

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE



PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 655 OF 2019

Appeal under section 100 of C.P.C, against the Judgment and Decree, dated 27-06-2017 made in A.S.No.3 of 2012 on the file of the Court of the V Additional District Court, Rayachoty, Y.S.R District against the Judgment and Decree, dated 30-07-2012 made in O.S.No.28 of 2009 on the file of the Court of the Principal Junior Civil Judge, Rayachoty, Y.S.R District.

Between:

Shaik Reddy Basha, S/o. Abdul Azeez, Aged about 73 years, Occ. Driver, R/o. D.No.29/141, Alimabad Street, Rayachoty Town and Mandal, Y.S.R District.

...Appellants/Defendants/Respondents

AND

1. Kalpavalli Venkataramana Reddy, S/o. Subbi Reddy, Aged about 67 years, Occ. Business, residing at D.No.29/141, Almabad Street, Rayachoty Town and Mandal, Y.S.R District.

2. Kalavapalli Prathap Reddy, S/o. Venkataramana Reddy, Aged about 67 years, Occ. Business, residing at D.No.29/141, Almabad Street, Rayachoty Town and Mandal, Y.S.R District.

...Respondents/Plaintiffs/Appellants

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in pursuance of the Judgment and Decree, dated 27.06.2017 in A.S.No.3 of 2012 on the file of V Addl District Judge Rayachoty pending disposal of the above appeal.

IA NO: 2 OF 2022

Petition under Order 14 Rule 5 under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Judgment and Decree, dated 27.06.2017 in A.S.No.3 of 2012 pending disposal of the above appeal.

Counsel for the Appellant: Sri V R Reddy Kovvuri

Counsel for the Respondents: Sri V Surendra Reddy

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

Second Appeal No.655 of 2019

Judgment:

This second appeal under Section 100 of the Code of Civil Procedure ("C.P.C." for short) is filed aggrieved against the Judgment and decree, dated 27.06.2017 in A.S.No.3 of 2012, on the file of the V Additional District Judge, Rayachoty, reversing the Judgment and decree, dated 30.07.2012 in O.S.No.28 of 2009, on the file of Principal Junior Civil Judge, Rayachoty.

2. The appellant herein is defendant and respondents herein are the plaintiffs in O.S.No.28 of 2009, on the file of Principal Junior Civil Judge, Rayachoty.

3. The plaintiffs initiated action in O.S.No.28 of 2009, on the file of Principal Junior Civil Judge, Rayachoty, with a prayer for permanent injunction restraining the defendant and his men from encroaching and causing any obstruction in the plaint schedule rasta shown as ABIGH portion in the plaint plan and for costs of the suit.

4. The learned Principal Junior Civil Judge, Rayachoty, dismissed the suit without costs. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed A.S.No.3 of 2012, on the file of the V Additional District Judge, Rayachoty. The learned V Additional District Judge, Rayachoty, allowed the appeal by decreeing the suit in favour of plaintiffs. Aggrieved thereby, the defendant approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.28 of 2009, is as follows:

The plaint schedule property is part of Ac.3-30 cents in S.No.759/4 of Rayachoty village and the land in S.No.759/2 is an extent of Ac.2-10 cents originally belongs to one Pyarijan out of which she gifted Ac.0-86 cents in S.No.759/4 and Ac.0-14 cents in S.No.759/2 to the defendant under a registered gift deed, dated 19.08.1975. The said Ac.1-00 cents is bounded on east by Kadapa-Chittoor trunk road, on the north by the land retained by the donor Pyarijan, on the west by the land Shaik Yusuf and on the south the land retained by the Pyarijan which is shown as ABCD in the plaint plan. The defendant prepared a layout over the said extent of Ac.1-00 cents by leaving Ac.0-4 $\frac{3}{4}$ cents for streets and sold the remaining Ac.0-95 $\frac{1}{4}$ cents for house sites to different people, different extents and different points of time. One such sale over the extent of Ac.0-6 $\frac{1}{2}$ cents shown ABIEF in the plaint plan to one Abdul Kareem under a registered sale deed, dated 21.02.1980 vide document No.851/1989. In the said sale this suit property is shown as property of Pyarijan his donor. After demise of Shaik Abdul Kareem, his legal heirs sold the said extent to Shaik Khader Mohiddin under a registered sale deed, dated 29.08.1996 vide document No.2466/1996. In the said sale deed also the plaint schedule property is shown as a property of Pyarijan. Pyarijan retained the land on the south of ABCD portion of the land, prepared a layout for house sites leaving some extent for streets. One such street left out is shown ABIGH with a width of 12 feet and length of 60 feet connecting Kadapa-Chittoor road to a street on the west of ABIGH street as shown in plaint plan.

