
(2010) 12 AP CK 0020

In the Andhra Pradesh High Court

Case No : Second Appeal No. 251 of 2009

Swethamber Murthy Pujak Jain Sangh, Kurnool by its
Members, Chaganlal (Died) and Others

APPELLANT

Vs

Illuru Urukundaiah (died by his LRs.) Illuru Subrahmanyam

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 AP CK 0020

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Narasimha Sharma, for the Appellant; K. Sita Ram, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This Second Appeal has a very long career. The litigation, which is the subject matter of the suit, is going on for the past 23 years.

2. The Appellant is a Religious Association. It has acquired property covered by Door Nos. 18-178, 18-180, 181, 182, 183, 184, 185, 186 and 187 in Kurnool town. It filed O.S. No. 313 of 1987 in the Court of Principal Junior Civil Judge, Kurnool, against the Respondent, for the relief of perpetual injunction, to restrain him from opening door in AD joint wall shown in the plaint plan and from using the site lying to its West, as a rasta for ingress and egress to the premises, bearing No. 18-188. The Appellant pleaded that over the period, it has acquired the property shown as "E F G H" in the plan, abutting a road on the northern side and that the Respondent is having his premises on the western corner of "E F G H", separated by wall AD. According to them, though the Respondent has a big opening and access for his property to the main road, he proposed to open a door into the exclusive property of the Appellant, with an oblique motive.

3. The Respondent opposed the suit by filing written statement. His case is that

the property shown in "E F G H" is a public lane and the Appellant does not have any exclusive right over it. The particulars of various properties acquired by the Appellant and by himself are furnished in detail. The summary of his contention was that the property in "E F G H" was being used as parking place by the owners and the users of the nearby go-down and the Appellant does not have any exclusive right.

4. The suit was dismissed by the trial Court. The Appellant filed A.S. No. 54 of 1993 in the Court of III Additional District Judge, Kurnool. The appeal was dismissed on earlier occasion, on 03.04.1997. S.A. No. 246 of 1997 was filed before this Court. The second appeal was allowed on 28.11.2007 and the matter was remanded to the lower Appellate Court, by permitting the parties to adduce additional evidence. On such remand, the lower Appellate Court dismissed the appeal through judgment, dated 25.02.2009. Hence, the present Second Appeal.

5. Sri B. Narasimha Sharma, learned Counsel for the Appellant, submits" that the Respondent did not deny the factum of the Appellant purchasing quite large number of buildings, abutting E F G H open space, and there was nothing on record to disclose that the said space is a public rasta. He contends that once "E F G H" property is not a recognized public lane, the Respondent has no right to open a door into that place. He submits that the trial Court as well as lower Appellate Court proceeded as though it was a suit for declaration of title and travelled beyond the scope of the suit.

6. Sri K. Sitaram, learned Counsel for the Respondent, on the other hand, submits that the Appellant failed to prove that the plaint "E F G H" exclusively belongs to them and they have no right to prevent the use of that place by others, including the Respondent. Learned Counsel contends that the trial Court and the lower Appellate Court, on two occasions, found that the Appellant failed to prove their case and no substantial question of law arises for consideration.

7. The suit filed by the Appellant was the one for perpetual injunction simpliciter. Having regard to the facts pleaded by the parties in the plaint and the written statement, the trial Court framed three issues, viz.,

- a) whether the plaint plan is not correct?
- b) whether the Plaintiff is entitled for permanent injunction as prayer for? and
- c) whether the Defendant is entitled to open a new door way in the western wall of his shop opening into the Plaintiffs private rasta?

8. In a way, it can be said that the third issue has answered the entire controversy. It is not known as to how the Respondent permitted such an issue to be framed. A reading of that issue suggests that on the western side of the Respondent's property, there is a "private rasta" owned by the Appellant. If the rasta is private, there is no question of the Respondent being permitted to open his door into it. Further, the controversy in this regard could not have been resolved in a suit filed by the Appellant for the relief of injunction simpliciter. This

much, about the framing of issues.

