

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.740 of 2012

JUDGMENT:

The unsuccessful plaintiff in O.S. No.149 of 2008 on the file of IV Additional District Judge (for short, 'the trial court'), Guntur, preferred the present appeal challenging the Decree and Judgment of the trial court, whereunder the suit filed by the plaintiff for injunction simplicitor was dismissed.

02. For convenience of reference, the ranks given to the parties before the trial court in O.S. No.149 of 2008 will be adopted throughout the Judgment.

03. The plaintiff filed the suit claiming perpetual injunction against defendants 1 and 2 contending that he purchased the plaintiff schedule property of an extent of Ac.0.25 cents out of Ac.0.50 cents in Sy.No.167/3 from Bandi Ramanujamma wife of Pulla Reddy under a registered sale deed dated 23.01.1963, subsequently he sold the same to Lakkavajjala Subramanya Sharma under a registered sale deed dated 19.02.1982 and later the plaintiff purchased the same from Subramanya Sharma under registered sale deed dated 04.12.1995. Thus, the plaintiff became absolute owner of the property. Later, it is found that there was a typographical error regarding the sub-division number in the registered sale deed dated 23.01.1963 and got the same rectified by executing rectification deed dated 25.03.2000.

04. One Tupakula Rami Reddy obtained a provisional lay out for laying road through the suit property to reach his lands situated to the further West and that the plaintiff filed objections and sought for cancellation of the provisional layout and that the same was cancelled by the VGTM UD Authority. After the death of Tupakula Rami Reddy, realtors exploited the defendants and trying to cause obstruction to the plaintiff in enjoyment of the suit property. The defendants being the owners to the schedule property claiming that they have got right to lay

road through the schedule property to reach highway, trying to interfere with the possession and enjoyment of the same. Therefore, the plaintiff filed the suit for injunction simplicitor, to restrain the defendants and their men from interfering and enjoyment of the schedule property including erection of barbed wire, fencing and compound wall around the suit schedule property.

05. The first defendant filed written statement denying the material allegations of the petitioner *inter alia* contending that Bandi Ramanujamma own and possessed Ac.1.90 cents of land, out of the same, she sold Ac.0.25 cents to Vedagiri Bhargavamma, which is on the Southern side of the plaintiff's site. The said Bhargavamma gifted the property to her son, Vedagiri Laxmi Narayana, who in turn sold the same along with further extent of Ac.0.15 cents to Tupakula Rami Reddy. The said Tupakula Rami Reddy purchased Ac.1.30 cents of land, divided the entire extent of Ac.1.70 cents into plots, and to provide a road for ingress and egress, carved out a road in 40 feet width on the Southern side of the plaintiff's plot.

06. The defendants own and possessed land on the Southern side of the 40 feet road and except the road under dispute, no other path way is provided to reach the main road situated on the Eastern side. The defendant also purchased right to pass through 40 feet road from Kode Venkata Subba Rao, the registered power of attorney of Thupakula Satyavathi wife of Tupakula Rami Reddy under registered sale deed dated 19.01.2006. Since the date of purchase, the first defendant enjoying the right in the 40 feet width road, to reach National Highway and that the plaintiff is not the owner of schedule property. In case any permanent injunction is granted restraining the defendants/ respondents from passing through the schedule property to reach main road, the defendants/ respondents will put to serious loss and prayed to dismiss the suit.

07. The second defendant remained *ex parte*.

08. The first defendant also filed O.S. No.127 of 2009 against the plaintiff/ appellant herein and both the suits were tried and dismissed.

09. Based on the above pleadings, the trial court framed the following issues:

- 1) Whether the plaintiff is possession in the suit schedule property as on the date of filing of the suit?
- 2) Whether the plaintiff is entitled for permanent injunction?

10. The suit in O.S. No.148 of 2009 originally pending on the file of Senior Civil Judge, Mangalagiri, was transferred to the District Court vide Orders in T.O.P. No.24 of 2009 dated 09.06.2009 directed the IV Additional District Judge to try and dispose of both the cases together. Accordingly, the trial court disposed of both the suits and dismissed.

11. Since the Judgment and Decree in O.S. No.127 of 2009 is not the subject matter of the suit. The pleadings issues framed in the said suit are irrelevant for deciding the real controversy and therefore ignored.

