

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

SA No. 87 of 2012

With

CAN 5 of 2024

Hekmat Biswas & Anr.

Vs

Alibuddin Biswas

For the Appellants/Defendants

: Mr. Prantick Ghosh,
Mr. Udayan Ray.

**For the Respondent/
Plaintiff**

: Mr. Siva Prasad Ghosh,
Ms. Jyotsna Roy Mukherjee,
Ms. Srijani Mukherjee.

Hearing concluded on

: 08.08.2024

Judgment on

: 10.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Defendant/Respondent/ the Appellant herein, against the judgment and decree dated 23rd day of December, 2011 passed by the Learned Additional District Judge, 2nd Court, Krishnanagar, Nadia in Title Appeal No. 104 of 2010, setting aside the judgment and decree dated 28.05.2010 passed by the Learned Civil Judge, Junior Division, 1st Court at Krishnanagar, Nadia in Title Suit No. 217 of 2007, dismissing the suit.
2. **The plaintiff's case in Title Suit No. 217 of 2007 was a suit for permanent injunction.**
3. **THE FACTS :-**

Plaintiffs

"..... That the property mentioned in the schedule of the plaint is situated in plot no. 525 and 474/1801 having an area of 1.73 dec and .27 dec respectively under the control of P.S. Dhubulia, Mouza – Changasha, Hashadanga. Ubbani Bibi was the previous owner of the suit property which she has inherited from her father Rabbani Biswas and acquired perfect title in respect of 2 annas share. Ubbani Bibi during her life time has transferred her share in favour of the present plaintiff on 23.03.1967 by executing a deed of gift. Sadaruddin Biswas being the natural guardian has accepted the deed of gift as at time the present plaintiff was minor and aged about 6 years. Plaintiff became major in the year 1987. Since 1987, the plaintiff is possessing the suit property and using the same for the purpose of cultivation. Name of the plaintiff has been duly entered into the record of rights. Defendants who are the full blood brothers are trying to enter into the suit property illegally and with the ulterior motive to grab the property. On 10.11.2007, the defendants have tried to dispossess, the plaintiff forcibly but the plaintiff somehow managed to resist

them from entering into the suit property. Defendants have threatened the plaintiff of dire consequences. Plaintiff prayed for a decree of permanent injunction restraining the defendants not to create disturbance in the plaintiff's peaceful possession of the suit property....."

Defendants

Defendants contested the suit by filing written statement. It is stated by the defendants that:-

".....the husband of Ubbani Bibi was the actual owner of the suit property. After the death of her husband Rabbani Biswas, she became the owner to the extent of 2 annas as per the Muslim Law of succession and rest of the property left by Rabbani have been inherited by the other legal heirs of Rabbani such as Sadaruddin Biswas his only son and four daughters Hamijan Bibi, Sasifan Bibi, Saira Bibi, Jaira Bibi, Ubbani Bibi in collusion with the plaintiff has prepared a fictitious deed on 23.03.67. Relating to schedule of the property mentioned in the deed, T.S. No. 72/77 is pending in the court of Civil Judge, Sr. Division, Krishnanagar. Suppressing such fact, the plaintiff has brought this instant suit on the strength of the manufactured deed. The plaintiff has managed to record his name in the L.R.R.O.R. Defendants have filed objection against the erroneous entry in the record of rights. Defendants are claiming to have title, interest and possession over the suit property. According to the defendants, plaintiff has neither title nor the possession and is thus not entitled to get any decree....."

- 4. The trial Court framed issues and while deciding the suit praying for permanent injunction, the trial court decided issue no.3, as follows :-**

Issue No. 3

"Issue involved is whether the plaintiff has any right, title, interest and possession over the suit

property. In support of his claim, plaintiff has filed the original deed of gift bearing no. 4032 of 1962, L.R.R.O.R. and the rent receipts which were marked as exhibits and examined three witnesses as PWs.

