



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.341 OF 2025**

Ashok Natha Bhore ... Appellant
versus
Chandrakant Sampatrao Matekar and Ors. ... Respondents

Mr. Mayank R. Tripathi for Appellant.

CORAM: N.J.JAMADAR, J.

DATE : 13 JUNE 2025

ORAL ORDER :

1. Heard the learned Counsel for the Appellant.
2. The challenge in this Second Appeal is to the judgment and decree dated 20 March 2025 passed by the learned District Judge, Islampur, in Regular Civil Appeal No.45 of 2013, whereby the learned District Judge allowed the appeal preferred by the Respondent Nos.1 and 2 – Plaintiffs by setting aside the judgment and decree passed by the Trial Court in RCS No.59 of 2000, thereby dismissing the suit instituted by the Respondents-Plaintiffs for injunction.
3. Learned Counsel for the Appellant submitted that the Respondents-Plaintiffs failed to prove the identity of the property which the Respondents-Plaintiffs had purportedly purchased from the Defendant No.1 under a registered Sale Deed dated 18 August 1998. The Trial Court has, therefore, justifiably dismissed the suit for injunction as the property allegedly purchased

by the Plaintiffs was not identifiable. Learned District Judge was not justified in upsetting the finding of facts recorded by the Trial Court on the basis of objective material.

4. It was further submitted that the suit for injunction simplicitor was not maintainable as the Defendant No.1 – vendor of the Plaintiffs and the Appellant – Defendant No.2 had disputed the very factum of execution of the registered Sale Deed, and, there was serious cloud over the title of the Plaintiffs. It was incumbent upon the Plaintiffs to seek declaration and a suit for injunction simplicitor was not maintainable.

5. To buttress this submission, learned Counsel for the Appellant placed reliance on the judgment of the Supreme Court in the case of T.V.Ramakrishna Reddy V/s. M. Mallappa and Anr.¹.

6. Learned District Judge was persuaded to interfere with the judgment and decree passed by the Trial Court as in the view of the learned District Judge, the suit property was adequately described in the Sale Deed, and, thus, identifiable. Secondly, an adverse inference was drawn against Defendant No.1 – vendor of the Plaintiffs and Defendant No.2 for not entering into the witness box in support of the defence that the sale deed was not executed in favour of the Plaintiffs.

7. On the aspect of the description of the property, I have perused the

1 (2021) 13 SCC 135

recitals in the sale deed. Indeed, there is adequate description of the suit property which was sold under the sale deed executed in favour of the Plaintiffs. Learned District Judge was, thus, justified in returning a finding that the Plaintiffs succeeded in establishing the identity of the suit property.

8. On the aspect of the tenability of the suit for injunction simplicitor without seeking declaration, the submission on behalf of the Appellant does not merit countenance as the Plaintiffs had acquired title on the strength of a registered instrument and the names of the Plaintiffs were mutated to the record of rights of the suit property.

9. It is not a mere denial of title which constitutes a cloud on the title warranting institution of a suit for declaration of title. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of Anathula Sudhakar V/s. P. Buchi Reddy (dead) by LRs and Ors.² which was followed by the Supreme Court in the case of T.V.Ramakrishna Reddy (Supra). In paragraph No.14 of the decision in the case of Anathula Sudhakar (Supra), the Supreme Court has clarified the position as regards the circumstances in which it can be said that there is a cloud on the title of the Plaintiff, as under :

“14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a

² (2008) 4 SCC 594

cloud on the title of plaintiff to the property. 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. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

10. In the case at hand, it was a bald denial on the part of Defendant No.1 that the sale deed was not executed in favour of the Plaintiffs. Learned

District Judge was within his rights in drawing an inference against the Defendant No.1 – the vendor of the Appellant, for not entering into witness box, to substantiate the said defence.

11. In the circumstances of the case, I do not find that any substantial question of law arises for determination.

12. Hence, the Second Appeal stands dismissed.

(N.J.JAMADAR, J.)