

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.420 of 2003Order reserved on: 31-1-2019Order delivered on: 20-2-2019

1. Chhed Ram, S/o Khelan, Aged about 42 years,
2. Bikham, S/o Khelan, Aged 37 years, R/o Vill. Lilvakapa, Tahsil Mungeli, Distt. Bilaspur (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Budhvantin, W/o Bullu, Aged about 47 years,
2. Khed Ram, S/o Bullu, Aged 32 years,
3. Bedram, S/o Bullu, Aged 28 years.

All by Caste Satnami, R/o Vill. Lilvakapa, Tahsil Mungeli, Distt. Bilaspur (C.G.)

4. Parsuram alias Bullu (Died and deleted)
5. State of C.G., Through Collector, Bilaspur.

(Defendants)
---- Respondents

For Appellants:	Mr. Vimlesh Bajpai, Advocate.
For Respondents No.1 to 3: -	Mr. Malay Kumar Bhaduri, Advocate.
For Respondent No.5 / State: -	Miss K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

1. The second appeal has been admitted on the following substantial questions of law: -

“(1) Whether in a suit for perpetual injunction on the basis of possession title has any impact over it?

(2) Whether admitted transaction of sale-deed can be challenged by strangers on the ground that it was a sale transaction?

(3) Whether without lawfully appreciating the evidence on

record, the first appellate Court rejected the finding of possession held by the trial Court?”

(Parties hereinafter will be referred as per their status and ranking shown in the plaint before the trial Court.)

2. The plaintiffs filed bare suit for permanent injunction that they are owners and title holders of the suit land and defendants No.1 to 4 are interfering with their possession, therefore, the defendants be restrained by way of injunction from interfering with their possession. The defendants denied the plaint allegations and set-out a case of loan transaction. The trial Court decreed the suit which was set aside by the first appellate Court that the sale deed dated 28-11-1973 has not been pleaded and proved against which this second appeal has been preferred by the appellants / plaintiffs in which the substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.
3. During the pendency of second appeal, application under Order 41 Rule 27 of the CPC has been filed along with a copy of the sale deed dated 28-11-1973 and the Court while granting the application remitted the matter to the first appellate Court by order dated 28-3-2014. The first appellate Court after giving opportunity to adduce to both the parties on sale deed dated 28-11-1973 has sent the documents (sale deed) along with its evidence which are now being considered.
4. Mr. Vimlesh Bajpai, learned counsel appearing for the appellants / plaintiffs, submits that the sale deed has already been proved by production of additional evidence, therefore, the plaintiffs / appellants are entitled for decree as such, the judgment & decree of the first appellate Court deserve to be set aside. He relies upon the judgments of the Supreme Court in the matters of Corporation of the

City of Bangalore v. M. Papaiah and another¹, Kurella Naga Druva Vudaya Bhaskara Rao v. Galla Jani Kamma alias Nacharamma² and Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and others³ to buttress his submission.

5. Mr. Malay Kumar Bhaduri, learned counsel appearing for respondents No.1 to 3 herein / defendants, submits that bare suit for declaration of title was not maintainable and the plaintiffs ought to have filed comprehensive suit for declaration of title and the sale deed has also not been proved in accordance with law before the first appellate Court on remand by this Court.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Answer to Substantial Questions of Law No.1 to 3: -

7. The plaintiffs have only filed suit for perpetual injunction restraining the defendants from interfering with their peaceful possession stating that the suit land was earlier purchased by their father from one Hincharam on 28-11-1973 by registered sale deed and obtained possession of the suit land and thereafter, they are in long and settled possession of the suit land. Perpetual injunction was 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.

1 AIR 1989 SC 1809
 2 (2008) 15 SCC 150
 3 (2008) 4 SCC 594

(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.”

8. 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 price 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 recognised 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.

9. 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.

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

11. 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.”

12. The Supreme Court in the matter of Anathula Sudhakar (supra) 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.

13. 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*⁴). 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 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

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

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.”

14. 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 (supra).

15. In a recently pronounced judgment of Their Lordships of the Supreme Court in the matter of Balkrishna Dattatraya Galande v. Balkrishna Rambharose Gupta and another⁵, 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 not entitled for the decree for permanent injunction.”

