

(2006) 06 AP CK 0086
In the Andhra Pradesh High Court
Case No : SA No. 159 of 1994

Polasa Rajalaxmi

APPELLANT

Vs

M.A. Raheem

RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Citation : (2006) 5 ALD 7

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Chandra Shekhara Rao, for the Appellant; V. Parabrabma Sastri, for the Respondent

Judgement

L. Narasimha Reddy, J.—The appellant filed O.S. No. 878 of 1982 in the Court of Principal District Munsif, Warangal, against the respondent, for the relief of perpetual injunction, to restrain the latter from interfering with the suit schedule property. The appellant pleaded that she is the owner and possessor of the house bearing No. 15/81/2 of Rangampet, Warangal, and that having purchased the same through Sale Deed dated 10-7-1963, she constructed a house soon thereafter. She also pleaded that she purchased the neighbouring piece of the land on the western side through Sale Deed, dated 3-4-1964.

2. According to the appellant, there is a proposed road of 30 feet wide on the rear that he did not encroach into any property belonging to any one, much less, that of the appellant.

4. Through its judgment, dated 3-11-1992, the trial Court decreed the suit. The respondent filed A.S. No. 1 of 1993 before the District Court, Warangal. The appeal was allowed on 17-3-1994. Hence, this second appeal.

5. Sri K. V. Bhanu Prasad, learned Counsel for the appellant, submits that his client had proved to the satisfaction of the trial Court that there existed an open space of 30 feet which was earmarked for road and that the respondent had high handedly encroached upon it. He further submits that the respondent took a plea

before the lower appellate Court that there was an exchange of Plot No. 8 for Plot No. 7 by the appellant herein. learned Counsel points out that the respondent is attempting to make construction on open space, which is earmarked for public use.

6. Sri V. Parabrahma Sastry, learned Counsel for the respondent, on the other hand, submits that there was not even an allegation against his client that he has encroached into any property held by the appellant and as such there did not exist any basis, for the filing of the suit itself.

7. One of the requirements, in a suit for perpetual injunction is that the plaintiff must assert and establish that he is in possession of the suit schedule property, by the date of filing of the suit. It is thereafter that the further question as to the nature of interference by the defendant, and the type of preventive relief would become significant. The question of seeking such a remedy in respect of properties other than those owned by the plaintiff would not arise. Basically, an individual does not have the right to seek remedies vis-a-vis the properties that do not belong to him, except where the rights akin to easements, are claimed. Even where a limited relief is claimed as regards property not held by the plaintiff, it must be preceded by a relief of declaration, as to the nature of his right.

8. In the instant case, it is not the allegation of the appellant that the respondent tried to encroach into the land owned by her. Her grievance is that the respondent was making attempt to construct, on the open site, on the rear side of her house. Admittedly the said open land, whether earmarked for road or otherwise, does not belong to her. In such an event, there was no basis for her to claim the relief of injunction. In case, the appellant wanted the strip of 30 feet land to be kept in tact for common use, it was obligatory on her part to seek the relief of declaration, to the effect that the said land is earmarked for common use, and that the defendant does not have any right to claim it, exclusively for himself. Such an exercise was not undertaken.

9. The lower appellate Court, no doubt, reversed the finding of the trial Court on a different aspect. But once it has emerged that the appellant did not expect any threat of encroachment over her exclusive property, the very basis that the suit filed by her is ceased to exist.

10. Therefore, the second appeal is dismissed. It is, however, made clear that it shall be open to the appellant herein to seek necessary declaratory relief, if she is so advised. In such an event, the various observations made by the trial Court or the appellate Court or this Court shall not be treated as conclusive pronouncements on the issue. There shall be no order as to costs.