7. The defendant filed written statement before the trial Court by denying the material averments and contended as follows:

The plaint schedule property is a part of Ac.3-30 cents in S.No.759/4 of Rayachoty village, which originally belonged to one Pyarijan. The defendant denied that the defendant prepared a layout over the said Ac.1-00 cents by

leaving Ac.0-4 3/4 cents for streets and sold remaining extent and also said Pyarijan retained the land on south of ABCD portion of land, prepared a layout for house sites leaving some extent for streets and one such street left out is shown as ABIGH with a width of 12 feet and length of 60 feet connecting Kadapa-Chittoor road to a street on the west of ABIGH street as shown in plaint plan. The plaint plan is irregular and incorrect and no such plaint plan rasta is available on ground and the same is situated on the west of alleged rasta which runs from north to south.

8. On the basis of above pleadings, the learned Principal Junior Civil Judge, Puttur, framed the following issues for trial:

- (1) Whether the plaintiffs are in possession and enjoyment of the plaint schedule property as on the date of filing of the suit as prayed for?
- (2) Whether the plaintiffs are entitled to claim permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaint schedule property as prayed for?
- (3) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.W.1 to P.W.3 were examined and Exs.A.1 to A.17 were marked. On behalf of the defendant, D.W.1 was examined and Ex.B.1 and Ex.B.2 were marked.

10. The learned Principal Junior Civil Judge, Rayachoty, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit without costs. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.3 of 2012, on the file of the V Additional District Judge, Rayachoty, wherein, the following point came up for consideration:

- (1) Whether the plaintiffs are having any right and title over their plots or not?

(2) Whether the plaintiffs are entitled for permanent injunction for ingress and egress through the rasta?

(3) Whether the findings of the trial Court in its decree and judgment are tenable and sustainable under law or not and if not liable to be set aside or not?

(4) To what relief?

11. The learned V Additional District Judge, Rayachoty i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the defendant and allowed the appeal filed by the plaintiffs by decreeing the suit. Felt aggrieved of the same, the defendant in O.S.No.28 of 2009 filed the present second appeal before this Court.

12. On hearing both side counsels at the time of admission of the appeal, on 09.12.2022, this Court framed the following substantial questions of law:

(1) Whether in a suit for injunction, filed by the plaintiffs, placing burden on the defendant vitiates the judgment of appellate Court?

(2) Whether the plaintiffs having filed suit for injunction proved existence of rasta, by placing evidence?

(3) Whether granting of injunction without adjudicating as to whether property of an extent of Ac.0-04 1/4 cents belonging to the defendant was left for rasta.?

13. Heard Sri V.R. Reddy Kovvuri, learned counsel for the appellant and heard Sri V. Surendra Reddy, learned counsel for the respondents.

14. Law is well settled that under Section 100 of CPC the High Court cannot interfere with the findings of fact arrived at by the First Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In a case of **Bhagwan Sharma v. Bani Ghosh**¹, the Apex Court held as follows:

"The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In a case of **Kondira Dagadu Kadam vs. Savitribai Sopan Gujar**², the Apex Court held as follows:

