

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 700 OF 2023

Chandrakant Rangrao Kadam and Ors.

..Applicants
(Ori. Defendants)

Versus

Shri Vijay Namdev Powar and Ors.

...Respondents
(Ori. Plaintiffs)

Mr. Anand Patil, for the applicants.

Mr. Prajakt Arjunwadkar with Mr. Raj Satam, for the respondent nos.
1,2 and 4.

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N. J. JAMADAR, J.

RESERVED ON :

17th FEBRUARY 2025

PRONOUNCED ON:

7th May 2025

ORDER:

1. This Revision Application is directed against an order passed by the learned Civil Judge on 21st September 2023, whereby an application preferred by the applicants/defendants for rejection of the plaint (Exhibit-29) under the provisions of order VII Rule 11 (a) and (d) of Code of Civil Procedure, 1908 (the Code) came to be rejected.

2. Shorn of unnecessary details, the background facts can be stated as under:

2.1 The respondents/plaintiffs instituted a suit for perpetual injunction to restrain the petitioners / defendants from creating from disclosing, alienating

or otherwise creating any third party rights in land bearing Gat No. 465 /A situated at Kasba Bawada, Kolhapur (the suit land), with the assertion that, the suit land is ancestral property of the plaintiffs and defendants and there has not been partition by metes and bounds.

2.2 Rangrao was the common ancestor. Rangrao passed away on 21st August 1980, leaving behind three sons namely, Baburao, the predecessor in title of defendant nos. 5 and 6, Pandurang, the predecessor in title of defendant nos. 7, 8 and 9, Chandrakant defendant no. 4 and a daughter; Mangal. Defendant Nos. 2,3 and 4 are the wife and sons of defendant no.1.

2.3 Mangal passed away on 1st December 2018. Mangal was the wife of plaintiff no. 2 and mother of plaintiff no. 1, 3 and 4.

2.4. The plaintiffs assert that, during the lifetime of Mangal she was in possession of the suit land as a co-sharer. After the demise of Mangal, the plaintiffs have been in cultivation and possession of the suit land along with the defendants. However, as the price of the land has substantially increased due to its inclusion in

urban area, the defendants have started to sell the suit land. A public notice was published in the newspaper on 6th September 2021. Even few days prior to the institution of the suit, the defendants entered into negotiations with the prospective purchaser.

2.5 The plaintiffs called upon the defendants to partition the suit land and allot their share therein. However, the defendants refuted the plaintiffs claim. Hence, the plaintiffs were constrained to institute a suit to restrain the defendants from alienating or otherwise creating any third party interest in the suit land.

3. Defendants filed an application for rejection of the plaint on the ground that, the defendants have categorically denied the interest of Mangal, the predecessor in title of the plaintiffs in the suit land. Dispute about the title of the plaintiffs in the suit land has arisen. Yet, the plaintiffs have instituted a suit for injunction simpliciter without seeking any declaration or partition of the suit land. Thus, a suit for injunction simpliciter is not tenable. The defendants further contend that late Mangal had never asserted her interest in the suit land during the lifetime of Rangrao and even after his demise. In the year 1992, there was a partition amongst the sons of Rangrao, namely, Baburao, Pandurang and Chandrakant, the defendant no. 1. Neither late Mangal,

during her lifetime, nor the plaintiffs, after the demise of Mangal, have ever laid any claim over the suit land. Nor sought the partition. Therefore, the plaint deserved to be rejected.

4. The plaintiffs resisted the application.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that a co-owner can institute a suit for injunction simpliciter to protect its co-ownership rights. Even the plaintiffs can amend the plaint and seek further reliefs. As the plaint did disclose a cause of action and the suit did not appear to be barred by any law, the learned Civil Judge rejected the application

6. Mr. Anand Patil, learned counsel for the applicant, submitted that the learned Civil Judge completely misdirected himself in rejecting the application for rejection of the plaint on the premise that the plaintiffs could amend the plaint at any time. The learned Civil Judge did not examine the core issue raised by the defendants about the tenability of the suit for injunction simpliciter where the title of the plaintiffs was under a cloud. Banking heavily upon the decision of the Supreme court in the case of ***Anathula Sudhakar Vs. P Buchi Reddy (Dead) By Lrs and Ors.***¹, Mr Patil submitted that, the suit in the present form, where plaintiffs have sought mere injunction sans any prayer for declaration or partition, is clearly not maintainable.

