

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE :: RAJAMPET**

**Present:- Smt. C.SATYA VANI.,**

III Additional District Judge, Rajampet.

Monday this 16<sup>th</sup> day of March,2020

**C.M.A.01/ 2019 in I.A.No.186/2015 in O.S.56/2015**

**on the file of Junior Civil Judge Court, Rajampet**

Kadapa Chan Bee @ Sankaramma w/o late Kadapa Mandagiri Saheb, aged 70 years, Hindu, cultivation, residing at Kitchamambapuram village h/o Mandaram Rajampet Mandal, Now residing at Yeguvagadda street, Rajampet town and Mandal, Kadapa District : Appellant/Respondent/Defendant

Vs

Kasarapu Sankaraiah son of late Krishnaiah, aged 50 years Hindu, living by cultivation, residing at Bhuvanagiripalli village Rajampet Mandal, Kadapa District : Respondent/Petitioner/Plaintiff

**On appeal against the decree and order made in**  
**in I.A.No.186/2015 in O.S.No.56/2015, dated:6.12.2018**  
**on the file of Junior Civil Judge court, Rajampwet**

**Between**

Kasarapu Sankaraiah : **Petitioner**

**And**

Kadapa Chan Bee @ Sankaramma : **Respondent**

This Civil Miscellaneous appeal coming on 3.3.2020 for final hearing before me in the presence of Sri P.Vallabha, Counsel for Appellant /Respondent/Defendant and of Sri AS.V.Subramanyam, Counsel for Respondent/Petitioner/Plaintiff/ and the matter having stood over for consideration till this day, this court delivered the following:-

**O R D E R**

This is an Civil Miscellaneous appeal filed by the Appellant / Respondent/Defendant in I.A.No.186/2015 in O.S.No.56/2015 dated 6.12.2018 on the file of Junior Civil Judge court, Rajampet as against the decree and order, praying this court to set aside the decree and order of

the said court by allowing this Civil Miscellaneous appeal .

2:The appellant is the Petitioner/defendant and the respondent is petitioner/Plaintiff in I.A.No.186/2015 in O.S.No.56/2015. For the sake of convenience the parties are arrayed as petitioner and respondent.

3:The brief averments of the petition filed by Respondent/ Petitioner before the Trial court are as follows:-

That the mother of the petitioner purchased the property under sale deed dated: 9.11.1995. That her mother got easementary right under the document. It is further the contention of petitioner that the vendor of the document dated: 9.10.1995 got the above right under Lok Adalath award passed in O.S.No.253/1951. Hence prays to grant temporary injunction restraining the respondent and her men from interfering with the peaceful possession and enjoyment of petition schedule property by the petitioner till disposal of the main suit.

4: The respondent filed counter alleging that the petitioner got created sale deed dated: 27.7.2015. That the respondent is in possession of plaint schedule property and sought for to dismiss the petition.

5: On behalf of petitioner, Ex.P1 to Ex.P7 were got marked. On behalf of respondent no documents shown marked on docket or in orders.

6: On appreciation of the oral and documentary evidence, the trial court ultimately allowed the petition. Aggrieved by the order and decree of Junior Civil Judge, Rajampet made in I.A. No.186/2015 in O.S. 56/2015, dated: 6.12.2018 the Respondents filed present appeal.

7: The grounds of appeal are as follows:-

The order of trial court is contrary to law weight of evidence and probabilities of the case. The trial court without going through the documents filed by the appellant erroneously allowed the petition

without observing the consequences which lead to multiplicity of litigation. In any view of the matter the decree and order passed by the trial court can be sustained and liable to be set aside. The trial court ignored that the petitioner has to establish prima facie case, balance of convenience and irreparable loss to seek temporary injunction on the strength of their own document, while passing orders the trial court considered Ex.P2 alone for the satisfaction of the above ingredients and granted injunction which is irregular and erroneous.

That the trial court completely forgotten the convention of appellant and documents filed by her in support of her case. The trial court failed to consider the arguments of the appellant with regard to the measurements given by the petitioner to the suit passage which are imagination and completely contra to his own documents. The trial court failed to consider the documents filed by the appellant wherein there is no rasta created to the petitioner in the suit passage in their site. The trial court failed to take advocate commissioner report into consideration to decide the physical features of the petitioner over petition schedule property. The trial court erroneously allowed petition without considering the document filed by the appellant. Hence sought for to allow the appeal.