12. During the course of joint trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and marked Exs.A.1 to A.12. On behalf of the defendants, D.Ws.1 to 5 were examined, Exs.B.1 to B.19 and Exs.C.1 to C.8 were marked.

13. Upon hearing argument of both the learned counsel, the trial court dismissed both the suits. The unsuccessful plaintiff in O.S. No.149 of 2009 preferred the present appeal on various grounds, more particularly, regarding the appreciation of evidence both the oral and documentary, and non consideration of rectification deed in proper perspective, finally prayed to allow the appeal, setting aside the Decree and Judgment of the trial court and pass a decree in favour of the plaintiff in granting permanent injunction, restraining the defendants and their men from interfering with peaceful possession

and enjoyment of the schedule property.

14. During the course of argument, Sri Srinivas Reddy, learned counsel for the plaintiff/ appellant disputed the finding recorded by the trial court in different angles, mainly contending that the southern boundary owner of schedule property is one Vedagiri Bhargavamma. In such case, the land purchased by Tupakula Rami Reddy must be the adjacent land of the plaintiff and not the plaintiff's land. Apart from that the rectification deed, clearly disclosed the detailed measurement of the schedule property marked as Ex.A.6 dated 25.03.2000 and the other document Ex.A.7 proved that the lay out was cancelled on 21.05.2000. Therefore, the question of existence of any road does not arise and that the plaintiff being the owner of the property, though not able to prove, his effective possession, but basing on the principle of title follows possession, the possession of the plaintiff can be accepted. But the trial court without considering the material on record dismissed the suit erroneously and prayed to set aside the same, granting permanent injunction in his favour.

15. *Per contra*, learned counsel for the respondents, Sri A. Bhaskara Chary, would contend that northern boundary in Ex.B.5 is sufficient to conclude that there exists a road of 40 feet width, leading to high way, similarly in Exs.B.6, B.7 and B.8, there is clear reference about existence of road, and the same is substantiated by adducing oral evidence, in such case, the existence of road cannot be disputed. However, in a suit for injunction simplicitor, it is the duty of the plaintiff to establish his case independently, more particularly, to prove that he is in possession and enjoyment of the property as on the date of filing the suit and that the defendants made any attempt to infringe or invade his legal right, then only the plaintiff is entitled to claim perpetual injunction. But in the present case, the plaintiff not only failed to establish his lawful possession in schedule property as on the date of filing suit, but also failed to establish that the defendants made any

attempt to infringe or invade the legal right of the plaintiff. Thereby, the trial court rightly declined to grant any permanent injunction in his favour and the findings of the trial court do not call for interference of this court even after re-appraisal of entire evidence and prayed to dismiss the appeal, confirming the decree and common judgment passed by the trial court.

16. Considering rival contentions, perusing oral and documentary evidence, including the Judgment and Decree of the trial court, the sole point that arise for consideration is,

01. Whether the plaintiff is in lawful possession and enjoyment of the suit schedule property as on the date of filing the suit? If so, whether the defendants made any attempt to infringe or invade the legal right of the plaintiff? and Whether the defendants be restrained from interfering with the peaceful possession and enjoyment including the erection of barbed wire fencing and compound wall around the suit schedule property in any manner whatsoever by granting permanent injunction?

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POINT:

17. In a suit for injunction simplicitor, the plaintiff has to prove that he is in lawful possession and enjoyment of the property as on the date of filing the suit and perpetual injunction can be granted only when there is an imminent threat to interfere with the possession and enjoyment or infringement or invasion of his legal rights by the defendants. In a suit for perpetual or permanent injunction, the burden of proof is always rests on the plaintiff to establish the above two requirements. But when both parties adduced evidence in support of their pleas, the burden of proof loses its weight and importance.

18. Section 37 of the Specific Relief Act, 1963 (for short, 'the Act') deals with grant of temporary and perpetual injunction, in general, whereas Section 38 of the Act deals with situations when perpetual injunction be granted. According to Section 38 of the Act, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication;

when any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II; when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction, where the defendant is trustee of the property for the plaintiff; where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion; where the invasion is such that compensation in money would not afford adequate relief; where the injunction is necessary to prevent a multiplicity of judicial proceedings

19. When the plaintiff claiming right in vacant land, the plaintiff is required to establish either symbolic or actual possession, if it is not vacant land, normally it is not so difficult to prove actual possession.

