

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 2062 OF 1995

JUDGMENT:

The unsuccessful plaintiff in Original Suit No.194 of 1985 on the file of the Court of Principal Subordinate Judge, Ranga Reddy District at Saroornagar, Hyderabad (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 31.07.1995, whereunder and whereby the suit filed by the plaintiff, for perpetual injunction regarding Ac.113.00 cents of agricultural land covered by Survey No.422 of Malkajgiri Village, Ranga Reddy District, Hyderabad, was negated.

2. For convenience of reference, the ranks given to the parties in O.S.No.194 of 1985 will be adopted throughout this judgment.

3. Originally, Ghulam Ali Khan (1st plaintiff), represented by its General Power of Attorney Holder Zaheer Ahmed Khan, filed the suit and when he died during pendency of the suit, Zaheer Ahmed Khan (2nd plaintiff) was brought on record as his legal heir, as per orders in I.A. No.1047 of 1988, dated 01.11.1994.

4. The plaintiff filed the suit against defendants 1 to 4 for injunction simplicitor to restrain the defendants from issuing any pattas for the schedule land in an extent of Ac.113.00 cents in Survey No.422 of Moulali. The 1st plaintiff was the Mutawalli of Dargah Koh-e-Moula Ali (for short, 'the dargah'), situated at, Malkajgiri village, Vallabhnagar Taluk, Ranga Reddy District, own agricultural land in Survey Nos.289 to 294, 306, 309 to 342, 422, 424, 426, 430 to 432, 432/1, 432/2, 433/1, 433/2, 434/1, 434/2, 435 to 439, 443 and 446 for the last 250 years.

While the matter stood thus, during the year 1979, when the defendants made an attempt to interfere with the plaintiff's peaceful

possession and enjoyment of the suit land, by laying road through the suit land, the plaintiff was constrained to file a suit in O.S. No.29 of 1978 on the file of Principal District Munsif Court, Hyderabad, East and North and obtained a perpetual injunction restraining them from interfering with his possession and enjoyment of the property. While so, some of the local residents of Malkajgiri namely Roshan Ali Khan, Mohammed Yeesa, Syed Sadiq Hussain and Mir Sabir Ali and Mir Ghulam Abbas made an attempt to interfere with the plaintiff's possession and enjoyment, in an extent of 3000 Sq. Yards in survey No.422, he filed a suit in O.S. No.79 of 1985 on the file of Principal District Munsif Court, Hyderabad, East and North for perpetual injunction against them.

On coming to know that the defendants herein illegally, arbitrarily and without following due course of law taking steps to allot the land in Survey No.422 and to grant pattas to different persons with an intention to cause loss to the plaintiff and to the dargah, to which original plaintiff was a Mutawalli, the plaintiff submitted petitions to defendants 1 and 3 on 21.06.1984 and 16.08.1984 respectively bringing to their notice about the decree and judgment in O.S. No.29 of 1978 and asserting that the land attached to the dargah; defendants 1 to 3 failed to take any action on the said petitions. On the other hand, the defendants herein, without any manner of right visited the suit land on 10.08.1985 and tried to survey the land but the plaintiff successfully resisted them asserting his right, title interest and possession to the suit land. The defendants are not entitled to dispossess the plaintiff without following due course of law, the plaintiff apprehends that the defendants may bent upon dispossessing him from suit land taking the law into their own hands without initiating any proceedings under the Land Acquisition Act, 1894 to acquire the suit land and issue pattas in favour of the illegal occupants and prayed to grant perpetual injunction restraining the defendants from allotting or granting pattas to any

person or from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, in an extent of Ac.113.00 cents of land in Survey No.422 of Malkajgiri village, Ranga Reddy district.

5. The 1st defendant filed written statement and the same was adopted by defendants 2 and 3. 4th defendant remained exparte.