¹(2008) 4 SCC 594

7. In opposition to this, Mr. Arjunwadkar, the learned counsel for the respondents, would submit that, the fact that late Mangal had an interest in the suit land can hardly be contested. The plaintiff nos. 1, 3 and 4 who are the children of late Mangal, are entitled to succeed to the estate of late Mangal under Section 15 of the Hindu Succession Act, 1956. Therefore, the mere denial of title of the plaintiffs by the defendants, according to Mr. Arjunwadkar, would not necessarily lead to an inference that there is a cloud on the title of the plaintiffs, which would warrant them to seek the relief of declaration or partition.

8. Mr. Arjunwadkar, further submitted that the reliance on the judgment in the case of *Anathula Sudhakar* (supra) does not advance the cause of the defendants. It is not imperative that, in every case, where the defendants raises a dispute about the title of the plaintiff, the latter, must seek declaratory reliefs. Reliance was placed on a judgment of the Supreme Court in the case of *K.M. Krishna Reddy vs Vinod Reddy and Anr²*, wherein it was enunciated that when in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff.

9. I have given careful consideration to the submissions canvassed across the bar. At the outset, it is necessary to note that while considering a prayer for rejection of the plaint either on account of there being no cause of action (clause a) or on account of the suit being barred by any law (clause d) the Court is enjoined to read the averments in the plaint and the documents annexed with it.

10. At the stage of consideration from the point of view of the rejection of the plaint, the pleas taken by the defendants in the written statement or the application for rejection of the plaint on merits, would be irrelevant, and cannot be adverted to, or taken into consideration. It is only on the basis of the meaningful reading of the plaint along with the documents annexed thereto, the Court has to find out whether the plaint discloses a cause of action or reliefs therein are barred by any law, including the law of limitation. (*Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Ors.*)³

11. It is equally well settled that, the bar of law is not restricted to statutory provisions. The bar of law envisaged by Clause (d) of the Order VII Rule 11 is elastic enough to include a bar to the institution of suit by the law declared by the Supreme Court. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of *Bhargavi Constrution Vs. Kothakapu Muthyam Reddy and*

3(2020) 7 SCC 366

*Ors.*⁴, wherein it was enunciated that the term “barred by any law” occurring in clause(d) of Rule 11 of Order 7 of the Code, includes not only codified law but the law declared by the judicial precedents.

12. In the instant case, the defendants had made an endeavour to seek rejection of the plaint on two grounds. First, the plaint does not disclose a cause of action. Second, a suit for injunction simpliciter without seeking a relief of declaration or partition was not tenable. The first ground need not detain the court. Incontrovertibly, late Mangal was the daughter of Rangrao and sister of defendant no. 1 and late Baburao and Pandurang, the predecessors in title of defendant nos. 5 and 6 and 7 to 9, respectively.

13. In view of the provisions contained in section 15 of the Hindu Succession Act, the plaintiff no. 1, 3 and 4, being the children of late Mangal, were entitled to succeed to the estate of late Mangal. Thus, though the aspect of entitlement of plaintiff no. 2 Narayan can be put in contest, yet, it would be difficult to accede to the submission that the plaintiff no. 1, 3 and 4 had no cause of action.

⁴(2017) SCC online SC 1053

14. The thrust of the submission of Mr. Patil was premised on the pronouncement of the Supreme Court in the case of *Anathula Sudhakar* (supra). In the said case, the Supreme Court elaborately considered the scope of the suit for prohibitory injunction in different situations. The supreme Court culled out the principles 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 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”.

15. The crucial issue is, when it can be said that there is a cloud on the title of the plaintiffs. The Supreme Court, in the aforesaid judgment, has clarified that a prayer for declaration will be necessary only if the denial of title by the defendants or challenge to the plaintiff's

title raises a cloud on the title of the plaintiff to the property. A cloud is set 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.