9. On behalf of the Appellant, P Ws.1 to 4 were examined and Exs.A.1 to A.4 were filed. On behalf of the Respondent, R Ws.1 and 2 were examined and Exs.B.1 and B.2 were filed. An Advocate-Commissioner was appointed and through him Exs.C.1 and C.2 were filed. The suit was dismissed. The appeal filed against it was dismissed, at the first instance. The second appeal filed before this Court, was allowed and the matter was remanded to the lower Appellate Court. After such remand, the lower Appellate Court, framed the points, which are almost on par with the issues framed by the trial Court. They read as under:

- 1) whether the plaint plan is not correct?
- 2) Whether the Plaintiff is entitled for permanent injunction, as prayed for?
- 3) Whether the Defendant is entitled to open a new door way in the Western wall of his shop opening into the Plaintiff's private rasta?
- 4) Whether there are any grounds to set aside the judgment and decree of the trial Court?

10. Additional evidence was also recorded by the lower Appellate Court, in the form of Exs.A.18 and A.19, copy of the registered sale deed, dated 20.01.1935 and certified copy of street survey plan No. 329. The appeal was dismissed on 25.02.2009.

11. The effort of the Appellant was to prevent the Respondent, its neighbour on the eastern side, from opening a door into its property. A perusal of the plaint plan discloses that the property "E F G H", on the one hand, and the property owned by the Respondent, on the other, open into the public road, on the northern side. In addition to having access in the northern side, the Respondent wanted to open a door into the plaint schedule open space. In a suit for perpetual injunction, the Court is not required to adjudicate the disputes as to title. The Respondent did not dispute the fact that the Appellant is the owner of almost all the properties abutting the open place "E F G H". It was not even alleged that it is a thorough fare. As pointed out in the preceding paragraphs, the very framing of the third issue by the trial Court and the third point by the lower Appellate Court clearly suggests that "E F G H" is a "private rasta" owned by the Appellant. If that be so, there is no question of the Respondent having a right to open a door into it.

12. Keeping aside for a while the dispute as to ownership and the nature of rights of the Appellant over E F G H. it is un-understandable as to how the Respondent can fix a door opening into that property, when it is not a public lane. It is not as if the Respondent was having any access to the open space, before he attempted to fix the door opening into it. The easiest thing for him would have been to prove by filing the certified copies of the plans or other documents, obtained from the local authority to prove that "E F G H" is a public lane and that he is entitled to open the door. For this purpose, he could have

even impleaded the local municipality. He did neither. Simply because the vehicles of the owners of surrounding properties are parked in the open space "E F G H", the Respondent does not have any right to open the door into it. Unfortunately, these vital aspects were not dealt with. In a way, the adjudication of the matter was out side the scope of the limited controversy in the suit and that is evident from the purport of the issues and points that were framed. A substantial question of law, viz., whether the relief of injunction in the context of opening the door into the property owned by a Plaintiff can be denied, when the Defendant does not claim any legal or easementary right over it. The question deserves to be answered in favour of the Appellant.

13. In case the Respondent is of the firm view that he is entitled to open the door as proposed by him, he can file a suit for declaration and then proceed to take further steps, depending upon the result.

14. The Second Appeal is therefore allowed and the judgments of the trial Court in O.S. No. 313 of 1987 on the file of the Principal Junior Civil Judge, Kurnool, dated 12.10.1993, and the lower Appellate Court in A.S. No. 54 of 1993, on the file of the Principal District Judge, Kurnool, dated 25.02.2009, are set aside. O.S. No. 313 of 1987 is decreed as prayed for. It is however left open to the Respondent to file a suit for declaration, if he so advises and seek consequential reliefs. It shall be open to him to close the opening made to the wall, during the pendency of the suit.

15. There shall be no order as costs.