Therefore, it is for the plaintiff who approached the court has to discharge his initial onus of proof, in terms of Sections 101 and 102 of the Indian Evidence Act, 1872.

20. The plaintiff purchased an extent of Ac.0.25 cents under registered sale dated 23.01.1963, extract is marked as Ex.A.1. The schedule of property purchased under original of Ex.A.1 is relevant to decide the real controversy between the parties. The schedule of property is within the limits of Vundavalli Panchayat area in Sy.No.167/1. The land purchased by plaintiff in Sy.No.167/1 is within the following boundaries.

East – Trunk road Margin

South – land of Vedagiri Bhargavamma

West – land of Bandi Ramanujamma

North – land of Bandi Subba Reddy

21. The total extent purchased under the original of Ex.A.1 is Ac.0.25 cents. Later the plaintiff sold the same to Subramanya Sharma under the original of Ex.A.2, dated 19.02.1982. In original of Ex.A.1, the schedule of property is in Sy.No.167/1, situated in

Vundavalli Village within the specific boundaries, the boundaries mentioned in original of Ex.A.2 are similar to the boundaries mentioned in original of Ex.A.1. Therefore, the boundaries need not be repeated.

22. It is the specific contention of the plaintiff that he repurchased the schedule property from Subramanya Sharma, vendee under original of Ex.A.2, the extent and survey number and boundaries are same as mentioned in original of Ex.A.1. The plaintiff purchased the schedule property in the year 1995 i.e. on 04.12.1995. In none of the documents, Exs.A.1 to A.3, the lineal measurements were mentioned for the entire extent of Ac.0.25 cents, strangely for the first time a certificate from Mandal Revenue Officer was obtained on 24.03.2000 certifying that Sy.No.167 was subdivided by Revenue Divisional Officer as per Award No.7/58 dated 10.12.1958. The said certificate was marked as Ex.A.5. As per Ex.A.5, the Sy.No.167 was divided into three sub divisions viz., Sy.No.167/1 consists of Ac.6.70 cents, Sy.No.167/2 consists of Ac.0.75 cents and Sy.No.167/3 consists of Ac.7.12 cents.

23. Even according to these documents, the sub division took place as early as in 1958, whereas Ex.A.1 was obtained in 1963, almost 15 years later, from the date of sub division, but still mentioned the Sy.No.167/1 in Exs.A.1, A.2 and A.3 obviously for the reasons best known to the parties to the documents. Suddenly, the rectification deed was obtained by the plaintiff from his original vendor Bandi Ramanujamma under the original of Ex.A.1 explaining that the survey number in document No.89/1963 was wrongly mentioned as 167/1 (new) instead of 167/3 and, therefore, required to be rectified and that lineal measurements were also not mentioned to the land purchased under the document. Hence, the mistake mentioned in survey number was rectified and mentioned the lineal measurements of the property purchased by the plaintiff from Bandi Ramanujamma by executing the rectification deed. The said rectification deed was marked as Ex.A.6.

The said rectification deed was obtained on 25.03.2000, whereas the suit was filed in 2008, however, the date of document is not necessary. Even according to Ex.A.5, Sy.No.167 was divided prior to award bearing No.7/58 dated 10.12.1958, but the document, original of Ex.A.1 was obtained in 1963. Thus, by the date of execution of original Ex.A.1, the Sy.No.167 was subdivided into three letters as 167/1, 2 and 3 with different extents. Curiously, it was mentioned that in Sy.No.167/1 the land consists of Ac.6.70 cents, but rectified the same as Sy.No.167/3, which consists of Ac.7.12 cents by executing Ex.A.6 without informing the owners of land in S.No.167/3. If really the plaintiff or his vendor Bandi Ramanujamma was not aware about sub division by the date of execution of Ex.A.1, they ought not to have mentioned the Sy.No.167/1 and she would have mentioned survey number as 167. Therefore, mentioning Sy.No.167/1 itself indicates that the vendor of the plaintiff is aware about the sub division. Even if the mistake mentioned in survey number is ignored, the boundaries will prevail over the survey numbers when survey number is in dispute. In the present set of facts, the plaintiff undisputedly purchased the land to an extent of Ac.0.25 cents within the boundaries mentioned in the original of Ex.A.1. Even according to the boundaries mentioned in original of Ex.A.1, the Southern boundary owner was Vedagiri Bhargavamma, purchased the property from same vendor Bandi Ramanujamma. It is the specific contention of the defendant that Bandi Ramanujamma own and possessed Ac.1.90 cents, out of it, Ac.0.25 cents was sold to Vedula Bhargavamma, who in turn gifted the property to his son Vedula Lakshmi Narasamma, he sold the same to Tupakula Rami Reddy along with another extent of Ac.0.50 cents and he also purchased Ac.1.30 cents. The said Tupakula Ramireddy laid lay out and divided the property into plots, applied for carving out the 40 feet road to reach Eastern side High way. As per the plan marked under Exs.C.4, C.8 and C.9 submitted by the Commissioner on two different occasions would go to show that the property was divided into