16. Reverting to the facts of the case in light of the proposition of law laid down by the Supreme Court with regard to filing bare suit for permanent prohibitory injunction, it is quite vivid that the plaintiffs have filed suit for permanent injunction simpliciter stating that their father has purchased the suit land from Hincharam by registered sale deed and pursuant to the said purchase, their father was in possession during his lifetime and thereafter, after his death, they are continuing in possession. It has also been pleaded that during the lifetime of their father, the dispute arose between their father and Hincharam – original holder of the land and proceeding under Section 145 of the Code of Criminal Procedure, 1973 was initiated by the plaintiffs' father against Hincharam, and by order dated 30-9-1989, the Sub-Divisional Magistrate, Mungeli directed for delivery of possession to the plaintiffs'

5 2019 SCC OnLine SC 135

father and it was delivered to him. The aforesaid fact of initiation and conclusion of proceeding under Section 145 of the CrPC was incorporated in the plaint by the order of the trial Court dated 18-11-1998, but the said fact was not controverted by making amendment in the written statement and even the plaintiffs' witness Bheekham (PW-1) has clearly stated in his examination-in-chief that pursuant to the conclusion of proceeding, possession was delivered to his father in the said proceeding, but it was not cross-examined on the side of the defendants and that fact remained un-controverted. So it is apparent position on record that the possession of suit land was delivered to the plaintiffs' father pursuant to the outcome of the proceeding under Section 145 of the CrPC and during his lifetime, he was in possession of the suit land and thereafter, the plaintiffs are in possession of the suit land.

17. Defendant No.5 Parsuram alias Bullu claimed to be the adopted son of Hincharam, as the suit property originally belongs to Hincharam. The plaintiffs claimed that their father has purchased the suit property by registered sale deed dated 28-11-1973, whereas defendant No.5 claimed to be the adopted son of Hincharam, original holder of the land, but no evidence has been brought on record on behalf of the defendants to establish that Parsuram was validly adopted by Hincharam during his lifetime and after his death, Parsuram has inherited the suit property on the strength of adoption by Hincharamas such, the defendants being strangers to the sale transaction are not entitled to question the sale deed dated 28-11-1973 on the ground of it being the mortgage or sham transaction.

18. The Supreme Court in the matter of Muddasani Venkata Narsaiah

(dead) Through Legal Representatives v. Muddasani Sarojana⁶

has held that passing of consideration under a sale deed cannot be questioned by third party. It was observed as under: -

“17. It is also settled law that passing of consideration under a sale deed cannot be questioned by third party. Defendant 3 has not been able to establish her case that she is an adopted daughter of the deceased Yashoda and thus, she being the third party, could not have questioned the execution of the sale deed by Buchamma on the ground of passing of consideration as rightly laid down by the High Court of Madhya Pradesh in *Ramjilal Tiwari v. Vijai Kumar*⁷. The High Court of Patna has also held that passing of consideration can be questioned by a party or his representative in *Akli v. Daho*⁸. Similar is the view of the High Court of Nagpur in *Maroti Bansi Teli v. Radhabai*⁹. Thus, the High Court has erred in law on this ground also in dismissing the suit.”

19. Therefore, merely on the ground of interfering with the possession of the plaintiffs by the defendants, the plaintiffs would not be required to seek declaration of title unless the suit filed is for perpetual injunction with the consequential relief of recovery of possession, as it is the plaintiffs' case that the plaintiffs are in possession and there is threat of dispossession and declaration would not be necessary as held in paragraph 14 of **Anathula Sudhakar's** case (supra), as there is no serious challenge to the plaintiffs' title raising a cloud on the title of the plaintiffs' right to the property.

20. In view of the aforesaid analysis, it is held that bare suit for perpetual injunction on the basis of actual possession was maintainable and the plaintiffs were not required to seek declaration of title and the defendants being strangers to the sale deed are not entitled to question the sale deed executed by Hincharam – original holder of land in favour of the plaintiffs' father.

6 (2016) 12 SCC 288

7 1969 SCC OnLine MP 55 : 1970 Cri LJ 1176 : 1970 MPLJ 50

8 1927 SCC OnLine Pat 200 : AIR 1928 Pat 44

9 1943 SCC OnLine MP 128 : AIR 1945 Nag 60

21. The plaintiffs are in possession of the suit land and the defendants cannot interfere with the possession and interference of possession by the defendants is wholly unlawful and as such, the plaintiffs are entitled for permanent injunction and the first appellate Court is absolutely unjustified in reversing the well reasoned and well merited judgment & decree of the trial Court by recording a finding which is perverse and contrary to record. Accordingly, the judgment & decree passed by the first appellate Court is set aside and that of the trial Court is hereby restored.
22. The second appeal is allowed to the extent indicated herein-above. The substantial questions of law are answered accordingly. No order as to cost(s).
23. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge