

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.179 OF 2011

JUDGMENT:

The plaintiffs in O.S.No.10 of 1998 on the file of the Junior Civil Judge, Chevella, Ranga Reddy District and A.S.No.4 of 2008 on the file of the Senior Civil Judge, Vikarabad, Ranga Reddy District, filed the present second appeal under Section 100 of the Civil Procedure Code, challenging the concurrent findings recorded both by the Trial Court and the First Appellate Court, dismissing the suit filed for injunction simplicitor.

For convenience of reference, the ranks given to the parties in the Trial Court will be adopted throughout the judgment.

The plaintiffs 1 to 4 are the owners and possessors of the suit schedule property having purchased the land under registered sale deed No.680/81 dated 27.04.1981 from its original owners Mirza Janullah Baig and Athaullah Baig. The total extent of land in Sy.No.1645/A is Ac.10-20 gts and Sy.No.1645/AA is Ac.10-19 gts and out of land in the said survey numbers, land to an extent of Ac.5-16 gts is sold to the plaintiffs in the year 1981 by the owners, Mirza Janullah Baig and Athaullah Baig. Later, the names of the plaintiffs were mutated in the concerned revenue records. Thus, the plaintiffs are continuing in peaceful possession and enjoyment of the suit schedule property.

While the matter stood thus, the defendants without in any manner of right and title over the property started claiming

ownership over the property and made an attempt to interfere with peaceful possession and enjoyment of the suit schedule property on 01.02.1998 with the aid of unsocial elements and tried to dispossess the plaintiffs, but same was resisted by the plaintiffs.

Since the attempt of the defendants was successfully resisted by the plaintiffs, the defendants while withdrawing from the suit schedule property, threatened to renew their attempt at later point of time with more force and to dispossess the plaintiffs from the suit schedule property. Hence, the plaintiffs, apprehending their dispossession from the suit schedule property, filed O.S.No.10 of 1998 for grant of perpetual injunction.

During pendency of the suit, the defendant No.1 died and his legal representatives were brought on record as defendant Nos.2 to 8 vide order in I.A.No.352 of 2007 dated 26.07.2007.

The 1st defendant, during his lifetime filed his written statement denying material allegations of the plaint, *inter alia* contending that the suit was filed with frivolous allegations and it is a speculative litigation by misrepresenting and suppressing the material facts. It is the specific case of the defendant that originally one Mohd. Ali Baig was the owner and pattedar of agricultural land admeasuring Ac.20.39 guntas in Sy.No.1645 situated at Shabad Village and Revenue Mandal, Ranga Reddy District. The said pattedar also owned land in Sy.No.1628 of Shabad Village. The land bearing Sy.No.1645 was bounded by:

EAST	: By Sy.No.144
WEST	: By Shivar of Regadi Doswada Village
SOUTH	: By Sy.No.1628 and 1629
NORTH	: By Sy.No.1646

On the demise of Mohd. Ali Baig, his sons Mirza Janullah Baig and Athaullah Baig succeeded his estate, his two sons sold an extent of Ac.15-00 of land to the 1st defendant in Sy.No.1645 and 1628 of Shabad Village by unregistered sale deed dated 11.01.1975 and the 1st defendant is in physical possession of the land which consisted of part of Sy.No.1645 in an extent of Ac.11-01 gts and part of Sy.No.1628 to an extent of Ac.3.39 gts. Thus, the 1st defendant is in exclusive possession and enjoyment of Ac.15-00 of land since the date of purchase.

After demise of Mohd. Ali Baig, while mutating the lands held by him in favour of his two sons, the revenue authorities have assigned nominal sub-division numbers to Sy.No.1645 as 1645/A and 1645/AA without actually there being no sub-division on the spot and no sub-divisional record is ever prepared. The part of the land sold to the 1st defendant in Sy.No.1645 is located on the Southern side abutting Sy.No.1628. After alienating Ac.11-01 gts of land in Sy.No.1645 to the 1st defendant, Mirza Janullah Baig and Athaullah Baig were left with Ac.9-38 gts of land in Sy.No.1645 (1645/A and 1645/AA) and they were entitled to deal with the said land of Ac.9-38 gts.

While the matter stood thus, in the year 1986, one Jeevagalla Yellaiah and his two brothers namely Chandraiah and Anjaiah residents of Venkammagudem filed suit for perpetual injunction against the plaintiffs in O.S.No.3 of 1986 on the file of Junior Civil Judge's Court, Chevella, claiming right in Ac.3-00 of land in Sy.No.1645/A of Shabad Village alleging that they

purchased the land from Mirza Janullah Baig and Athaullah Baig through alleged registered sale deed dated 24.04.1981 and claimed to be in possession over the said land since the date of purchase. Similarly, one Midde Sayanna and Midde Buggaiah of Venkammagudam filed another suit bearing O.S.No.4 of 1986 against the plaintiffs for perpetual injunction in respect of Ac.6-03 gts in Sy.No.1645/A of Shabad Village, claiming that they have acquired the said land from the above named pattadars through registered sale deed on 28.04.1981 and that they are continuing in possession.