16. Clause (d) of Para 21 also makes the position abundantly clear. The Supreme Court has enunciated in clear and explicit terms 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 straight forward, the court may decide upon the issue regarding title, even in a suit 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.

17. The aforesaid enunciation of law would thus indicate that, while considering the bar for institution of suit for injunction simpliciter, on the ground that the plaintiff has not sought declaration of title, the Court has to read the averments in the plaint in a meaningful manner to discern the true nature of the plaintiff's claim and the relief sought by the plaintiff. If the question of title becomes subsidiary in the sense that there are necessary pleadings regarding the title and, by and large, the claim appears incontestable, either on account of unimpeachable

document or a right of succession, the plaintiff cannot be non-suited on the ground that the plaintiff has not sought a declaration as to title.

18. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of **Vishram Alias Pradas Govekar and Others Vs. Sudesh Govekar (Dead) by legal representative and others, 2017(11) Supreme Court Cases 345**, wherein the plaintiff had sought the relief of mandatory injunction seeking demolition of the construction carried out by the defendant on the suit property with the allegation that it was illegally put up by the defendant on the plaintiff's land. In the said case, the tenability of the suit was challenged on the ground that the plaintiffs were not in possession of the suit property. The Supreme Court, distinguishing the judgment in the case of **Anathula Sudhakar, (supra)**, held that the assertion that the defendants have carried out illegal construction did not imply that the plaintiff admitted the possession of the defendant over the suit land and, therefore, the suit was not untenable in the absence of any relief of possession.

19. In the case of **K.M. Krishna Reddy** (Supra) where the respondent had set up an adverse title, after referring to the aforesaid pronouncement in the case of **Anathula Sudhakar**(supra), the Supreme Court held that it was not necessary to sue for declaration. The

observations, in paragraph No. 16 of the judgment, are material and, hence, extracted below:

“16. It is obvious that there was no issue involved about the title of the plaintiff and his father. It is not as if the respondents had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant, which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the case at hand, it was not necessary for the appellant to claim a declaration of ownership. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable”.

20. In the case of ***T.V. Ramakrishna Reddy Vs. M. Mallappa and Anr⁵***, the supreme Court reiterated the aforesaid position in the following words:

“10. 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

5(Civil Appeal No. 5577 of 2021)

to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

11. 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”.

21. On the aforesaid touchstone, reverting to the facts of the case, as noted above, the relationship between the parties is incontrovertible. Late Mangal, the mother of the plaintiff nos. 1,2 and 4 was entitled to succeed to the estate of Rangrao. Evidently, the defendants claimed that there was a partition amongst sons of Rangrao, after the demise of the Rangrao, and mutation entries were effected. Whether the said partition would fall within the ambit of the proviso to section 6 of Hindu Succession Act, 1956, as amended by the Amendment Act, 2005 would be a matter for adjudication at the trial.

22. A useful reference can be made to the decision of the Supreme Court in the case of ***Vineeta Sharma V/s. Rakesh Sharma and Ors***⁶ wherein it was enunciated that the provision contained in substituted Section 6 of the Hindu Succession Act,, 1956 confers status

⁶ (AIR 2020 SC 3717)

of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities. Since the coparcenary is by birth, it is not necessary that father coparcener should be living as on 9th September 2005. As in the case at hand a plea of prior partition is taken by the defendants/applicants, it is would necessary to extract the conclusion in Para No. 137.5

137.5 In view of the rigor of provisions of Explanation to [Section 6\(5\)](#) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the [Registration Act, 1908](#) or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

23. In these circumstances, when the defendants have come up with a case of prior partition of the suit land, the challenge to the suit on ground that the suit for injunction simpliciter is not maintainable, does not merit countenance. The learned Civil judge was, thus, justified in rejecting the application for rejection of the plaint. Therefore, no interference is warranted with the impugned order in exercise of revisional jurisdiction.

24. The application, thus, stands rejected.
- No costs.

[N. J. JAMADAR, J.]