

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 453 of 2005****Judgment reserved on 30/09/2019****Judgment delivered on 24/10/2019**

Sukulram Sahu (dead) through Lrs :-

1. Sundari Bai, Aged 75 years, W/o Late Shri Sukulram
2. Manbodhi, Aged 56 years, S/o Late Shri Sukulram
3. Madanlal, Aged 49 years, S/o Late Shri Sukulram
4. Khilawan, Aged 35 years, S/o Late Shri Sukulram

All the above are R/o Village Bodra, Tahsil Kurud, District Dhamtari, Chhattisgarh.

--- Lrs. of defendant No. 1

5. Raj Kumar, Aged 41 years, S/o Patiram Sahu
 6. Channu Lal, Aged 38 years, S/o Patiram Sahu
- Both are R/o Village Siwnikhurd, Tahsil Dhamtari, District Dhamtari, Chhattisgarh.
7. Kunti Bai, Aged 35 years, W/o Bahr Singh Sahu, D/o Patiram Sahu, R/o Village Bagod, Tahsil Ummad, District Dhamtari, Chhattisgarh.
 8. Vina Bai, Aged 32 years, W/o Nandu Sahu, Daughter of Patiram Sahu, R/o Village Khairbhiti, Tahsil Magarload, District Dhamtari, Chhattisgarh.
 9. Man Bai, Aged 44 years, D/o Sukul Ram, W/o Vishnu Sahu, R/o Arang, Tahsil Kurud, District Dhamtari, Chhattisgarh.
 10. Devkunwar Bai, Aged 32 years, W/o Anandi Sahu, Resident of Village Paraswani, Tahsil Kurud, District Dhamtari, Chhattisgarh.

---Appellants

Versus

1. Mahesh Ram Sahu (dead) through Lrs. :-

(i) Smt. Asha Bai, Aged about 65 years, Widow of late Shri Mahesh Kumar Sahu.

(ii) Sita Bai, Aged 60 years, Widow of late Shri Mahesh Kumar Sahu.

(iii) Khilawan, Aged 45 years, Son of Late Shri Mahesh Kumar Sahu.

(iv) Khuman, Aged 35 years, Son of Late Shri Mahesh Kumar Sahu.

(v) Hiranjay, Aged 33 years, Son of Late Mahesh Kumar Sahu.

(vi) Rekha Bai, Aged 43 years, Daughter of Late Shri Mahesh Kumar Sahu.

All above are residents of Village Bodra, P.O. Sodhidih, Tahsil Magarload, District Dhamtari, Chhattisgarh.

(vii) Parmeshwari, Aged about 30 years, W/o Duman Sahu, Daughter of late Shri Mahesh Kumar Sahu, R/o Singhorikala, Tahsil Kurud, District Dhamtari, Chhattisgarh. --- **Lrs. of plaintiff**

2. State of Chhattisgarh, through the Collector, District Dhamtari, Chhattisgarh.

--- **Defendant No. 2**

--- **Respondents**

For Appellants	:	Mr. Somnath Verma, Advocate
For Respondent No. 1	:	Mr. D.N. Prajapati, Advocate
For State	:	Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

1. The two substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants / defendant No. 1 (now his Lrs.) state as under :-

“1. Whether the plaintiff could have been declared the owner of the land bearing kh.No. 215/4 as against the sale deed (Ex. P/12), wherein the land bearing kh.No. 215/4 is not a subject of sale property ?

