

APPR0A0027512014



IN THE COURT OF THE PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION)::ONGOLE

Present: **Smt. S.Komalavalli**
Principal Civil Judge (Junior Division), Ongole

(Monday, this the 29th day of June, 2026)

O.S.No.292/2014

BETWEEN:

Makkena Nagendramma, W/o Venkateswarlu,
aged about 55 years, Hindu, Housewife,
R/o Venkatrajupalem Village,
Doddavarappadu Post, Maddipadu Mandal,
Prakasam District.

..... Plaintiff

AND

1. Marneni Anjamma, W/o late Nageswara Rao,
aged about 55 years, Hindu, Housewife,
2. Marneni Srinivasa Rao, S/o Subbaiah,
aged about 48 years, Hindu, Private Bus Driver,

Both Defendants are R/o Venatrajupalem Village,
Doddavarappadu Post,
Maddipadu Mandal, Prakasam District

..... Defendants

*This Suit came up on 23.06.2026 for Arguments before me in the presence of **Sri.CH.Venkata Rao**, Learned Counsel for the Plaintiff and **Sri S.Siva Rama Krishna Prasad**, Learned Counsel for the Defendants, upon hearing the arguments, upon considering the material available on record and the matter having been stood over for consideration till this day, the Court doth order and delivered the following:*

J U D G M E N T

1. This is a suit filed by the Plaintiff for Declaration of title over X, X1 and X2 covered portion of Plaint Schedule Property as shown in the Plaint Plan, and for

Declaration that the action of the Defendants 1 and 2 is illegal and also for Mandatory Injunction for removal of X, X1 and X2 which starts from Southern side towards Northern side and in the event of failure to remove the same by Defendants, to get the same done through process of law and also for Permanent Injunction restraining the Defendants from making any constructions towards northern side up to Patibandla Singaiah's site and for costs.

2. THE BRIEF AVERMENTS OF THE PLAINT IN BRIEF ARE AS FOLLOWS :

2.1. Plot Nos.A, B and B1 shown in plaint plan are covered by Sy.No.12/1 of Venkatrajupalem Village. Plaintiff is owner of the plot A including X, X1 and X2 marked property which is an extent of 94 links X 9 links = 846 links and equivalent to 31 sq yards . "A" marked plot is within specified boundaries and obtained by Plaintiff under a Partition Deed dated.06.08.2012. B and B1 marked plots originally belongs to Marneni Venkatappaiah S/o Sriramulu, who purchased the same from Patibandla Sessaiah who is the grandfather of the Plaintiff on 02.07.1951. Ever since the purchase of respective plots, the purchaser has been in possession and enjoyment of the respective plots as per the recitals.

2.2. It is further submitted that as per the family arrangement B series properties allotted to Marneni Subbaiah. Defendants inherited the B series plots. By the date of obtaining Registered Sale Deed from Patibandla Sessaiah, the Schedule Property was covered with measurements. While so, in the absence of Plaintiff, Defendants highhandedly encroached X, X1, X2 marked portion which is situated on the southern side of B and B1 marked plots and raised building wall along X, X1 and X2 marked portion and also proceeding to convert plot B into residential portion.

2.3. It is further submitted that the Defendants have absolutely no right over X, X1 and X2 marked portion. The Defendants are not law abiding citizens and trying to construct compound wall up to Patibandla Singaiah site on Northern side beyond their right.

2.4. It is further submitted that the Defendants have secured necessary materials to raise compound wall without leaving 3 links of site towards northern side. If the Defendants encroached up to Patibandla Singaiah site on Northern side, the Plaintiff will be suffered great loss. The Defendants are claiming title over B and B1 marked plots based on 1951 document. The Defendants are openly proclaiming in the village that they will occupy 3 (three) links of site towards northern side up to Patibandla Singaiah's site for construction of compound wall. The Plaintiff cannot resist the illegal acts of Defendants as they are having much following in the village and threatening the Plaintiff. Hence the Plaintiff is constrained to file this suit.