6. Defendants 1 to 3 denied the material allegations made in the plaint contending that the property in Survey No.422 is not a private property; it neither belongs to dargah Koh-e-Moula Ali nor to the Government. The said land is classified as '*Poramboke Sarkari*' in the revenue basic register known as vasoolbaqui and sethwar. The decree in O.S. No.29 of 1978, passed by the Principal District Munsif, Hyderabad East and North is against the Executive Officer, Gram Panchayat, Malkajgiri restraining the panchayat from laying road over the land in Survey No.422 and other survey numbers but not against the defendants 1 to 3. Therefore, it is not binding on the defendants 1 to 3. It is further contended that the defendants 1 to 3 are not parties to the suit in O.S. No.79 of 1985, on the file of Additional Subordinate Judge, Ranga Reddy District, filed by the plaintiff herein was dismissed, the decree is not binding on the defendants 1 to 3.

The Government has got every right to protect its land through its officers and use it for public welfare and the suit schedule property is in occupation of around 245 encroachers, who raised many permanent houses over the suit land. The Government is examining as to whether the concerned encroachers are eligible for house-sites *etc.*, the defendants have decided and conducted social survey and submitted proposals for allotment of house sites in the suit land and the same is under consideration. Therefore, the allegation that the plaintiff is in peaceful possession and enjoyment of the suit land is not correct and that the plaintiff has no *locus-standi* to file the suit without

any manner of right or title over the schedule property, thereby the plaintiff is not entitled to seek perpetual injunction without seeking declaratory relief and prayed for dismissal of the suit

7. Basing on the above pleadings, the trial Court framed the following issues:

- 1) Whether the plaintiff is entitled for perpetual injunction as prayed for?
- 2) Whether the suit for injunction simpliciter is maintainable under law?
- 3) Whether the present suit for prayer injunction without seeking declaration of title is maintainable under law?
- 4) To what relief?

8. During course of trial, on behalf of the plaintiff, PW.1 was examined and marked Exs.A-1 to A-9. On behalf of defendants, DW.1 was examined and marked Exs.B-1 to B-3.

9. Upon hearing the argument of both the counsel, considering oral and documentary evidence available on record, the trial Court held that the plaintiff failed to establish his right and title over the schedule property so also possession, declined to grant perpetual injunction in his favour and dismissed the suit.

10. The plaintiff, being unsuccessful before the trial Court, preferred the present Appeal on various grounds challenging the decree and judgment; the main contentions raised in the grounds of appeal are as follows:

- (a) The conclusion arrived by the trial Court that the property does not belong to the dargah is erroneous since Ex.A-6 proved that dargah is the owner of the property. Therefore, the trial Court committed an error in arriving at conclusion that the property does not belong

to dargah;

(b) The conclusion arrived by the trial Court that the plaintiff has no *locus-standi* is incorrect since the original plaintiff was appointed as Mutawalli and after his death his legal heir, 2nd plaintiff was brought on record as he has been rendering services as Mutawalli of the dargah. The trial Court also did not consider the effect of Section 3(f) of the Wakf Act, 1995;

(c) The finding of the trial Court that the land in Survey No.422 is classified as poramboke sarkari on the basis of admission of the plaintiff is *ex-facie* an error as the alleged admission is a stray admission and it is contrary to Ex.A-6 but the trial Court on erroneous appreciation of evidence on record, recorded adverse finding against the plaintiff;

(d) The property was declared as Wakf Property as per Ex.A-5, dated 27.08.1982, under Section 5 of the Wakf Act after conducting enquiry and it was not questioned before the Civil Court within the prescribed term of one year; consequently, by virtue of Ex.A-5 the property shall be treated as Wakf Property thereby question of seeking declaration is un-necessary and a suit for injunction simpliciter is maintainable but the trial Court without considering the effect of Ex.A-5, with reference to Section 5 of the Act, committed an error in holding that the plaintiff is not the owner on the ground that the gazette publication was during pendency of the suit. If the entire evidence on record with reference to law is appreciated in proper perspective, the trial Court would not have dismissed the suit.

