

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.117 of 2008**

Union of India, New Delhi, Through: General Manager,
South East Railway, Head Office E.R. Garden Reach
Road, Kolkata-43

----- Appellant/Defendant No.1

Versus

1. Narendra Kumar Paliwal, Aged about 55 years, S/o.
Laksheshwar Lal, R/o. Village Naila, P.S. & Tahsil
Janjgir, District Janjgir-Champa (CG)

----- Plaintiff

2. State of Chhattisgarh, Through: Collector Janjgir-
Champa, District Janjgir-Champa (CG)

----- Respondents/Defendants

For Appellant/Defendant No.1:	Mr. Abhishek Sinha and Mr. Vaibhav Maheshwari, Advocates
For Res.No.1/Plaintiff	: Mr. Manoj Paranjape and Mr. Anurag Singh, Advocates
For Respondent No.2/State	: Mr. Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

11.02.2020

1. The substantial questions of law involved, formulated
and to be answered in this second appeal preferred by
the appellant/defendant No.1 are as under:-

"1. Whether the First Appellate Court is
justified in granting decree for declaration
of title in favour of the plaintiff in
absence of pleading and proof, prayer for
declaration of title in the suit ?

2. Whether the First Appellate Court is
justified in directing that the plaintiff is
entitled for compensation in lieu of the suit

land, in absence of specific prayer in that regard in the suit by recording a perverse finding ?”

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

2. The suit land bearing Khasra No.165/1 area 0.43 acre and Khasra No.165/5 area 0.01 acre appended with the plaint as G, F, J, K, L, M, N, O and P is subject-matter of the dispute and for which the plaintiff filed a bare suit for recovery of possession stating that he is title-holder of the suit land as he has purchased the same by registered sale deed dated 6.5.1972 (Ex.P-1) and became title-holder and possession holder of the suit land, in which the Railway has laid railway line and affixed iron angles, for which he is entitled for possession. The plaintiff amended his plaint that since railway line has already been laid by the Railway on the suit land, therefore, he is entitled for compensation in lieu of possession.
3. The defendant NO.1 set-up a plea that it is defendant's land since 1942 and the Railway is in possession from 1954 and has perfected their title and as such, the suit deserves to be dismissed.
4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record,

by its judgment and decree dated 30.1.2006, dismissed the suit holding that the plaintiff has failed to prove his title and possession over the suit land and defendant No.1 is in possession over the suit land since 1942 peacefully. On appeal being preferred by the plaintiff, the first appellate Court has reversed the judgment and decree of the trial Court. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.1, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

5. Mr. Abhishek Sinha, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in granting decree for declaration of title in absence of any relief for claiming title and further unjustified in holding that the plaintiff is entitled for compensation as railway line has already been laid by the Railway on the suit land and as such, the plaintiff is not entitled for compensation. He relied upon the judgments of the Supreme court in the matters of Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRS.

and others¹ and Bachhaj Nahar v. Nilima Mandal and another².

6. Mr. Manoj Paranjape, learned counsel for respondent No.1/plaintiff, would submit that though the plaintiff has not filed a suit for declaration of title, yet question of title was incidentally gone into by the trial Court and it has been held by the first appellate Court that the plaintiff is title-holder of the suit land and since relief of possession could not be granted, therefore, the first appellate Court is absolutely justified in holding that the plaintiff is entitled for compensation from the competent Court in accordance with law, in which no interference is called for under Section 100 of the CPC.

7. I have heard learned counsel for the parties, considered their submissions made hereinabove and also went through the records with utmost circumspection.

8. The dispute relates to the suit land bearing Khasra No.165/1 area 0.43 acre and Khasra No.165/5 area 0.01 acre and out of which, in some portion railway line has been laid by the Railway and in some portion iron angles have been affixed. It is the case of the plaintiff that he has purchased the suit land by registered sale deed dated 6.5.1972 (Ex.P-1) and came

1 (2008) 4 SCC 594

2 (2008) 17 SCC 491

in possession over the suit land to whom defendant No.1 has dispossessed by laying railway line and affixing iron rods, but it is the case of defendant No.1 relying upon Exs.D-2 and D-3 that both the lands are recorded as grass/government land. The trial Court did not found favour with the title of the plaintiff, but the first appellate Court held that the plaintiff is title-holder of the suit land and decreed the suit to the extent of declaration of title and right of compensation.

9. It is correct to say that though the plaintiff during trial of suit amended the suit finding that he is not in possession of the suit land and his title is under cloud by defendant NO.1's plea that the suit land is government land and they are in possession since long back, but no prayer was made by the plaintiff in the pleading either for claiming title or for claiming compensation by amending the prayer in the suit, whereas as laid down by the Supreme Court in **Bachhaj Nahar** (supra), in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings and held as under:-

"22. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the

court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer.

23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

10. The plaintiff during the course of trial finding that he is not title-holder of the suit land and his title is under cloud, then he decided to amend his plaint seeking compensation on the basis of title. He ought to have also introduced the claim for relief of

declaration of title over the suit land and also claimed relief of claiming amount of compensation formally, which he did not choose to claim and as such, the first appellate Court granted relief of declaration of title as well as right to compensation without there being any suit claiming and praying for declaration of title and compensation.

11. Argument of learned counsel for respondent No.1/plaintiff that question of title was gone into by both the Courts below deserve to be noticed for rejection as it was incidentally gone into for the purpose to find out as to whether the plaintiff is entitled for possession of the suit land or not, but it was not gone comprehensively and exhaustively for adjudication as to whether the plaintiff is titleholder of the suit land and on account of it having been taken by defendant No.1, if any, and whether he is entitled for compensation. Therefore, incidental adjudication of the question of title before that Court, the plaintiff was not relieved to claim declaration of title or filing comprehensive suit for claiming title as held by the Supreme Court in para 21 of Anathula Sudhakar's case (supra) which states 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 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*³). 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

3 *Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202

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 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."

12. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in Anathula Sudhakar (supra), it is quite vivid that there is no detailed pleading with regard to title. The plaintiff filed a suit only for recovery of possession, therefore, the first appellate Court is unjustified in granting decree of declaration of title and further unjustified in holding that on the basis of said declaration, the plaintiff has a right of compensation. The suit ought to have been amended (if any) clearly claiming declaration of title and compensation in full against title of the suit land,

so that defendant NO.1 could have been opportunity to meet out those averments and finding of title could have been decided directly and substantially by framing an issue. In absence of that pleading, issue framed and evidence led, defendant No.1 has suffered prejudice and as such, the judgment and decree passed by the first appellate Court granting declaration of title and further holding that the plaintiff is entitled for compensation in accordance with law deserves to be set aside and accordingly, it is set aside and that of the judgment and decree of the trial Court is hereby restored. The substantial questions of law are answered in favour of defendant No.1 and against the plaintiff.

13. Since, it has been held that the plaintiff ought to have filed a comprehensive suit for declaration of title, liberty is reserved in favour of the plaintiff to file a comprehensive suit for declaration of title and/or suit claiming compensation in accordance with law. The question of title upon the suit land would remain open to be considered by the jurisdictional civil Court afresh. It is made clear that this Court has not expressed any opinion about the title of the either of party to suit.

14. The second appeal is allowed to the extent

indicated hereinabove leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-