3. Defendants 1 and 2 filed Written Statement denying the averments of plaint and submitted that the topography of plots A, B, B1 and X, X1, X2 is not correct. X, X1 and X2 is not vividly shown in the Plaint Plan and also their location. The measurements of X, X1 and X2 are not shown. The measurements given in para No.3 of plaint and plan are not correct. The Partition Deed dated.13.08.2012 is a null and void document and concocted for the purpose of this suit. The list of documents are dated.02.07.1951 and 13.08.2012 but in para no.3 of plaint document dated.06.08.2012 is referred. This discrepancy is not explained. The relationship and genealogy is to be established and also the plot "A" of Patibandla Sessaiah is also to be proved.

3.1. It is further submitted that the Plaintiff was present at the time of constructing building by Defendants but she never objected for the same. There are two political groups in the village. Plaintiff belongs to one group and the Defendant belong to another group. Due to political rivalry Plaintiff filed this suit. The plaint allegations are contrary to the recitals of the documents dated.02.07.1951 and 13.08.2012. Now the ground position was changed and there is a lot of variation.

3.2. It is further submitted that the sale in favour of Chunduri Venkata Rao has been intentionally suppressed, as such the Plaintiff is guilty of fraud and suppression of truth. The Plaintiff has approached the Court with unclean hands, hence she is not entitled for Declaration of title in respect of the Schedule Property. The Plan furnished by

the Plaintiff is silent about the locations on Northern and Eastern side. The Plaintiff Plan is deviating with the pleadings of the Plaintiff.

3.3. It is further submitted that under the Registered Sale Deed dated.02.07.1951 Patibandla Sessaiah and his sons Venkaiah and Singaiah (Plaintiff's father) sold an extent of 6382 links to Marneni Venikatappaiah in Patta No.49 in Sy.No.12/1 of Venkatarajupalem H/o Yedugundlapadu. During the life time of Venkatappaiah and his son Sriramulu the said site was given to elder brother of Venkatappaiah i.e., late Subbaiah. Till it was given to Subbaiah, Venkatappaiah was in possession and enjoyment of the said property and later Subbaiah was in possession and enjoyment of the same till his death. After the death of Subbaiah his son late Nageswara Rao (husband of D1) and 2nd Defendant have been in possession and enjoyment of the above said property. There is no X, X1, X2 marked portion on the Eastern side of Defendants' property i.e., B, B1 marked plots in the Registered Sale Deed dated.02.07.1951. It is mentioned in the said document that there is a land in Sy.No.14 on the Northern side of Defendant property. In fact there are "A" marked property of Plaintiff and property of Chunduri Venkata Rao are situated on the Eastern side of Defendants property i.e., B B1 marked plots. Defendants have got right to construct the building wall on the Eastern side in their site. In fact Defendants left their site on the Northern side for use of their own way for some time. "A" marked property, belongs to Plaintiffs is a vacant site and there are no constructions in plot "A". The suit is barred by limitation as such the suit is not maintainable the other allegations made in the plaint which are not specifically referred herein are denied and prayed to dismiss the suit.

4. Based on the above pleadings the following issues are settled for trial.

1. Whether Plaintiff is entitled for decree for declaration against Defendants as prayed for?
2. Whether Plaintiff is entitled for decree for Mandatory Injunction against Defendants as prayed for?
3. Whether Plaintiff is entitled for decree for Permanent Injunction against Defendants as prayed for?
4. To what relief?

5. ISSUE NO.1 and 2 :-

Whether Plaintiff is entitled for decree for declaration against Defendants as prayed for?

AND

Whether Plaintiff is entitled for decree for Mandatory Injunction against Defendants as prayed for?

6. Since both these issues are inter-related with each other, to avoid repetition of facts and evidence, both these issues are answered together.