In the said suits, the plaintiffs filed identical written statements setting up title to the property by way of purchase of an extent of Ac.5-16 gts in Sy.No.1645 from Mirza Janullah Baig and Athaullah Baig through registered sale deed bearing document No.680/1981 dated 27.04.1981 and that they are continuing in possession and enjoyment of the same. In the said written statement, the plaintiffs clearly admitted that out of Ac.20.39 gts of land, they are in possession of Ac.5-16 gts in Sy.No.1645 and the rest of the land in Sy.No.1645 is in the possession of the 1st defendant and one Mirzagudem Mallareddy, localized Ac.5-16 gts land which is allegedly in their occupation in Sy.No.1645 within specified boundaries and they are as follows:

EAST	: Land in possession of Mirzagudem Mallaiah @ Mallareddy in Sy.No.1645/A and 1645/AA
WEST	: Doswada Village Shivar
SOUTH	: Land in the possession of Ediga Chandraiah in Sy.No.1645 and 1645/AA
NORTH	: Land bearing Sy.No.1646

Thus, the defendants categorically admitted in the written statements that they are in possession and enjoyment of the land within the specified boundaries mentioned above in the earlier litigation between the plaintiffs and third parties. Therefore, they are estopped to claim any right contrary to the admissions made in the written statement filed in the earlier civil litigation.

The said suits O.S.No.3 of 1986 and O.S.No.4 of 1986 were decreed in favour of the plaintiffs therein and the plaintiffs herein being the defendants therein were permanently restrained from causing any sort of interference with the possession and enjoyment of the plaintiffs therein over an extent of Ac.9-03 gts in Sy.No.1645 of Shabad Village. The decree and judgments in both the suits attained finality. Therefore, the plaintiffs were not entitled to claim any right over the suit schedule property.

O.S.No.3 of 1991 was filed against the 1st defendant alleging that the 1st defendant is trying to interfere with the alleged possession of the plaintiffs in O.S.No.4 of 1986 over an extent of Ac.6-03 gts in Sy.No.1645 and the claim was resisted by the 1st defendant by filing comprehensive written statement. But later, O.S.No.4 of 1986 ended in compromise and the plaintiffs therein have categorically admitted and acknowledged the title and possession of the 1st defendant over Ac.11-01 gts of land in Sy.No.1645.

It is contended that the 1st defendant alone is in possession and enjoyment of Ac.11-01 gts of land in Sy.No.1645 and the plaintiffs are no way concerned with the property in the said

survey numbers, in view of the decree and judgments passed in O.S.Nos.3 & 4 of 1986.

In view of the litigation between various persons claiming right and title over the land in Sy.No.1645 of Shabad Village, the vendors of the plaintiffs i.e Mirza Janullah Baig and Athaullah Baig are only in possession of Ac.0-38 gts of land in Sy.No.1645, after sale of the land to the plaintiffs in O.S.Nos.3 & 4 of 1986 and the defendants herein, thereby question of sale of any land to the plaintiffs does not arise and that the plaintiffs filed the suit to grab the property.

After purchase of the property, mutation in the revenue records for the land purchased by the 1st defendant was proposed to be made and the mutation of the names of the plaintiffs for Ac.5-16 gts of land in Sy.No.1645 was also proposed to be effected by revenue authorities. However, the Nazim Jamabandi has rejected the said proposal and the said fact is evident from Faisal Patti for the year 1982-83. In spite of rejection of mutation proposals of Nazim Jamabandi, without valid sanction, the plaintiffs with the connivance of V.A.O got their names recorded as pattedars and possessors in respect of Ac.5-16 gts of land in Sy.No.1645 (1645/A and 1645/AA) from 1983-84 onwards.

The 1st defendant purchased the property only under unregistered sale deed dated 11.01.1975 and later it was validated on the validation application submitted by the 1st defendant under mistaken impression, the Mandal Revenue Officer shown the plaintiffs as pattadars for Ac.5-16 gts in Sy.No.1645 and later it

was rectified. Therefore, the illegal entries in the revenue records would not confer any title on the plaintiffs and thereby the plaintiffs are not entitled to claim any prohibitory relief of permanent injunctions.

The 1st defendant specifically denied the attempt to interfere with the possession and such threat to interfere would not arise as the defendant alone is in possession and enjoyment of the property as on the date of filing the suit and thereby there is no cause of action for the suit for perpetual injunction and the suit is liable to be dismissed on the sole ground and prayed for dismissal of the suit.

Based on the above pleadings, the Trial Court framed the following issues:

- 1. *Whether the Plaintiffs are entitle for claim of injunction as prayed for?***
- 2. *To what relief?***

During Trial, on behalf of the plaintiffs, P.Ws.1 to 4 were examined and marked Exs.A-1 to A-21. On behalf of the defendants D.Ws.1 & 2 were examined and marked Exs.B-1 to B-28.

Upon hearing argument of both the counsel, the Trial Court in its elaborate judgment concluded that the plaintiffs have failed to prove their *prima facie* title over the property to establish their peaceful possession over the suit land as on the date of filing the suit and dismissed O.S.No 10 of 1998.