2. Whether the grant of permanent injunction in favour of the plaintiff can be sustained because of absence of prayer to claim the possession by the defendant ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Sole plaintiff – Mahesh Ram Sahu (who died during the pendency of this second appeal) filed a bare suit for permanent injunction stating *inter alia* that on 27/05/1981, he purchased the suit land

bearing khasra No. 215/4 admeasuring 0.60 acre from defendant No. 1 namely Sukulram Sahu after which he came into possession of the said suit land but the sale deed was not registered instantly. During the registration of the sale deed, suit land bearing khasra No. 215/4 admeasuring 0.60 acre was mistakenly mentioned as land bearing khasra No. 497/2 admeasuring 0.46 acre for which he filed an application under Sections 115 and 116 of the Chhattisgarh Land Revenue Code, 1959 before the Naib Tahsildar seeking correction in description of the sale deed which was allowed by the order dated 16/10/1992. Being aggrieved by the said order, defendant No. 1 preferred an appeal before the Sub-divisional Officer, Dhamtari which was allowed by order dated 17/04/1995 against which plaintiff preferred a revision but during the pendency of the said revision, necessity arose for institution of the civil suit by the plaintiff only for permanent injunction claiming that defendant No. 1 be restrained from interfering with his possession over suit land bearing khasra No. 215/4 admeasuring 0.60 acre.

3. In the said civil suit filed by the plaintiff, defendant No. 1 — Sukul Ram Sahu filed his

written statement and set up a plea as well as a counter-claim stating that he has never sold the suit land bearing khasra No. 215/4 admeasuring 0.60 acre to the plaintiff and moreover, plaintiff's bare suit for permanent injunction without claiming the relief of declaration of title is not maintainable therefore, plaintiff's suit deserves to be dismissed and counter-claim be granted in his favour.

4. Learned trial Court, upon appreciating the oral and documentary evidence on record, vide its judgment and decree dated 14/09/2002, decreed the suit of the plaintiff holding that plaintiff has purchased the suit land bearing khasra No. 215/4 admeasuring 0.60 acre from defendant No. 1 by registered sale deed dated 27/05/1981 after which he came into possession of the said suit land and negatived the claim of defendant No. 1.

5. Defendant No. 1 preferred an appeal against the judgment and decree passed by the trial Court wherein learned first appellate Court affirmed to the findings of the trial Court and vide its judgment and decree dated 14/09/2002 dismissed the appeal of defendant No. 1.

6. Being aggrieved by the judgment and decree passed by both the Courts below, this second appeal has been preferred by defendant No. 1 – Sukulram Sahu (now his Lrs.) under Section 100 of the CPC in which two substantial questions of law have been formulated and set out in the opening paragraph of this judgment.

7. Mr. Somnath Verma, learned counsel appearing for legal representatives of defendant No. 1 would submit that both the Courts below have concurrently committed legal error in holding that plaintiff is entitled for decree for permanent injunction as defendant No. 1 has never sold the suit land bearing khasra No. 215/4 to the plaintiff and moreover, if the plaintiff is claiming title over the suit land, he ought to have filed the suit for declaration of title which he has not done therefore, decree granted by both the Courts below in favour of plaintiff is liable to be set aside and the second appeal deserves to be allowed.

8. Mr. D.N. Prajapati, learned counsel appearing for the plaintiff (now his Lrs.) would support the impugned judgment and decree passed by the first appellate Court and would submit that both the

Courts below have concurrently and rightly recorded a finding that plaintiff is the title-holder of the suit land bearing khasra No. 215/4 and he is entitled for decree for permanent injunction which is a pure finding of fact based on evidence available on record therefore, the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

10. Plaintiff – Mahesh Ram Sahu filed a bare suit for permanent injunction claiming that he purchased the suit land bearing khasra No. 215/4 admeasuring 0.60 acre from defendant No. 1 – Sukulram Sahu and came into possession of the said suit land forthwith, but during the registration of the sale deed, the suit land was inadvertently and mistakenly recorded as land bearing khasra No. 497/2 admeasuring 0.46 acre but, since he is in possession of the suit land bearing khasra No. 215/4 admeasuring 0.60 acre, therefore, he is entitled for permanent injunction.

11. Both the Courts below decreed the suit of the plaintiff and held that plaintiff is the title-holder of the suit land bearing khasra No. 215/4 admeasuring 0.60 acre as he purchased it from defendant No. 1 by a registered sale deed dated 27/05/1981 (Exhibit P/12) therefore, he is entitled for permanent injunction.

