

APHC010768372002



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

[3368]

THURSDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

SECOND APPEAL No: 224/2002

Between:

1.CHEEPURU RAMULU,, S/O. KURMAYYA, CULTIVATION, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

...APPELLANT

AND

1.ALLADA LATCHAYYA, S/O. RAMAYYA, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

2.BODDANA LAKSHMU, S/O. RAMAYYA, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

3.ALLADA APPARAO, S/O. VANJAYYA, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

...RESPONDENT(S):

Counsel for the Appellant:

1.A RAVI SHANKAR

Counsel for the Respondent(S):

1.K MANIK PRABHU

APHC010407482002



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SECOND APPEAL No: 254/2002

Between:

1.CHEEPURU RAMULU,, S/O. LATE KURMAYYA, CULTIVATION
R/O. KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

...APPELLANT

AND

1.ALLADA LATVHAYYA, S/o. late Peda Ramanna, Cultivation R/o.
Kondavalasa(V), Sarubujjili(M), Srikakulam dist.

...RESPONDENT

Counsel for the Appellant:

1.A RAVI SHANKAR

Counsel for the Respondent:

1.K MANIK PRABHU

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

S.A.No.224 OF 2002

Between:

1.CHEEPURU RAMULU,, S/O. KURMAYYA, CULTIVATION, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

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3.ALLADA APPARAO, S/O. VANJAYYA, R/O.
KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

...RESPONDENT(S):

DATE OF COMMON JUDGMENT PRONOUNCED : **27.03.2025**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Judgment? | Yes/No |

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ S.A.No.224 OF 2002

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KONDAVALASA(V),SARUBUJJILI(M), SRIKAKULAM DIST.

...RESPONDENT(S):

! Counsel for the Appellant : Sri A.Ravishankar

^ Counsel for the Respondents : Sri K.Manik Prabhu

< Gist:

> Head Note:

? Cases referred:

1. AIR 1968 A.P. 276

This Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

S.A.No.254 OF 2002

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1.CHEEPURU RAMULU,, S/O. KURMAYYA, CULTIVATION, R/O.
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...RESPONDENT(S):

! Counsel for the Appellant : Sri A.Ravishankar

^ Counsel for the Respondent : Sri K.Manik Prabhu

< Gist:

> Head Note:

? Cases referred:

1. AIR 1968 A.P. 276

This Court made the following:

THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

SECOND APPEALS No.224 OF 2002 & 254 OF 2002

COMMON JUDGMENT:

S.A.No.224 OF 2002

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, was filed by the appellant/respondent/plaintiff assailing the common judgment, dated 30.10.2001, of the learned Senior Civil Judge, Srikakulam, passed in A.S.No.52 of 2001.

02. The appellant/plaintiff filed O.S.16/1994 on the file of learned District Munsif Court, Amadalavalasa, against the respondents/defendants seeking the relief of permanent injunction, contending that the suit schedule property i.e., ABCD pathway is a part and parcel of the property covered by sale deed dated 26.04.1948 purchased by his father, and that the ABCD pathway is in existence since long time. The defendants causing obstruction to use the passage due to village rivalry. Hence, the suit for permanent injunction.

03. The case of the plaintiff is that the suit schedule property i.e., ABCD pathway is a part and parcel of the property covered by sale deed dated 26.04.1948 purchased by his father, and that the ABCD pathway is in existence since long time; The defendants causing obstruction to use the passage due to village rivalry; Hence, the suit for permanent

injunction.

04. The case of the defendant is that the suit property i.e., ABCD pathway is a common pathway of Allada people used to reach Rajamargam (main road) from the defendants' house; The defendants alone are having exclusive right over the said pathway; The plaintiff has neither title nor possession over the said pathway; Hence, the suit for permanent injunction is not maintainable.

S.A.No.254 OF 2002

05. This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, was filed by the appellant/respondent/defendant assailing the common judgment, dated 30.10.2001, of the learned Senior Civil Judge, Srikakulam, passed in A.S.No.65 of 2001.