And finally requested this Court to reappraise the entire

evidence and pass a decree in favour of the plaintiff granting permanent injunction restraining the defendants and their men from allotting plots to the occupants of suit schedule property and issuing pattas in their favour and restrain them from interfering with his possession and enjoyment of the schedule property.

11. During course of argument, Sri A.M. Qureshi, learned counsel for the plaintiff-appellant, while reiterating the grounds urged before the trial Court, would contend that issue of gazette publication under Ex.A-5 during pendency of the suit is *prima-facie* proof of title when no objections were filed within one year from the date of such publication. Therefore, the dargah became owner of the property but the trial Court overlooked Ex.A-5 on the ground that it was issued during pendency of the suit, which is erroneous and placed reliance on the decisions of the Apex Court in ***Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by L.Rs***^[1] and ***Sayyed Ali and others Vs. A.P. Wakf Board, Hyderabad and others***^[2]. He further contended that the plaintiff sought for permanent injunction restraining the defendants from allotting and issuing pattas in favour of the occupants of the schedule property for which possession of the property need not be looked into as act of allotment and issue of pattas in favour of the occupants directly amounts to infringement of legal right of the plaintiff in the schedule property, thereby the plaintiff is entitled to perpetual injunction but the trial Court on the sole ground that the plaintiff was out of possession dismissed the suit, which is erroneous. The trial Court also failed to take into consideration of the decree passed in the earlier suit in O.S. No.29 of 1978 on the file of Principal District Munsif, Hyderabad East and North on the basis of the decisions referred *supra*, dargah became owner of the property and thereby entitled to permanent injunction without claiming any declaration in view of Ex.A-5, gazette notification but the trial Court on wrong appreciation of facts and law declined to grant a perpetual injunction in favour of the plaintiff

and committed an error, finally prayed to reappraise the entire evidence and pass a decree in favour of the plaintiff, as claimed.

12. Learned Government Pleader for Appeals did not advance any argument despite listing the matter several times for respondents' argument.

13. Considering the contentions of learned counsel for the plaintiff-appellant, perusing material available on record including oral and documentary evidence and the decree and judgment under challenge, the points that arise for consideration are:

- 1) Whether the 1st plaintiff, Ghulam Ali Khan, represented by General Power of Attorney Holder Zaheer Ahmed Khan, or consequent upon his death Zaheer Ahmed Khan, are competent to file this suit?
- 2) Whether the defendants invaded or infringed the legal right of dargah? If so, the defendants 1 to 4 be restrained from allotting house site plots to the occupants of the suit schedule property and issuing pattas in their favour?
- 3) Whether the plaintiff is in lawful possession and enjoyment of the schedule property as on the date of filing the suit? If so, is the plaintiff entitled to a permanent injunction restraining the defendants and their men from dispossessing the plaintiff from the schedule property?

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14. **POINT No.1:** One of the main contentions raised in the written statement is that the plaintiff has no *locus-standi* to file the suit which means the Government questioned the very competency of Ghulam Ali Khan to file the suit in personal capacity. The said Ghulam Ali Khan claiming to be the Mutawalli of dargah allegedly filed the suit as per the averments of the plaint. The schedule property belongs to dargah but the 1st plaintiff, Ghulam Ali Khan filed the suit through his General

Power of Attorney holder Zaheer Ahmed Khan, who is no other than the 2nd plaintiff who came on record consequent upon death of Ghulam Ali Khan, the 1st plaintiff. When the plaintiff is contending that the dargah is the owner of the property, the suit must be filed by dargah represented by its Mutawalli or any other competent person. Strangely, dargah is not a party to the suit but Ghulam Ali Khan claiming to be the Mutawalli filed the present suit.