12. Perpetual injunction is granted under Section 38 of the Specific Relief Act, 1963, which states as under: -

"38. Perpetual injunction when granted.—

(1) Subject to the other provisions contained in or referred to by this Chapter, 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.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

13. A careful perusal of sub-section (1) of Section 38 of the Specific Relief Act would show that perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the plaintiff, whether expressly or by implication. The word "obligation" has been defined in Section 2(a) of the Specific Relief Act which states that "obligation" includes every duty enforceable by law. The obligation may arise from contract or may be in the nature of promise or obligation from breach of which amounts to tort or civil wrong or any other legal obligation. But in order to be enforceable, it must be an obligation recognized by law. Legal obligation includes every duty enforceable by law so that when a legal duty is imposed on the person in respect to another, the other is invested with a corresponding legal right. This definition is used in its wider juristic sense as covering duties arising *ex contractu* or *ex delicto*, and may cover any other enforceable duty under any statute. As such, obligation contemplated under Section 38 of the Specific Relief Act is legal obligation capable of being enforced by law.

14. Where there is invasion of the plaintiff's rights to property or its enjoyment, injunction may be granted in the circumstances mentioned in clauses (a) to (d) of sub-section (3) of Section 38 of the Specific Relief Act. There must be, however, right to or enjoyment of property.

15. The question is, whether only the suit for injunction simpliciter is maintainable without a prayer for declaration?

16. Section 34 of the Specific Relief Act provides as under: -

"34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee."

17. The Supreme Court in the matter of **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by Lrs. and**

Ors.¹ considered the question as to when a bare 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 and held as under: -

“13. 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.

13.1. 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.

13.2. 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.

13.3. 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 the 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.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the 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 the 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 the 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.

15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

18. Their Lordships summarized the legal position

qua the prohibitory injunction as under: -

"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 the 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 the 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 *Annamuthu Thevar*²). 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 straightforward, 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

² *Annamuthu Thevar v. Alagammal*, (2005) 6 SCC 202

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 to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

19.The proposition laid down in **Anathula Sudhakar** (supra) (paragraph 14) has been followed with approval in the matter of **Kurella Naga Druva Vudaya Bhaskara Rao Vs. Galla Jani Kamma alias Nacharamma**³

20.In a recently pronounced judgment of Their Lordships of the Supreme Court in the matter of **Balkrishna Dattatraya Galande v. Balkrishna Rambharose Gupta and another**⁴, it has been held that possession of the plaintiff on the date of suit is a must for grant of permanent injunction, and observed as under: -

"17. As discussed earlier, in a suit filed under Section 38 of the Specific Relief Act, possession on the date of suit is a must for grant of permanent injunction. When the first respondent-plaintiff has failed to prove that he was in actual possession of the property on the date of the suit, he is

3 (2008) 15 SCC 150

4 2019 SCC OnLine SC 135

not entitled for the decree for permanent injunction."

21. Thereafter, in the matter of ***Jharkhand State Housing Board Vs. Anirudh Kumar Sahu and Ors.***⁵, their Lordships of the Supreme Court have held that suit filed by the plaintiff only seeking relief for permanent injunction without seeking declaration of title cannot be granted. Paragraphs 6 and 7 of the report state as under :-

"6. We have heard the learned counsel on either side and perused the material available on record. We are very much surprised at the way the suit was dealt with by the Courts below contrary to the pleadings and contrary to the settled legal position. In the plaint, plaintiff has clearly averred that as the defendants are interfering with his possession, the necessity arose to file the suit for permanent injunction and particularly sought the prayer for permanent injunction. The trial Court has framed several issues and held all the issues in favour of the plaintiff including the issue with regard to title but granted only the relief of injunction. The trial Court has given several findings with regard to the title and observed that plaintiff has got right and title to the property. Even the first appellate Court has also made specific observation with regard to the title and gave a clear finding that plaintiff has asked for declaration. High Court mechanically confirmed the judgment and decree of

the Courts below without appreciating both the legal and factual aspects.

