
(2002) 02 AP CK 0194

In the Andhra Pradesh High Court

Case No : Second Appeal No. 778 of 2001

Nadupari Narayana and Others

APPELLANT

Vs

Ijjada Narayana

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Easements Act, 1882 — Section 7
Transfer of Property Act, 1882 — Section 8

Citation : AIR 2002 AP 387 : (2002) 3 ALT 681

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V.L.N. Gopala Krishna Murthy, for the Appellant; I. Nagesh, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The defendants in the suit are the appellants. They filed this second appeal aggrieved by the judgment and decree dated 17-4-2001, passed by the Additional District Judge, Vizianagaram, in A.S. No. 125 of 1998, reversing the judgment and decree, passed by the Junior Civil Judge, Gajapathinagaram, in O.S. No. 206 of 1996, dated 19-3-1998.

2. A piece of agricultural land was owned by one Kandhi Rama Naidu. He had three sons namely. Guru Naidu, Appala Naidu and Satyanarayana, who after the death of their father, partitioned the property among themselves. Whether or not there was a condition in the partition, it appears that the three were using the water for agricultural purposes, from a well situated in the eastern corner of the agricultural field called "Peda Akumadi". As years passed by Guru Naidu, presumably the eldest son of late Rama Naidu, sold an extent of Ac. 1.50 cents in Sy. No. 185/10, 185/2, 182/3 and 174/1 to the 1st defendant under Ex. B1. During the pendency of the suit, the 1st defendant died and his son, the 4th appellant herein was brought on record as his legal representative. The other two sons of Rama Naidu namely, Appala Naidu and Satyanarayana sold their share of

the property situated in Sy. Nos. 185/10, 185/12 and 185/3, to the respondent-plaintiff under Exs. A1 and A2. "Peda Akumadi", where the well is situated, is in Sy. No. 185/10.

3. The respondent-plaintiff filed the suit O.S. No. 206 of 1996 on the file of the Junior Civil Judge, Gajapathinagararn, for a declaration that he is the exclusive owner of the suit well, and for a permanent injunction restraining the defendants from Interfering with the plaint schedule well. The suit claim was based on two registered sale deeds Exs. A 1 and A2, under which the plaintiff purchased "Peda Akumadi". The suit was resisted on the ground that the well in "Peda Akumadi" is a common well, and therefore, the 1st defendant having purchased the property from Guru Naidu under Ex. B 1 is "also entitled to draw water from the well.

4. On behalf of the plaintiff, P.Ws. 1 to 4 and on behalf of the defendants, D.Ws. 1 to 3, were examined, besides marking Exs. A 1 to A4 for the plaintiff and Ex. B 1 for the defendants.

5. The trial Court decreed the suit holding that the vendors under Exs. A 1, A2 and B1 had joint and common rights in the well, and therefore, the subsequent purchasers of the properties under the said registered sale deeds, would also have joint and common rights in the disputed well. On appeal by the unsuccessful plaintiff, the appellate Court placed reliance on Ex. A 1 under which Sy. No. 185/10 "Peda Akumadi" was purchased by the plaintiff, and decreed the suit reversing the judgment and decree of the trial Court. Aggrieved by the said reversing judgment, the second appeal has been filed.

6. Sri S. Subba Reddy, the learned counsel appearing on behalf of the appellants-defendants submits that under Ex. B 1, the share of Guru Naidu was purchased by the defendants, and therefore, all the rights which inhered in Guru Naidu, including the right to draw water from the well in "Peda Akumadi" passed on to the defendants. He also submitted that the fact that the well was joint among the three sons of late Rama Naidu was proved by the evidence of D.Ws, 2 and 3, who are no other than the younger brothers of Guru Naidu, the vendor of defendants, that the rights inherited by the sons of Rama Naidu upon partition of his property, would stand transferred to the subsequent purchasers of the property, and therefore, the defendants who purchased the share of Guru Naidu under Ex. B1, are also entitled to draw water from the disputed well.

7. The appellate Court held that the well is situated in "Peda Akumadi". The plaintiff having purchased the same under Ex. A 1, and having become owner thereof, is alone entitled to draw the water from the well. There cannot be any criticism of this finding of the appellate Court. Ex. B 1, under which the defendants purchased the property including the land in Sy. No. 185/10 admeasuring Ac. 0-36 cents, is silent as regards the right of the defendants to draw water from the common well, which is situated in "Peda Akumadi". Further a part of the land admeasuring Ac. 0-50 cents in Sy. No. 185/10 known as "Peda Akumadi" where the well is situated was purchased by the plaintiff from D.Ws. 2

and 3 along with the well. Ex. A 1, sale deed, dated 10-2-1986, is earlier in point of time, and therefore, when the defendants purchased the property under Ex. B 1, if there was any right still subsisting in Guru Naidu by reason of an agreement to keep the well joint and common, there must have been a condition in Ex. B1, which is admittedly absent. In the absence of such a condition, in law it would be presumed that the purchaser of a property, which may be in the very same survey number, shall not get the rights in the land, which was already alienated by the true owners in favour of another person.

8. Further the plaintiff is in no way connected with Ex. B 1, and therefore, Ex. B 1 does not bind the plaintiff. No doubt, the evidence of D.Ws. 1 to 3 supports the contention that there was partition among the brothers after the death of Rama Naidu, and the well being joint and common among themselves will not by itself lead to an inference that under Ex. B 1. Guru Naidu transferred his right in the well. Indeed, the moment Exs. A 1 and A2 were accepted by D.Ws. 2 and 3, the land in Sy. No. 185/10, admeasuring Ac, 0.50 cents "Peda Akumadi" where the well is situated, Guru Naidu who is the owner thereof, was divested of his right in the Joint well, and therefore, he could not have alienated any right to the defendants.

9. Further, ownership of land, Includes the right to draw underground water from the land, fixers to the land, like trees, etc.

10. Section 7(h) and (i) of the Indian Easements Act, 1882, which is relevant for our purpose, reads :

7. Easement restrictive of certain rights :-- Easements are restrictions of one or other of the following rights : (h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature, the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) the right of every owner of upper land that water naturally rising in, or falling, on such land, and passing defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

11. The right of every owner of upper land that water naturally rising in, and passing in defined channels is recognized by law as restricted easement. The right of every owner of the land to the natural flow of water by natural stream without interruption and without material alterations is also recognized. The right, however of an owner to claim a share in the water in a well constructed in a separate and distinct land is not recognized in law. Indeed Section 8 of the Transfer of Property Act, 1882 lays down the effect of transfer of property. According to this Section, the transfer of property passes forthwith to the

transferee all the interests, which the transferor is capable of passing in the property and the legal incidents thereof. When Guru Naidu transferred an extent of Ac. 0-36 cents of land in Sy. No. 185/10, in the absence of any express or implied condition in Ex. B 1, the law presumes that the right of Guru Naidu, if any, in the well situated in "Peda Akumadi", though in Sy. No. 185/10, did not pass on to the defendants under Ex. B 1.

12. Incoming to the conclusion that under Ex. A 1, plaintiff has become absolute owner of the land called "Peda Akumadi", including the well thereof, the learned District Judge has come to a correct conclusion both in law and on facts.

The second appeal fails, and it is accordingly dismissed. No costs.