06. The suit in O.S.60/1994 is filed by the 1st defendant in O.S.16/1994 against the plaintiff in O.S.16/1994, contending that the 1st defendant is the owner of the said suit property i.e., ABCD pathway and that she purchased the suit schedule property from one Dharmavarapu Ramulu and his family members on 25.03.1997 and ever since, the 1st defendant has been in possession and enjoyment of the suit schedule property; and she also raised foundations in the said property; therefore, the plaintiff in O.S.16/1994 has neither title nor

possession over the suit schedule property; Hence, the suit for permanent injunction.

07. The plaintiff in O.S.16/1994 i.e., defendant in O.S.60/1994 contended that he is owner of the schedule property, which is situated towards western side of 1st defendant foundations and that it was purchased under a registered sale deed dated 26.04.1998; in the suit property, a house was constructed leaving some place towards east for pathway to reach Rajamargam (main road) located on the northern side since long time without any interruption; the 1st defendant has neither title nor possession over the said property.

08. During the course of trial, before the learned District Munsif Court, Amadalavalasa, both counsel filed a joint memo dated 21.07.1997 to club O.S.16/1994 and O.S.60/1994 and to record evidence in O.S.16/1994. Accordingly, the memo was recorded, as the suit schedule property and parties in both the suits are one and the same.

09. Taking into consideration of the above pleadings, the trial Court settled the following issues for trial:

1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. To what relief?

10. At trial, on behalf of the plaintiff in O.S.16/1994, P.W-1 and P.W-2 were examined and Exs.A-1 and A-2 were marked. On behalf of the defendants, D.W-1 to D.W-3 were examined, and Ex. B-1 was marked.

11. The learned trial Court on consideration of the above evidence placed by the respective parties, vide common judgment dated 30.09.1997, dismissed the suit in O.S.16/1994 and decreed the suit in O.S.60/1994 granting permanent injunction in favour of the 1st defendant.

12. The plaintiff in O.S.16/1994, who is defendant in O.S.60/1994 preferred A.S.52/2001 (O.S.16/1994) and A.S.65/2001 (O.S.60/1994) on the file of learned Prl.Senior Civil Judge, Srikakulam, challenging the common judgment and decree of the learned trial Court.

13. The learned Prl.Senior Civil Judge, Srikakulam, disposed of both appeals vide common judgment dated 30.10.2001, and dismissed both the appeals i.e., A.S.52/2001 and A.S.65/2001 with costs. Hence, the Second Appeals vide S.A.224/2002 (A.S.52/2001) and S.A.254/2002 (A.S.65/2001) came to be filed.

14. The parties are referred to as arraigned in O.S.16/1994 for convenience and clarity.

15. The common substantial questions of law are raised in both the appeals are as under:

1. Whether the Courts below are justified in ignoring Ex.A-1 sale deed dated 26.04.1948, which is more than 30 years old in view of section 90 of Evidence Act?

2. Whether the Courts below failed to consider the admission of the 1st defendant that ABCD suit schedule lane was used as passage to reach Rajamargam?

16. Heard, Sri A.Ravi Shankar, learned counsel appearing for the Appellant/Plaintiff and Sri K.Manik Prabhu, learned counsel appearing for the Respondents/Defendants. Perused the material on record.

17. **QUESTIONS No.1 & 2:**

On consideration of the evidence placed by the respective parties, both Courts below made a concurrent finding on facts, holding that the property covered under Ex. A-1 and Ex. B-1 sale deeds would show existence of a Rajamargam (main road). The plaintiff's property covered under Ex. A-1 is located on western side of the 1st defendant's property covered by Ex. B-1.

18. The contention of the plaintiff is that the suit schedule property i.e., ABCD passage is part and parcel of the property covered by

Ex. A-1 and it runs from south to north and east to west. Ex. A-2 plaint schedule plan and the length of the property from north to south as 50 cubits, and east to west as 6 cubits. The plaintiff admitted that the suit schedule pathway has been arranged recently for his purpose. He deposed that doorway was opened into eastern side and he has been passing through ABCD lane to reach Rajamargam (main road). But, contrary to his statement, in the cross-examination, he admitted that no doorways or windows opened on the eastern side of his house. Thereby, contradicting his own statement that he has been using ABCD pathway as part of his property.