7. The admitted facts from the above said pleadings of both parties are that A marked property of plaint plan belongs to plaintiff, B marked property of plaint plan belongs to D1 and B1 marked property of plaint plan belongs to D2; that the forefathers of defendants have purchased their B and B1 marked properties from the ancestors of plaintiff under a registered sale deed dt.2-7-1951 marked as Ex.A1 and that A marked plaintiff's property is situated on eastern side of defendants' B and B1 marked properties. Therefore, Ex.A1 document, which is the document of defendants is not in dispute and in fact it is produced by plaintiff herself.

8. However, the contention of the plaintiff is defendants have encroached into her A marked property to an extent of 31 sq. yards shown as X X1 X2 in a triangle triangle in plaint plan and constructed a wall on the eastern side of their BB1 marked property, against the recitals in Ex.A1 sale deed. In support her contention, plaintiff examined herself as Pw1 and deposed reiterating her contentions and got marked Exs. A1 to A3 on her behalf. Ex.A1 is Certified copy of Registered Sale Deed dated.02.07.1951 executed by Patibandla Sessaiah in favour of Marneni Venkatappaiah. Ex.A2 is the Original Partition Deed dated.13.08.2012 among Patibandla Singaiah and his family members. Ex.A3 is the Attested copy of R.S.R relates to Suit Survey Number dated.14.02.2019.

9. Per contra, the contention of the defendants is that there is no such XX1X2 triangle shaped property on their eastern side BB1 marked property and they never encroached into plaintiffs property and they have constructed their wall within their site.

10. The learned counsel for plaintiff vehemently argued that the Advocate Commissioner, who visited the suit schedule property is examined as CW1. The Advocate Commissioner has measured the property of defendants with the help of Mandal Surveyor and submitted report to this court, marked as Ex.C4 along with plan, marked as Ex.C3 which is also tallying with the plaint plan. The learned counsel further vehemently argued that as per Ex.A1, the purchasers i.e. the forefathers of defendants have to leave 3 links on their eastern side for "araka" (a passage meant to take agricultural instruments), but as per Ex.C4 Commissioner's report , there is no such space left by defendants and the report clearly shows that the Commissioner has observed sunshade wall projected up to 6 feet on eastern side, which itself is sufficient to say that the defendants encroached into plaintiff's property. Contrary to the same, the learned counsel for the defendants argued that the defendants have constructed the sun shade wall within their compound wall, but not beyond their compound wall and there is some space beyond the compound wall of defendants on eastern side.

11. In view of rival arguments of both the counsel with regard to commissioner's report, this court has gone through the Commissioner's report Ex.C4, rough plan Ex.C3 and the evidence of Advocate Commissioner, examined as CW1. Perusal of Ex.C4 Commissioner's report shows that no where it is mentioned in the said report that XX1X2 marked triangle portion of plaint plan belongs to plaintiff and that it was encroached by defendants. So also, it was not mentioned in the said report that defendants constructed their building within their site as per their 1951 document i.e. Ex.A1, as argued by learned counsel for defendant by leaving 3 links site towards eastern side i.e. A marked property of plaintiff and that the sunshade wall of defendants on eastern side is projected upto 6 feet within boundary wall. Ex.C4 Commissioner's report only shows that the sunshade wall of defendants was constructed upto 6 feet. It is not specifically mentioned in Ex.C4, whether the said 6 feet is length or height of the wall.

12. CW1, the Advocate commissioner admitted in his cross-examination by defendants that after measuring the property, he found that the defendants have property on four sides of BB1 marked property according to the Ex.A1 document and that the properties of defendants are situated according to his measurements taken with the help

of Mandal Surveyor i.e. from north to south 91 links, west to east 74 links, south to north 94 links and from east to west 64 links. In fact, the said measurements are tallying with the measurements in Ex.A1 document and also the plan issued by Mandal Surveyor.