8: Heard arguments on both sides.

9: Now the Points for consideration are :-

1: Whether the decree and order made in I.A.No.186/2015 in O.S.No.56/2015, dated: 6.12.2018 on the file of Junior Civil Judge Court, Rajampet is liable to be set aside?

2 : To what relief?

10: **Point No.1** :

Orders in the instant case are issued on docket. There is no endorsement with regard to marking of documents on behalf of respondent. Documents of the petitioner is shown marked as Ex.P1 to Ex.P7 dated: 28.9.2018 and orders were passed on 6.12.2018. On behalf of respondent no document shown marked on docket nor mentioned in orders. But on documents two registered sale deeds dated: 7.12.1992 as marked as Ex.R1 and Ex.R2 with initials of Presiding Officer, dated: 29.10.2018. Appendix not maintained on file.

11: It is not in dispute with regard to sale deed Ex.P2 executed by mother of plaintiff in favour of plaintiff, dated: 27.7.2015. At the same time it is disputed that same is created for the purpose of this case with particulars of the instant disputed rasta. It is also not in dispute that there are two registered sale deeds dated: 9.10.1995 vide Ex.P3 Son Narasimha rao and wife of Narasimha Rao by name Geetha. Ex.P4 in the name of mother of plaintiff executed by one Tiruvengalam. Ex.P5 is the certified copy of decree in O.S.No.253/1995, dated: 10.12.1951 under compromise in between said Tiruvengalam and one Ammanemma. A plaint plan prepared by Advocate commissioner in the said O.S.No.253/1951 under Ex.P.6. Ex.P7 is the certified copy of decree in O.S.No.253/1951.

12: On perusal of Ex.P5 no doubt there is a reference of rasta leading from main R.S road towards Latrine behind house of said parties.

13: It is also not in dispute that ABCD property shown under Ex.P1 belongs to petitioner and QEDA house belongs to the defendant and there is a joint wall in between their houses. It is also not in dispute that vendor of the defendant is Irugolla Ammanemma who is mother in law of

respondent. On perusal of Ex.P1 with that of Ex.P2 registered sale deed is in consistency and both appears with the said particulars with regard to raatha in existence. Ex.P5 also shows that there is as raatha agreed in between parties for using as passage for Ingres and egress to the plaintiff Teruvengalam therein to go to Latrine shown situated under Ex.P6.

14: In the light of above facts it is the contention of respondent that inspite of Ex.P5 showing that there is a passage but the measurements as shown in Ex.P6 are not shown in Ex.P1. They clearly differs. On perusal of Ex.P1 with that of Ex.P6 measurements starts from 5 feet which ends to 11 feet which is not shown similarly in Ex.P6. It is left unexplained by the petitioner as to how said measurements have been presumed and mentioned in Ex.P1. Further it is the contention of respondent that Ex.P4 clearly shows that on north of house of plaintiff bearing D.No.6/343 there is such raatha. Ex.P1 is very clear in noting the door number of house of plaintiff as 6/343. Further raatha is not shown just abutting north to said house as seen under Ex.P4. At the same time said raatha is shown north to the house of defendant which is with D.No.6/342 which is not mentioned in Ex.P4. More over the defendant is not a party to Ex.P4 nor informed of the same.

15: The arguments of the learned counsel for the respondent that he is not a party to Ex.P3 and Ex.P4 is not appreciable as there is a compromise decree in between vendors of plaintiff and vendors of defendant under Ex.P5. At the same time arguments of learned counsel for the respondent are considerable that measurements given by the petitioner over raatha which is not seen under any of the documents under Ex.P3 to Ex.P7 cannot be accepted nor any injunction can be granted. No doubt easementary right of the Tiruyengalam was considered

and accepted by the vendor of the respondent. At the same time said passage shall be shown clearly in accordance with Ex.P6 plaint plan under compromise decree in O.S.No.253/1951 In the absence of the same case of the petitioner as such cannot be taken into consideration for issuance of temporary injunction against the respondent. Petitioner is expected to place true facts.

