

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

4. CRA/56/2014

ALKA SUPDU BHIRUD
V/S
SUPDU SOMA BHIRUD

Mr. N.E. Deshmukh, Advocate for applicant.

Mr. U.R. Awate, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 15th December, 2015.

ORDER :

1. The revision is filed to challenge the order made by the learned Civil Judge, Junior Division, Jalgaon in R.C.S. No. 105/2013 on Exh. 14. The application filed by the defendant, present petitioner under the provision of Order 7, Rule 11 of Civil Procedure Code is partly allowed. The Trial Court has directed the plaintiff to pay deficit court fees, but has refused to reject the plaint on the ground that relief of injunction cannot be granted as the other efficacious relief is not claimed.

2. When the suit was filed, the plaintiff was the husband of defendant and during pendency, it appears that decree of divorce is given. It is the case of husband that he is in possession of the suit house, though the suit house is standing in the name of defendant, his wife. It is the case of husband that

he has purchased the property in the name of his wife and so, the wife has no right to alienate the property. In the suit, he claimed the reliefs as follows :-

- (i) Grant injunction to prevent the defendant from alienating the property without taking consent of plaintiff, and
- (ii) Grant injunction to prevent the defendant from disturbing the possession of the plaintiff over the suit property.

3. The learned counsel for respondent/husband placed reliance on the case reported as **2008 (5) ALL MR 451 (S.C.) [Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. & Ors.]**. The Apex Court has given guidelines at para No. 17 and the position of law with regard to the relief of injunction and the points which need to be addressed at the time of consideration of such relief are given. They are as under :-

“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 inquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

4. In view of the aforesaid position of law, the plaintiff can prosecute the matter for relief of injunction, to protect his possession. However, for other relief, it can be said that in view

of the provision of section 41 (h) of Specific Relief Act, the plaintiff ought to have claimed other equally efficacious relief like declaration in respect of his title. However, the entire plaint cannot be rejected only because the first relief cannot be granted by the Civil Court. In view of these circumstances, this Court holds that present proceeding is devoid of merits.

5. In the result, the revision stands dismissed.

[T.V. NALAWADE, J.]

SSC/