13. Further it is elicited from the evidence of CW1, the Advocate Commissioner during cross-examination of plaintiff that he got measured the property as per Ex.A1 document; that he had fixed boundary stones as per Field Measurements book, but he was not furnished any FMB copy by either party to the suit and that his report does not disclose that he measured the property as per Ex.A1 document. In this regard, it is pertinent to note that on one hand, the plaintiff is taking support of Advocate Commissioner in respect of projecting sunshade wall of defendants on eastern side upto 6 feet, towards plaintiff side and contending that the defendant encroached into plaintiffs' property and also contending that Ex.C3 rough plan is corroborating with plaintiff plan with regard to encroachment. But on the other hand, he is denying the Commissioners plan stating that the Commissioner was not directed to measure the property as per FMB and the Commissioner has not mentioned in the report that he measured the property with the help of 1951 document.

14. Perusal of Commissioner's warrant clearly shows that the Advocate Commissioner was directed to measure BB1 marked property (i.e. the property of defendants) with respect to Ex.A1 document dt. 2-7-1951 ; that at the time of measuring the said property, plaintiff, defendants and their counsels were also present and the plaintiff's counsel gave a work memo to note down the compound walls on southern side and western side and requested to measure the schedule property with the help of Mandal Surveyor. Admittedly in this case, the schedule property XX1X2 of plaintiff plan was measured with the help of Mandal Surveyor. In his Ex.C4 report, the Advocate Commissioner has also clearly stated that he has measured the sunshade walls on southern and western side of B and B1 properties of defendants and gave measurements. The plaintiff did not file any objections on the Advocate Commissioners report that he has not properly measured the defendants' property. The photos filed along with Commissioners' report do not show that there is a compound wall between plaintiff's and defendants' property. In fact, the Advocate Commissioner did not take the houses of

defendants' houses towards plaintiff's property on eastern side, when they are compared with his rough plan and report.

15. As observed by this court and discussed above, there is no compound wall to the buildings of defendants in B B1 marked property as seen from the photos and Ex.C3 rough plan and Ex.C4 report of Advocate Commissioner. Even though the Commissioner has shown triangle shape on eastern side of B1 property, the site of plaintiff is not specifically shown in the said plan and the said triangle shape line shown in dots around the B B1 marked properties are drawn as per the measurements of B B1 marked properties on all four sides, which are tallying with the measurements in Ex.A1 document as stated supra. Admittedly the plaintiff is not denying the said measurements. In fact she relied on Ex.A1 document itself and contending that defendants encroached into her site. Further, the constructions of defendants in B B1 properties are within the said dotted lines of triangle in Ex.C3 Commissioner's rough plan.

16. Since the plaintiff is seeking the relief of declaration of her title over XX1X2 marked, triangle shaped, portion of plaintiff plan, the burden is on the plaintiff to prove her title over the said triangle shaped XX1X2 property of plaintiff plan. If the contention of the plaintiff is presumed to be true for a moment that XX1X2 portion of plaintiff plan adjacent immediately on western side of her A marked also belongs to her, her property would be having boundaries on 6 sides i.e. 1) on south, 2) from south to west, 3) then from west to east, 4) and again further towards north, 5) on northern side and 6) on eastern side with measurements. In such scenario, the property of plaintiff would be in the shape of -----, but it is shown in rectangular shape as A marked property in plaintiff plan. However, perusal of Ex.A2 registered partition deed, relied on by the plaintiff in proof of her title over XX1 property shows that plaintiff was allotted D schedule properties, out of which, item no.2 is vacant site in S.No.12/1 of Yedugundlapadu village, which is corresponding to the A marked plaintiff's property of plaintiff plan. The said item No.2 of plaintiff schedule property is having boundaries on 4 sides with boundaries and measurements as follows

East : The land of legal heirs of Chunduri Kotaiah - 55 links

South : Compound wall of Chunduri Venkatrao - 70 links

West : Site of Marneni Srinivasa Rao - 55 links

North : Land of Chunduri Kotilingam and Rangarao - 70 links

17. Further, as per Ex.A2, the measurement of A marked property on western side is 55 links, whereas as per the plaint plan, the measurements of A marked property on western side from X to X2 is shown as 94 links and beyond X2, the measurements of plot A up to Chunduri Chalamaiahs site, are not given by plaintiff. If the said measurements from X2 upto Chunduri Chalamaiah's site are also given, the measurement of plot A of plaintiff on western side would be more than 55 links, which is contrary to the plaintiff's title document Ex.A2. Thus, the boundaries of Ex.A2 partition deed are not tallying with the boundaries of plaint plan.

