

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
SECOND APPEAL No.1144 of 2008

JUDGMENT

The unsuccessful plaintiff in O.S.No.444 of 1992 on the file of Principal District Munsif, Hyderabad East and North, Ranga Reddy District, and appellant in A.S.No.116 of 1997 preferred this Second Appeal under Section 100 of CPC challenging the decree and judgment, recording concurrent findings both by trial court and appellate court, dismissing the suit filed for injunction simpliciter.

For the sake of convenience, the parties hereinafter referred as plaintiff and defendants.

The plaintiff filed the suit for grant of perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the suit schedule property over an extent of 242 sq. yards in Plot No.32/A along with house No.1-2/2 in Sy.Nos.1 to 4 of Bahadurguda village, Saroornagar Mandal, Ranga Reddy District, contending that she purchased the property under registered sale deed dated 30-04-1988, which is marked as Ex.A1 from one Sri E.Punnaiah and ever since she has been in possession and enjoyment of the suit schedule property. But, the defendants are making hectic efforts to interfere with her possession and enjoyment.

The 2nd defendant remained ex-parte.

Defendants 1 and 3 before the trial court filed written statement raising several contentions mainly contending that the 1st defendant purchased Plot No.32 admeasuring 242 sq. yards in Sy.Nos.1 to 4 of Bahadurguda village from its lawful owners Smt.Baindla Ettamma and others through their General Power of Attorney holder under registered sale deed dated 30-06-1989, they raised construction upto basement level and constructed compound wall to some extent; that the plaintiff tried to encroach the schedule property contending that she is the owner of the property; on enquiry they came to know that no such house number was allotted to the plaintiff; she was never in possession and enjoyment of the schedule property and the 1st defendant

is in possession and enjoyment of the suit schedule property therefore, the suit is liable to be dismissed.

Basing on the above pleadings, the trial court framed three issues and during trial, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A-1 to A-4 were marked. On behalf of the defendants, DWs.1 to 3 were examined and Exs.B-1 to B-8 were marked.

Upon hearing argument of both the counsel, the trial court in para '10' of the judgment recorded a finding that the burden is on the plaintiff to prove the existence of the suit plot by proper layout and the plaintiff failed to file layout and prove the existence of Plot No.32/A. Further, PW.1 in her evidence deposed that she obtained permission from Bahadurguda Grampanchayat and constructed a room. But, the plaintiff failed to prove the said facts and on the other hand, she assailed the sale deeds and the ownership certificates of the defendants and their vendor. The trial court finally concluded as follows:-

“... The plaintiff failed to show that she is entitled for suit property by valid documents and that she has been in possession and enjoyment of the suit property by the date of suit. On the other hand, the evidence of D1 and D3 under Ex.B1 to B8 reveal that D1 and wife of D3 have purchased their plots validly from lawful owner. Further Ex.B1 coupled with Exs.B5 and B6 reveal that D1 has got right in suit property i.e., plot No.32 and not the plaintiff. In the circumstances, I am of considered opinion that the plaintiff is not entitled for perpetual injunction as prayed for and this issue is answered against the plaintiff and in favour of the defendants.”

Aggrieved by decree and judgment of the trial court, the plaintiff being unsuccessful preferred appeal before the appellate court and the II Additional District Judge, Ranga Reddy District, by his decree and judgment in A.S.No.116 of 1997 confirmed the decree and judgment passed by the trial court while upholding the finding of the trial court regarding title of the defendants in respect of Plot No.32 while observing that the plaintiff miserably failed to establish *prima facie* title to the schedule property. At the end of para '15' it is held as follows:-

“The plaintiff not only failed to establish *prima facie* title to the suit schedule property but also failed to establish her possession over the schedule property by the date of suit. The lower court under well

considered judgment dismissed the suit. This Court does not find any reason to interfere with the said judgment of the lower court.”

The trial court recorded a finding that the plaintiff failed to establish title to the property whereas the appellate court slightly modified and held that the plaintiff failed to prove prima facie title over the suit property while upholding the findings regarding title of defendants in respect of plot No.32 of Bahadurguda Village, R.R. District.

The present appeal is filed raising several contentions and framed three substantial questions of law but only question No.2 is a substantial question of law, which is as follows:-

“Whether the courts below right in recording a finding that the plaintiff has no title over the property and the defendant is having title in a suit for bare injunction?

The other two questions are not substantial questions of law and they are purely questions of fact.

Sri V.L.N.G.K.Murthy on behalf of Sri K.G.Krishna Murthy, learned counsel for the appellant, would contend that the finding regarding title touching finality is beyond the scope of trial in a suit for bare injunction and the court is not supposed to record a finding as to title except to go into the title incidentally to decide lawful possession of the property as on the date of suit in a suit for injunction simpliciter. Therefore, the findings recorded by both the trial court as well as appellate court are totally erroneous and prays to set aside the judgment of the trial court on this ground alone. He also further contend that the 1st appellate court failed to frame appropriate point for consideration as required under Order 41 Rule 31 CPC but framed the point for consideration, repeating the relief claimed in the plaint. Thus, the appellate court did not apply its mind failed to adhere to Order 41 Rule 31 CPC. Therefore, on this ground alone, the appeal is liable to be allowed setting aside the decree and judgment of both trial court and appellate court.

Per contra, Sri S.R.Sanku, learned counsel for the respondents, supported the judgments of both trial court and appellate court in all respects particularly regarding findings as to title recorded by the trial court, affirmed by appellate court, having found that the defendants are in possession and

the plaintiff failed to prove her right and possession over the suit property, rightly came to the conclusion and dismissed the suit and the appellate court rightly upheld the same.

The present appeal is filed in the year 2008. Till date, it is under the caption '**for admission**' and there is no meaning in admitting the appeal without hearing. Therefore, this appeal is heard, to dispose of at the stage of admission with the consent of both the counsel.

Undisputedly, the plaintiff filed the suit for injunction simpliciter claiming discretionary relief under Section 38 of the Specific Relief Act contending that she purchased the property i.e., Plot No.32/A of Bahadurguda Village, Ranga Reddy District and she has been in continuous possession and enjoyment of the property and that the defendants threatened to interfere with her possession and enjoyment. The 1st defendant purchased Plot No.32 at Bahadurguda Village, Ranga Reddy District, from Baindla Ettamma and others under registered sale deed dated 30-06-1989 through General Power of Attorney Holder and continuing in possession and enjoyment of the property. In view of the rival contentions, the court has to decide as to lawful possession and enjoyment of the property by the plaintiff as on the date of filing of suit without recording any finding as to the title either of the plaintiff or defendants attaching finality. But, the trial court clearly recorded a finding as to title of the defendants and failure of the plaintiff to prove her title to the property, which is extracted in the earlier paragraphs. Strangely, the appellate court also confirmed the finding of the trial court as to the title of the defendants while observing that the trial court concluded that the plaintiff failed to prove her prima facie title, at the end of para '15' of the judgment. No doubt, in a suit for bare injunction, the courts are not expected to record a finding as to title attaching finality and the parties cannot be allowed to obtain larger benefit on payment of meagre court fee under Section 26 (c) of A.P.Court Fees and Suit Valuation Act. However, in a suit filed by the plaintiff, both trial court and appellate court recorded a finding upholding the title of defendants 1 and 3 and their predecessors in title. Such finding is against the settled law laid down by the Apex Court and this Court

in a catena of decisions.

Even otherwise, the scope of trial of suit for injunction under Section 38 of the Specific Relief Act, 1963 is limited and at best the Courts can record the finding as to who is in lawful possession as on the date of filing the suit and also record a finding that whether the defendants threatened to interfere with such lawful possession of the plaintiff. Therefore, in view of the limited scope of the suit filed for injunction simplicitor, the Court cannot record any finding with regard to title. In ***Alla Seshukumar and another v. Alla Radha Krishna***^[1], ***P.Anil Kumar and others v. the Joint Collector, Ranga Reddy District at Hyderabad and others***^[2] and ***Surampudi Sudarsana Rao v. Nanduri Venkata Seetha Ramanjaneyulu and others***^[3] this Court consistently held that in a suit for injunction simplicitor, complicated questions of title cannot be gone into. A person not having title but being in possession of the property can claim injunction even against true owner. Basically, finding as to the possession must be recorded in a suit for injunction and the verification of title is only for limited purpose of recording a finding that the possession is lawful or not. Therefore, no finding shall be recorded by the Courts regarding title and rights of the parties in immovable property in a suit for bare injunction.

In ***Anathula Sudhakar Vs. P.Buchi Reddy and Others***^[4] the Apex Court in paras '11' and '12' of the judgment laid down the following principles :-

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.

12. 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.

In **Yachamaneni Rajaiah Naidu Vs. Yachamaneni Munikrishnaiah and Others**^[5], this Court held that, in a suit for injunction, what becomes material is the state of affairs, pertaining to possession as on the date of filing of the suit. The title is certainly important, but assumes significance only after possession.

In view of the law declared by this Court and the Apex Court, the lawful possession as on the date of suit alone is required to be proved and

the court is expected to record a finding as to lawful possession, since the court cannot record a finding as to the title in a suit for bare injunction attaching finality and it can go into title incidentally to the limited extent of finding lawful possession. That apart, in a suit filed by the plaintiff for injunction simpliciter, the courts are not expected to record a finding as to the title of the defendants attaching finality, who have not paid single pie as a court fee. Therefore, the finding of the trial court as confirmed by the appellate court as to the title of both plaintiff and defendants attaching finality are liable to be set aside and accordingly set aside.

The second contention urged before this Court is that the trial court did not frame proper points for determination in terms of Order 41 Rule 31 CPC.

Order 41 Rule 31 CPC did not specify as to how a point for determination is to be framed but it requires framing a point for determination. The appellate court repeated the prayer portion in the point for consideration and answered but on this simple ground, the decree and judgment of the trial court and appellate court cannot be interfered since both the courts discussed about possession and enjoyment and threat to infringe or invade the legal right or obligation of the plaintiff as required under Section 38 of the Specific Relief Act.

Both the trial court and appellate court while recording findings as to the title of both parties attaching finality, recorded a finding that the plaintiff failed to prove lawful possession and enjoyment of the property besides infringement and invasion of legal right or obligation of the plaintiff by the defendants.

Hence, the decree and judgment of the trial court as confirmed by the appellate court, on the ground that the plaintiff failed to prove lawful possession and enjoyment of the suit schedule property as on the date of filing of suit and threat to interfere with lawful possession and enjoyment of the plaintiff by the defendant is upheld while setting aside the findings as to title of the plaintiff and defendants recorded by the trial court.

In view of my foregoing discussion, the judgment and decree of the

trial court as well as the appellate court are hereby confirmed while setting aside the findings as to the title of the plaintiff and defendants.

The Second Appeal is partly allowed confirming the decree to the extent of granting permanent injunction while setting aside the findings as to title of both plaintiff and defendants. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 25-07-2016

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HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[1\]](#) 2008 (6) ALT 676
[\[2\]](#) ALT (2) 1988 583 (D.B.)
[\[3\]](#) 2008 (6) ALT 676
[\[4\]](#) AIR 2008 SC 2033
[\[5\]](#) 2013 (3) ALT 243