15. When similar question came up before the Delhi High Court in ***Shri Amar Nath Sarma Vs. Bankey Behari Ji Maharaj (Thakur Ji) and others***^[3], it was held as follows:

“12. The judgment of Jogesh Chandra Bera (supra) is inapplicable. This was a case where along with the plaint an application for leave to sue as an indigent person had been filed. It was held that a suit in the name of deity unless brought by the shebait himself or a prospective shebait must be so instituted through a next friend and the suit instituted without obtaining such a leave is incompetent. Consequently, the question of granting leave to sue as an indigent person was not competent. Ratio of this authority is inapplicable.”

16. In the decision referred *supra*, the Delhi Court consistently held that a Poojari or shebait can file a suit representing the idol or temple since the idol or temple has no physical existence but here the plaintiff filed the suit in his individual capacity, not representing the dargah. Therefore, the plaintiff has no legal competency that means he has no *locus-standi* to file the suit. Hence, the suit is liable to be dismissed on the sole ground that the plaintiff, in his personal capacity, is incompetent to file the suit. Therefore, the 1st plaintiff Ghulam Ahmed Khan, represented by its General Power of Attorney holder has no *locus-standi* to file the present suit in his individual capacity. Though the specific contention was raised by the 1st defendant in the written statement that the plaintiff has no locus-standi to file the suit, more particularly, when the plaintiff claiming to be Mutawalli of dargah the

trial Court ought to have framed an issue under Order XIV Rule 1 of C.P.C. since the plaintiff affirmed that he is Mutawalli of dargah and denied by the defendants an issue would arise which goes to the root of the case but the trial Court did not frame any issue and failed to record any finding thereon about the competency of the plaintiff to file the present suit.

17. In view of my foregoing discussion, I find that the 1st plaintiff, Ghulam Ahmed Khan, has no *locus-standi* to file the suit in his personal capacity and hence on this simple ground, the suit is liable to be dismissed. Accordingly, the point is answered.

18. **POINT Nos.2 and 3:** Since both the points are interconnected, they are answered by way of common discussion. One of the major contentions of the plaintiff is that dargah is owner of the entire property as per munthakab but the said munthakab was not filed; no munthakab is brought on record to prove that the plaintiff is in lawful possession and enjoyment of the property. No doubt, in a suit for bare injunction, the Court need not go into the title of the parties, normally, but it can be gone into incidentally to decide the lawful possession and enjoyment of the property and thereby infringement or invasion of legal right as per the law laid down by this Court in ***Alla Seshukumar and another Vs. Alla Radha Krishna***^[4], ***Fathima and another Vs. Samru Sultana and others***^[5] and ***Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjanaeyulu and others***^[6].

19. One of the major contentions of the plaintiff is that in view of issuing declaration under Section 5 of Wakf Act, unless the declaration that the property in question is Wakf property is not questioned in any competent civil Court it becomes final. Learned counsel for the plaintiff, in support of his contentions, placed reliance on the decision of the Apex Court in ***Hathija Ammal***¹, wherein, when similar question came

up before the Apex Court, it was held as follows:

“7. The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4, 5, and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the trial Court as affirmed by the First Appellate Court.

8. Ms. Shobha, learned counsel for the appellant, drew our attention to the decision of this Court in Sayyed Ali and others Vs [. A.P. Wakf Board, Hyderabad and others](#) [1998] 1 SCR 398 , to contend that wakf property can never lose its character was wakf property once it is shown that it is a permanent dedication of property and once a wakf, it will always be a wakf. The point urged in this case is that the suit property is a wakf property and hence sought for possession. What was pointed out by the trial Court, the First Appellate Court and the High Court concurrently is that before filing the suit as provided in law, the Wakf Board should have followed the procedure as required under Sections 4, 5 and 6 or 27 of the Act. A finding of fact has been recorded by the trial Court, and affirmed in Appeal, is that the suit properties are not included in the notification published under Section 5(2) of the Act and therefore, steps should have been taken as provided under Section 27 of the Act. It is only thereafter a suit for possession could have been filed by the appellant. There is no answer to this finding.”

