
(2011) 03 AP CK 0083

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1039 of 1999

Boppana venkata Rao (Died) Per L.Rs. 1 to 7

APPELLANT

Vs

Sunkara Krishna Murthy, Sunkara Suryanarayana and
Sunkara Chandra Rao

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 03 AP CK 0083

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : D. Sudarshan Reddy, for the Appellant; G. Vasantha Rayudu, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This second appeal is filed against the judgment and decree passed by the II-Additional District Judge, East Godavari at Rajahmundry in A.S. No. 123 of 1992, dated 14-09-1999 reversing the decree and judgment passed by the District Munsif, Rajahmundry in OS. No. 487 of 1984, dated 03-08-1992.

2. Heard Sri D. Sudershan Reddy, the learned Counsel appearing for the Appellant-Plaintiff and Sri G. Vasantha Rayudu, the learned Counsel appearing for the Respondents.

3. The Plaintiff is the Appellant in the present second appeal. For the sake of convenience, the parties will be referred to as "Plaintiff" and "Defendants".

4. The Plaintiff instituted the suit seeking permanent injunction against the Defendants, restraining them from interfering with his peaceful possession and enjoyment of kattava, (hedge) which is on the eastern boundary of his land of an extent of Ac:0-37 1/2 cents. He claims to have purchased the said land under registered sale deed under Ex.A-1 from one Smt. Machiraju Ranganayaki. His case is that even at the time of his purchase and even prior to that also kattava

had been in existence on the eastern side of his land. The Defendants are the eastern neighbours of the Plaintiff, having their land adjacent to that of the Plaintiff. It was alleged by the Plaintiff that kattava on the eastern bund of the land exclusively belongs to him and the Defendants have no right over the same. He stated that when the Defendants tried to cut away the trees situated on the kattava, he filed the suit for permanent injunction.

5. The version of the Defendants as could be seen from the written statement filed by the third Defendant is that they purchased the vacant land of an extent of Ac:0-34 1/2 cents in Survey No. 344 in Rajahmundry Rural which is on the eastern side of the Plaintiff's land. He purchased the same under registered sale deed dated 30-10-1973 from its rightful owner. According to the Defendants, when they proposed to sell their land, the Plaintiff offered to purchase the same at a very low price and as the price offered by the Plaintiff is very low, the Defendants were reluctant to sell the same to the Plaintiff, which has become a grouse to the Plaintiff and being aggrieved, the Plaintiff with the active support of his henchmen removed the survey stones, which were previously fixed on the southern and northern boundaries in between the Plaintiff and Defendants land and tried to encroach into the Defendants' land. When he tried to encroach upon the land, the Defendants approached the Tahsildar, Rajahmundry and requested to depute the Taluk Surveyor and fix the boundary stones. Thereafter, the Taluk Surveyor inspected both the lands, measured and fixed the boundaries and put the boundary stones. The Plaintiff having not satisfied with the survey conducted by the Taluk Surveyor have approached the police and lodged a report, alleging that the Defendants have been interfering with his possession. The police advised the parties to approach the Civil Court, since the dispute involved is of civil nature and therefore , the Plaintiff filed the suit.

6. Before the trial Court, the Plaintiff examined PWs 1 to 3 and marked Exs.A-1 to A-5 on his behalf. On behalf of the Defendants, DWs 1 to 4 were examined and Exs.B-1 and B-2 were marked. Exs.X-1 to X-3 were marked.

7. The learned trial Court upon considering the entire evidence placed on record, rendered a finding that there is kattava on the eastern bund of the Plaintiff's land and the said kattava belongs to him and accordingly passed decree in favour of the Plaintiff and against the Defendants for permanent injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of schedule mentioned kattava.

8. The main basis for the finding recorded by the learned trial Court eventually resulted in decreeing the suit in favour of the Plaintiff is that the Plaintiff specifically pleaded in his plaint that the kattava has been in existence from the very beginning. Whereas the Defendants have contended in their written statement that there is no kattava at all in between their land and that of the Plaintiff and that the evidence of the witnesses examined on behalf of the Plaintiff i.e., PW-2 who is the Taluk Surveyor revealed that there is kattava in existence on the eastern side of the Plaintiff's land and also in the western side

and he marked the existence of kattava in the plan Ex.A-5 prepared by him.

9. However, the learned Second Additional District Judge, Rajahmundry in AS. No. 123 of 1992 filed by the Defendants reversed the finding of the trial Court on the ground that the report of the Commissioner as well as the evidence of Taluk Surveyor PW-2, and the evidence of DW-3 Mandal Surveyor, Rajahmundry and DW-4 the Commissioner revealed that there is an extent of vacant site of Ac:0-05 cents between the land of the Plaintiff and the Defendants and when it was so found that both the lands were measured and the Plaintiff failed to explain about the vacant land in existence between both the lands of the Plaintiff and the Defendants and since he has to establish that the kattava as well as Ac:0-05 cents of vacant land is part of Ac:0-37 1/2 cents of land purchased by him under Ex.A-1 sale deed he must fail.