19. Both courts categorically found that the plaintiff failed to prove that ABCD pathway is in existence since long time and it is part of the property purchased under Ex. A-1 sale deed, except relying on Ex.A-1 document.

20. The 1st defendant did not dispute about the execution of Ex. A-1 sale deed in favour of the plaintiff's father. The dispute is that the ABCD pathway is not part of the property covered by Ex. A-1 sale deed.

21. Both the Courts below, on consideration of evidence, categorically held that the plaintiff failed to prove that ABCD passage

is part of the property purchased under Ex. A-1 sale deed.

22. The contention of the plaintiff is that Ex. A-1 is a 30 years old document, and therefore, it shall be presumed that the contents of the document are true and correct as per section 90 of the Evidence Act and both the Courts below ignored the said legal proposition.

23. Section 90 of the Evidence Act deals with the presumption as to documents 30 years old: It speaks that

“where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purport to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.”

24. Therefore, when a document more than 30 years old, comes from proper custody, it must be presumed to have been executed by the person by whom it purports to be executed as laid down by the Hon'ble Apex Court in the case of **Boddu Veerayya Vs. Aripirala Venkata Laxmamma**¹. Therefore, the principle underlining section 90 of the Indian Evidence Act is that if a document 30 years old or more is

¹ AIR 1968 A.P. 276

produced from proper custody and is, on its face, free from suspicion, the Court may presume that it has been duly executed and attested. All that section 90 says is where any document purporting to be 30 years old is produced, the Court may presume that it was executed by the person by whom it purports to be executed. Therefore, the Court may presume its execution and attestation.

25. Section 90 of the Indian Evidence Act, 1872, primarily deals with the presumption related to genuineness of a document's signature and execution, but, it does not directly address the contents of the document itself. Therefore, it is related to authenticity of the signature and execution only, not the accuracy or truthfulness of the contents of the document. To prove the contents of a document, other provisions of the Evidence Act, such as those related to admissibility and proof of the documents must be complied with. Hence, even if a document is presumed to be genuine U/s.90 of the Evidence Act, the contents of the document still need to be proved separately.

26. The contents of the document shall be proved as required under law by adducing proper evidence. No presumption can be drawn U/s.90 of the Indian Evidence Act with reference to the contents of the document.

27. In the case on hand, both the Courts below categorically found that the plaintiff failed to prove that the ABCD pathway claimed by him as part of the property covered by the property purchased under Ex. A-1 sale deed.

28. In that view of the matter, there are no grounds to interfere with the judgment and decree of the Courts below in respect of O.S.16/1994.

29. When coming to the contention of the 1st defendant in O.S.16/1994, both the Courts below found that the evidence on record placed by both sides, would establish that the 1st defendant has laid foundations on the western side of her property, as the disputed property i.e., ABCD pathway is in the possession of the 1st defendant, and it was not used as pathway by the plaintiff to reach Rajamargam (main road) as claimed by him. Therefore, decreed the suit filed by the 1st defendant i.e., O.S.60/1994 for permanent injunction.

30. Further, the plaintiff himself admitted that there are no doorways opened towards eastern side of his house to enter into the ABCD pathway, and he has been using northern side pathway to reach the road. Therefore, it ruled out the alternative plea of the plaintiff that he is having easementary right over ABCD property.

31. In the light of foregoing discussion, this Court is of the considered opinion that there are no grounds to interfere with the judgment and decree passed in O.S.60/1994 by the Courts below.

32. In the light of above findings on substantial questions of law raised by the appellants in both the appeals, both the appeals are liable to be dismissed.

33. In the result, both the Second Appeals are dismissed. There shall be no order as to costs.

As a sequel, interlacutory applications pending in both the Second Appeals, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI.

Note: L.R.Copy is to be marked

B/o. psk.

27.03.2025

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THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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S.A.Nos.224 OF 2002 & 254 OF 2002

**Note: Mark L.R. Copy
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27th March, 2025

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