20. In another decision of the Apex Court in ***Sayyed Ali²***, it was ruled as follows in Para 8:

“8.....Under Sub-section (2) of Section 5 of the Act the Board is required to publish in the official Gazette the list of Wakf properties whether in existence at the commencement of the Act or coming into existence thereafter. Section 6 of the Wakf Act further provides that if any question arises whether a particular property specified as Wakf property in the list of Wakf published under the Act, is a Wakf property or not, the Board or Mutuwallis of the Wakf or any person interested therein, may institute a suit in a Civil Court of competent

jurisdiction for decision of the question and the decision of the Civil Court in respect of such matter shall be final. It is also provided therein that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of Wakf under Sub-section (8) of Section 5 of the Act. Sub-section (4) of Section 6 further provides that the list of Wakfs published under Sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under Sub-section (1), be final and conclusive. Therefore, any dispute relating to the character of Wakf property is to be decided in the manner provided under the Wakf Act. Subject to the result of a civil suit, if filed, the list of Wakfs published in the official gazette is final and conclusive. In the present case, the disputed property was shown as Wakf property in the A.P. Official Gazette on 30.11.1961 and no suit having been filed challenging the Wakf property, the entries in the official gazette describing the property as Wakf became final and conclusive. Under Section 3 of the Inams Act, Tahsildar may *suo motu* make an enquiry for the purpose of grant of patta on three points, one of them being, whether inam land is held by any institution. While making an enquiry in the present case as to find out whether the inam land was held by the Dargah, the Tahsildar was not required to enquire into and adjudicate upon the character of the Wakf property mentioned in the list of Wakfs published in the official gazette under Sub-section (2) of Section 5 of the Wakf Act, as the dispute in that regard as to its character could only be decided in the manner provided in Section 6 of the Wakf Act. Assuming that the Wakf property was not found to be held by the Dargah under Section 3 of the Inam Act, it was not open to the Tahsildar to adjudicate upon the character of the Wakf property as the same was a grant by way of service inam for purposes recognized by the Muslim law as pious, religious or charitable which constituted the property as Wakf. Thus, we find that finding of the Tahsildar that the property was not Wakf, was wholly erroneous and beyond his jurisdiction. Consequently, the finding of the Tahsildar that the property is not a Wakf property would not constitute *res judicata* in the subsequent suit filed by the Wakf Board. It is well settled that if a decision of a court or a tribunal is without jurisdiction, such a decision or finding cannot operate as *res judicata* in any subsequent proceedings. The plea of *res judicata* presupposes that there is inexistence a decree or judgment which is legal but when the judgment is nonest in law, no plea of *res judicata* can be founded on such a judgment. It would be appropriate here to quote the following passage from "Res-

judicata" Spencer Bower and Turner, 2nd Edition, page 92:

"Competent jurisdiction is an essential condition of every valid *res judicata*, which means that, in order that a judicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the Article, or (in the case of in rem decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter and over the parties, sufficient to warrant it in so doing."

21. Under Section 5 sub-section 2 of the Act, the Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni Wakfs or Shia Wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed. Section 6 of the Wakf Act further provides that if any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final; provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

22. In view of the law declared by the Apex Court in the decisions referred *supra*, Wakf Board need not file a civil suit for declaration when Wakf is notified in the official gazette under Section 5(2) of the Wakf Act unless it is challenged it becomes final. On the strength of Ex.A-5, dated 27.08.1982 the plaintiff would contend that when the gazette notification declaring that the property as Wakf is unchallenged in any civil Court within one year, the plaintiff need not prove the title of the dargah. There is no quarrel about the law laid down by the Apex

Court but the trial Court ignored Ex.A-5 on the ground that it was issued during pendency of the suit before this Court but the suit was filed in the year 1985 and disposed of on 31.07.1985. Therefore, Ex.A-5 is not subsequent to filing of the suit but it was 3 years anterior to the date of filing the present suit. Therefore, ignoring the document on the ground that Ex.A-5 is posterior to institution of suit is an illegality. However, the plaintiff did not plead in the plaint that the property was notified as Wakf under Section 5(2) of the Wakf Act. In the absence of any pleading, any amount of evidence produced cannot be looked into, as per the settled law laid down by the Apex Court.