Aggrieved by the decree and judgment passed by the Trial Court, the plaintiffs being unsuccessful, preferred A.S.No.4 of 2008 on the file of the Senior Civil Judge, Vikarabad, Ranga Reddy District, which ended in dismissal by decree and judgment dated 14.07.2010, confirming the findings in decree and judgment of the Trial Court and recorded concurrent findings on the lawful possession and *prima facie* title of the plaintiffs.

Aggrieved by the decree and judgment passed by both the Trial Court and the Appellate Court, the present second appeal is filed, raising several contentions, more particularly, the identity of the property on ground and also proof of their possession as on the date of filing suit while producing Exs.A-1 to A-21, more particularly, copy of Pahanis marked as Exs.A-2 to A.10 for the years 1987-88, 1988-89, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 & 1996-97 respectively and copy of pahanis marked as Exs.A-15 to A-20 for the years 1998-99, 1999-00, 2001-02 & 2002-03 respectively, besides copy of pattedar passbooks marked as Exs.A-11 to A-14, substantiating the contention of the plaintiffs and proved that they are in possession and enjoyment of the property. But the Trial Court and the Appellate Court totally ignored these documents and disbelieved the lawful possession of the plaintiffs as on the date of filing the suit. With regard to Exs.B-1 to B-28, the Trial Court disbelieved possession of the defendants over the suit schedule property as on the date of filing the suit and committed a grave error in dismissing the suit.

The Trial Court also erroneously placed burden of proof on the plaintiffs. Though the burden of proof is on the defendants regarding purchase of the property which is purchased by the 1st defendant under sale deed, it is only an unregistered sale deed for an extent of Ac.11-01 gts and no such document was produced before the Courts to establish the same and mere validation on the application made by the defendants is not sufficient. But, both the Courts below erroneously dismissed the suit.

Learned counsel for the plaintiffs formulated as many as eight substantial questions of law. Out of the eight substantial questions of law formulated, question Nos.1,3,5 & 8 are the substantial questions of law and they are extracted herein under and the remaining are mere question of facts:

1. Whether in a suit for perpetual injunction *prima facie* title and possession can be gone into for grant of injunction?
3. Whether the Court can rely upon the oral evidence of the parties contrary to the contents in documents where there is discrepancy between the two i.e. documentary and oral evidence?
5. Whether the Courts are justified in relying upon the plea of the defendants and draw an inference that they purchased certain extent of land without filing any documentary evidence in support of their claim?
8. Whether the Courts are justified in holding that where there is a discrepancy with regard to boundaries and extent of the suit property the property cannot be localized?

At the stage of admission, with the consent of both the learned counsel for the appellants and the respondents, heard the matter finally, as the second appeal is pending for admission since 2011 and there is no point in admitting the appeal after five years and keep the same pending for further long period is not justifiable.

Learned counsel for the appellants Sri N. Vasudeva Reddy mainly contended that, in a suit for injunction simplicitor, the Court has to decide as to whether the plaintiffs are in lawful possession and enjoyment of the property and whether the defendants made any attempt to interfere with the peaceful possession and enjoyment of the property without any right over the property and record a finding thereon. If, for any reason, the Court found that the plaintiffs are in possession and enjoyment of the property subject to proof of infringement of the right, the Court is bound to grant decree in favour of the plaintiffs. But, the Trial court erroneously adverted to the question of title and recorded unwarranted findings, in view of the limited scope of suit for perpetual injunction and committed grave error.

Learned counsel for the appellants also placed reliance on judgments of the Apex Court in **Anathula Sudhakar v. P. Buchi Reddy and others**¹. Based on the principle laid down in the judgment referred supra, the learned counsel contended that, when the property is agricultural land, effective possession cannot be proved and in such a case, the revenue records alone are proper

¹ (2008) 4 Supreme Court Cases 954

documents to find out lawful possession as on the date of filing the suit. But the Trial Court and the Appellate Court ignored Pahanis which were marked as Exs.A-2 to A.10 and A-15 to A-20 and erroneously held that the plaintiffs failed to prove effective possession over the property and dismissed the suit.

Per contra, learned counsel for the respondents Sri K. Ravi Mahendra raised several contentions regarding title. It is the specific contention of the respondents that there is a clear dispute regarding title and the decrees and judgments in the earlier suits O.S.Nos.3 & 4 of 1986 and the written statement filed by the 1st defendant in those two suits would clinchingly establish that the plaintiffs were not the owners of Ac.5-16 gts in Sy.No.1645. The total extent in Sy.No.1645 of Shabad Village is Ac.20-39 gts. Out of the said Ac.20-39 gts of land Jeevagalla Yellaiah and others purchased Ac.3-00 vide registered sale deed 28.04.1981, Ac.6-00 was purchased by Midde Sayanna and Midde Buggaiah under registered sale deed dated 28.04.1981. Out of the remaining land, the defendants purchased Ac.11-01 gts. Thus, the remaining extent was only Ac.0.38 gts and in such case, the purchase of the property from Mirza Janullah Baig and Athaullah Baig by the plaintiffs is without any lawful title to the suit schedule property and therefore, the said Mirza Janullah Baig and Athaullah Baig cannot convey title in an extent of Ac.5-16 gts in Sy.No.1645. Based on the entries in revenue records, lawful possession cannot be inferred. However, the evidence produced before the Court by the plaintiffs clinchingly established that first defendant during his

