

Dusane

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

**SECOND APPEAL NO.715 OF 2014
WITH
CIVIL APPLICATION NO.1664 OF 2014**

Shri. Jagannath Balaso Pujari & Ors. ...Appellants/
Applicants

V/s.

Pandurang Mhatu @ Sutyappa ...Respondents
Metkar (deceased) thru'
Smt. Anusaya Pandurang Metkar
& Ors.

Mr. Tanaji Mhatugade for Appellants/Applicants.

Mr. Sandeep S. Koregave for Respondent Nos.1 to
6.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 15th FEBRUARY 2023**

P.C.:

1. Heard Mr. Mhatugade, learned Counsel appearing for the Appellants i.e. original Defendants and Mr. Koregave, learned Counsel appearing for the Respondent Nos. 1 to 6 i.e. heirs and legal representatives of the original Plaintiff.

2. Mr. Mhatugade submitted that the following substantial questions of law are involved in this Second Appeal:-

(i) Whether the simplicitor suit for injunction is maintainable without claiming declaration of title in the facts and circumstances of the case ?

(ii) Whether the simplicitor suit for simplicitor injunction is maintainable in the light of the law laid down by the Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and Others**¹

3. In view of very narrow controversy, the Second Appeal is taken for final disposal forthwith with the consent of the parties.

4. The Respondent i.e. original Plaintiff filed simplicitor suit for injunction. The learned Trial Court dismissed the suit by holding that in the suit property, there is 200 year old temple and therefore injunction cannot be granted. It is the contention of the Respondent i.e. the Plaintiff that although there is a temple in the suit property, the said temple is a private temple and therefore, it is his contention that it is the private property of the Respondents. The learned First Appellate Court held that the original Plaintiff proved his ownership and possession over the suit property. The learned First Appellate Court in paragraph 14 although have held that there is a temple of Biroba and the said temple is a public temple and in the said temple people of all community are performing their religious functions, however, on the basis of revenue entry, i.e. Sanad, City Survey extract etc. held that the Plaintiff proved the ownership and granted perpetual injunction.

¹ 2008 4 SCC 594

5. The Supreme Court in the judgment, reported in the matter of **Anathula Sudhakar** (supra) has considered the circumstances in which simplicitor suit for injunction will be maintainable and the circumstances in which the simplicitor suit for injunction is not maintainable and in addition to the relief of injunction, declaration regarding title is also required to be sought. The principles in that behalf are summarised in paragraph 21 of the said judgment. The said paragraph 21 reads 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 simplicitor 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]. 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."**

(Emphasis added)

6. The Supreme Court again considered this issue in the judgment reported in the matter of **Kayalulla Parambath Moidu Haji V. Namboodiyil Vinodan**². The Supreme Court after noticing above referred paragraph 21 of **Anathula Sudhakar** (supra) in unequivocal terms has held that where the averments regarding title are absent in a plaint and where there is no issue framed relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. It has been clearly held that in case of the 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.

7. This is a case where the contention is raised by the Appellant i.e. the Defendant that there is 200 year old temple in the suit property and the same is a community temple.

² 2021 SCC Online SC 675

Therefore, on the basis of the judgment of **Anathulla Sudhakar** (supra) as well as **Kayalulla Parambath Moidu Haji** (supra), the Respondent i.e. the Plaintiff is required to be relegated to the remedy by way of comprehensive suit for declaration of title instead of suit of mere injunction. Therefore, there is substance in the substantial question of law raised by Mr. Tanaji Mhatugade, learned Counsel appearing for the Appellants and therefore the decree passed by the learned First Appellate Court deserves to be set aside.

8. However, Mr. Koregave, learned Counsel appearing for the Respondents submitted that in view of above legal position, the Respondents have no objection if the judgment and decrees of both the Courts are set aside and the Regular Civil Suit No. 75 of 2008 is remanded back to the learned Trial Court. He submitted that the issue regarding ownership is already framed, however, the pleadings in that behalf are required to be incorporated in the suit. He submitted that as the suit has been filed in 2008 and this Second Appeal is pending for admission since 2014, the Plaintiffs be allowed to apply for amendment in the plaint. Mr. Tanaji Mhatugade, learned Counsel appearing for the Appellants has no objection for said course of action.

9. In view of above legal position in this case, simplicitor suit for injunction is not maintainable. However, in view of the above

contentions raised by both the parties and in view of peculiar factual position as noted hereinabove, following order is passed:-

ORDER

(i) The impugned judgment and decree dated 26th September 2014 passed by the learned Ad-hoc District Judge-3, Kolhapur in Regular Civil Appeal No. 297 of 2012 as well as judgment and decree dated 28th June 2012 passed by the learned Joint Civil Judge, Junior Division, Kagal, District Kolhapur in Regular Civil Suit No. 75 of 2008 are quashed and set aside and said Regular Civil Suit No. 75 of 2008 is restored to the file of Civil Judge, Junior Division, Kagal, District Kolhapur.

(ii) Both the parties to appear before the concerned Civil Judges, Junior Division, Kagal, District Kolhapur on 19th June 2023 for placing before the Court copy of this order.

(iii) The Respondent i.e. the Plaintiff to file appropriate application seeking amendment in the Regular Civil Suit No. 75 of 2008 and the said amendment application be decided by the learned Trial Court in accordance with law. The learned Trial Court also to give opportunity to the Defendants to file additional written statement and also allow parties to lead additional evidence in case the amendment application is allowed. The learned Trial Court thereafter to decide Regular

Civil Suit No. 75 of 2008 in accordance with law.

(iv) It is clarified that the Plaintiff can file application seeking appropriate injunction before the learned Trial Court, which the learned Trial Court to decide in accordance with law.

(v) All contentions of both the parties on merits are expressly kept open.

(vi) The Second Appeal is allowed in above terms with no order as to costs. As the Second Appeal is disposed of, nothing survives in the Civil Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)