

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1339/2023

(Vivekanand Ashram Hiwra Budruk V Vijaykumar and others)

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mrs. R.S. Sirpurkar, Adv for petitioner.
 Mr. A.R. Deshpande, Adv for respondents.

CORAM : AVINASH G GHAROTE, J.
DATE : 10-03-2023

The petition challenges the order dated 05-12-22 passed below Exh-96 an application for deleting/striking out and recasting of issues no.3, 4 and 6 framed at Exh 68, rejecting the same (pg 57). Mr. Deshpande, learned Counsel for the petitioner, relying upon Anathula Sudhakar v P. Buchi Reddy (Dead) by L.Rs. and Ors. (AIR 2008 SC 2033), submit that since the suit was simpliciter injunction, the issues regarding title ought not have been framed and since they have been framed they need to be deleted.

2. The learned Counsel for respondent nos.1, 2 and 3 opposing the same and contends that the issues no. 3, 4 and 6 are derived from the pleadings and the issue of injunction cannot be decided unless and until the issues no.3, 4 and 6 are decided.

3. In **Anathula** (supra), while considering the position in regard to injunction in relation to immovable property, the Hon'ble Apex Court held as under in para 17.

“17. 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.”

(emphasis supplied)

4. In the instant case, the injunction is been sought in the basis of title to the property in question on the basis of a Gift Deed dated 17-1-1973 claimed to have been executed by the plaintiff/respondent no.1 in favour of the petitioner. That being the position, the second part of para 17 (b) of **Anathula** (supra) would clearly be attracted as the question of injunction cannot

be decided without rendering a finding on the question of title. That being the position, I am not inclined to interfere in the order impugned in this petition, the petition is therefore dismissed. No costs.

JUDGE

Deshmukh