lifetime and after his death, defendants 2 to 10 are continuing in possession and enjoyment of the property. Thus, the Trial Court and the Appellate Court rightly decided the suit in favour of the defendants and as against the plaintiffs and dismissed the suit for perpetual injunction and the concurrent findings of both the Trial Court and the Appellate Court do not call for interference of this Court at this stage, in the second appeal, since the jurisdiction of this Court under Section 100 of C.P.C is limited to substantial question of law. Therefore, this Court cannot go into factual findings recorded by both the Courts, though concurrent, unless the judgment and decrees of the Trial Court and the Appellate Court are perverse and prayed to dismiss the appeal, confirming decree passed by the Trial Court and the Appellate Court.

Considering the contentions of both the parties, the following are the substantial questions of law framed by this Court.

1. Whether the plaintiffs (appellants) approached the Trial Court with clean hands to claim discretionary relief under Section 38 of the Specific Relief Act?
2. Whether Adangals and Pattedar Passbooks are sufficient to believe that the plaintiffs (appellants) are in lawful possession and enjoyment of the property. If so, whether the first defendant threatened to invade or infringe the legal right of the plaintiffs if so the plaintiffs (appellants) are entitled for permanent injunction?

QUESTION NO.1

The first and foremost contention of the defendants is that, the plaintiffs are not the owners of the property in dispute. Voluminous documentary evidence produced before the Trial Court and the decrees and judgments including schedule and written statement filed before the Court in O.S.Nos.3 & 4 of 1986 and the attempts made by P.Ws.1 to 3 about the occupation of the said property by the plaintiffs in those two suits is sufficient to conclude that the property purchased by the plaintiffs is totally different from the property which they are claiming to be in possession. But the plaintiffs suppressed the previous litigation between the plaintiffs and other two persons Chandraiah and Anjaiah and Midde Satyanarayana and Buggaiah in O.S.Nos.3 & 4 of 1986 on the file of the Junior Civil Judge Court at Chevella and made an attempt to obtain permanent injunction against the defendants for the property which does not belong to them and such suppression is suffice to deny relief of permanent injunction under Section 38 of the Specific Relief Act.

It is the specific case that they purchased the property from Mirza Janullah Baig and Athaullah Baig under registered sale deed Ex.A-1 dated 27.04.1981. Curiously, all the witnesses examined on behalf of P.W.3 made certain admissions regarding previous litigations. They will be referred at appropriate stage while deciding the issue and before going to the evidence on record, it is appropriate to decide the issue of identity of the property which is

in dispute. The schedule of property in the present suit is within the following boundaries:

EAST : Land in possession of Mirzagudem
Mallaiah @ Mallareddy in Sy.No.1645/A
and 1645/AA
WEST : Doswada Village Shivar
SOUTH : Land in the possession of Ediga
Chandraiah in Sy.No.1645 and 1645/AA
NORTH : Land bearing Sy.No.1646

Ex.B-7 is the written statement filed by the defendants in O.S.No.3 & 4 of 1986, the plaintiffs herein specifying the boundaries. In paragraph 7 of the written statement, the plaintiffs herein being the defendants in O.S.No.3 of 1986 claimed that they are in possession and enjoyment of Ac.5-16 gts situated within the following four boundaries:

EAST : Land in possession of Mirzagudem
Mallaiah @ Mallareddy in
Sy.No.1645/A and 1645/AA
WEST : Doswada Village Shivar
SOUTH : Land in the possession of Ediga
Chandraiah in Sy.No.1645 and 1645/AA
NORTH : Land bearing Sy.No.1645

It is further contended that original pattedars Mirza Janullah Baig and Athaullah Baig who were in need of money for their family necessity, sold the property to the defendants therein, the plaintiffs herein of an extent of Ac.5-16 cents under registered sale deed bearing document No.680/1981 dated 27.04.1981. But the suit was decreed against the plaintiffs herein who were the defendants in the said suit. The counter affidavit filed by Chandraiah @ Ediga Chandraiah in I.A.No.16 of 1991 in O.S.No.3 of 1991, which is marked as Ex.B-8 along with rough sketch, the

plan annexed to the affidavit would show that the land on the North-West corner and the defendants/vendors site is on the North-East corner. The defendants site is shown on the Southern side of land Srirangapuram Malliah and his legal heirs. Ex.B-11 is the compromise decree passed in O.S.No.3 of 1991 on the file of the District Munsif, Chevella in a suit filed by Midde Butchaiah and two others against the 1st defendant herein i.e. Ediga Chandraiah. To the compromise petition, a plan was annexed which shows that the property in Sy.No.1645 was divided into two parts as 1645/A & 1645/AA, but the said decree is not binding on the plaintiffs herein to disable them to claim right over the property. The Ex.B-22 decree and judgment in O.S.No.3 of 1986 is relevant to decide the real controversy. The said suit was filed by Jeevagalla Galayya and two others against Sriramapuram Anjaiah and three others, claiming permanent injunction restraining, the defendants in the said suit from interfering with their peaceful possession and enjoyment of the land of an extent of Ac.6-03 gts in Sy.No.1645/A:

