



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO. 189 OF 2018

APPELLANT : Suresh Namdeorao Wankhade,
ORI. PLTFF. ON R.A. Aged about 43 years, Occ.: Labour Work,
Resident of Shegaon, Ward No.1,
Amravati, Tq. and District Amravati

//VERSUS//

RESPONDENT : Smt. Meena w/o Arun Jayale (Patil),
ORI. DEFDT. ON R.A. Aged about 42 years, Occ.: Household,
resident of Urwashi Nagar, Behind
Shegaon, Near Swawalambi Nagar,
Amravati, Tq. and Distt. Amravati.

Mr. C.S. Samudra, Advocate for the appellant.

Mr. V.P. Kaslikar, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 8th FEBRUARY, 2024

ORAL JUDGMENT

1. Heard.

2. **ADMIT.** Taken up for final disposal forthwith by the
consent of learned advocates for the respective parties

3. In this second appeal, the challenge is to the judgment and decree, dated 24.11.2017, passed by the learned District Judge-8 Amaravati, whereby the learned District Judge dismissed the appeal filed by the appellant-plaintiff and confirmed the judgment and decree dated 10.04.2012, passed by the Trial Court, whereby the suit filed by the appellant-plaintiff seeking a declaration, permanent injunction and possession of a portion of the suit premises was dismissed.

4. In this second appeal, the notice was issued on the following two substantial questions of law:

“1. Whether the findings rendered by the Courts below on the question of ownership and possession of the appellant in the suit property, were perverse in the face of registered sale deed dated 15.05.2004 (Exh.51) placed on record?

2. What would be the effect of law laid down by the Hon’ble Supreme Court in case of *Anthula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and others (2008) 4 Supreme Court Cases 594*, on the facts and circumstances of the present case and in that light, whether the concurrent judgments and orders passed by the Courts

below are sustainable?

5. The facts leading to the above substantial questions of law need to be stated in brief.

The appellant shall be referred to as the plaintiff and respondent shall be referred as the defendant in this judgment. Plaintiff claims to be the owner and in possession of the suit plot, described in paragraph No.1 of the plaint, on the basis of the sale deed dated 15.05.2004. According to the plaintiff, the late husband of the defendant was the owner of the suit plot. The late husband of the defendant sold the suit plot to him by sale deed dated 15.05.2004, on acceptance of consideration of Rs.77,000/- (Rupees Seventy Seven Thousand Only). The plaintiff further stated that at the time of his visit to the suit plot, he found that a portion of the plot shown by the letters E, F, G, H, E in the plaint map was encroached by erecting permanent construction. The plaintiff asserted his title as well as the wrongful act of the encroachment of defendant's by his notice dated 05.01.2006 and called upon the defendant to remove the encroachment. The defendant, by her reply dated 10.02.2006, denied the execution of the sale deed as well as the alleged encroachment over the plot. The defendant contended that she has been in continuous possession of the suit property. The plaintiff, therefore, filed the suit for declaration, permanent

injunction and possession of the portion of the plot.

6. The defendant opposed the suit. According to the defendant, the plaintiff was not in possession of the suit plot. According to the defendant, the alleged sale deed was a sham and bogus. The sale deed was not executed by her husband. On the date of the alleged execution of the sale deed, her husband was admitted in the General Hospital, Amravati. In short, the defendant denied the title of the plaintiff over the suit plot by challenging the sale deed.

7. In support of their rival contentions, parties adduced the evidence before the Trial Court. Learned Judge of the Trial Court on analysis of the evidence recorded the finding on the principal issue against the plaintiff and ultimately dismissed the suit. The appeal filed by the plaintiff met with same fate. The Appellate Court on re-appreciation of the evidence found that claim of the plaintiff was without substance and ultimately dismissed the appeal. The Courts below have recorded a concurrent finding of fact on threadbare analysis of the evidence against the plaintiff. In this Second Appeal, the substantial questions, as above, have been framed.

8. I have heard Mr. C.S. Samudra, learned Advocate for the plaintiff and Mr. Y.P. Kaslikar, learned Advocate for the defendant. Perused the record and proceedings.