16:While arguments both learned counsels reported that both houses of plaintiff and defendants dilapidated. Admittedly and evidently the Advocate commissioner observed pits dug in the suit property. Thereby it is understood and can be observed that presently there are no structures nor house of defendant is in existence. Further it is also for the petitioner to place material that the said Latrine of the year 1951 is still in existence and the easementary right also is in existence with such measurements even to this day.

17:In the light of contention of respondent in fact the measurements does not tally and also as per Ex.P1 rasta is not shown in accordance with Ex.P6. Further there is no mention in Ex.P4 that on the north of the house of plaintiff there is house of Ammanemma and abutting to the said house said rasta is in existence. Therefore it is to be substantiated by the petitioner that rasta shown under Ex.P1 is none other than rasta agreed in between parties under compromise decree and as seen in Ex.P.6.

18:Further the arguments of the learned counsel for the respondent that rasta measurements shown as 5 feet which extended till 11 feet will leave for the house only 2 feet which is unbelievable as house cannot be of 2 to 3 feet and the rasta will be permitted for 5 feet that too under easementary right. The said arguments are also

considerable and it is for the petitioner to substantiate same with relevant documents. No doubt house of the respondent is shown as one Ankanam house in the documents, but it is for the petitioner to substantiate that rastha is with such measurements shown under Ex.P1 were in fact agreed by her vendor's vendor. Under Ex.P4 door number of the respondent is not mentioned so as to connect house of respondent and to presume the rastha on the north of the house of respondent. Ex.P7 is with regard to D.No.1351 but the plaint door number shown as 6/343 which is also to be substantiated by the petitioner showing nexus in between the same. Only for the reason that mother of the plaintiff purchased petition schedule property under Ex.P3 and Ex.P4 where in the respondent is not a party nor informed about any passage the respondent cannot be bound by the same unless petitioner establishes his case with clear measurements of the rastha.

19: Further arguments of the learned counsel for the respondent that when there is only 12 feet available site how can rastha will be given for an average measurements of 6.5 feet leaving only 5 to 6 feet to the respondent. The right with regard to such measurements has been extended from Ex.P.4. But the same does not effect in Exc.P.5. Therefore it is for the petitioner to substantiate that said rastha as agreed upon in compromise decree alone claimed. Measurements shown by the petitioner are exaggerated and a false measurements have been shown in Ex.P.1. The said arguments are considerable as the petitioner failed to connect Ex.P1 with that of compromise decree.

20: At the same time respondent cannot go beyond Ex.P5 as it is an admitted fact and will be estopped. But petitioner has to establish location, measurements and other aspects connecting his case

with Ex.P5.The petitioner is at liberty to proceed with trial expeditiously and respondent directed to cooperate for speedy disposal of the suit.

21: Therefore this court is of the opinion that the petitioner has suppressed the facts and not placed his case properly, even location, identity and measurements of the said ratha could not be substantiated. Therefore this court finds no prima facie case in favour of petitioner and the case of petitioner is to be adjudicated with an elaborate trial. Therefore orders of the Junior Civil Judge, Rajampet basing on Ex.P.2 alone pronouncing of orders on the docket without marking documents on behalf of respondent are perverse and are to be set aside. Therefore the order made by the Junior Civil Judge, Rajampet in I.A.No. 186/2015 in O.S. No. 56/2015, dated: 6.12.2018 on the file of Junior Civil Judge court, Rajampet is set aside. Accordingly point No.1 for consideration is answered.

21: **Point No.2** : -

In the result, the Civil Miscellaneous appeal is allowed without costs, setting aside the order and decree made in I.A.No. 186/2015 in O.S. No. 56/2015, dated: 6.12.2018 on the file of Junior Civil Judge court, Rajampet.

Further the petition of the petitioner in I.A.No.186/2015 in O.s.No.56/2015 on the file of Junior Civil Judge court, Rajampet is dismissed.

Dictated to the Stenographer Grade-I transcribed by him corrected and pronounced by me in the open Court, this the 16<sup>th</sup> day of March, 2020.

sd/-C.Satyavani  
III ADDITIONAL DISTRICT JUDGE,  
RAJAMPET.

**APPENDIX OF EVIDENCE**

-Nil-

sd/-CSV

III A.D.J