18. As rightly argued by the learned counsel for the defendants, the entire argument of learned counsel for plaintiff is revolving around Ex.A1 document of defendant and Ex.C3 Advocate Commissioner's plan contending that as per the measurements in Commissioner report and plan, the defendants have encroached into plaintiff's site. The above discussion with regard to the Commissioner's report and plan clearly shows that nowhere the Commissioner has stated that defendants have encroached into plaintiff's site to the extent of 31 sq. yards i.e. XX1 X2 triangle shape.

19. The learned counsel for the plaintiff further argued that 2nd defendant, who is examined as DW1 himself admitted in his evidence that except plaintiff none are having any right over the triangle bit and this itself is sufficient to prove that there existed a triangle shaped site shown in plaint plan and it belongs to plaintiff. In this regard, the learned counsel for the defendants argued that the cross-examination of DW1 was recorded by an Advocate Commissioner, who could not properly record the cross-examination, as such, instead of recording the said suggestion as denied by DW1, it is recorded as admitted by DW1. But the learned counsel for plaintiff vehemently argued that the counsel for defendants was also present at the time of recording the cross-examination and, if it was wrongly recorded as contended by the defendants, she would have opposed and correct the same, but it was not done so. Admittedly in this case no re-examination was done by counsel for defendants for any clarification in that regard.

20. However, it is pertinent to note that perusal of entire cross-examination of DW1 shows that he has categorically stated about their case and denied the plaintiff's case, except the alleged admission in the last but not least sentence of his cross-examination. In such scenario, simply based on the single sentence stated by defendant, the entire case of defendant cannot be discarded in toto. Further, it is also settled legal position that plaintiff should stand on his own legs, but not on the weakness of opposite party. In this regard, this court is relying on the judgment of Hon'ble Apex court in the cases of **Union of India v. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269**) wherein it was held that

It is trite law that, in a suit for declaration of title, the burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.

21. In this case also, instead of proving his case by producing the cogent and convincing documentary evidence, the plaintiff is relying on the admission of defendants in single sentence in the evidence if DW1 to prove his case. Therefore, this court do not find any force in the said contention of the learned counsel for plaintiff.

22. The learned counsel for the defendants have argued that this suit is barred by limitation for the relief of declaration, and further argued that since the plaintiff is contending that defendants constructed building having occupied the plaintiff's site, and also sought for the relief of mandatory injunction, this suit is not maintainable u/s 34 of Specific Relief Act, as she did not seek the recovery of possession of suit schedule property, which is alleged to be in possession of defendant. In support of their contention, defendants relied on the judgments reported in **Chittoju Ramanaiah Vs. Sri ubba (1998(1) ALT 751**. As seen from the written statement of the defendant, they have not take the said plea in their written statement , but they have taken the said plea for the first time during arguments and placed reliance on the above said judgment. Therefore this court is not looking into the said contention of the defendants, and also in view of the above discussion that plaintiffs failed to prove their right and title over the suit schedule property. Even though the defendants have filed bunch of judgments during arguments, they have not specifically argued on which aspect they are relying on the said judgments

and how they are relevant to the facts of this present case. Hence, the said judgments are not looking into by this court.

