



2026:AHC:191292

Reserved on 17.8.2026
Delivered on 14.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 834 of 2024

Ved Prakash Garg

.....Appellant(s)

Versus

Smt Sunita Dayal

.....Respondent(s)

Counsel for Appellant(s)	: Rakesh Kumar Srivastava
Counsel for Respondent(s)	: Ashish Kumar Singh, Deepak Rana

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Dileep Kumar Pandey, learned counsel for appellant and Mr. Ashish Kumar Singh, learned counsel for the respondent.
2. The present appeal has been filed against the judgement & decree dated 22.8.2024/5.9.2024 passed by Additional District Judge, Court No. 10, Ghaziabad in Civil Appeal No. 6 of 2021 (Smt. Sunita Dayal Vs. Vedprakash Garg) arising out of Original Suit No. 2773 of 2011.
3. After hearing learned counsel for the parties, the present appeal has been admitted vide order dated 11.4.2025 on the following substantial question of law :-

“Whether the finding returned by the first appellate court with regard to partition of the property is perverse and simpliciter suit for injunction without relief for procession is not maintainable ?”

4. Further, while admitting the present appeal vide order dated 11.4.2025, the Court has granted interim order by directing the parties not to create any third party right over the property in question until further orders of the Court.

5. Learned counsel for the appellant-plaintiff submits that one residential plot no. 22 M area 100 sq. yard situated at village Sihani, Pargana Loni, Distt. Ghaziaabd was purchased by the appellant through sale deed dated 21.6.1988. He submits that the plaintiff-appellant has started construction over the said property but the dispute arose between the parties, therefore, the plaintiff-appellant has filed a suit for injunction wherein the respondent -defendant has filed written statement and after considering the material available on record, the trial court has decreed the suit in favour of the appellant-plaintiff. However, being aggrieved to the said order, the respondent -defendant has filed civil appeal, which has illegally been allowed by the impugned order without reversing the findings recorded by the trial court.

6. He submits that the appellant-plaintiff is in possession over the said property and the said property cannot be disputed merely on the basis of sale deed dated 15.5.2009 alleged to be executed in favour of respondent -defendant. He submits that the trial court has rightly decreed the suit but the appellant court has illegally allowed the appeal filed by the respondent.

7. *Per contra*, learned counsel for the respondent opposed the said submissions of learned counsel for the appellant. He submits that a simpliciter suit for injunction was filed which has wrongly been decreed in favour of the appellant against the settled law as held by the Apex court in the case of **Jharkhand State Housing Board Vs. Didar Singh (2018) 6 AWC 5932**.

8. He submits that possession over the property in question as claimed by the appellant-plaintiff is under the serious cloud. He submits that the court below has sent a Court Commission wherein it was found that the defendant-respondent(s) are in possession over the property in question and the said findings have never been challenged by the

appellant at any stage, even before this Court. He submits that once the Court Commission Report is in favour of the defendant-respondent, the suit for simpliciter injunction was not maintainable. He submits that the appellate court has rightly allowed the appeal filed by the respondent after due consideration of the material available on record as well as report of Court Commission.

9. After hearing learned counsel for the parties, the Court has perused the records.

10. It is not in dispute that the suit for simpliciter injunction has been filed. The suit for simpliciter injunction can be filed when there is no cloud over the possession and title of the property in question. In the present case, both the parties are claiming their right and possession over the property in question on the strength of sale deed executed in their favour on different dates. The defendant-respondent has brought on record the evidence raising cloud over the title of the plaintiff-appellant. The defendant-respondent has also brought on record the registered sale deed executed in his favour as well as electricity bills, water tax receipts, house tax receipts and khatauni in order to show that plaintiff -appellant was not in the possession over the property in question.

11. Apart from the said evidence, the report of Court Commission was also prepared at the presence of both the parties wherein the Court Commissioner has recorded the finding that the defendant-respondent(s) are in possession over the property in question. The said findings have never been challenged by the plaintiff/appellant at any stage, even before this Court. Once the findings of Court Commissioner with regard to the possession of the defendant-respondent, has not been challenged by the appellant-plaintiff, then it cannot be said that title of the plaintiff-appellant is without any cloud. Once the record itself reveals that title and possession is in dispute and the respondents have successfully raises cloud over the title of the plaintiff-appellant, the suit for injunction without seeking declaration of title is not maintainable.

12. Hon'ble the Apex Court in the case of **Jharkhand State Housing Board (supra)** has held as under :-

10. The issue that fall for our consideration is: “Whether the suit for permanent injunction is maintainable when the defendant disputes the title of the plaintiff?”

11. It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

12. In the facts of the case the defendant Board by relying upon the land acquisition proceedings and the possession certificate could successfully raise cloud over the title of the plaintiff and in those circumstances plaintiff ought to have sought for the relief of declaration. The Courts below erred in entertaining the suit for injunction.

13. Hence in view of the above discussion, we are of the considered opinion that the judgment and decree impugned in the appeal deserves to be set aside and accordingly we set aside the same. However, a request was made at the time of hearing on behalf of the plaintiff to direct the parties to maintain status quo for a period of three months to enable the plaintiff to avail the appropriate remedies available under law. In view of the long pending litigation, we deem it appropriate to direct the parties to maintain status quo with regard to possession for a period of three months. Resultantly, the appeal is allowed with the above observations by setting aside the judgment and decree dt. 12.10.2001 but in the circumstances without costs.

13. Similar view has been taken in the case of **T.V. Ramakrishna Reddy Vs. M. Mallappa (2021) 13 SCC 135** in which the Court has held as under :

6. Shri Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the respondent No.1 (defendant No.2), on the contrary, would submit that the learned single judge of the Karnataka High Court has rightly held that the issue involved had to be first decided on the basis of title and until the plaintiff’s claim for declaration of title is decided, the suit simpliciter for permanent injunction was not tenable.

7.

8. The short question that falls for consideration before us is:

Whether the learned single judge of the High Court was right in holding that the suit simpliciter for permanent injunction without

claiming declaration of title, as filed by the plaintiff, was not maintainable?

.....

20. *It will also be relevant to refer to the following observations of this Court in the case of Jharkhand State Housing Board v. Didar Singh and another*²:

“11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances (2019) 17 SCC 692 stances, plaintiff cannot maintain a suit for bare injunction.”

21. *In the facts of the present case, it cannot be said at this stage that the dispute raised by the defendant No.2 with regard to title is not genuine nor can it be said that the title of the plaintiff/appellant over the suit property is free from cloud. The issue with regard to title can be decided only after the full-fledged trial on the basis of the evidence that would be led by the parties in support of their rival claims.*

14. Again in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (dead)** **(2008) 4 SCC 594**, the Apex Court has held as under :

11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and

the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

..

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or

wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

15. On perusal of the Apex Court judgement and order as quoted herein above, it appears that the issue in hand is squarely covered in favour of the respondent -defendant.

16. In view of the facts of the present case as well as case law referred herein above, the appellant herein utterly failed to show that the possession and title over the property in question is beyond the cloud. Once the respondent -defendant on the basis of evidence on record clearly establishes his possession and title over the property in question and same raises cloud upon the title of the plaintiff-appellant, the suit for simpliciter injunction, without seeking declaration of title, is not maintainable.

17. No interference is called for by this Court in the impugned order.

18. The appeal fails and is accordingly **dismissed**.

19. The substantial question of law is answered accordingly.

(Piyush Agrawal,J.)

September 14, 2026

Rahul Dwivedi/-