23. The general principle is that the Court cannot travel beyond pleadings and record a finding as held by the Apex Court in ***State of Maharashtra Vs. Hindustan Construction Company Limited***^[7], ***Kalyan Singh Chouhan Vs. C.P. Joshi***^[8] and ***Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria***^[9].

24. In ***Union of India Vs. Ibrahim Uddin and another***^[10], the Apex Court ruled as follows:

"Relief not founded in pleading cannot be granted. A decision of a case cannot be based on ground outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of pleadings in that respect. No party can be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of the case set up by it."

It was further held therein as follows:

"Where evidence was not in lines of pleadings, the said evidence cannot be looked into or relied upon."

25. The Apex Court in ***Hindustan Construction Company Limited***⁷ and ***Kalyan Singh Chouhan***⁸, consistently ruled as follows:

"Pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the Court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule, relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."

26. Therefore, on the strength of Ex.A-5 without any pleading, I am unable to consider the same to decide *prima-facie* title, if any, to find out the lawful possession of the plaintiff. The plaintiff also produced Ex.A-1, certified copy of the judgment in O.S. No.79 of 1983 passed by the Additional Senior Civil Judge and certified copy of decree and judgment in O.S. No.509 of 1986, marked as Exs.A-2 and A-3 and certified copy of order in I.A. No.365 of 1985 in O.S. No.181 of 1985 to prove that dargah is the *prima-facie* owner of the property but in the judgment in Ex.A-1 title of the dargah was not decided since the scope of trial in a suit for bare injunction is limited. Similarly, in other document also there was nothing to establish that the dargah was the *prima-facie* owner of the property. The other documents are not relevant for deciding the present controversy since the title cannot be gone into in a suit for injunction simpliciter. In any view of the matter, the trial Court while declining to grant injunction *prima-facie* held that the plaintiff failed to prove that he has been in possession and enjoyment of the property and dismissed the suit.

27. Learned counsel for the plaintiff-appellant would contend that when the plaintiff filed a suit seeking perpetual injunction to restrain the defendants from allotting the plots and issuing pattas in their favour, possession of the property is irrelevant. This contention holds substance to some extent but the relief prayed by the plaintiff in the

plaint consists of two parts *i.e.*,

- a) to issue perpetual injunction against the defendants, their servants, agents or any one acting on their behalf restraining them from allotting or granting pattas to any person or;
- b) from interfering with the peaceful possession and enjoyment of the plaintiff over the suit land in an extent of Ac.113.00 cents in Survey No.422 of Malkajgiri village, Vallabhnagar Taluk, Ranga Reddy District.

28. The two parts of relief claimed in Para 15 of the plaint shows that the plaintiff claimed two different injunctions against the defendants in the alternative in view of the use of the word 'or' between two. For grant of second part of the relief, it is for the plaintiff to prove lawful possession and enjoyment of the property as on the date of filing suit but it is admitted by the plaintiff that dargah is not in possession of the plaint schedule property and it is encroached by more than 450 persons. In such a case, the 2nd part of the relief to restrain the defendants from interfering with the possession and enjoyment of the plaintiff over the suit land cannot be granted.

29. In a recent judgment of the Apex Court in **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. and others**^[11], the Division Bench of the Apex Court laid down certain guidelines for grant of injunction simpliciter claiming any declaration of title and laid down the following guidelines:

"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 simplicitor 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 simplicitor, without claiming the relief of possession.”

