
(2014) 02 AP CK 0162

In the Andhra Pradesh High Court

Case No : Second Appeal No. 419 of 2012

Kodali Rajendra Prasad

APPELLANT

Vs

Bandaru Napoleon

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 4 ALD 505 : (2014) 6 ALT 813

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

Advocate : G.V. Shivaji, Advocate for the Appellant; Chakravarthy P.V.S.K, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J.—The respondents filed O.S. No. 2178 of 2006 in the Court of II Additional Junior Civil Judge, Guntur against the appellants for the relief of mandatory injunction to remove the structures on the road, marked as "E.F.G.C. in the plaint plan and for perpetual injunction to restrain the appellants from interfering with the possession of the respondents to use the road for ingress and egress and to let rain and drain water into the lane.

2. The respondents pleaded that the lane shown in the plaint plan is the common facility available not only for them and the appellants, but also others. They have made reference to the documents, through which they have acquired their property and the manner in which they have been using the lane.

3. The appellants filed a written statement opposing the suit. It was pleaded that the so-called lane is part of the property purchased under the relevant documents. They pleaded that a bathroom was constructed by them within their property and that there are no merits in the suit.

4. The trial Court decreed the suit through judgment, dated 30.11.2009. Aggrieved by that, the appellants filed A.S. No. 126 of 2010 in the Court of Additional District Judge-cum-Family Court, Guntur. The appeal was dismissed

through judgment, dated 06.02.2012. Hence, this second appeal.

5. Heard the learned counsel for the appellants and the learned counsel for the respondents.

6. The suit was filed for the dual relief of perpetual and mandatory injunctions. However, the trial Court framed only one issue for its consideration, namely "whether the plaintiffs are entitled to have a relief like mandatory injunction against the defendants as prayed for?"

7. On behalf of the respondents, P.Ws.1 to 3 were examined and Exs. A1 to A7 were filed. On behalf of the appellants, D.W.1 was examined and Exs. B1 to B3 were filed. The trial Court decreed the suit as prayed for. In A.S. No. 126 of 2010 filed by the appellants, the lower appellate Court framed the following points for its consideration:

(1) Whether the E.F.G.C. road is in enjoyment of the plaintiffs and it is for ingress and egress and or sending rain and drain water?

(2) Whether the plaintiffs are entitled for right of way into the E.F.G.C. road?

(3) Whether there are any grounds to set aside the findings of the learned trial Judge?

The appeal was dismissed.

8. This Court finds that a substantial question of law, namely "whether a suit for the relief of mandatory injunction, without seeking the relief of declaration of rights, is maintainable?" arises for consideration.

9. While according to the respondents, the portion marked as "E.F.G.C. is a common lane for use of persons in the locality, the appellants specifically pleaded that it is part of their exclusive property. The appellants did not dispute the construction of a bathroom, which is within the alignment of the alleged lane. However, they pleaded that they are entitled to make that construction, since the concerned area is in their exclusive property.

10. The very fact that the relief of perpetual injunction, that too, for removal of an existing structure, discloses that the defendants in such a suit had already assumed possession and made construction. It is only when the Court holds that the person who made the construction, which is sought to be removed, did not have the right upon it, that the relief of mandatory injunction can be granted as a consequential step. Unless the question as to the mutual rights of the parties vis-?-vis the property, on which the construction which is said to be removed is raised, the whole adjudication becomes imperfect.

11. Things would have been different altogether, had the appellants herein not disputed the claim of the respondents that "E.F.G.C." is a public lane. When the appellants categorically stated that there is no such lane and the said portion is part of their lane, it was obligatory on the part of the respondents to seek the

relief of declaration, in that behalf. The trial Court ought not to have undertaken adjudication unless such a declaration was prayed for.

12. It is brought to the notice of this Court that the decree has since been executed and the structure was removed. Since this Court finds that the suit itself was defective, the decree passed against the appellants cannot be sustained in law. However, taking into account the fact that the structure was removed, the following decree is passed:

(1) the decree passed by the trial Court in O.S. No. 2178 of 2006 is hereby set aside;

(2) the state of affairs obtaining as of now shall be continued for a period of three months. If in the meanwhile, the appellants-defendants or the respondents-plaintiffs file a suit for declaration in relation to the property mentioned as "E.F.G.C. in the plaint plan, the same shall be decided on its own merits and on the basis of the evidence that may be adduced by the parties; and

(3) if no suit is filed as mentioned above, the decree passed by the trial Court shall continue to be in force and the existing arrangement shall remain intact.

13. The second appeal is allowed, to the extent indicated above.

14. The miscellaneous petition filed in this appeal shall also stand disposed of.