"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

15. The plaintiffs in the suit approached the trial Court for seeking relief of permanent injunction to restrain the defendant and his men from encroaching and causing obstruction in the plaint schedule rasta shown as ABIGH in the plaint plan. Since the plaintiffs approached the Court for seeking the relief of permanent injunction in respect of rasta as shown in ABIGH in the plaint plan, it is for the plaintiffs to prove that they are having exclusive right in the plaint schedule rasta. The contention of the plaintiffs as per the plaint averments in the plaint is that the plot on the south of ABIGH rasta was sold to one Ahammad Basha by Pyarijan under a registered sale deed, dated 24.05.1999 and in the said document, the plaint schedule rasta is shown as northern boundary. The plaintiffs further pleaded that the said Ahammad Basha in turn sold the same to one Mannur Subbamma under a registered

¹ AIR 1993 SC 398

² AIR 1999 SC 471

sale deed, dated 21.03.2001 and in the said document also the plaint rasta has shown as northern boundary and 2nd plaintiff purchased the very same property from Mannuru Subbamma under a registered sale deed, dated 27.10.2008. The plaintiffs further pleaded that the plaintiffs and general public have to pass through the suit rasta to their respective plots. The contention of the appellant is that the First Appellate Court failed to observe that the plaintiffs having pleaded that the defendant was gifted the land in an extent of Ac.1-00 cents in Sy.Nos.759/2 and 4 within the boundaries has shown as ABCD in the plaint plan and they had sold an extent of Ac.0-95 $\frac{1}{4}$ cents leaving an extent of Ac.0-4 $\frac{3}{4}$ cents as rasta shown in the plaint schedule property outside of the ABCD boundaries and that the plaint plan attached to the plaint is not at all correct.

16. It is not disputed by both the parties that the plaint schedule rasta is not a public rasta. As seen from Ex.A.8 to Ex.A.11 registered sale deeds, the boundaries mentioned in Ex.A.8 to Ex.A.11 are not in similar. It is the specific case of the plaintiffs that the vendor of the 1st plaintiff purchased the property under Ex.A.13 from Pyarijan on 17.10.1985. Admittedly, the 1st plaintiff does not get any right of passage under Ex.A.11. Ex.A.13 is not at all disputed by the plaintiffs. Ex.A.1 is the plaint plan. The relief sought by the plaintiffs is to restrain the defendant and his men by way of granting permanent injunction from encroaching and causing obstruction in the plaint schedule rasta shown as ABIGH in the plaint plan. The plaintiffs pleaded that the defendant was gifted the land for an extent of Ac.1-00 cents in Sy.No.759/2 and 4 within the boundaries shown as ABCD in the plaint plan and he sold Ac.0-95 $\frac{1}{2}$ cents by leaving an extent of Ac.0-04 $\frac{3}{4}$ cents for streets (rasta). As seen from the plaint plan, rasta is shown as outsider of the ABCD in the plaint plan. The plaintiffs relied on Ex.A.8 to Ex.A.11. As seen from Ex.A.11 the 1st plaintiff has purchased the property from his vendors. The specific recitals in Ex.A.1 is that he can pass through the road left of them from Kadapa-Chittoor truck road. It

is undisputed by both the parties that the vendors of P.W.1 purchased the said property under Ex.A.13. The vendors of P.W.1 purchased the property from Pyarijan on 17.10.1985 under a registered sale deed. The western boundary mentioned in the said document is Door No.759/2 of Reddi Basha land and there was a clear mention in Ex.A.13 that the vendors of their vendors are having right to pass through Chittoor – Kadapa truck road through their lands only. It was specifically pleaded by the defendant that the 1st plaintiff has not get any right from his vendor under Ex.A.11 to claim the property of the defendant.