plots and there existed road in the straight line up to the plot of the schedule property and later took a turn towards South and reaching Guntur - Vijayawada High way, but on account of the obstruction of the plaintiff's land, the road took a curve according to the defendants. In fact, there is a triangular piece of land shown in Ex.C.4 and there was no explanation as to who is the owner of triangular piece of land adjacent to the plot, Southern side of first plot and Western side of the plaintiff's land. In any view of the matter, there were trees on either side of the road as per Ex.C.4 which was filed by the Commissioner in O.S. No.149 of 2008 tried along with the Suit. As per Exs.C.8 and C.9, the road was in straight line commencing from Guntur, connecting NH5 and that there are grown up trees on either side of the road and there are electrical poles on the margin of Southern side of the road, the road is adjacent to the land of the plaintiff and defendants in O.S. No.484 of 2008 which is re numbered as O.S. No.149 of 2008. According to the plaintiff, Exs.C.8 and C.9 were submitted by the Commissioner by inspecting the property without notice to the defendant in the said suit, but whereas Ex.C.4 was submitted after notice to both the counsel, curiously during the pendency of the suit after obtaining permission from the Court vide orders in I.A. No.737 of 2008 in O.S. No.149 of 2008, before its transfer, barbed wire fencing was erected. Therefore, it is evident from the record that after obtaining permission from the Court and with the police aid, barbed wire fencing was erected around the site, hence, Ex.C.4 would not disclose the actual possession of the land as on the date of filing the suit.

24. Since the burden is on the plaintiff to prove that he is in lawful possession as on the date of filing the suit, it is for him to establish the same by adducing cogent and satisfactory evidence and he cannot be allowed to take advantage of weakness in the case of the defendant.

As usual in the examination-in-chief, P.W.1 asserted that he is in possession and enjoyment of the property as on the date of filing the

suit, having purchased the same under original of Ex.A.1. In the cross-examination, in first paragraph, P.W.1 asserted that since the defendants 1 and 2 residing in that locality, and using the site, as passage for ingress and egress and when he proposed to set up a barbed wire fencing around his site to protect his property, the defendants objected for putting up barbed wire fencing and threatened, therefore, he impleaded both the defendants to the suit. This admission would normally establish that both the defendants are using the suit schedule property as passage to reach the High way for their ingress and egress. He further admitted in the same paragraph that he filed suit before erecting the barbed wire fencing and when he purchased the property, it was agricultural land, under the original of Ex.A.1 and that Bandi Ramanujamma own Ac.0.25 cents to South of his property and that Ramanujamma gifted Ac.0.25 cents situated to the South of plaintiff's property to her son and that Rami Reddy sold Ac.0.25 cents to Vedagiri Bhargavamma, who in turn gifted the same to her son, Laxmi Narayana, who sold the same to Tupakula Rami Reddy and Rami Reddy also purchased some more properties to the West of the suit schedule property and also to the West of the site of Laxmi Narayana, divided the same into plots, but the evidence further goes to show that no road was laid to reach the high way by the said Rami Reddy while dividing the land into plots. The suit schedule property was a vacant land. In further cross-examination, P.W.1 pleaded ignorance of 40 feet road on the West side of the first defendant site. However, in the penultimate paragraph of the cross-examination, P.W.1 admitted that there is katcha road, after two or three plots West to his site leading to the North and then to the East to the NH5. The evidence of P.W.1, at best, useful to prove that there was no road, if the evidence of P.W.1 in the penultimate paragraph at the end of cross examination is accepted the physical features mentioned in Ex.C.4 are false on the face of record. The plaintiff did not produce any evidence to prove his lawful possession and

enjoyment of the property and on the other hand, he purchased an extent of Ac.0.25 cents under the original of Ex.A.1 out of Ac.7.12 cents in S.No.167/1 and not in Sy.No.167/3, even under original of Ex.A.3 also.

