obtained injunction for plot No.3 shown in the rough sketch and the said injunction order was granted and served on plaintiff No.2 herein long before the filing of the present suit. But the pendency of the suit was maliciously suppressed by the plaintiffs herein and played fraud on the Court and obtained *ex parte* order of injunction against the

defendants herein not to make further construction and also obtained *ex parte* orders of mandatory injunction for the removal of construction made already in the alleged suit lane.

(i) The stone slabbed wall has been in existence along with DEI since a very long time, and as it was in dilapidated condition, a brick wall was raised in its place about three months back to the knowledge of the plaintiffs. The defendants also obtained approval from the Municipal Commissioner, Chittoor for construction of their house in plot Nos.2, 3 and 4 *vide* BA.No.63/2002 G, dated 26.04.2002, long prior to filing of the suit in O.S.No.490 of 2002.

15. There was an old terraced house in the portion of plot Nos.1 and 2 and a thatched house in plot No.3 as shown in the rough sketch. The thatched house became dilapidated and therefore, it was removed and pakka terraced house has been constructed in the portion of plot Nos.2 and 3 and in the portion of plot No.4 after obtaining approval plan from the Municipal Commissioner, Chittoor. Defendant No.2 executed a settlement deed, dated 10.04.2002, in favour of defendant No.1 settling a portion of the site in plot No.3 and a portion of site on the southern side of plot No.4 and delivered possession of the same to her to the knowledge of plaintiffs. The defendants specifically denied other plaint allegations by reiterating their contentions. Therefore, all the said contentions are not repeated once again. Thus, the defendants herein prayed for the dismissal of the suit with costs.

16. Defendant No.4 filed written statement denying the contentions of the plaintiffs and contending *inter alia* as follows:-

Defendant No.4 is not aware of the facts pertaining to the sale deeds and also “FEDJIHG” lane as mentioned in the rough sketch. There is no plan marked “sandhu dova” according to the municipal records. No plan was approved to that effect either to the plaintiffs or defendants at any point of time. It is a private dispute in between the plaintiff and defendants which is to be adjudicated by them in the Court. The Municipality has not approved any plan. In the disputed site, there is no plan marked channel or lane as per the municipal records as alleged by the plaintiffs. It is purely a private dispute. Defendant No.4 is not aware of the fact regarding existence of windows on the western wall of ABCDEF portion and also the fact that plaintiff has no direct access to white wash the western side wall and no possibility for ventilation and free air. Defendant No.4 has unnecessarily been impleaded and therefore, suit may be dismissed with exemplary costs.

17. On the above pleadings, the following issues were settled for trial:-

- “1. Whether the suit is bad for mis-joinder of parties?**
- 2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?**
- 3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?**
- 4. To what relief?”**

18. The plaintiff in O.S.No.490 of 2002 got himself examined as P.W.1, got examined four other witnesses as P.Ws.2 to 5 including his elder sister, who is said to be an attestor of Ex.A-2 will, as P.W.5, and got marked Exs.A-1 to A-15. In the appeal, plaintiff got marked Ex.A-16 as additional evidence. On behalf of the

defendant, she got herself examined as D.W.1 and also got examined two other witnesses as D.Ws.2 and 3 and got marked Exs.B-1 to B-13.

19. The trial Court, upon considering the oral and documentary evidence on record *vide* common judgment, dated 23.12.2009, in O.S.No.490 of 2002 and O.S.No.522 of 2002 on the file of I Additional Junior Civil Judge, Chittoor, dismissed O.S.No.490 of 2002 with costs and decreed O.S.No.522 of 2002 with costs by granting mandatory injunction directing defendant Nos.1 to 4 to remove the illegal constructions laid in the plaint schedule property and also by granting permanent injunction restraining the defendants from interfering with the plaintiffs' right of enjoyment of the plaint schedule property.

20. Aggrieved by the said common judgment, the unsuccessful plaintiff in O.S.No.490 of 2002, who is defendant No.2 in the other suit, along with his wife and son, who are defendant Nos.1 and 3 in it and who suffered decree, filed A.S.Nos.9 and 10 of 2010.

21. On appeal, the appellate Court framed the following points for determination:-

“1. Whether the plaintiff in OS.No.490/2002 has proved that he has been in possession and enjoyment of pliant “A” schedule property as of right and is entitled for the relief of permanent injunction as prayed for?

2. Whether the sole defendant in OS.No.490/2002 along with her husband who are plaintiffs in OS.No.522/2002 is entitled for the relief of mandatory injunction as prayed for?

3. Whether the suit in OS.No.522/2002 for the relief of mandatory injunction without seeking the relief of

declaration in respect of easementary right is maintainable?

4. Whether the impugned decrees and judgments are liable to be set-aside?"

22. Upon considering the oral and documentary evidence on record, the appellate Court dismissed both the appeals. Challenging the same, the present Second Appeals are filed.