It is admitted by PW1 during his cross examination that Sunil Biswas has filed a case relating to the suit property. It also transpires from the evidence of the PW that he did not file any document to substantiate that Ubbani Bibi had absolute title in the suit property while she gifted the said property in favour of the plaintiff PW2. Head Cashier of U.B.I. Dhubulia Branch has produced the original Deed No. 4032/67 along with the attested copy of the deed of gift which is marked as Exhibit : 3 but the said PW has stated that he has no personal knowledge about the deed and could not say whether the bank has collected any Search Report prior to sanction of loan. PW3 has stated that numbers of the suit plot are 474 and 525. It is also stated that after the death of Sadaruddin all his legal heirs are have inherited the property left by Sadaruddin.

Defendant though claimed that the plaintiff has not got title and possession over the suit property but during cross examination of DW1 it is admitted that the plaintiff's name is recorded in L.R.R.O.R. and the plaintiff is praying rent to the Govt.

On perusal of the exhibit 1, 2 and 3, it transpires that though the plaintiff claimed that he has absolute title over the suit property but the documents relating to title filed by the plaintiff is not tallying with the description and area given in the schedule of the plaint. Area mentioned in respect of plot no. 474/1801 is .27 dec. but no such description is available in the deed being no. 4032 dt. 23.03.62. When the documents are conflicting, such documents cannot be relied upon in determining the question of the title and possession. Moreover no declaration can be given on the basis of the record of right as it is the document which relates to possession and as inference can be drawn relating to right, title and interest of the

parties. Apart from this, it is barred by Section 34 of the Specific Relief Act.

In view of the observation made herein above, there cannot be any hesitation to conclude that the plaintiff has failed to prove his title in the suit property and failed to establish his absolute ownership in the suit property. It is also not proved that the defendants have even tried to create disturbance in the plaintiff's peaceful possession of the suit property by adducing adequate convincing evidence.

Hence issue no.3 is answered and disposed of against the plaintiff."

And finally the trial Court disposed of the case, by deciding issue no. 4 and 5.

Issue No. 4 and 5

"These two issues are taken up together for the sake of convenience and as the issues are co-related.

As the plaintiff has failed to establish his title, interest in the suit property, he is not entitled to get any decree of permanent injunction against the defendants. If the gift deed is the foundation of his title, such deed was not proved by adducing the evidence of the attesting witnesses, scribe etc. Apart from this even if it is assumed that plot no. 474 and plot no. 474/1801 are same and identical plot but from the description in Exhibit : 3, it reveals that plot no. 474 is having area of .38 dec. whereas the description mentioned in the schedule of the plaint shows that the area of the suit property is 27 dec.

Plaintiff has failed to establish his title and not entitled to get any decree of permanent injunction. Hence these two issues are answered and disposed of against the plaintiff.

*C.F. paid is correct.
Hence, it is*

Ordered

that the suit be and same is dismissed on contest without any cost.

***Sd/-
Civil Judge (Jr. Division)
1st Court, Krishnanagar, Nadia."***

- 5. In an appeal by the plaintiff,** the Learned Additional District Judge, 2nd Court, Nadia in T.A. 104 of 2010, held as follows :-

“.....It is the specific case of the plaintiff/appellant that he acquired the property from his grandmother, Ubbani Bewa, by way of deed of gift.

From the oral testimony of the plaintiff/appellant and from Ext. 3, I find that the deed was executed on 23.03.1967 and the deed of gift was accepted by his father on behalf of the plaintiff/appellant, as he was a minor. From ext. 2, L.R.R.O.R., it appears that the plaintiff/appellant has been possessing the property in suit. Record of Right carries with it presumption of possession, though rebuttable. Exhibit-1 shows that the plaintiff/appellant has been paying rent and taxes.

Thus, I feel no hesitation to hold that preponderance of probability is tilting in favour of the plaintiff/appellant. Since the plaintiff/appellant has been able to discharge his onus, now burden is shifted upon the defendant/respondents to establish that the suit property was owned by their grandfather and not Ubbani Bewa. After demise of their grandfather, Ubbani Bewa being a widow acquired her share along with her sons and daughters. Sadaruddin, their father also had his share in the property and after demise of their father, they along with their brother, plaintiff/appellant acquired ownership and possession.

Upon careful perusal of the oral testimony of D.W.1, I find that Ubbani Bewa has property in her name but she transferred the share in favour of Hekmat and Matleb Biswas. But, Hekmat Biswas as D.W. 1 stated that he has not filed those deeds in Court, which invites the Court to draw adverse presumption. The defendant/respondents failed to show that they have been possessing the suit property. In paragraph 6 of their written statement, they have admitted the execution of deed of gift.

Under such facts and circumstances, I am of the view that the Learned trial Court missed this factual matrix on record and I cannot be in one voice with the learned trial Court.

Since possession of the plaintiff/appellant has been established, he is entitled to an order of injunction to protect his possession. Consequently, the appeal succeeds.

Memo of appeal is sufficiently stamped.

Hence, it is

Ordered

that the Title Appeal be and the same is allowed on contest but without cost.

The impugned judgment and decree passed by the learned trial Court is set aside. Consequently, the suit is decreed. Plaintiff/appellant is entitled to a decree for permanent injunction. The defendant/respondents are hereby restrained perpetually from disturbing the possession of the plaintiff/appellant in respect of the suit property otherwise than due process of law.....

***Sd/-
Additional District Judge,
2nd Court, Nadia.”***

6. Hence the appeal by the Defendant/Respondent/Appellant on the following grounds :-

- i) The Learned First Appellant Court erred in law in decreeing the simple suit for permanent injunction without seeking declaration of title, particularly when issue of the title of the plaintiff is directly in issue of the suit and that issue had been answered and disposed of against the plaintiff/appellant/respondent.
- ii) In the present case, learned First Appellate Court did not appreciate the evidence of the parties independently and merely expressed the general opinion that in a case of suit for permanent injunction, the document of possession is enough for decreeing the suit.
- iii) That Learned First Appellate Court failed to appreciate the proposition of law that when a de-jure possession has to be established on the basis of the title to the property, **as in the case of vacant sites** and the issue of title directly arises for

consideration and in such situation mere suit for permanent injunction without seeking for declaration is not maintainable.

- iv) First Appellate Court did not consider the exhibit 3 in accordance with law.

7. The respondent/plaintiff has filed an application (CAN 5/2024) under **order 41 Rule 27 CPC** praying for adducing additional evidence being as follows :-

- “1) That the Learned Court of appeal below was pleased to set aside the judgment of the trial court by observing that Exhibit –1 shows that the plaintiff/appellant has been paying rates and taxes and Ext. 2, L.R.R.O.R. shows that the plaintiff has been possessing the property-in-suit and Ext.3, deed of gift was executed on 23.03.67 and the deed of gift was accepted by his father on behalf of the plaintiff as he was a minor and Learned Court Court-of-appeal below held that preponderance of probability is tilting in favour of the plaintiff and since the plaintiff has been able to discharge his onus now burden is shifted upon the defendant to establish that the suit property was owned by their grandfather and not Ubbani Bewa and Learned Court of appeal below came to a finding that from the oral testimony of DW1, it was found that Ubbani Bewa had property in her name but she transferred the share in favour of Hekmat and Matlab Biswas. But Hekmat Biswas, as DW1 stated that he has not filed those deeds in court which invites the court to draw adverse presumption. The defendant failed to show that they have been possessing the suit property.*
- 2) That the defendant admitted the execution of the deed of gift. The respondent states that the document sought to be adduced and/or produced would have vitiating effect on ultimate decision because wife of Siraj Mondal and her two daughters namely 1) Suratan Nesa Bewa 2) Sahanara Bibi and 3) Mirja Bibi all daughters of Sadaruddin Biswas filed a suit for partition and permanent injunction registered as T.S. No. 149 of 2013 against the appellants and the respondents happened*

to be the son of Sadar Uddin Biswas and said suit was dismissed on contest on 20.03.2018 by coming to a finding that present respondent established his 16 annas ownership over the suit property and the property is not a joint one and the plaintiff are not entitled to get a preliminary decree of partition in respect of the suit property. Earlier partition suit being T.S. No. 72 of 1977 is not connected with the property of the instant respondent. The respondent states that L.R. Appeal No. 124/14 was in the Learned Appellant Authority under Section 54 of the West Bengal land Reforms Act and order dated 14.01.2020 passed in Case No. 124/14 are required to be consideration while disposal of the appeal as an additional evidence along with the appeal on merits otherwise respondent will suffer irreparable loss and injury.”