17. There is no evidence to show that the defendant left an extent of Ac.0-04 $\frac{3}{4}$ cents for the purpose of rasta towards western and northern side east to west road. In cross examination when elicited by the defendant, P.W.1 pleaded ignorance about the measurements of Pyarijan property on southern side to Ac.1-00 cents of land belongs to the defendant. P.W.1 admits in cross examination itself that the general public are not using the rasta in suit survey number and the particulars of the suit property were shown in the plaint schedule was given only by using on the document only but not seeing physically on ground. He further admits that he does not know whether the donor of defendant i.e., Pyarijan is still alive. He further admits the general public is not using the rasta in suit survey number. Another admission made by P.W.1 is that he is not even mentioned in his pleadings as to who are objecting the defendant laying foundation in the suit schedule property and he cannot say the names of the owners of the properties, which are adjoining to the suit property as affected persons after the defendant laying foundation. P.W.2 i.e., 2nd plaintiff admits in his evidence in cross examination that he has seen the layout plan prepared by original owner Pyarijan and Pyarijan is not his original vendor but she is the original owner of the suit schedule property and Pyarijan is the step mother of the defendant. He further admits that he came to know that Pyarijan gifted Ac.1-00 cents of land to Shaik Reddy Basha

i.e., defendant in the suit schedule survey number and the same is sold away to third party. The evidence produced by the plaintiffs is no way established about the alleged right of the plaintiffs in the suit schedule rasta. As per the plaint averments, the plaintiffs and general public have to pass through the suit rasta to their respective plots. P.W.1 admits in his evidence in cross examination itself that the general public is not using the rasta in suit schedule survey number. The plaintiffs in the suit sought the relief of permanent injunction restraining the defendant and his men from encroaching and causing obstruction in the plaint schedule rasta shown as ABIGH in the plaint plan. It is also relevant to note that P.W.1 himself admits in his evidence in cross examination that the particulars of the suit property shown in the plaint schedule was given only on seeing documents but not seeing the ground physically. Another crucial admission made by him is that the general public is not using the rasta in suit survey number, therefore, the fact remains the plaintiffs approached the Court with unclean hands by suppressing the real facts, as such, the plaintiffs are not entitled equitable relief of permanent injunction.

18. The contention of the plaintiffs is that the alleged rasta is a private rasta and the plaintiffs and general public have to pass through the disputed rasta through their respective plots. The observation of the learned First Appellate Judge is that the right of plaintiffs is denied by the defendant, therefore, the defendant has to prove that the same is not rasta being used by public and plaintiffs. The learned First Appellate Judge further observed that the defendant has not filed any application for appointment of Advocate-Commissioner to prove the same. The said observation of the learned First Appellate Judge is unknown to law. The plaintiffs approached the trial Court for seeking equitable relief of permanent injunction against the defendant, therefore, the observation of the learned First Appellate Judge in a suit for permanent injunction that the defendant has to prove that the disputed rasta is

not for usage of plaintiffs and neighbouring plot owners is unknown to law and the said finding is liable to be set aside. In fact, the plaintiffs have approached the trial Court for seeking equitable relief of permanent injunction to restrain the defendant and his men from encroaching and causing obstruction in the plaintiff schedule rasta shown as ABIGH in the plaintiff plan, therefore, the plaintiffs have to prove their case but not by the defendant.

19. Law is well settled by the Apex Court in **Rangammal vs. Kuppuswami and another**³ that;

"Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof' which clearly lays down that:

"101. Burden of proof.- whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

In the case on hand, the plaintiffs pleaded that the plaintiffs and general public have to pass through the suit schedule rasta to their respective plots, but P.W.1 admits in his evidence in cross examination itself that the general public is not using suit schedule rasta to go to their respective plots. Another crucial admission made by P.W.1 is that the particulars of the suit schedule property shown in the plaintiff schedule were given by seeing the documents only, but not seeing physically on ground. Another crucial admission made by P.W.1 is that he cannot say the names of the owners of the property adjoining

to the suit schedule property, therefore, it is quite clear that the plaintiffs does not know anything about the suit schedule rasta and the plaintiffs suppressed the real facts and approached the trial Court with unclean hands. Ex.A.11 plaint plan shows that the disputed rasta shown as ABIGH. In fact, there is no whisper in the plaint plan that the plaintiffs are having right to ingress and egress through the disputed rasta. Ex.A.11 is the document of the plaintiffs, the same is not yet disputed by both the parties. As seen from Ex.A.11, the said property was purchased by the vendors of P.W.1 under Ex.A.13 from Pyarijan and there is no evidence on record to show that the 1st plaintiff has got right of passage from his vendors under sale deed by the plaintiffs.

