APHC010234852000

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

WEDNESDAY, THE 5th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 793/2000

Between:

K.parandham Naidu and Others **...APPELLANT(S)**

AND

Dist Collector and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. V JAGAPATHI
2. .
3. K KOUTILYA

Counsel for the Respondent(S):

1. LINGAREDDY LAKSHMIPATHI
2. GP FOR ARBITRATION
3. L J VEERA REDDY

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.793 of 2000

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed being aggrieved by the judgment and decree, dated 27.03.2000, in A.S.No.23 of 1996, on the file of the Senior Civil Judge, Puttur, confirming the judgment and decree, dated 19.08.1996, in O.S.No.206 of 1990, on the file of the District Munsif, Nagari.

2. The plaintiffs initiated action in O.S.No.206 of 1990, on the file of the District Munsif, Nagari**,** with a prayer for the right of passage in the suit lands for taking carts, lorries etc., to the fields of the plaintiffs and restraining the defendant Nos.1 and 2 to assign or alienate the suit land to the defendant No.4 or to any body and for costs.

3. The learned District Munsif, Nagari, dismissed the suit with costs. Felt aggrieved by the same, the unsuccessful plaintiffs in the above said suit filed the aforesaid appeal before the First Appellate Court. The learned Senior Civil Judge, Puttur, dismissed the appeal by confirming the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the plaintiffs in O.S.No.206 of 1990 approached this Court by way of second appeal.

4. The appellant Nos.1 to 6 herein are the plaintiffs and the respondent Nos.1 to 4 herein are the defendants in O.S.No.206 of 1990. During the pendency of the second appeal the appellant Nos.2, 4 and 5 were died and

the appellant Nos.7 to 10 were brought on record as the legal representatives of the deceased appellant Nos.2, 4 and 5 and subsequently, the appellant No.1 also died and the appellant Nos.11 and 12 were brought on record as the legal representatives of the deceased appellant No.1. During the pendency of the second appeal, the respondent No.4 died and the respondent Nos.5 to 8 were brought on record as the legal representatives of the deceased respondent No.4.

5. For the sake of convenience, both parties in the second appeal will be referred to as they were arrayed in the suit O.S.No.206 of 1990 before the trial Court.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.206 of 1990, is as follows:

I. The plaintiffs pleaded that the plaint schedule land is R & B Road poramboke land and originally Nagari-Nagalapuram R & B Road was passing through the plaint schedule land. The plaintiffs further pleaded that the plaint schedule land was between 2/2 km and 2/4 km from Nagari and there is a Cart Track from the old Kinky road, which proceeds towards South to the fields of the plaintiffs and some other ryots since times immemorial. The plaintiffs further pleaded that the said Cart Track is a plan marked Cart-Track and after straightening the said road, it has been shifted towards the North to a distance of about 120 feet from the said plan marked Cart Track. The plaintiffs further pleaded

that they came to know that the defendant Nos.1 and 2 are marking proposals to assign or alienate the suit land, where there was old Nagari-Nagalapuram R & B road, to the defendant No.4 in collusion with him. The plaintiffs further pleaded that the suit land where there was old R & B road is only connecting the road from the said straightened R & B road to the planned marked Cart Track, there is no other road from the said planned marked cart track.

II. The plaintiffs pleaded that their ancestors and themselves were using the suit land since times immemorial and the said plan marked cart track as right of way to take their carts, tractors, lorries, cattles and agricultural implements to their fields and if the defendant Nos.1 and 2 either alienate or assign the said lands either to the defendant No.4 or to any other 3rd party, the plan marked cart track gets disconnected or discontinued from the straightened R & B road. The plaintiffs further pleaded that the plaintiff No.1 has laid down an underground cement irrigation water pipe line in the suit land from his bore-well to his fields with the permission of the defendant No.3 issued *vide* letter bearing No.D4/87-88 dated 09.02.1988. The plaintiff further pleaded that on 01.11.1990, the defendant No.4 attempted to interfere with the plaintiffs' possession and enjoyment of the suit land as right of way and he also tried to cause damage to the suit cement pipe line declaring that the Government is going to assign the same to him and the plaintiffs have thwarted his attempts. The plaintiffs further pleaded that the defendant

No.4 is declaring that he will bring the defendant Nos.1 and 2 and his supporters to remove the cement pipe line and prevent the plaintiffs from using the suit land as right of way to take their carts, tractors, lorries, cattles and other agricultural implements to their fields. The plaintiffs pleaded that the defendants have no right to do so and as such, the plaintiffs are constrained to file the present suit.