23. Heard both sides and perused the record.

24. Learned counsel for the appellants would contend that the impugned judgment and decree are against law, weight of evidence and the probabilities of the case; that the lower appellate Court erred in confirming the judgment and decree passed in the suit; that the trial Court as well as the lower appellate Court have not properly considered and appreciated the evidence, oral and documentary, on record and erroneously held that there was a common lane and dismissed the suit for permanent injunction and granted mandatory injunction in respect of common lane; that the trial Court or the lower appellate Court ought not have placed reliance on the oral and documentary evidence adduced on behalf of the other side; that both the Courts below ought not have relied upon the Commissioner's Report without there being examination of the Commissioner and ultimately, prayed to set aside the impugned judgment and decree and grant the relief of permanent injunction in favour of the appellants.

25. On the other hand, learned counsel for the respondents would contend that both the Courts below, having analysed the entire oral and documentary evidence, held that there is a common

passage in between the house of P.W.1 and D.W.1 and the same has been evident from the registered documents and in the Commissioner's Report also, the same has come up and it is only a factual aspect and it cannot be dealt with under Section 100 (4) C.P.C.; that no substantial question of law is framed and ultimately, prayed to dismiss these appeals.

26. Second Appeal No.1158 of 2017 is sought to be admitted on the following substantial questions of law:

- “a. In as much as the respondent approached the trial court by filing O.S.No.522 of 2002 long after the completion of the construction by the appellant, whether both the courts could have refused to grant injunction in favour of the appellant?”***
- b. Whether the judgments of the trial court and lower appellate court are based on improper appreciation/ignoring to consider material/vital evidence on record and the admissions of DW.1 in cross-examination?***
- c. Whether on the basis of the report submitted by the Advocate Commissioner, both the courts could have decided the rights of the parties to the lis?”***

27. Second Appeal No.447 of 2017 is sought to be admitted on the following substantial questions of law:

- “a. Whether the trial court and the lower appellate court could have granted mandatory injunction without respondents 1 and 2 seeking a declaration that the alleged pathway/lane is a common passage/lane?***
- b. In as much as respondents 1 and 2 approached the trial court long after the completion of constructions by the appellants, whether both the courts could have granted instead of refusing mandatory injunction?***

- c. Whether the judgments of the trial court and the appellate court are based on improper appreciation ignoring to consider material evidence vital on record and the admissions made by DW-1 in cross-examination?**
- d. Having allowed to bring on record Ex.A-16 as additional evidence on behalf of the appellants, whether the lower appellate court could have brushed it aside while considering the core question involved in the suit?**
- e. Whether on the basis of the report of the Advocate Commissioner, both the courts have decided the rights of the parties to the list?"**

28. The contention of the appellants is that there is no common passage/lane in between the house of P.W.1 and D.W.1, and that in the document under Ex.A-1, there is no mention of such lane, and that Ex.A-6 document, which is of the year 1933, also does not reflect the said common passage. So, the trial Court, while dealing with the subject matter, placed reliance on the oral and documentary evidence viz., Ex.B-1 – original sale deed, dated 06.12.1957, executed by one Faridunnisa Begum and her minor children in favour of father-in-law of D.W.1 and his brother Kuppuswamy, Ex.B-2 – original sale deed, dated 07.12.1957, executed by S.M.Shafi Saheb in favour of the father-in-law of D.W.1 and his brother Kuppuswamy, Ex.B-4 – Registration copy of sale deed, dated 29.01.1999, executed by one Varadarajulu and his brother Gopalu in favour of D.W.1., and Ex.B-9 – certified copy of the mortgage deed, dated 21.03.1932. The evidence of D.W.1 coupled with Exs.B-1 and B-2 reflect that these documents pertain to their house property situated on the southern side of Kummara Street and eastern side of the suit disputed passage. These documents reveal western boundaries as a lane. In

Commissioner's Report also, there is a specific mention of the existence of the suit lane for the ingress and out gress. After analysing the evidence on record, including the Commissioner's Report, the trial Court held that there is a common passage in between the houses of P.W.1 and D.W.1 and the parties have right to use the same as common passage and that plaintiffs are entitled to remove illegal construction made by defendants in the common lane. Both the Courts had elaborately dealt with oral and documentary evidence and ultimately, decided the factual aspects with regard to existence of a common lane in between the house of P.W.1 and D.W.1.

29. The substantial questions raised are with regard to the non-consideration of evidence and documents adduced on behalf of the appellants and also considering the oral and documentary evidence placed on record on behalf of the respondents. The Courts below have rightly appreciated the entire oral and documentary evidence on record. Neither admissible evidence was left out nor inadmissible evidence was considered by both the Courts below. The substantial questions of law raised in the appeal are only factual aspects with regard to existence/non-existence of suit lane and also the constructions made by the appellants in the disputed suit lane. Those aspects again cannot be re-adjudicated in the Second Appeals particularly, when there are concurrent findings by both the Courts below against the appellants. In view of the facts and circumstances of the case, no substantial questions of law do arise for determination in these Second Appeals.

30. Accordingly, both the Second Appeals are dismissed confirming the common judgment and decree, dated 29.12.2016, passed in A.S.Nos.9 and 10 of 2010 on the file of the Principal District Judge, Chittoor. There shall be no order as to costs.

31. Miscellaneous petitions pending, if any, in these Second Appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 03.10.2018
AMD



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



SECOND APPEAL Nos.447 & 1158 OF 2017

Date: 03.10.2018

AMD