9. Learned Advocate for the plaintiff submitted that in view of the registered sale deed dated 15.05.2004, the presumption of proper execution of the sale deed in respect of suit plot is in favour of the plaintiff. Learned Advocate submitted that in view of this registered sale deed and the fact that it was categorically mentioned in the sale deed that possession of the suit plot was handed over to the plaintiff on the date of execution of the sale deed, it was not necessary for the plaintiff to file a suit seeking a declaration of his title on the basis of the sale deed. Learned Advocate for the plaintiff submitted that in the backdrop of the registered sale deed Exh.51 in favour of the plaintiff, the defendant was duty bound to file a suit seeking a declaration that the said sale deed was fraudulent and as such, not binding on her. Learned Advocate submitted that the reliance placed in support of the finding by the Courts below on the decision in the case of *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and others (2008) 4 SCC 594* was misconceived. Learned Advocate, therefore, submitted that in the teeth of the concrete evidence as to the possession of the plaintiff over the suit plot, it was not necessary to claim the relief of declaration of his title to the plot.

Learned Advocate submitted that the Courts below have failed to properly appreciate the evidence on record and as such, on this count, the judgments are perverse.

10. Learned Advocate for the defendant submitted that, legality and validity of the sale deed and as such, the title of the plaintiff over the suit plot was questioned by the defendant vide reply dated 10.02.2006 Exh.41 given to the notice of the plaintiff dated 05.01.2006, i.e. Exh.38. Learned Advocate submitted that in the year 2006 itself, the defendant challenged the possession of suit plot and title of the plaintiff over the suit plot, but the plaintiff filed the suit in question on 02.02.2009, for possession of portion of the plot. Learned Advocate submitted that on the basis of the proper analysis of the evidence, the Courts below have concurrently held that the execution of the alleged sale deed was surrounded by doubtful circumstances. Learned Advocate submitted that the plaintiff has miserably failed to prove his possession over the suit plot on the basis of the alleged sale deed. Learned Advocate pointed out that it has been proved by leading cogent evidence by the defendant that on the date of the alleged execution of the sale deed, her deceased husband was admitted in the General Hospital, Amravati. Learned Advocate submitted that both the Courts below, in the teeth of this evidence, have properly appreciated the issue of the

presumptive value of the alleged registered sale deed. Learned Advocate submitted that no perversity has been committed by the Courts below in the process of appreciation of evidence. Learned Advocate pointed out that the decision in the case of *Anthula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and others (2008) 4 SCC 594* was rightly held applicable to the facts of this case.

11. At the outset it needs to be stated that the registered sale deed has presumptive value. It is necessary to state in this context that this presumption can be rebutted by leading evidence. The presumption is thus not an absolute presumption. At the most, it could be said that the party relying on the registered document could be said to have discharged the initial onus of proof as to the execution of the document. However, if the other side is able to establish that execution of registered sale deed was surrounded by suspicious circumstances by leading cogent evidence and demonstrates that it was not a legal document, then the onus shifts on the plaintiff and the plaintiff is required to establish, on the basis of the concrete and cogent evidence, the legality and validity of the sale deed. In this context, the relevant facts brought on record need brief narration. The sale deed was registered on 15.05.2004. It has been proved that the deceased husband, who, according to the plaintiff, executed the sale deed in his favour, was admitted in the

General Hospital, Amravati, on 07.05.2004 and he was discharged from the hospital on 17.05.2004. He died on 12.05.2005. The defendant has examined Dr. Manish Tulsidas Rathi, Medical Officer, as DW-2. Exh. 75 is the discharge card. Exh.83 is an extract of the admission register from the hospital. Exh.84 is the duty list of the medical officers and particularly of DW-2, on the relevant date. On the basis of the evidence of DW-2, the defendant has established that her husband was admitted in the General Hospital from 07.05.2004 to 17.05.2004. The sale deed dated 15.05.2004 was allegedly executed and registered during this period. PW-2, examined by the plaintiff, is the attesting witness. The evidence of the attesting witness was found doubtful by the Courts below on the basis of the admissions given by him. Undisputedly, the document was registered after 5.30 p.m. on 15.05.2004. PW-2, the attesting witness, has stated that he went to the office of Registrar at 12.00 p.m. and returned after 4 to 5 hours. He has stated that the deceased visited the Sub Registrar Office and signed the sale deed. He has stated that except for this, he did not know anything. The possibility of the deceased visiting the Sub Registrar Office cannot be ruled out. However, in order to fortify such a possibility, there must be evidence.