25. When I adverted to Ex.B.1 - sale deed executed by the children of Bheemireddy Koti Reddy in favour of the first defendant, it established ownership of the first defendant. Ex.B.2 is another sale deed executed in favour of Karri Subba Reddy by Tupakula Satyavathi wife of Rami Reddy on 19.01.2006, in which, it was mentioned that Northern boundary is 40 feet joint road. Similarly, in Ex.B.4 dated 31.12.1969, the Western boundary was shown as land of Ramanujamma. Ex.B.5 is the registered sale deed dated 09.10.2002 executed by Ramanujamma, vendor of the plaintiff in favour of Bogireddy Nagaveni, according to the boundaries mentioned therein, the Northern boundary is 40 feet wide joint road. In Ex.B.6 - sale deed executed by Ramanujamma in favour of Ramesh Babu, Northern boundary was mentioned as 40 feet wide road. Ex.B.7 is another sale deed executed in favour of Venkata Purnachandar Rao. Like wise, several documents were produced to establish that 40 feet road was in existence. As stated above, it is for the plaintiff to establish his lawful possession as on the date of filing the suit. To establish the same he did not produce any piece of paper to believe that he is in possession and enjoyment of the property.

26. On the other hand, the documents produced by the plaintiff/appellant in the present suit are not sufficient to establish his lawful possession over the suit schedule property. The plaintiff paid land revenue only in the year 2000 that is not sufficient to establish lawful possession of the property as on the date of filing the suit. Even otherwise, there is clear dispute regarding the identity of property with reference to survey number and boundaries. The defendants denied the title of the plaintiff in clear terms, but still the plaintiff pursued the suit for bare injunction without taking any steps to convert the same

into a suit for declaration of title and for other consequential reliefs. When title is in dispute and created cloud over the title of the plaintiff, the plaintiff is not entitled to claim injunction simplicitor without seeking declaration.

27. The trial court placing reliance on the Judgment reported **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by Legal representatives and others**^[1], wherein the Apex Court laid down certain guidelines when suit for bare injunction is maintainable, held in para 11 as follows:

“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.

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.”

28. The Apex Court in paragraph 12 to elucidated elaborately when cloud casts on the title as follows:

“We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper

without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

29. In view of the principles laid down in the above Judgment, when the land is agricultural land effective possession cannot be established, but basing on the principle of possession follows title, the Court can decide as to who is in possession of the property. Here, the suit schedule property was originally agricultural land, but due to passage of time no crop was raised, but still it is vacant. As there is clear dispute as to who is in possession of the property as on the date of filing the suit with reference to boundaries and survey number, it is difficult for the trial court to accept the contention that the plaintiff is in possession of the suit schedule property.

30. In the same judgment, the Apex Court held that when the issue of title involves complicate or complex questions of fact and law or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

31. If the principle laid down in the above Judgment is applied to the present facts of the case, at best, the plaintiff be relegated to claim relief of declaration, since there is a clear dispute with regard to the identity of the property with reference to survey number and boundaries, which created a cloud on the title of the plaintiff.

32. Time and again, the Courts held that in a suit for injunction simplicitor, title cannot be gone into, but for limited purpose of deciding lawful possession, the court may look into title. In a suit for injunction simplicitor, complicated question of title not to be gone into. The person not having title, but being in settled possession of the property on the date of suit is entitled to injunction, even against true owner in view of the principles laid down in **Alla seshukumar and another vs. alla radha krishna**^[2] and in **Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjanaeyulu and others**^[3]. Hence, this court is of the view that for grant of perpetual injunction, a finding has to be recorded as to who is in possession. In view of the settled legal possession laid down by this court, title of the parties and need not be gone into to and no finding be recorded as to title of the party except for the limited purpose to deciding the lawful possession.

33. The Apex Court in more than one judgment repeated that in a suit for bare injunction, the title of the parties cannot be gone into, except for a limited extent for deciding lawful possession.