7. We have given our anxious consideration and we are of the considered opinion that the Courts below misconstrued the pleadings and went on a premise that the suit is for declaration of title when the same is for bare injunction and in a way declared the title of the plaintiff. Even before this Court, plaintiff filed the counter and stated that his suit is only for the relief of injunction. The learned counsel has also submitted that the relief sought is only for injunction. The copy of the plaint filed before us also strengthens the same. The judgment and decree under appeal deserves to be set aside and accordingly appeal is allowed. It was brought to our notice that plaintiff is continuing with the possession of the property during the pendency of the litigation. In view of the same, we deem it appropriate to direct the parties to maintain status quo for a period of 3 months and if so advised, to avail the remedy available under law. Resultantly, the appeal is allowed with the above observations by setting aside the judgment and decree dated 26th August, 2004, in the circumstances without costs."

22. Reverting to the facts of the present case in light of the principles of law laid down by the Supreme Court in the aforesaid judgments, it is quite vivid that plaintiff's suit was for permanent injunction simpliciter claiming that he has purchased the suit land bearing khasra No. 215/4 admeasuring 0.60 acre after which he came into its possession but in the sale deed,

inadvertently and mistakenly, it was entered as khasra No. 497/2 admeasuring 0.46 acre. Defendant No. 1 refuted plaintiff's claim by stating that he has never sold the suit land bearing khasra No. 215/4 admeasuring 0.60 acre to the plaintiff.

23. It is also the case of the parties that plaintiff got the suit land registered in his name vide Exhibit P/3 i.e. order dated 16/10/1992 passed by the Naib Tahsildar, Magarload which was then set aside by the Sub-divisional Officer, Dhamtari by its order dated 17/04/1995 (Exhibit D/1) and the revision preferred by the plaintiff was also dismissed by the Additional Commissioner on 22/11/1994 (Exhibit D/2) and in such a case, there is a serious dispute with regard to the title of the plaintiff upon the suit land as to whether he has purchased the suit land bearing khasra No. 215/4 admeasuring 0.60 acre or land bearing khasra No. 497/2 admeasuring 0.46 acre. Plaintiff, therefore, ought to have filed a suit for declaration of title also. Though both the Courts below have returned a finding of title in favour of plaintiff, but in the considered opinion of this Court, the question of title ought not to have been considered by both the

Courts below, particularly when plaintiff's suit was only for permanent injunction, as he ought to have filed a suit for correction of sale deed dated 27/05/1981 (Exhibit P/12) under Section 26 of the Specific Relief Act or in alternative for declaration of title under Section 34 of the Specific Relief Act.

24. In the considered opinion of this Court, plaintiff could have filed a suit for rectification of the sale deed stating that he is the owner and title-holder of the suit land bearing khasra No. 215/4 admeasuring 0.60 acre, but that was not done and only the suit for permanent injunction simpliciter was filed by the plaintiff without seeking either declaration of title under Section 34 of the Specific Relief Act or rectification of sale deed under Section 26 of the Specific Relief Act which was not maintainable in absence of the relief claimed for declaration of title or rectification of sale deed, as such, both the Courts below have concurrently erred in granting decree for permanent injunction in favour of plaintiff in absence of any relief with regard to declaration of title and/or rectification of sale deed dated

27/05/1981 (Exhibit P/12) sought out by the plaintiff. Accordingly, both the substantial questions of law are answered in favour of defendant No. 1 and against the plaintiff.

25. Following the principle of law laid down by the Supreme Court in ***Jharkhand State Housing Board*** (supra), the judgment and decree passed by both the Courts below are hereby set aside. However, plaintiff (now, his Lrs.) are at liberty to file a comprehensive suit for declaration of title or rectification of sale deed dated 27/05/1981 (Exhibit P/12) in accordance with law within a period of two months.

26. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

27. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge