

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.622 OF 2021
WITH CA/748/2022 IN SA/622/2021
WITH CA/13997/2021 IN SA/622/2021**

Government of India, New Delhi	]	
Through Superintending Archaeologist,	]	
Archeological Survey of India,	]	
Aurangabad Circle, Bibi-ka-Maqbara,	]	
District Aurangabad	]	... Appellant
		<i>(Orig. Defendant)</i>

Versus

Ravindra S/o. Pralhadrao Puranik,	]	
Age : Major, Occupation : Archak (Pujari),	]	
R/o. Verul, Taluka Khultabad,	]	
District Aurangabd.	]	... Respondent
		<i>(Orig. Plaintiff)</i>

. . .
Advocate for Appellant : Mr. Ramdas B. Bhosale
Advocate for Respondent : Mr. R. L. Chhabda
. . .

CORAM : MANGESH S. PATIL, J.

DATED : 01 APRIL 2022.

PER COURT :

1. This is an appeal by the original defendant which is the Government of India through its Superintending Archaeologist, who has suffered a concurrent decision of the courts below holding the respondent-plaintiff to be entitled to perpetual injunction to protect his possession over the suit property described as Survey No. 299 of Verul, Taluka Khultabad, Dist. Aurangabad.

2. After hearing the learned advocates of both the sides, following substantial questions of law arise for determination in the second appeal and it is admitted:

- I. Whether the courts below were justified in ignoring the law laid down by the Supreme Court in the matter of *Anathula Sudhakar Vs. P. Buchi Reddy*, AIR 2008 SC 2033, even when apparently a cloud was created over the respondent's title to the suit property and deciding the suit and the appeal without framing any issue as to title?
- II. Whether the lower appellate court has erred in refusing to remand the suit for decision afresh in the facts and circumstances?

I have heard the learned advocates of both the sides, on the aforementioned substantial questions of law.

3. There is no dispute about the fact that the respondent claiming himself to be in exclusive possession of the suit property filed the regular civil suit seeking perpetual injunction against the appellant, restraining it from obstructing his possession over the suit property. The appellant filed a written statement, but thereafter did not turn out to contest the suit. Pertinently, in the written statement it was the contention that the suit property was declared as a 'Centrally Protected Monument' by virtue of a Government of India

Gazette Notification of the year 1960. It also tried to justify the mutation entry effected in that respect in the year 2010.

4. The averments in the plaint itself were indicative of the fact that the respondent was aware about the claim by the Archaeologist Department of the Government of India and even questioned the mutation entry No. 3163 of the year 2010. It is, therefore, quite clear that the respondent has been aware that a claim is being put up by the appellant creating a cloud over the title on the basis of which he claimed to be in possession.

5. In spite of the above state of pleadings, the trial court did not frame any issue pertaining to this question of disputed title. Only the issues pertaining to possession and its obstruction were claimed.

6. The error seems to have perpetuated even before the lower appellate court. In an appeal by the appellant a serious question as to the title to the suit property was raised/agitated. Even the documents were sought to be produced under Order 41 Rule 27 of the CPC which were allowed to be produced. But without formulating any point for the determination touching the disputed question of title, it has proceeded to decide the appeal by formulating the points for determination in tune with the issues framed by the trial Court.

7. It is true that in paragraph nos. 10 and 11, the lower appellate

court did make some attempt to go into the issue regarding title and even commented upon some overwriting in the copy of the government notification that was allowed to be produced under Order 41 Rule 27. However, it is a matter of record that the point regarding title to the suit property was not specifically formulated and decided.

8. There is one more aspect. The lower appellate court has indulged in scanning of these additional material produced on behalf of the appellant and even commented about the overwriting in the copy of the notification in respect of the survey number of the land. There is nothing on record to demonstrate and even the judgment of the lower appellate court is silent as to if such overwriting even when the court was to comment upon was brought to the notice of the appellant or any attempt was made to solicit any explanation in that regard. It is, therefore, quite clear that though the lower appellate court was alive to the fact that the dispute as to title was under serious contention and even though the appellant was allowed to produce certain documents, without allowing the matter to be re-agitated and decided by the trial court, it proceeded to scan such additional evidence without letting the parties to prove or disprove it. It has taken over the burden and has scanned the matter to reach some half hearted conclusion and discarded the material produced on record.

9. In my considered view, the whole approach of the courts below is

clearly in violation of the principles laid down by the Supreme Court in the matter of *Anathula Sudhakar Vs. P. Buchi Reddy*, (*supra*), wherein it has been specifically laid down that even in the suits for injunction, if a cloud is created on the title of the plaintiff even the issue regarding title has to be framed and gone in.

10. It is clear that both the courts below have not framed the issues/points touching the aspect of title and none has been gone into and decided much less on merits. If the lower appellate court was kind enough to permit the appellant to produce on the record some additional documents under Order 41 Rule 27 of the CPC, it would have been appropriate for it to have invoked the powers under Order 41 Rules 23 and 23A of the CPC and remanded the suit to the trial court for decision afresh by permitting the parties to lead evidence and also by directing a issue as to title to be framed and decided. That having not been done, in my view the aforementioned substantial questions of law deserves to be answered in the negative.

11. In the result, the second appeal is partly allowed. The impugned Judgments and Orders of the courts below are quashed and set aside.

12. The suit is remanded back to the trial court for decision afresh in the light of the observations made hereinabove and by extending opportunity to both the sides to lead additional evidence, oral as well as documentary.

13. Parties shall appear before the trial court on 29 April 2022 and there shall be no need for it to issue any summons to them.

14. It is made clear that the respondent-plaintiff shall be entitled to press for interim relief, if any, before the trial court which shall be decided on its own merits.

15. For the time being, the parties shall maintain status-quo as is obtaining today which shall remain in operation till 30 June 2022 before which the trial court shall decide the application, if any, to be filed by the respondent plaintiff for temporary injunction.

16. Pending civil applications stand disposed of.

(MANGESH S. PATIL, J.)