8. Both parties have filed their Written Notes of Arguments.
9. **The Appellant** in the Second Appeal being the defendant before the trial Court and respondent before the First Appellate Court has stated as follows :-

- 1) That plaintiff and the defendants are siblings. The defendants categorically disputed the absolute ownership of Ubbani Bibi and the defendants also disputed the fact that she inherited the suit property from her father. The defendant raised serious title dispute of the donor of the plaintiff. The defendants further stated that Rabbani Biswas was the husband of the Ubbani Biswas and not the father. The Defendants categorically stated that the entire suit property was originally owned and possessed by their grandfather Rabbani Biswas who died intestate leaving behind widow Ubbani Bibi (alleged

donor), one son Sadaruddin Biswas (father of the plaintiff and the defendants) and the 4 daughters.

2) Ubbani Bibi, grandmother of the parties to the suit, **inherited two annas share over the entire suit property** and residuary portions devolved upon the father and paternal aunt of the parties to the suit as per the Mohammedan Succession Law. The plaintiff manufactured and procured the alleged Deed of Gift dated 23.03.1967 being EXHIBIT 3 and got transferred the entire suit property which is illegal and not binding upon the defendants.

10. It is further stated by the Appellant/Defendant that the plaintiffs title in a suit for injunction simpliciter with possession is not maintainable, in a case where *de jure* possession has to be established on the basis of title to the property, **as in the case of vacant site**, the issue of title is directly and substantially raised for consideration as without findings thereon, it will not be possible to decide the issue of possession.

11. The appellant has relied upon the following Judgments :-

1) Anathula Sudhakar vs P. Buchi Reddy (Dead) by LRS. and Ors., (2008) 4 SCC 594.

“Re: Question (i)

*The position in regard to suits for prohibitory injunction relating to immovable property, is as under:
(a) Where a cloud is raised over the 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 the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.

(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). 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 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.

(Paras 21, 14, 13, 15 and 16)”

2) Jharkhand State Housing Board vs Didar Singh and Anr.,

(2019) 17 SCC 692.

3) B.V. Nagesh and Anr. vs H. V. Sreenivasa Murthy, (2010)

13 SCC 530.

4) Union of India vs Ibrahim Uddin and Anr., (2012) 8 SCC

148.

12. The Respondents/Plaintiffs have stated as follows in their written arguments :-

- 1) That the Learned court of appeal below was pleased to set aside the judgment of the trial court by observing that Exhibit -1 shows that the plaintiff/appellant has been paying rates and taxes and Ext.2 L.R.R.O.R. shows that the plaintiff has been possessing the property-in-suit and Ext.3, deed of gift was executed on 23.03.67 and the deed of gift was accepted by his father on behalf of the plaintiff as he was a minor and Learned Court-of-appeal below held that preponderance of probability is tilting in favour of the plaintiff and since the plaintiff has been able to discharge his onus now burden is shifted upon the defendant to establish that the suit property was owned by their grandfather and not Ubbani Bewa and

Learned Court of appeal below came to a finding that from the oral testimony of DW1, it was found that Ubbani Bewa had property in her name but she transferred the share in favour of Hekmat and Matlab Biswas. But Hekmat Biswas, as DW1 stated that he has not filed those deeds in court which invites the court to draw adverse presumption. The defendant failed to show that they have been possessing the suit property.

- 2) In view of law laid down by the Apex Court in the case of ***Anathula Sudhakar (supra)*** and also taking into consideration of Ext.1, Ext.2 and Ext.3 and oral evidence of parties and documentary evidence it is crystal clear that the plaintiff respondent is in lawful possession and enjoyment of the suit schedule property. Learned First Appellate Court re-assessed the entire evidence on the touchstone of intrinsic probabilities viewed from any angle, the judgment and decree of the Learned 1st Appellate Court is not opposed to law, facts or probabilities/plaintiff respondent succeeded in establishing his title and proved that he is in lawful possession over suit property. Appellants/Defendants failed to establish that they are in lawful possession over the suit property and the appellants failed to substantiate their case by producing the case.