12. The deceased husband of the defendant had sustained severe injury to his leg. According to the defendant, he was unable to move. In the ordinary circumstances, the patient admitted in the hospital is not allowed to leave the hospital in this manner without the permission of the treating doctor. Even if the patient is allowed to move out of the hospital after admission with the consent of the treating doctor then the necessary entry is made in the record. It is not the case of the plaintiff that any such permission was obtained and entry was made in the hospital register. It needs to be stated at this stage that for the registration of documents the Registrar can be requested to attend any place on payment of the requisite fees. It is not the case of the plaintiff that Sub Registrar was taken to the hospital where the deceased husband of the defendant was admitted, for the purpose of execution of document. The Courts below, on appreciation of the entire evidence have recorded a finding that the case of the plaintiff with regard to the execution of the sale deed and registration of the sale deed on 15.05.2004 is surrounded by a doubtful circumstances. On going through the record, I do not see any perversity or mistake in the findings of fact recorded by the Courts below on this point. The entire evidence has been analyzed in a threadbare manner. The Courts below, on threadbare analysis of the evidence, found that the presumption in favour of the sale deed of its due registration has been fully rebutted.

13. The next important issue is with regard to the defect in the suit filed by the plaintiff. The Courts below have concurrently held that the plaintiff ought to have filed the suit seeking a declaration of his title on the basis of the sale deed. The Courts below have held that the suit simpliciter for injunction and the declaration of the nature sought for was not properly framed. The Courts below, in support of this conclusion have placed reliance on the decision in the case of *Anthula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and others (2008) 4 SCC 594*.

14. Learned Advocate for the plaintiff has relied upon this decision to make good his submission that reliance placed on this decision to nonsuit the plaintiff was not proper. In order to address this issue in a proper perspective, it would be necessary to consider the principles laid down in this decision. The principles are as follows:-

“(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 Plaintiffs 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 Plaintiffs 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 their [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 pleading 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.”

15. In my view, the First Appellate Court was fully justified in the teeth of the facts and evidence to place implicit reliance on this decision to dismiss the appeal.

16. It is the case of the plaintiff that a portion of the suit plot shown by letters E, F, G, H and E was encroached by making construction by the defendant. It is the case of the plaintiff, that the remaining plot continued to be in his possession. It needs to be stated at this stage that by reply dated 10.02.2006 Exh. 41 the defendant has denied the possession as well as title of the plaintiff over the suit plot. The defendant has categorically stated in the reply that the sale deed was bogus *inasmuch* as her husband was ill during this time and was not in a position to move. The defendant has independently proved this fact. The Courts below have held that the evidence adduced by the plaintiff, coupled with his conduct, is not sufficient to prove his possession over the suit plot. It needs to be stated that a grievance about the encroachment was made without stating the exact date of the construction. It is evident that the construction on this portion of the plot was permanent. This aspect has been taken into consideration by the Courts below to reject the contention of the plaintiff with regard to his possession over the property. In my view, the Courts below have properly appreciated the evidence to arrive at this conclusion. In the facts and circumstances, the findings of fact could not be said to be perverse. There has been challenge to the title of the plaintiff since the beginning by the defendant. Therefore, the plaintiff was required to file a composite suit seeking a declaration of his title. In view of this,

I conclude that there is no substance in the appeal. As such, I answer question No.1 in the negative and question No.2 in the affirmative.

17. As such, the appeal fails and it is dismissed accordingly.

18. Second Appeal stands disposed of. No order as to costs.
Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

manisha