The Court, passed a decree in favour of the plaintiffs therein restraining the defendants therein to interfere with their possession and enjoyment of the property. That itself is sufficient to prove that the plaintiffs herein were not in possession as on the date of passing decree in O.S.No.3 of 1986 i.e. on 30.08.1991. Apart from the above evidence, it is an undisputed fact that the plaintiffs herein filed an interlocutory application I.A.No.19 of 1986 for grant of temporary injunction during pendency of the suit, which was dismissed by the Trial Court. However, the matter was

carried in appeal in C.M.A.No.16 of 1998, certified copy which is marked as Ex.B-28 before the Trial Court and the Court having found no *prima facie* case and balance of convenience in favour of the plaintiffs, dismissed the petition confirming the order passed by the Trial Court in I.A.No.19 of 1998 in O.S.No.10 of 1998. However, when the suit was disposed of, the interlocutory order would merge in the judgment and it will have no bearing on disposal of the main suit.

The undisputed fact is that, O.S.Nos.3 & 4 of 1986 filed against the defendants were decreed in favour of those plaintiffs in the said suits and against the defendants who are the plaintiffs herein. In the cross-examination, of P.W.1 admitted that there were civil disputes between Midde Sayanna and others and P.W.1, in the said suit P. Ram Reddy appeared on behalf of P.W.1 and contested the matter and filed written statement which is marked as Ex.A-1 in O.S.No.4 of 1986. He admitted that the suit O.S.Nos.3 & 4 of 1986 were filed by Midde Sayanna and Jeevagalla Galayya against the plaintiffs herein claiming that they are in possession of land in Sy.No.1645. A suggestion was put to him that the said Sayanna and Jeevagalla Galayya were in possession and enjoyment of the land in Sy.No.1645, but denied by him, while asserting that the plaintiffs who are in possession of Ac.5-00 in Sy.No.1645. Since Midde Sayanna and Jeevagalla Galayya obstructed P.W.1, he filed the suit. Thus, the facts elicited in the cross-examination which are admitted by P.W.1 is at best helpful to prove that there was previous litigation between the plaintiffs

Sayanna and Jeevagalla Galayya who filed suits O.S.Nos.3 & 4 of 1986. P.W.2 is S. Anantaiah the second plaintiff in the present suit. In his cross-examination in chief, he asserted that the plaintiffs are the owners who are in possession of the suit schedule property in different extents. Curiously, in the cross-examination he made certain admissions which are relevant for deciding the real controversy between the parties. The specific admission is extracted herein for better appreciation.

“.....It is true, the defendant is in possession of land in Sy.No.1645. It is true the defendant purchased land from Athaullah Baig and Janullah Baig and in possession of said land ever since. I cannot say the directions like East, West, South, North. I have seen suit land in my childhood. I do not know the particulars of suit extent with boundaries, which part of Sy.No.1645 was purchased.

It is true that one G.Galayya and Midde Sayanna filed suit against us in O.S.No 3/86 & O.S.No. 4 of 1986 against us claiming the same land what we purchased. It is true after decree, G.Galayya and M. Sayanna occupied the said lands. IT is not true to suggest that instead we claiming the land in O.S.No.3/86, in order to grab the land in possession of defendant we filed the present suit. We never carried initiated proceedings against plaintiffs in O.S.No.3/86 and 4/86, against illegal occupation.”

These crucial admissions does go to establish that the property of the plaintiffs purchased under Ex.A-1 is the same as that of the property purchased by Jeevagalla Galayya and Midde Sayanna, which is the subject matter in O.S.No.3 & 4 of 1986 and admittedly in possession of Jeevagalla Galayya and Midde Sayanna, who obtained permanent injunction based on their possession. Even if the admission of P.W.2, the second plaintiff is accepted, the said Jeevagalla Galayya and Midde Sayanna occupied the land

after passing of decree in those two suits. Thus, the property in possession of the defendants and the property purchased by the plaintiffs is totally different and distinct and the property covered by Ex.A-1 is in possession of Jeevagalla Galayya and Midde Sayanna, according to the admission of P.W.2.

The plaintiffs also examined S. Anjaiah, the third plaintiff in the suit whose examination in chief is almost identical to the evidence of P.Ws.1 & 2 regarding purchase and possession of the property. In the cross-examination, he made crucial admissions with regard to the identity of the property at page no.6, para no.3 and the P.W-3 admitted as follows:

"It is true both plaintiffs in O.S.3 and 4/86 filed suit claiming northern portion of Sy.No.1645, has purchased from Janaullah Baig and Attaullah Baig. We contest by filing written statements. It is true that in our written statement we pleaded that present defendant is in possession of southern side of land in Sy.No.1645. Both suites were decreed. I carried matter before Hon'ble High Court."

