

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

**SECOND APPEAL NO.725 OF 2019
WITH
CIVIL APPLICATION NO.1507 OF 2019**

Namdeo Dnyanu Kharade

Deceased through L Rs.

1.1. Smt. Muktabai Namdev

Kharade And Others

... Appellants

Versus

Sou. Manisha Mukand Suryavanshi

And Others

... Respondents

.....

Mr. S.M. Gorwadkar i/b Mr. S.M. Kamble for the
Appellants/Applicants.

Mr. Bhooshan R. Mandlik for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE : 28 NOVEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 The controversy in the second appeal concerns the identity of the properties, which are purchased by the Appellants (original defendant nos.1 to 3) and Respondent No.1 (original plaintiff). Going by the description of the lands in their respective sale deeds and the revenue records, it is apparent that there was a cloud as to the plaintiff's title as well as possession of the suit property. The dispute mainly hovered around the identity of the properties purchased by the

plaintiff. In these circumstances, *prima facie* it is arguable that the plaintiff should have sought an appropriate declaration instead of filing a suit for injunction simplicitor. Learned Counsel for the Appellants relies on the law stated by the Supreme Court in the case of **Anathula Sudhakar Vs. P. Bushi Reddy**¹ in support of this proposition. Accordingly, the appeal raises a substantial question of law and is admitted. The substantial question of law is formulated as follows :

1. Whether the courts below were right in law in granting the relief of perpetual injunction to the plaintiff (Respondent No.1 herein) when her title and possession of the suit property could be said to be under a cloud, without her having prayed for a declaration of her title and possession ?

3 Considering the controversy, at the request of the parties, the hearing of the Second Appeal is expedited. Either party may mention the appeal for fixing of a date of hearing upon reopening of courts after the ensuing Christmas Vacation and after filing of paper book. The Appellants to file a paper book within four weeks from today. The Respondents waive service.[main.php](#)

4 In the meantime, the stay granted by the lower appellate court on 16 September 2014, and which operated during the pendency of Regular Civil Appeal No.167 of 2014, and continued by this court, shall continue pending the hearing and final disposal of the second

¹ (2008) 4 Supreme Court Cases 594

appeal. The Civil Application is disposed of accordingly.

(S.C. GUPTE, J.)