10. It has been contended by the learned Counsel appearing for the Plaintiff that the findings recorded by the first appellate court are contrary to the evidence on record and are perverse and that the first appellate court did not give any valid reasons to reverse the judgment of the trial Court and the judgment of the first appellate court being perverse is liable to be set aside in this second appeal.

11. On the other hand, the learned Counsel appearing for the Defendants contended that there is no substantial question of law involved for consideration in this second appeal. The finding of fact recorded by the first appellate Court being final and this Court is not supposed to interfere with the said finding recorded by the first appellate court, the second appeal is liable to be dismissed.

12. It is true that the existence of substantial question of law is "sine-qua-non" for entertaining the second appeal. But when the first appellate court reversed the well-reasoned finding of fact recorded by the first appellate court, which is based on evidence on record and pleadings of both parties and the reversal of the finding, is either contrary to the evidence on record or totally perverse, this Court can consider as if substantial question of law involved for consideration in the second appeal and this Court can interfere with such finding of fact recorded by the first appellate court while exercising its jurisdiction u/s 100 of the Code of Civil Procedure.

13. There is no dispute about the fact that the Plaintiff purchased the land of an extent of Ac:0-37 1/2 cents under Ex.A-1 sale deed and the Defendants purchased the land of an extent of Ac:34 1/2 cents on eastern side of the land of the Plaintiff. There is no dispute about the fact that they have title to their respective lands. The Plaintiff instituted the suit basing on a substantial contention that even prior to the date of his purchase kattava is in existence on the eastern bund of his land and the said kattava belongs to him and when the Defendants have been interfering with his peaceful possession and enjoyment over the said kattava, he was constrained to file the suit. It was specifically contended by the Defendants that there is no such kattava in existence at all and the claim of the Plaintiff is false and the Plaintiff filed the suit with an intention to

grab the land which is adjacent to the land of the Plaintiff. The third Defendant is examined as DW-1. He specifically stated in his chief examination before the trial court that there is bund in between their site and Plaintiff's site. The said bund is from northern side to southern side, there is no kattava at any time between two sites. Therefore, it is not open for the Defendants to contend that there is kattava and the said kattava is situated in their land and it belongs to them. DW-4 the Court Commissioner had categorically admitted in the cross-examination that the Defendants land is bounded on the west by a thumma kattava, which was cut in part, and the stems were to be seen at the time of his visit. He also stated that the western boundary of the Plaintiff is a national highway.

14. Similarly, DW-2 who was examined on behalf of Defendants stated in his evidence that there is a bund in between the Plaintiff's land and the Defendants land. The bund is running from north to south. There are survey stones fixed on the north and the southern end of the bund. The vacant site on the east to the bund belongs to the Defendants.

15. PW-2 who was examined on behalf of the Plaintiff, who claims to have taken measurement to help the Taluk surveyor stated in his evidence that on the eastern as well as on western side of the Plaintiff's land there is kattava which is running from north to south. Therefore, this witness also noticed the existence of kattava.

16. Thus, the entire evidence on record obviously reveals that as contended by the Plaintiff kattava had been existence on the eastern bund of his land. The entire evidence falsifies the contention of the Defendants that there is no kattava in existence whether in their land or in the land of the Plaintiff. The learned first appellate court observed that the survey conducted and measurements taken by the Commissioner with the help of Taluk Surveyor is not proper because they admitted in their evidence that the measurements were not taken with the help of Field Measurement Book and thus the learned first appellate court held that there is some scope for committing mistake in taking measurement of the respective land. If that is so, the first appellate Court ought not to have relied on the report of the Commissioner and also the evidence and plan submitted by the Mandal Surveyor that there is vacant land of Ac:0-05 cents between the land of the Plaintiff and Defendants. In fact it is nobody's case that there is some vacant land in between both the lands of the Plaintiff and the Defendants. Both the parties have specifically stated in their pleadings that the lands are adjacent to each other. It is not understandable as to how the first appellate court having found that the measurements were not properly taken accepted the evidence of PWs 3 and 4, Mandal Surveyor and the Commissioner and Ex.B2 report of the Commissioner and the plan submitted by the surveyor that there is vacant land of Ac:0-05 cents between both the lands of Plaintiff and the Defendants.

17. It is nothing but making out a third case and reversing the findings of the trial court which is in accordance with the pleadings and evidence on record. The

findings recorded by the learned first appellate court thus are entire contrary to the pleadings of the parties and the evidence forth coming in this case. The findings recorded by the first appellate Court that there is existence of Ac:0-05 cents of land between the Plaintiff and the Defendants and that the Plaintiff was unable to prove that the said belongs to him and that he cannot succeed by taking advantage of the weakness of the case of Defendants and it is baseless and irrational. This Court can set aside such perverse findings recorded by the first appellate court in the second appeal. However, the first appellate court is justified in reversing-the finding of the trial court in so far granting damages of Rs. 1000/-is concerned, since there was no issue framed by the trial court, and there is no evidence in proof of such damage.

18. For the foregoing reasons, the decree and judgment passed by the first appellate court is set aside and the decree and judgment passed by the trial Court is confirmed. The second appeal succeeds and the same is accordingly allowed. There shall be no order as to costs.