This piece of evidence clearly established that the first defendant is in the southern side of the land which the plaintiffs claimed being the defendants in the earlier suits of O.S.Nos.3 & 4 of 1986 filed by Jeevagalla Galayya and Midde Sayanna and others against the plaintiffs herein. They also disclosed the boundaries of the land which they purchased in the said suit which I extracted in the earlier paragraphs. The southern boundary owner is the 1st defendant Chandriah. Therefore, the admissions of the plaintiffs coupled with the written statement confirmed that the defendant is the southern side owner of the land allegedly purchased by plaintiffs in Sy.No.1645 of Shabad Village.

In further cross-examination, P.W.3 further admitted as follows:

"It is true, in the year 1975 the defendant purchased 15 acres of land in Sy.No.1645 and 1628 from Attaullah Baig and Janaullah Baig. I do not know whether defendant in possession of said 15 acres of land ever since..... "

This piece of evidence confirmed that the defendant purchased Ac.15.00 of land in Sy.No.1645 from the same vendor, he also admitted that knowing the fact that defendant is in possession of land in Sy.Nos.1645 & 1628, P.W.3 filed the present suit. P.W.3 filed the present suit, as per recitals of Ex.A-1, the southern boundary is the land of the defendant. These crucial admissions of P.W.s 2 & 3 would clinchingly establish that the southern part of an extent of Ac.15-00 gts was purchased by Chandraiah in Sy.No.1645 & 1628 and he was shown as southern boundary owner of the schedule of property which the plaintiffs are claiming.

P.W.4, the fourth plaintiff in the suit is another crucial witness, who asserted that the plaintiffs are the owners and purchasers of the land of an extent of Ac.5-16 gts under registered sale deed marked as Ex.A-1. In his examination-in-chief he admitted that the total extent of survey no.1645/A is Ac.10-20 gts and Sy.No.1645/AA is Ac.10-19 gts and Attaullah Baig and Janullah Baig were the owners and possessors of land of total extent of land. Thus, the total extent, according to P.W.4 is Ac.20-39 gts in Sy.No.1645/A & 1645/AA. He also asserted that

the defendant has no manner of right over the suit schedule property. In the cross-examination, he admitted that the land was not got measured when it was purchased and he also admitted about filing of suit O.S.Nos.3 & 4 by Jeevagalla Galayya and Midde Sayanna. After passing decree in the suits in favour of Jeevagalla Galayya and Midde Sayanna, they occupied and they are in possession of the land, but the plaintiffs did not initiate any proceedings against illegal occupation by the plaintiffs in O.S.No.3 & 4 of 1986. These admissions further strengthen the contention of the defendants that the land which the plaintiffs purchased is in occupation of Jeevagalla Galayya and Midde Sayanna who filed suits O.S.Nos.3 & 4 of 1986 on the file of the District Munsif, Chevella. If that be the case, the plaintiffs are not in possession of the land which they allegedly purchased under Ex.A-1, but filed the present suit claiming right in the other part of the land in Sy.No.1645 for the land purchased by the defendants, admittedly occupied by Jeevagalla Galayya and Midde Sayanna in view of the crucial admissions extracted in the earlier paragraphs.

In a suit filed for perpetual injunction or injunction simplicitor, it is the duty of the plaintiffs to approach the Court with clean hands disclosing true facts. The plaintiffs asserted that they are in possession and enjoyment of the suit schedule property, which they purchased vide Ex.A-1. But in the evidence, P.Ws.2 to 4 admitted that the property they purchased is in occupation of Jeevagalla Galayya and Midde Sayanna who filed O.S.Nos.3 & 4 of 1986 on the file of the District Munsif Court, Chevella and

obtained decree on the strength of their possession in pursuance of the sale deeds obtained by them from Attaullah Baig and Janullah Baig.

Thus, it is evident from the material on record, the vendor of the plaintiffs, Jeevagalla Galayya and Midde Sayanna executed two sale deeds for the same land. But the said Jeevagalla Galayya and Midde Sayanna are in possession of the property purchased by the plaintiffs herein also. The plaintiffs did not disclose the factum of filing suits and obtaining permanent injunction by Jeevagalla Galayya and Midde Sayanna against the plaintiffs for the same property which the plaintiffs allegedly purchased under Ex.A-1, so also occupation of the said property by the said Jeevagalla Galayya and Midde Sayanna either before or after filing the suit, as admitted by P.Ws.2 to 4 in their cross-examination unequivocally. But, these facts were suppressed and approached the Court with unclean hands suppressing the true facts.

In a suit filed for permanent injunction, the plaintiff must fall or stand on his own legs and basing on the weakness in the case of the defendants, the plaintiffs cannot be allowed to claim permanent injunction, since relief of permanent injunction under Section 38 of the Specific Relief Act is discretionary and equitable relief. When a person approaches the Court, suppressing true facts, he is not entitled to claim equitable relief and discretionary from the Court.

