

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

SECOND APPEAL NO. 708 OF 2022
WITH CA/14450/2022 IN SA/708/2022

VIJAYSING RANSING PATIL AND OTHERS
VERSUS
VANDANA RAMESH PATIL AND ANOTHER

...
Advocate for Appellants : Mr. Temak Rahul B.

CORAM : R.M. JOSHI, J.
DATE : 21st March, 2023

PER COURT :

1. Heard.

2. This appeal is preferred by the defendants against the judgment and decree dated 02nd May, 2015, passed by the learned Civil Judge Senior Division, Jalgaon, in Regular Civil Suit No. 113 of 2008 and judgment and decree dated 30th March, 2021, passed by the learned District Judge-3, Jalgaon, in Regular Civil Appeal No. 73 of 2015, confirming the judgment of the learned Trial Court.

3. Plaintiffs filed suit for perpetual injunction against the defendants restraining them from interfering in the possession of the plaintiffs over the suit property. It is the case of the plaintiffs that suit property is purchased from defendant no. 1 vide registered sale deed dated 19th April, 2003, for total amount of consideration of Rs.

3,05,000/-. It is also specifically averred that since then the plaintiffs are in possession of the suit property. It is alleged by the plaintiffs that on 22nd November, 2008, defendants obstructed the peaceful possession of the plaintiffs over the suit property by unauthorizedly entering upon the land.

4. Defendants filed written statement at exhibit 17 and denied the contentions of the plaintiffs. It is claimed by the defendant no. 1 that since she was in the need of money she obtained loan from husband of the plaintiff and sale deed was executed by way of security towards re-payment of the loan. It is further contended that it was agreed by the plaintiff for executing sale deed in favour of the defendant no. 1 once the amount of loan is repaid.

5. Plaintiffs and defendants led oral as well as documentary evidence before the trial Court. There is no dispute about the fact that the sale deed (exh. 58) is executed by the defendant no. 1, who was erstwhile owner of the suit property.

6. Learned counsel for the appellants / defendants states that Trial Court as well as first appellate Court committed error in decreeing the suit without considering the fact that on the basis of written statement the title of the plaintiff over the suit property was

under cloud and hence, the suit for simplicitor injunction was not maintainable. To support his submissions, reliance is placed on the judgment of Hon'ble Apex Court in case of *Anathula Sudhakar Versus P. Buchi Reddy (Dead) by LRs and others*, **(2008) 4 SCC 594**. He further states that the witnesses examined by the defendants have specifically deposed about the money lending transaction and that no possession of the suit property was entrusted to the plaintiffs by defendant no. 1. Thus, according to him, the impugned judgment passed by both Courts below are contrary to the provisions of law as well as evidence on record.

7. Perusal of the judgment of the Hon'ble Apex Court in case of *Anathula Sudhakar* (supra) summarizes the position in regard to the suit for prohibitory injunction relating to the immovable property which states thus :

“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* (supra)]. 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 straight-forward, 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 plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

8. Clause no. c as stated above clearly shows that where the averments regarding the title were absent in the plaint and there is no issue relating to the title, Court will not investigate for examining or render a finding on question of title in such suit for injunction. In the instant case, there is specific pleadings in the plaint referring to the execution of registered sale deed by defendant no. 1 in respect of suit

property in their favour. Similarly, the witnesses of the defendant have admitted possession of plaintiff over the suit property. Though, it is stated by them that the plaintiff has taken possession of the same unauthorizedly, there is nothing on record to show as to when such possession was taken unauthorizedly and what steps are taken by the present defendants to regain the said possession. It is also pertinent to note that till date, no suit has been filed by the defendants to challenge the sale deed on the ground that the defendants never intended to transfer title in favour of the plaintiffs. All these facts clearly indicate that, there is no cloud over the title of the plaintiffs. Similarly, in view of the evidence on record that the plaintiffs are in possession of the suit property, there is no impediment in maintaining the suit simplicitor for injunction.

9. Learned counsel for the appellant argues that there is a compromise between the parties. According to him, the husband of plaintiff no. 1 has entered into compromise with the defendants, which indicates that the transaction in question was not intended to sale the suit property, it was for security. There is no dispute about the fact that the said alleged compromise has not been signed by plaintiff. There is nothing on record to show that her husband has signed the said compromise on behalf of plaintiffs or on the basis of any authority

given by the plaintiffs to him. In absence of any such authority, it cannot be held that plaintiff no. 1 - husband was authorized to compromise the dispute with defendants, on their behalf.

10. In view of the above discussion, this Court does not find any substantial question of law involved in this appeal. Hence, Second Appeal stands dismissed. All pending Civil Applications stands disposed of.

[R.M. JOSHI, J.]

SPChauhan