23. The learned counsel for the defendants further argued that without getting measured her site, how the plaintiff has shown in the plaint plan that defendants occupied total 31 sq. yards of site is not stated any where in this suit and that the plaintiff has given wrong measurements in the plaint plan and the plaint plan is also not drawn as per ground reality. The learned counsel further argued that at the time of selling the property to the ancestors of defendants by the ancestors of plaintiff, the vicinity is an agricultural land, but now the said lands are converted into residential plots and there are lot of changes from 1951 till date, but the plaintiff has not shown the surrounding residential houses of schedule property intentionally and suppressed the facts. As rightly argued by learned counsel for the defendants PW1 and PW2 have admitted in their evidence that they did not get measure the X X1 and X2 marked schedule property or the A marked property of plaintiff before filing suit. In such scenario, how plaintiff is saying that defendants have occupied X X1 and X2 shown as a triangle in the plaint plan to an extent of 31 sq. yards of site, is not understood by this court.

24. Therefore, in view of the above discussion, this court is coming to the conclusion that plaintiff failed to prove his right, title and interest over X X1 and X2 marked schedule property and also failed to prove that defendants encroached into plaintiff's site and constructed compound wall on their eastern side and hence, the X X1 and X2 from south to north is to be removed by the defendants. Hence he is not entitled for the relief of declaration of his title over the schedule property and relief of mandatory injunction to remove X X1 X2 from south to north as prayed for. Issue Nos.1 and 2 are answered against the plaintiff.

25. **ISSUE NO.3:-**

Whether Plaintiff is entitled for decree for Permanent Injunction against Defendants as prayed for?

Coming to the relief of permanent injunction restraining the defendants 1 and 2 from making any constructions towards northern side up to Patibandla Singaiah's site,

in view of the above discussion on issue Nos. 1 and 2 that the plaintiff failed to prove that he is having any site beyond XX2 of plaintiff plan on western side as per Ex.A2 document and also that the measurements of plaintiff's A marked property on western side are not tallying with the measures given in plaintiff plan, this court is coming to conclusion that plaintiff is not entitled to the relief permanent injunction also as prayed for. Further the Commissioner's plan also shows that there is a road in front of B and B1 marked properties i.e. between BB1 marked property. In fact, the site of Patibandla Singaiah and the property of plaintiff were not at all shown in Commissioner's rough plan. The issue No.3 is answered against the plaintiff.

26. **ISSUE NO.4:-**

To what relief?

In view of above discussion on issue Nos. 1 to 3, the suit is liable to be dismissed.

27. In the result, the suit is dismissed with costs.

Typed to my dictation by the Stenographer (Grade-III) directly on my laptop, corrected and pronounced by me in open Court, this the 29th day of June, 2026.

**SD/-S.Komalavalli
PRINCIPAL CIVIL JUDGE
(JUNIOR DIVISION), ONGOLE**

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

FOR PLAINTIFF

PW.1 Makkena Nagendramma

PW.2 Tippineni Suresh

PW.3 Patibandla Anil Kumar

FOR DEFENDANT

DW.1 Marneni Srinivasa Rao

FOR ADVOCATE COMMISSIONER

CW.1 V.Subramyam

DOCUMENTS MARKED FOR PLAINTIFFS

Ex.A1 is the Certified copy of Registered Sale Deed dated.02.07.1951 executed by Patibandla Sessaiah in favour of Marneni Venkatappaiah.

Ex.A2 is the Original Partition Deed dated.13.08.2012 among Patibandla Singaiah and his family members.

Ex.A3 is the Attested copy of R.S.R relates to Suit Survey Number dated.14.02.2019.

DOCUMENTS MARKED FOR DEFENDANTS

NIL

DOCUMENTS MARKED FOR ADVOCATE COMMISSIONER

Ex.C1 is the letter addressed to Tahsildar, Maddipadu Mandal for the assistance of Mandal Surveyor by Advocate Commissioner.

Ex.C2 is the Sketch given by Mandal Surveyor dated.13.06.2016.

Ex.C3 is the Rough Plan drawn by Advocate Commissioner along with photographs.

Ex.C4 is the Advocate Commissioner report dated.20.07.2016.

SD/-S.Komalavalli
PRL.J.C.J., Ongole