The Apex Court in **Khatari Hotels Private Limited and anr.**

v Union of India (UOI) and anr², held as follows:

“35. We also approve the findings and conclusions recorded by the trial Court that the Appellants had not approached the Court with clean hands inasmuch as they withheld Aks Sijra, site plan and the demarcation report and award Exhibit PW4/1. Not only this, they raised illegal construction despite the injunction order passed by the High Court and that too without obtaining permission from the competent authority.”

In **Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo**³, the Supreme Court held that the suit for possession of immovable property is equitable remedy and an equitable relief can be prayed for by a party approaching Court with clean hands.

In **Kommiseti Venkatasubbayya v. Karamsetti Venkateswarlu and others**⁴ this Court held that the relief and Section 38 of the Specific Relief Act is equitable remedy and one should approach with clean hands. In **Tirumala Tirupati Devasthanams, rep. by Executive Officer, Tirupathi, Chittoor District v. T. Venkata Padmavathamma and others**, this Court held that person who seeks equity must approach the Court with clean hands. In **Cultor Food Science INC, New York v. Nicholas Piramal India Limited, Mumbai and others**⁵, this Court in paragraph 29 of the judgment held that seeking equitable relief of injunction, the party should approach the Court with clean hands.

² AIR 2011 SC 3590

³ 2009) 5 Supreme Court Cases 713

⁴ AIR 1971 ANDHRA PRADESH 279

⁵ 2001 (6) ALT 706 (D.B.)

In the present facts, the plaintiffs asserted that they are in possession and enjoyment of the property and though the evidence established that Galayya and Sayanna are in possession and enjoyment of the property, the evidentiary admission totally destroyed their own case regarding possession, though they produced certain documents like Pahanis for the years from 1987-88 to 1996-97 which are marked as Exs.A-2 to A-10 and for the years 1998-99 and 2002-03 which are marked as Exs.15 to 20. The entries made in the pahanis are contrary to the admissions made by P.Ws.2 & 3 regarding possession, but the evidentiary value of pahanis will be considered in the next question.

In the plaint, the boundaries of the suit schedule property are as follows:

EAST	: Land belonging to Middegudem
WEST	: Patta land of Doswada Village Sivar
SOUTH	: Patta land of Malla Reddy
NORTH	: Patta land of Chandana Malla Reddy

And whereas, in the earlier suits in O.S.Nos.3 & 4 of 1986, the plaintiffs herein claimed right in the specific schedule mentioned in the annexure to the written statement which they filed before the Trial Court. A comparative table of the boundaries of written statement schedule of property claimed in the earlier suits and in the present suit is as under:

O.S.No.3 & 4	Present suit
EAST: Land belonging to Middegudem WEST : Patta land of Doswada Village Sivar SOUTH: Patta land of Malla Reddy NORTH: Patta land of Chandana Malla Reddy	EAST: Land in possession of Mirzagudem Mallaiah @ Mallareddy in Sy.No.1645/A and 1645/AA WEST: : Doswada Village Shivar SOUTH: Land in the possession of Ediga Chandraiah in Sy.No.1645 and 1645/AA NORTH: Land bearing Sy.No.1646

On comparison of schedule of property in earlier litigation and the present suit, there is any amount of discrepancy in the property and the plaintiffs suppressed several facts which disentitled them to claim equitable relief of permanent injunction under Section 38 of the Specific Relief Act.

In view of my foregoing discussion, since the plaintiffs did not approach the Court with clean hands and suppressed several material facts, consequently and they are disentitled to claim any relief under Section 38 of the Specific Relief Act. Accordingly, the question is answered.

Question No.2:

The basis for claim of the plaintiffs is the sale deed marked as Ex.A-1, which is the source of title and Ex.A-2 to A-10 and Ex.A-15 to A-20 are the pahanis for different years commencing from 1987-88 to 2002-2003 and the pattedar passbooks issued in the name of the individual plaintiffs marked as Exs.A-11 to A-14.

All these documents show that the plaintiffs are the pattedars of land in Sy.No.1645/A and they are in occupation as per column No.12 & 13 of the document viz., pahanis and nature of possession is by virtue of registered document. These documents were issued by the Mandal Revenue Officer. Taking advantage of the pahanis, it is contended that the plaintiffs alone are in possession and enjoyment of the property as on the date of filing suit and they are cultivating the land. In the evidence of P.Ws 2 to 4 admitted that they are not in possession and enjoyment of the property which they purchased and they are claiming right in the land they purchased and the same was occupied by Jeevagalla Galayya and Midde Sayanna, the plaintiffs in O.S.Nos. 3 & 4 of 1986. Therefore, the oral evidence is self contradictory and when they are out of possession, the question of cultivating the land and recording the same in the revenue records is highly doubtful. What evidentiary value that can be attached to that document was discussed in **Baleshwar Tewari (dead) by L.Rs and others v. Sheo Jatan Tiwary and others**⁶ in paragraph 18 of the judgment, the Apex Court held as follows:

“Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the land he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a

⁶ AIR 1997 SC 2089

camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills."