13. The Respondents/Plaintiffs have relied upon the following judgments :-

1) *Balvir Singh vs State of Uttarakhand*, 2023 SCC OnLine SC 1261.

“33. Section 106 of the Evidence Act, states as under:

“106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustration

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

2) *Anathula Sudhakar vs P. Buchi Reddy (Dead) by L.Rs. & Ors.*, AIR 2008 SC 2033.

“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.”

3) V. Ramachandra Ayyar and Anr. vs Ramalingam Chettiar and Anr., 1962 SCC OnLine SC 155.

4) T. Byregowda vs T. Mukunda, AIR 2024 Karnataka 83.

5) Mohinder Singh (now Deceased) vs Darshan Singh (Deceased), AIROnline 2023 P & H 908.

“16.The burden of proving the fact that the plot No.19 was part of the disputed property lied heavily on the shoulders of the respondent-defendant. But on perusal of evidence placed on record, it is revealed that the respondent-defendant had failed to discharge this onus by leading any sufficient, cogent, convincing and satisfactory evidence.....

.....Then coming to Ex.P-3 which is copy of jamabandi for the year 1982-83 pertaining to the disputed property, the present appellant-plaintiff is recorded to be owner as well as in possession of the disputed property as per the entries in this jamabandi. However, since the entries as made in these documents can be stated to be stray entries only as neither the jamabandis which were prior to this jamabandi nor the copies of subsequent jamabandis had been produced on record by the appellant to prove the authenticity of these entries, therefore, simply on the basis of these entries, no definite conclusion can be drawn

..... For the purpose of granting the relief of injunction, the appellant-plaintiff was required to establish his possession over the disputed property to the exclusion of the respondent-defendant. At the cost of repetition, it may be stated that the respondents failed to produce any convincing and reliable evidence on record to prove that he had purchased any disputed property or in possession of the same.....

.....In such circumstances, when the factum of possession of the appellant over the disputed property stood established from the material placed on record

.....the learned First Appellate Court had erred in declining the relief of injunction to the appellant.....”

6) State of Haryana vs Harnam Singh (dead) Thr. LRs. & Ors., 2022(1) Indian Civil Cases 549 (S.C.).

“A. Civil Procedure Code, 1908, Section 100 - Second appeal – Detailed factual enquiry is impermissible while hearing appeal u/S. 100 CPC.

(Para 7)”

14. In Second Appeal, the following points of law to be decided was framed:-

- 1)** Whether the learned lower appellate Court erred in law in decreeing the simple suit for permanent injunction without seeking declaration of title particularly when issue of the title of the plaintiff is directly in issue of the suit and that issue had been answered and disposed of against the plaintiff/appellant/respondent?
- 2)** Whether the learned lower appellate Court below came to an improper finding on scrutiny of the trial Court’s judgment read with evidence on record and as such, impugned judgment and decree requires to be set aside?
- 3)** Whether the learned lower appellate Court has committed gross mistake in law in decreeing the suit as well as the facts of the case thereby the judgment and decree passed by the learned appellate Court is nothing but miscarriage of justice?

15. All the said law points are taken up together for consideration as they are inter-connected.

16. The Supreme Court in *Kayalulla Parambath Moidu Haji Vs Namboodiyil Vinodan, in Civil Appeal Nos. 5575-5576 of 2021 (arising out of SLP (C) Nos. 9948-49 of 2020), decided on September 07, 2021*, held:-

“4. The claim of the appellant-plaintiff was resisted by the respondent-defendant by filing a written statement. It is the case of the respondent-defendant that the plaint schedule property is not identifiable from the description given in the plaint. It is his case that the property described in the plaint schedule and the property shown to the Advocate Commissioner is different. It is the case of the respondent defendant that the property to the extent of 52½ cents belonging to the respondent-defendant, despite not being included in the assignment deed of 1977, is being claimed by the appellant-plaintiff to be in his possession. It is his further case that the said property is also not part of the purchase certificate. It is the case of the respondent-defendant that the suit property never belonged to Kalariyullathil Paru and therefore, no right could be transferred in favour of the appellant-plaintiff by virtue of assignment deed dated 15 th January 1977. It is the specific case of the respondent defendant that the property as described in the plaint was never owned by the appellant-plaintiff or his predecessors.

