

**IN THE HIGH COURT OF JUDICATURE OF ANDHRAPRADESH  
AT HYDERABAD**

**HONOURABLE SRI JUSTICE SAMUDRALA GOVINDARAJULU**

**SECOND APPEAL No. 183 of 1999**

**DATE: 25.03.2013**

Between:

C.Narsing Rao

Appellant  
And

B.Ramchander

.....

.....Respondent

**HONOURABLE SRI JUSTICE SAMUDRALA  
GOVINDARAJULU**

**SECOND APPEAL No.183 of 1999**

**JUDGMENT :**

The plaintiff is the appellant herein. He filed the suit in the trial Court for permanent injunction restraining the defendant from dispossessing the plaintiff from the suit house bearing No.8-101/1 in 130 Sq. yards of site in S.No.170 at Temple Alwal, Secunderabad. After trial, the trial Court decreed the suit; and on appeal by the defendant, the lower appellate Court allowed the appeal setting aside the decree passed in favour of the plaintiff. Hence, this second appeal by the plaintiff.

2) It is the plaintiff's contention that he purchased 130 Sq. yards of site under registered sale deed Ex.A-1 dated 27.11.1985 and that the plaintiff obtained sanction for construction on 13.10.1988 and that the defendant who is his southern neighbour is trying to forcibly occupy a piece of the schedule land with a view to annex it to his own site. On the other hand, it is contention of the defendant that the defendant purchased his plot measuring 666 Sq. yards under Ex.B-1 registered sale deed dated 07.01.1960 and has been in possession of the same and that the defendant obtained permission for construction on 26.10.1978 and constructed house in his site and that the plaintiff has approached the Court with unclean hands and is not entitled for injunction. The lower appellate Court after considering report of Advocate-commissioner and measurements of sites in possession of each of the parties, came to the conclusion that the plaintiff intended to encroach into the defendant's site.

3) In this second appeal, it is contended by the appellant's counsel that the lower appellate Court should not have relied upon Commissioner's report to deny relief to the plaintiff. While admitting this second appeal, the then

learned Judge of this Court framed the following substantial question of law for consideration:

“Whether the report of the Commissioner is admissible in evidence without examining the Commissioner”.

4) Straightaway, answer for the above question is that report of the Advocate-commissioner is admissible in evidence without examining the Commissioner as witness. An Advocate-commissioner is an officer of the Court and report filed by him after making local inspection in the presence of both the parties after measuring the land with the help of a surveyor, is part and parcel of material part of the record. The report needs no formal proof by examining the Advocate-commissioner.

5) It is contended by the appellant's counsel that when report of the commissioner is considered by the lower appellate Court, the said report should have been considered taking into consideration objections filed by the plaintiff for the said report. Objections filed by the plaintiff are factually incorrect. Objection No.1 is that septic tank of the defendant is touching house wall of the plaintiff on the North-Eastern point and that a room on the South-West point and wall of the plaintiff are exactly linking both the points of the constructions of the defendant. When the

defendant is Southern side owner of the plaintiff's property, it is impossible that the defendant's septic tank is touching North-Eastern wall of the plaintiff's house. It is not the plaintiff's case that the defendant's property is both on South as well as North. The said objection No.1 of the plaintiff is wholly untenable. Objection No.3 is that some land of the defendant in front of the mulgies must have gone in road. This is only a hypothesis based on guess work. When the defendant is not having his complete site on North-South line, it cannot be said that the said loss of North-South line is due to leaving some site in front of mulgies on East-West line. So, objection No.3 is also untenable. Admittedly as per objection No.1 the plaintiff's East-West wall should be 26.5 ft, whereas the Advocate-Commissioner measured the said wall as 29.1 ft including total width of 1.4 ft, covered by construction of the wall on both sides. Similarly the lower appellate Court found the plaintiff in possession of site in excess of his entitlement as per his sale deed on North-South line also. Thus, even as per objections to the Commissioner's report filed by the plaintiff, he is in excess extent over and above the length on all sides by way of encroaching into neighbouring defendant's land on the

South.

6) The lower appellate Court took note of the fact that the defendant purchased his 666 Sq. yards of site in the year 1960 itself long prior to the plaintiff purchasing his site in the year 1985. In spite of it, the defendant is now found to be in possession of lesser extent whereas the plaintiff is found to be in possession of higher extent than to which he is entitled as per his sale deed Exs.A-1. Under the cover of interim injunction, the plaintiff constructed his compound wall by encroaching into the defendant's site; and the defendant is stated to have demolished compound wall lying in between their sites after the lower appellate Court set aside decree passed by the trial Court. I am of the opinion that even on facts, the view expressed by the lower appellate Court is in accordance with measurements of sites to which each of the parties is entitled as per their respective sale deeds. Further, except filing a sale deed of recent origin and which came into existence four years prior to the suit, the plaintiff failed to prove that his vendor had title to convey 130 Sq. yards of site to the plaintiff by executing Ex.A-1 sale deed. In the absence of valid proof of the plaintiff's title for 130 Sq. yards and in the light of the plaintiff making

deliberate attempt to encroach into part of the defendant's site of 666 Sq. yards which the defendant purchased long back under Ex.B-1 sale deed in the year 1960, it cannot be said that the plaintiff is entitled for permanent injunction against the defendant for the suit property. The plaintiff has not approached the lower Court with clean hands and approached the Court with an oblique motive of encroaching into the defendant's land under the cover of permanent injunction. Therefore, decision of the lower appellate Court is appropriate and legal. The substantial question of law is answered against the plaintiff/appellant.

7) In the result, the second appeal is dismissed.

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**SAMUDRALA GOVINDARAJULU,J**

Dt. 25<sup>th</sup> March, 2013

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