In view of the law laid down by the Supreme Court no credence can be given to such pahanis, as the ryoth is really concerned with the entries, except whether his enjoyment was disputed. Therefore, it is difficult to conclude that the plaintiffs are in possession and enjoyment of the property basing on the documents referred supra, in view of the principle laid down in the above judgment, it is difficult to believe the pahanis produced by both the parties.

Coming to the evidence of defendants, they are asserted that they are in possession and enjoyment of the property as purchaser under unregistered sale deed, later it was regularized and necessary entries were made in the revenue records and proceedings were also issued correcting the entries in the revenue records. The possession of the defendants, though not supported by documentary evidence, it is for the plaintiffs to establish their case that they are in possession and enjoyment of the property as on the date of filing the suit. But here, the self contradictory statements of P.Ws.2 to 4 destroyed the total case and it is totally contrary to the entries in pahanis marked as Exs.A-1 to A-10 & A-11 to A-20. The pattedar passbooks marked as Exs.A-11 to A-14, at best, are the documents of *prima facie* title, but in view of the subsequent proceedings issued by the Mandal Revenue Officer Exs.B-1 to B-5 & B-15 to B-19 pahanis for different years show that defendants are in possession of the property during relevant

years and the Mandal Revenue Officer issued necessary instructions to rectify the mistakes in pahanis by issuing Ex.B-14. Therefore, all these documents cumulatively support the case of the defendants. Moreover, it is clear that for the different years, the revenue authorities issued pahanis in favour of both plaintiffs and defendants. This itself creates any amount of suspicion on the entries recorded in the pahanis produced by both the parties, since, it is difficult for individuals to cultivate the same land at the same time for the same agricultural years.

Coming to the pleadings and evidence of the plaintiffs, the plaintiffs contended that they are in possession and enjoyment of the property but P.Ws 2 to 4 totally resiled from the statement in the pleadings regarding their possession, admitted that they are out of possession, as the possession was taken over by Jeevagalla Galayya and Midde Sayanna after passing decree in O.S.Nos.3 & 4 of 1986 on the file of the District Munsif Court, Chevella.

Thus, the oral evidence of P.Ws 2 to 4 is not in consonance with the pleadings and on the other hand their testimony supports the case of the defendants regarding possession and enjoyment of the suit schedule property.

In the plaint, a specific averment that the defendants threatened to interfere with their possession and enjoyment of the property on 01.02.1998 and their interference was resisted by the plaintiffs. The same is reiterated in paragraph 5 of the affidavit filed by P.W.1 under Order 18 Rule 4(2) of C.P.C, whereas, the same is reiterated in the Examination in Chief of P.Ws 2 to 4, but

the admissions made in the cross-examination of PWs 2 to 4 which I extracted above in the earlier paragraphs would destroy the plea of threat to interfere with the possession and enjoyment of the property by the plaintiffs, since they are out of possession, as admitted by P.Ws.2 to 4. In such a case, it is highly improper to believe that the defendants made any attempt to interfere with the peaceful possession and enjoyment of the property by the plaintiffs.

On an overall consideration of the entire material on record, it is clear that both the parties produced documents to prove their possession over the property and either of the documents i.e. pahanis produced by both the parties are believable and that apart, those documents are insufficient to prove their possession, in view of the Apex Court judgment referred supra coupled with admissions of P.Ws 2 to 4. If those documents are excluded from consideration, there is absolutely no iota of evidence to establish that the plaintiffs are in possession as on the date of filing the suit and it is also difficult to believe the alleged threat of interference by the defendants, since the plaintiffs are not in possession, as admitted by P.Ws 2 to 4.

Learned counsel for the appellant while contending that the documentary evidence produced before the Trial Court besides oral evidence are suffice to believe that the plaintiffs are in possession and enjoyment of the property and drawn attention of this Court to the judgment reported in paragraph 21 of **Anathula Sudhakar's case** (referred supra), whereunder the following principles:

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

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

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

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

parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

On the strength of the principles laid down therein, learned counsel for the defendants contended that it is difficult to prove effective possession in agricultural land and therefore, the Court cannot insist proof of effective possession by producing any documentary evidence. There is no quarrel about the principle laid down in the above judgments, but there is a clear cloud on the title on the plaintiffs. In such a case, by following guidelines No.A of paragraph 21 referred supra, the remedy open to the plaintiffs is to seek declaration of title.

On an overall consideration of the entire material available on record, it is abundantly clear that the plaintiffs did not approach the Court with clean hands and suppressed several facts and they are disentitled to claim equitable and discretionary relief under Section 38 of Specific Relief Act. Apart from that, they failed to establish the cause of action, i.e. threat to interfere with their possession and enjoyment of land, which is the basic requirement under Section 38 of the Specific Relief Act to grant a permanent injunction in favour of the plaintiff. Therefore, both the Trial Court and the Appellate Court rightly concluded that the plaintiffs failed to prove their lawful possession and enjoyment of property, as on the date of filing the suit and dismissed the suit. Accordingly, the question is answered.

In the result, the second appeal is dismissed, but without costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

DATED: 08.09.2016

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