8. *Shri P.N. Ravindran, learned Senior Counsel appearing on behalf of the appellant-plaintiff submitted that the High Court has grossly erred in setting aside the concurrent findings of fact recorded by the learned trial court as well as the learned Appellate Court. He submitted that on the basis of the report of the Advocate Commissioner, the learned trial court as well as the learned Appellate Court has found that the appellant plaintiff has successfully proved his possession over the suit property and therefore, have rightly decreed the suit and dismissed*

the appeal. The learned Senior Counsel, relying on the judgment of this Court in the case of **Anathula Sudhakar v. P. Buchi Reddy (dead) by LRs. and Others, (2008) 4 SCC 594**, would submit that since the suit was for injunction simpliciter, the issue of title was not directly and substantially in issue and therefore, the suit, as filed by the appellant-plaintiff, was very much maintainable. He submitted that the High Court has grossly erred in holding that the suit, as filed by the appellant-plaintiff, was not maintainable.

9. *Per contra*, Shri V. Chitambaresh, learned Senior Counsel appearing on behalf of the respondent-defendant submitted that even from the report of the Advocate Commissioner, it could be seen that the identification of the property was not beyond doubt. He submitted that the learned trial court as well as the learned Appellate Court had grossly erred in decreeing the suit inasmuch as it could not be said that the title of the appellant-plaintiff was clear. He also relied on the judgment of this Court in the case of **Anathula Sudhakar (supra)**.

10. The short question that falls for consideration before us is:

Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?

11. The issue is no more *res integra*. The position has been crystalised by this Court in the case of **Anathula Sudhakar (supra)** in paragraph 21, which read thus:

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the 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 the 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 [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). 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 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. *It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that 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.*

13. *No doubt, this Court has held that 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. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.*

18. *It could thus clearly be seen that this is not a case where the appellant-plaintiff can be said to have a clear title over the suit property or that there is no cloud on appellant-plaintiff's title over the suit property. There is a serious dispute between the appellant-plaintiff and respondent-defendant with regard not only to title over the suit property but also its identification, which cannot be decided unless the entire documentary as well as oral evidence is appreciated in a full-fledged trial.*

19. *We find that the present case would be covered by clause(b) of paragraph 21 of the judgment of this Court in Anathula Sudhakar (supra). We find that, in the present case, the question of de jure possession has to be established on the basis of the title over the*

property. Since the said property is a vacant site, the issue of title would directly and substantially arise for consideration, inasmuch as without the finding thereon, it will not be possible to decide the issue of possession. As observed in clause (c) of paragraph 21 of the judgment cited supra, 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 the suit for mere injunction. We do not find that the present case would fall in exception carved out in clause (d) in paragraph 21 of the judgment cited supra inasmuch as the matter involved cannot be said to be simple and straightforward wherein the Court would decide upon the issue regarding title, even in the suit for injunction.

20. It will also be relevant to refer to the following observations of this Court in the case of **Jharkhand State Housing Board v. Didar Singh and Another, (2019) 17 SCC 692:**

“11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.”

21. Another aspect which is required to be taken into consideration is that, in pursuance to the impugned judgment and order, the appellant-plaintiff has already amended the suit so as to claim a relief for declaration of title. A consequential amendment has also been made to the written statement by the respondent-defendant. In that view of the matter, it will be appropriate that the parties get their right adjudicated with regard to the declaration of title on

merits. We therefore find no reason to interfere with the impugned judgment and order of the High Court.