7. The defendant No.3 filed written statement before the trial Court and the same was adopted by the defendant Nos.1 and 2. The case of defendant Nos.1 to 3, as per the written statement filed by defendant No.3, is as follows:

The defendant No.3 pleaded that the work improvements to Geometrics in 2/2 Km of Nagari-Nagalapuram road was under taken by the Department to eliminate the kink in 2/2 Km in the old road and formed a straight road with the mutual agreement of exchanging the land of the old road bits to the owners of the land in lieu of compensation and accordingly, with the consent of the land holders by names K.Narayanaswamy, in S.No.239/7 about 0.17 cents and K.Ramachandra Naidu, in S.No.239/2 about 0.10 cents land handed over to the department with a mutual oral agreement of exchanging lands. The defendant No.3 has proposed to transfer the same in his letter APPS/A6/A2, dated 02.03.1989 an extent of 0.17 cents of land in S.No.240 of T.R.Kadiga in favour of K.Narayanaswamy Naidu and 0.10 cents in S.No.178 of Mangadu village accounts in favour of the defendant No.4 and the defendant No.1 also instructed the defendant No.2 to send the detailed proposals in this regard

and the same were submitted duly after following the formalities and as such, they prayed for dismissal of the suit with exemplary costs.

8. The defendant No.4 filed written statement before the trial Court and the case of defendant No.4, as per the written statement filed is as follows:

I. The defendant No.4 pleaded that at his request, the Collector proposed to transfer an extent of Ac.0.10 cents of land in S.No.178 of Mangadu Village to him as his land of Ac.0.10 cents were taken to straighten the road. The defendant No.4 further pleaded that in view of the sub-division of cart track, the newly formed road is being connected with old track which was in existence and nothing prevents the plaintiffs or anybody from taking their carts, tractors, lorries etc., and the same is evident through revenue records. The defendant No.4 further pleaded that the Government has every right to deal with the properties as per law and the land in question R & B poramboke and the plaintiffs' without having any right filed the suit with false and untenable allegations. The defendant No.4 further pleaded that the fact that plaintiff No.1 laid a pipe line is true, but the said pipe line is not laid in the suit property and at the time of permission, the plaintiff No.1 had not specified any particular survey number and laid the pipe line. The defendant No.4 further pleaded that the plaintiffs have no authority to question or to direct the Government to act in a particular way as the plaintiff No.1 was permitted to lay a pipe line for agricultural purpose. The defendant No.4 further pleaded that the plaintiff No.1 violated the condition imposed by

the 3rd defendant-department at the time of sanctioning the order for laying pipe line in their R & B road proamboke land.

II. The defendant No.4 further pleaded that the plaint schedule land was originally R & B road with a pin curved shape and the department intended to form a straight road to avoid inconvenience to heavy vehicles to run on the said road. The defendant No.4 further pleaded that that the R & B Department approached him and another person by name K.Narayanaswamy Naidu and requested them to give their lands for the purpose of laying straight road and agreed to give their old road to them by way of exchanging. The defendant No.4 further pleaded that in lieu of compensation he agreed and handed over Ac.0.10 cents of land in S.No.239/2 of T.R.Kandriga village accounts and agreed to receive an extent of Ac.0.10 cents of land in S.No.178 of Mangadu village which belongs to R & B old road and accordingly, in the aforesaid mutual agreement, the proposal of assignment was submitted to the defendant Nos.2 and 3 for consideration of all formalities and proceedings as per Revenue Laws and as such, he prayed for dismissal of the suit with exemplary costs.

9. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

1) Whether the plaintiff's acquired any rights of easement over the suit lands?

2) Whether the suit land is communal land or village suit poramboke or R & B and the defendants 1 to 3 has no right to alienate or assign the same?
3) To what relief?

10. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Ex.A-1 to Ex.A-5 were marked. On behalf of the defendants, D.Ws.1 to 5 were examined and Ex.B-1 to Ex.B-18 were marked and Ex.X-1 was also marked.

11. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit with costs. Felt aggrieved thereby, the unsuccessful plaintiffs filed the appeal suit in A.S.No.23 of 1996, wherein the following points came up for consideration:

1) Whether the proposal of the respondents 1 to 3 to transfer the schedule land in favour of the 4th respondent is prohibited by any law or board standing orders?
2) Whether the respondents 1 to 3 are justified in their proposal to transfer the suit land to the 4th respondent?
3) Whether the plaintiff is entitled to restrain the respondents 1 to 3 from transferring the suit land to the 4th respondent?
4) To what relief?

12. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the plaintiffs, and dismissed the appeal by confirming the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful plaintiffs in O.S.No.206 of 1990 filed the present second appeal before this Court.

13. On hearing learned counsel for the appellants at the time of admission of the second appeal on 10.10.2000, the Composite High Court of Andhra Pradesh, at Hyderabad, admitted the second appeal and framed the following substantial questions of law:

1) Whether the Government can assign, alienate or transfer the plaint schedule property which is a right of way in view of BSO 15?
2) When the report of the Commissioner clearly specifies that there is no alternative way at all, can the Court negative the relief to the plaintiffs based on the easement of necessity and the right by prescription?

14. Heard Sri K. Koutilya, learned counsel for the appellants, Sri M. Yuvasiva Swamy, learned Assistant Government Pleader for Appeals appearing for the respondent Nos.1 to 3 and Sri L. J. Veera Reddy, learned counsel for the respondent Nos.5 to 8.

15. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is 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 the 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 the case of ***Kondira Dagadu Kadam v. 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."*

16. It is the admitted case of the plaintiffs that the plaint schedule land is a R & B road poramboke land. The respondent Nos.1 to 3 are the District Collector, the Mandal revenue Officer of Nagari Mandal and the Executive Engineer of R & B Department. The Relief sought by the appellants/plaintiffs in the suit is to declare that they are having right of way in the suit land to take carts, lorries and tractors. Since the appellants themselves are seeking relief of declaration of right of passage in the suit schedule property, it is for the appellants/plaintiffs to prove that they are having right of easement through the suit schedule property. The appellants produced Ex.A-1 to Ex.A-5. Ex.A-1 is the letter said to have been addressed to the appellant No.1. There is no whisper in Ex.A-1 that the permission was accorded to the plaintiff No.1 by the

[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

defendant No.3 for using the passage. Admittedly, the suit is filed by the six plaintiffs i.e. the six appellants herein, but not by the plaintiff No.1 alone. Ex.A-2 is the registration extract of the sale deed dated 04.06.1987, said have been executed in the name of Gangadaram and not in the name of either of the plaintiffs. Ex.A-3 is the copy of legal notice and Ex.A-4 is the postal receipt and Ex.A-5 is rough sketch. Therefore, it is evident that no documentary evidence is produced by the appellants/plaintiffs to show that they are having right of passage in the disputed land. The legal position in this regard in declaratory suits is no more *res integra* and the same has been settled by the Hon'ble Apex Court in a catena of judgments. In a declaratory suit, the burden always lies on the plaintiff, who approached the Civil Court to make out and establish a clear case for granting such a declaration and the weaknesses, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiffs.

17. The learned counsel for appellants would contend that the government cannot assign, alienate or transfer the plaint schedule property which is a right of way in view of the Board Standing Orders 15. As per the own admission of the plaintiff, the suit property situated in 2/2 Km and 2/4 Km stone and the same is asserted by the Assistant Executive Engineer in R & B Department/P.W.1. The Mandal Revenue Officer/P.W.2 also asserted that the suit schedule property is situated at 2/2 Km stone at Nagari-Nagalapuram road. He further stated that since the Government has taken a land from the defendant No.4 at the time of forming a straight road and the Government

wants to give the suit schedule property by way of transfer, in view of the proposal made by the District Collector. The First Appellate Court by giving reasons clearly held that it can be treated as an exchange and it cannot be treated as an assignment. As seen from the oral and documentary evidence produced by both the parties, it cannot be termed as an assignment. Therefore, I am accepting the finding of the First Appellate Court that the transfer cannot be termed as an assignment and it is only by way of exchange.

18. The learned counsel for appellants would contend that report of Advocate Commissioner clearly reveals that there is no alternative way at all to all the plaintiffs and the plaintiffs have got right of easement. There was a clear admission of the plaintiff No.1/P.W.1 that the defendant No.4 was residing in the suit property prior to filing of the suit by constructing a hut and he was also running a bunk. It is in the evidence of P.W.2 that the plaintiff No.1 is his close relative. As stated *supra*, no documentary evidence is produced by the plaintiff to show that the plaintiffs are having right of easement in the suit property. P.W.1 is the plaintiff No.1, P.W.2 is co-relative of plaintiff No.1 and the other five plaintiffs did not enter into the witness box. It is a clear admission in the evidence of Plaintiff No.1/P.W.1 that the defendant No.4 was in a possession of suit property much prior to filing of the suit. By giving cogent reasons, the trial Court as well as the First Appellate Court rightly dismissed the suit of the plaintiffs.

19. The plaintiffs are seeking relief of declaration that they have got right of passage in the suit land. Admittedly, no oral or documentary evidence is produced by the appellants to show that all the six plaintiffs are having right of passage through the disputed property. The Plaintiff No.1/P.W.1 admitted that the defendant No.4 was in possession of the suit property by raising a hut much prior to filing of the suit. The finding of fact recorded by both the courts below are based on proper appreciation of the evidence and the material on record and there was neither illegality nor irregularity in those findings.

20. On appreciation of the entire evidence on record, the learned trial Judge as well as the learned First Appellate Judge arrived at a concurrent finding that the plaintiffs are not entitled to any of the reliefs sought in the plaint. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where:

i. the courts below have ignored material evidence or acted on no evidence;
ii. the courts have drawn wrong inferences from proved facts by applying the law erroneously; or
iii. the courts have wrongly cast the burden of proof.

The present case does not come within the ambit of the aforesaid exceptions as stated *supra*.

21. In the case at hand, as stated *supra*, on appreciation of the entire evidence on record, the learned trial Judge as well as the learned First Appellate Judge rightly dismissed the suit filed by the plaintiffs. In the light of the material on record and upon earnest consideration, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that this second appeal does not involve any substantial question of law for determination.

22. In the result, the second appeal is **dismissed**, confirming the judgment and decree passed by the trial Court as well as the First Appellate Court. Pending applications, if any, shall stand closed. Each party shall bear their own costs in the second appeal.

V. GOPALA KRISHNA RAO, J.

Date: 05.08.2026
SRT

Whether the order is:

Speaking		Reasoned	☑
Reportable		Non-reportable	☑