20. In a case of **Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and another**⁴, the Apex Court held that "in a suit filed under Section 38 of the Specific Relief Act, permanent injunction can be granted only to a person who is in actual possession of the property. The burden of proof lies upon the plaintiff to prove that he was in actual and physical possession of the property on the date of suit".

In the case on hand, the learned First Appellate Judge came to a wrong conclusion and held that the defendant has to prove that the disputed rasta is not for usage of the plaintiffs and neighbouring plot owners and to prove the same, the defendant has not filed any application for appointment of Commissioner in a suit filed by the plaintiffs for seeking equitable relief of permanent injunction against the defendant.

21. The plaintiffs failed to prove that the plaintiffs are having right of passage through ABIGH in the plaint plan. By giving cogent reasons, the learned trial Judge rightly dismissed the suit, but the learned First Appellate Judge came to a wrong conclusion and allowed the appeal by setting aside the decree and judgment passed by the learned trial Judge.

22. For the aforesaid reasons, I am of the considered view that the plaintiffs are not entitled the equitable relief of permanent injunction as sought for in the plaint. Therefore, the decree and judgment passed by the learned First Appellate Judge is not sustainable under law and the same is liable to be set aside. Therefore, the second appeal is liable to be allowed.

23. In the result, the second appeal is allowed setting aside the Judgment and decree, dated 27.06.2017 in A.S.No.3 of 2012, on the file of the V Additional District Judge, Rayachoty. Considering the facts and circumstances of the case, each party do bear their own costs in the second appeal.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

Sd/- E KAMESWARA RAO
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The V Additional District Court, Rayachoty, Y.S.R Kadapa District.
(with records if any)
2. The Principal Civil Judge(Junior Division), Rayachoty, Y.S.R District.
3. One CC to Sri. V R Reddy Kovvuri, Advocate [OPUC]
4. One CC to Sri. V Surendra Reddy, Advocate [OPUC]
5. The Section Officer, V.R. Section, High Court of Andhra Pradesh.
6. **Three CD Copies**

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HIGH COURT

DATED:28/02/2025

JUDGMENT + DECREE

SA.No.655 of 2019



ALLOWING THE SECOND APPEAL

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT



THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 655 OF 2019

Between:

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...Appellants/Defendants/Respondents

AND

1. Kalpavalli Venkataramana Reddy, S/o. Subbi Reddy, Aged about 67 years, Occ. Business, residing at D.No.29/141, Almabad Street, Rayachoty Town and Mandal, Y.S.R District.
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...Respondents/Plaintiffs/Appellants

Appeal under section 100 of C.P.C, against the Judgment and Decree, dated 27-06-2017 made in A.S.No.3 of 2012 on the file of the Court of the V Additional District Court, Rayachoty, Y.S.R District against the Judgment and Decree, dated 30-07-2012 made in O.S.No.28 of 2009

on the file of the Court of the Principal Junior Civil Judge, Rayachoty, Y.S.R District.

 This appeal coming on for hearing and upon perusing the grounds of appeal, the judgment and Decree of the trial Court and material papers in the Suit and upon hearing arguments of Sri. V R Reddy Kovvuri, Advocate for the Appellant and of Sri. V Surendra Reddy, Advocate for Respondents.

This Court doth Order and decree as follows:

1. That the second appeal be and is hereby allowed;
2. That the Judgment and decree, dated 27.06.2017 in A.S.No.3 of 2012, on the file of the V Additional District Judge, Rayachoty be and is hereby set aside and
3. That each party do bear their own costs in the second appeal.

Sd/- E KAMESWARA RAO
JOINT REGISTRAR


//TRUE COPY//

SECTION OFFICER

To,

1. The V Additional District Court, Rayachoty, Y.S.R Kadapa District.
2. The Principal Civil Judge(Junior Division), Rayachoty, Y.S.R District.
3. Three CD Copies

Stu
sree

HIGH COURT

DATED:28/02/2025

DECREE

SA.No.655 of 2019



ALLOWING THE SECOND APPEAL