34. In **Thimmaiah Vs. Shabira and others**^[4] the apex court held that

“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.”

35. In the same lines, in **Jagdish Vs. Rajendra**^[5] held as follows:

“Where the plaintiff is not in possession on the date of the plaint the property being in custodia legis having been attached under Section 145 of the Criminal Procedure Code, and pending suit the possession was delivered to the defendant by the Criminal Court, the plaintiff cannot be granted an injunction restraining the defendant from interfering with his possession. Before an injunction can be granted it has to be shown that the plaintiff was in possession.”

36. In **Ramji Rai and another Vs. Jagdish Mallah (Dead)** through **L.Rs. and another**^[6], wherein the Apex Court held as follows:

“An injunction restraining disturbance of possession will not be granted in favor 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.”

37. In a Judgment reported in **Manjoor Ali and another Vs. Kishmat Ali and other**^[7], wherein it was held as follows:

“In a suit for injunction, basing on possession, in the absence of any document like mutating name of plaintiff and his father, etc., in revenue record or any document evidencing delivery of possession to plaintiff, suit cannot be decreed and plaintiffs are not entitled to claim injunction.”

38. The law declared by this Court and Apex Court is consistent that in a suit for bare injunction, title cannot be gone into, but however, the law has taken a turn in the Judgment Apex Court reported in **Anathula Sudhakar’s** case. But, finally the Apex Court in **Sudhakar’s** case expressed clear view that issue of title involves complicated or complex questions of law and if the Court feels that the parties did not proceed on the basis of that title was in issue, the court has to relegate the parties to remedy of full fledged suit for declaration.

39. Even in the above Judgment the title is in dispute, when complex and complicated questions of fact and law involved, the court cannot be pass a decree in favour of the plaintiff granting permanent injunction.

40. In the present facts, the very identity of the lands on ground with reference to survey numbers and boundaries is in dispute. If the plaintiff purchased the land in Survey No.167/1 without any

measurements, but within specific boundaries, if the same is identified on ground, he is entitled to protection from high handed interference of the defendants under section 38 of the Act. At the same time, change of survey number and mentioning of lineal measurements of four boundaries is of no assistance to the plaintiff, to prove title to the property and possession thereto. Apart from that the vendor of the plaintiff, Rami Reddy sold different extents of land from different persons mentioned in earlier paragraphs, where the Northern boundary was mentioned as 40 feet width road. All these facts leads to complex situation and such issues cannot be decided in a suit for injunction simplicitor. Therefore, I find that it is appropriate to relegate the plaintiff to file appropriate suit for declaration of title with consequential reliefs by applying principles laid down by Apex Court referred supra.

41. Though the learned counsel for the plaintiff/ appellant raised several contentions with regard to barbed wire fencing, which shows that he is in possession, that is not sufficient for the reason that when the suit was filed there was no barbed wire fencing around the site, but it was erected only by virtue of the order passed by the II Additional Senior Civil Judge, Mangalagiri and with the police aid. The plans marked as Exs.C.4, 7 and 8 which were submitted by the commissioner along with report, leads further complication about title to the property of the plaintiff and to the existence of 40 feet width road. All these aspects cannot be gone into in a suit for injunction simplicitor.

42. The trial court only by applying the principle in Ananthula Sudhakar's case declined to grant relief of permanent injunction as the plaintiff failed to prove his lawful possession over the suit schedule property on the ground that the facts led to complicated issues of title and identification of property on ground. Therefore, the finding of the trial court cannot be faulted and the judgment and the decree cannot be reversed.

43. In view of my foregoing discussion, I find no illegality, or irregularity in the judgment, warranting interference of this court. Hence, the appeal is devoid of merits. The plaintiff is relegated to full fledge suit for declaration and other consequential reliefs following judgments of the Apex court.

44. With the above observation, the appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

DT.11-12-2015

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[\[1\]](#) AIR 2008 S.C. page 2033

[\[2\]](#) 2008 (1) ALT 430

[\[3\]](#) 2008(6) ALT 676

[\[4\]](#) **AIR 2008 SC page 1275**

[\[5\]](#) AIR 1975 All 395

[\[6\]](#) **AIR 2007 SC 900**

[\[7\]](#) AIR 2004 Allahabad 395