30. In ***Thimmaiah Vs. Shabira and others***^[12], the Apex Court in Para 5A held as follows:

“Undisputedly, the suit was one for permanent injunction and in such a suit the plaintiff has to establish that he is in possession in order to be entitled to a decree for permanent injunction. The general proposition is well settled that a plaintiff not in possession is not entitled to the relief without claiming recovery of possession. Before an injunction can be granted it has to be shown that the plaintiff was in possession.”

31. In ***Ramji Rai and another Vs. Jagdish Mallah (Dead) through L.Rs. and another***^[13], the Apex Court held as follows:

“An injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on protection of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his rights.

Where in the suit for permanent injunction restraining the defendants from interfering with the possession of land in dispute or from raising boundary wall, the plaintiffs fail to prove that they are in possession, the suit is liable to be dismissed only on that ground.”

Therefore, the finding of the trial Court in declining the 2nd part

of the relief cannot be found fault with.

32. The 1st part of the relief is only to restrain the defendants from allotting or granting pattas to any person. If the plaintiff is able to establish the *prima-facie* title to the property for limited purpose of claiming injunction there is any amount of justification to restrain the defendants from allotting or granting pattas to any person but here the plaintiff miserably failed to establish *prima-facie* title to the property in the absence of passing of specific pleading about issuance of gazette notification under Section 5(2) of the Wakf Act, under Ex.A-5. Yet, the major lacuna in this matter is that the plaintiff is incompetent to file a suit in his individual capacity. At best, he may represent the dargah and file the suit being mutawalli but claimed permanent injunction against the defendants in his personal capacity to restrain the defendants from allotting or granting pattas to any person. When the plaintiff has no personal interest in the property, in his individual capacity, in view of bar under Section 41 (j) of the Specific Relief Act, 1963, no permanent injunction can be granted.

33. The main endeavour of the learned counsel for the plaintiff is that the suit by a mutawalli is maintainable but in view of my finding on Point No.1, I am unable to accept this contention since the suit was not filed representing dargah but filed in his individual capacity on this ground alone the suit is liable to be dismissed.

34. For grant of perpetual injunction, under Section 38 of the Specific Relief Act, the plaintiff has not only to prove that he has got personal interest in the property but also to prove that the defendants made attempts to infringe or invade his legal right. Here, the defendants admittedly conducted survey to allot house sites to the occupants and if the plaintiff is able to establish that he has got right or personal interest in the schedule property, the act of the defendants directly amounts to an attempt to infringe or invade the legal right or

personal interest of the plaintiff but here the plaintiff miserably failed to establish his legal right or personal interest in the property, in his personal capacity. In view of Section 41(h) of the Specific Relief Act, the plaintiff is not entitled to claim perpetual injunction against the defendants in his personal capacity. Accordingly, the points are answered.

35. In view of my foregoing discussion, I find that the plaintiff miserably failed to prove that he has got right or personal interest in the schedule property as on the date of filing suit and thereby disentitled to claim perpetual injunction under Section 38 of the Specific Relief Act. In view of my foregoing discussion, I find that the Appeal Suit is devoid of merits and deserves to be dismissed.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 31.07.1995, passed in O.S. No.194 of 1985 by the learned Principal Senior Civil Judge, Ranga Reddy District at Saroornagar, Hyderabad.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 18-06-2015.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) AIR 2002 SC 402

[\[2\]](#) AIR 1988 SC 972

[\[3\]](#) MANU/DE/0339/2011

[\[4\]](#) AIR 2008 SC 2033

[\[5\]](#) 2008 (3) ALT 538

[\[6\]](#) 2008 (6) ALT 676

[\[7\]](#) 2010 (4) SCC 528

[\[8\]](#) AIR 2011 SC 1127

[\[9\]](#) AIR 2012 SC 1727

[\[10\]](#) 2012 (8) SCC 148

[\[11\]](#) AIR 2008 SC 2033

[\[12\]](#) AIR 2008 SC 1275

[\[13\]](#) AIR 2007 SC 900