22. *The appeals are therefore dismissed. However, taking into consideration the fact that the suit is pending since 2003, we direct the learned trial court to try and decide the suit as expeditiously as possible and preferably within a period of one year from the date of this judgment. Pending application(s), if any, shall stand disposed of. No order as to costs.”*

17. In the present case, admittedly the suit property is a vacant site,

and as such **Para 19** of the Judgment in ***Kayalulla Parambath Moidu Haji Vs Namboodiyil Vinodan (Supra)*** becomes applicable in this case.

- a) The suit property is admittedly a vacant site.
- b) The Appellant/Defendant raised the issue of title before the trial Court, contending that the transferor/donor of the suit properly in favour of the Respondent/Plaintiff is not valid as the share transfer was more than the share that transferor/donee had.
- c) The parties are full blooded brothers.
- d) The transferor/donee is their grandmother, who allegedly had only 2 decimals in the suit land after the death of her husband and the grandfather of the parties herein.
- e) This dispute/issue raised led to the trial Court framing **issue no.3** as to the prima facie title of the Respondent/Plaintiff and then deciding against the Respondent /Plaintiff.

- f) The trial Court considered the L.R.R.O.R. and rent receipt filed by the plaintiff but held that no document was placed to substantiate the claim that Ubbani Bibi had absolute title in the total suit property.
- g) The Trial Court held that the plaintiff name is recorded in the L.R.R.O.R and he is praying rent/taxes to the Govt. but the record of right supports the claim of possession only and nothing else, more so not a declaration of right title and interest in the suit property.
- h) The Supreme Court in ***Kayalulla Parambath Moidu Haji Vs Namboodiyil Vinodan (Supra)***, held:-

“19. We find that the present case would be covered by clause (b) of paragraph 21 of the judgment of this Court in Anathula Sudhakar (supra). We find that, in the present case, the question of de jure possession has to be established on the basis of the title over the property. Since the said property is a vacant site, the issue of title would directly and substantially arise for consideration, inasmuch as without the finding thereon, it will not be possible to decide the issue of possession. As observed in clause (c) of paragraph 21 of the judgment cited supra, 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 the suit for mere injunction. We do not find that the present case would fall in exception carved out in clause (d) in paragraph 21 of the judgment cited supra inasmuch as the

matter involved cannot be said to be simple and straightforward wherein the Court would decide upon the issue regarding title, even in the suit for injunction.

22. The appeals are therefore dismissed. However, taking into consideration the fact that the suit is pending since 2003, we direct the learned trial court to try and decide the suit as expeditiously as possible and preferably within a period of one year from the date of this judgment. Pending application(s), if any, shall stand disposed of. No order as to costs."

18. Here in this case too, it is seen that:-

The Court of First Appeal disagreed with the trial Court, on the finding that the suit for permanent injunction was maintainable.

19. The appeal Court held that the suit for permanent injunction (simpliciter) to be maintainable inspite of the plaintiff only producing document of possession and their title as to suit property on the basis of gift deed being challenged on the ground that the transferor/donor did not have title/interest in the total property transferred, which **admittedly is a vacant land. There thus being a genuine challenge as to the title, this case is covered by Para 19 of judgment in *Kayalulla Parambath Moidu Haji Vs Namboodiyil Vinodan (Supra)*.**

20. Accordingly, the parties are relegated to the trial Court, on the judgment of the trial court and the judgment of the court of first appeal being set aside, as the present case involves complicated questions of fact and law relating to title.

- 21. The plaintiff shall amend the plaint making the same to be a comprehensive suit for declaration of title, being a suit for declaration of right, title, interest and possession and consequentially a relief for permanent injunction.**
- 22. A consequential amendment be made to the Written Statement** by the Appellant/Defendant.
- 23.** The trial Court shall decide the case expeditiously on merit as to the declaration of title and other consequential reliefs, including the relief for permanent injunction **preferably within a year** from the date of this order.
- 24. SA 87 of 2012 accordingly stands disposed of.**
- 25.** All connected applications, if any, stand disposed of.
- 26.** Interim order, if any, stands vacated.
- 27.** Copy of this judgment be sent to the learned First Appellate Court (learned Additional District Judge, 2nd Court, Nadia) and Trial Court (Civil Judge (Junior Division), 1st Court, Krishnanagar) at once.
- 28.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)