



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-136-1994
RSA-137-1994
Reserved on: 06.11.2025
Pronounced on: 28.01.2026

1. RSA-136-1994

GURNAM SINGH AND OTHERS

....Appellants

Versus

BARA SINGH AND OTHERS

...Respondents

2. RSA-137-1994

GURNAM SINGH AND OTHERS

....Appellants

Versus

KARTAR SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Vikas Singh, Senior Advocate
Ms. Anamika Sharma, Advocate
for appellants.

Mr. N.K. Verma, Advocate
Mr. C.K. Jaugra, Advocate
for respondents.

Parmod Goyal, J.

Appellants/defendants have preferred present appeals being aggrieved by impugned judgment and decree dated 16.12.1993, whereby first appeal preferred by respondents/plaintiffs against judgment and decree dated 16.05.1992, passed by learned Sub Judge, First Class, Amritsar was allowed.

2. Respondents/plaintiffs had filed Civil Suit No.106 of 1983 seeking declaration and permanent injunction, that they are owners in

possession of land measuring 58 kanals 19 marlas on the basis of exchange/partition deed dated 22.07.1970 with proforma respondent/defendant No.1-Ajit Singh.

3. On the other hand, appellants/defendants had filed cross-suit bearing Civil Suit No.105 of 1985, whereby appellants/defendants (being plaintiffs in Civil Suit No.105 of 1985), claimed declaration that they are owners of land measuring 15 kanals 16 marlas vide sale deed dated 06.09.1979 out of land measuring 58 kanals 19 marlas claimed by respondents/plaintiffs (defendants in Civil Suit No.105 of 1985). They had also sought possession for the suit property on the basis of sale deed in their favour.

4. Both the suits were consolidated, tried and disposed of by a common judgment. The suit preferred by respondents/plaintiffs bearing Civil Suit No.106 of 1983 was dismissed, whereas suit preferred by appellants/defendants bearing Civil Suit No.105 of 1985 was decreed vide judgment and decree dated 16.05.1992, passed by Sub Judge, First Class, Amritsar. Aggrieved by judgment and decree dated 16.05.1992, respondents/plaintiffs (also defendants in Civil Suit No.105 of 1985) filed two appeals bearing Civil Appeals No.24 and 25 of 1992. Both the appeals were again disposed of by common judgment and decree dated 16.12.1993. Appeal No.24 of 1992 arising from Civil Suit No.106 of 1983 preferred by respondents/plaintiffs was allowed and Civil Suit No.106 of 1983 preferred by respondents/plaintiffs was allowed. Similarly, Civil Appeal No.25 of 1992 was also allowed and suit preferred by present appellants/defendants i.e. Civil Suit No.105 of 1985 was dismissed.

5. Respondents/plaintiffs in the present case had sought

declaration that they are owner in possession of land measuring 58 kanals 19 marlas fully described in the plaint, on the basis of writing dated 22.07.1970, whereby property between Kartar Singh and Ajit Singh was partitioned and exchanged. In addition to claiming their right on the basis of exchange deed dated 22.07.1970, respondents/plaintiffs had also claimed adverse possession over the suit land. Respondents/plaintiffs claimed ownership over land measuring 58 kanals 19 marlas, which includes 15 kanals 16 marlas comprised in Khasra No.185//16/1 (4-16), 16/2 (3-4) and 186//20 (7-16) which proforma defendant-Ajit Singh had sold to appellants/defendants vide sale deed dated 06.09.1979. It was the case of respondents/plaintiffs that land measuring 15 kanals 16 marlas allegedly sold by Ajit Singh in favour of appellants/defendants stood exchanged on 22.07.1970 and stood vested with respondents/plaintiffs. Apart from this, respondents/plaintiffs have also claimed that since they are in possession of suit property for more than 12 years and their possession has been open and hostile for more than 12 years, they have become owners of the suit property by adverse possession also.

6. The contentions raised by respondents/plaintiffs were contested by appellants/defendants claiming to be *bonafide* purchasers. They had challenged the writing dated 22.07.1970 stating the same being forged and fabricated and also denied the case of respondents/plaintiffs on the basis of adverse possession. They also asserted that the claim of plaintiffs/respondents regarding ownership on the basis of alleged exchange deed dated 22.07.1970 cannot be raised in the suit preferred by plaintiffs/respondents being barred by *res judicata* as this issue was specifically raised and decided in previous suit bearing No.169 of 1980 titled as 'Kartar Singh & Anr. Vs. Ajit Singh & Ors.', decided vide judgment and decree dated

09.06.1982 by the Court of learned Sub Judge, First Class, Amritsar vide which claim of respondents/plaintiffs on the basis of exchange deed dated 22.07.1970 was rejected. That the said judgment and decree dated 09.06.1982 has since attained finality as subsequent appeal bearing No.84 of 1982 preferred by plaintiffs/appellants before learned First Appellate Court was also dismissed vide judgment and decree dated 10.09.1983 and judgment and decree dated 10.09.1983 has attained finality between the parties. Therefore, present claim preferred by respondents/plaintiffs on the basis of exchange deed dated 22.07.1970 is hit by principle of *res judicata*. It was further asserted that no right of ownership had devolved upon respondents/plaintiffs as possession of respondents/plaintiffs had never been open, hostile and uninterrupted for more than 12 years. That as per own case of respondents/plaintiffs they came in possession of suit land on the basis of exchange deed dated 22.07.1970. The fact that Ajit Singh predecessor of appellants/defendants had sold the suit land on 06.09.1979 and the fact that respondents/plaintiffs had already filed their first suit seeking permanent injunction on the basis of exchange deed dated 22.07.1970 on 30.05.1980, claiming that Ajit Singh as well as present appellants/defendants are interfering in the possession of plaintiffs/respondents and same was dismissed on 09.06.1982 goes to show that the possession of respondents/plaintiffs was neither open nor hostile for more than 12 years. Ajit Singh has been asserting his right of ownership and had sold the land in 1979 and since then, appellants/defendants are claiming possession as well as ownership over the suit property. Therefore, respondents/plaintiffs are not entitled to declaration that they have become owners of suit land.

7. Apart from above noted assertions, since the Court of first

instance after going through evidence of respondents/plaintiffs had concluded that exchange deed dated 22.07.1970 has not been proved and could not have been taken into consideration as it was not registered and the said finding was set aside by learned Appellate Court, therefore, validity of exchange deed dated 22.07.1970 was contested.

8. On one hand, learned counsel for appellants/defendants has argued that learned Appellate Court has erred in setting aside well-reasoned judgment given by Court of first instance, without there being any legal basis as the claim of respondents/plaintiffs already stood adjudicated between the parties and has attained finality and, therefore, raising the same issue in the present suit is barred by principle of *res judicata*. He further argued that in view of the fact that Ajit Singh had been asserting his ownership rights since 1979 by selling the suit land to appellants/defendants and since by own case of respondents/plaintiffs, the possession as well as ownership is being contested since 1980, prior to lapse of 12 years, no case of adverse possession is made out. Learned counsel for appellants/defendants has also challenged validity of exchange deed as well as its applicability. Learned counsel for appellants/defendants has placed reliance upon the following judgment:-

(i). **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs & Ors.**, 2008 (2) RCR (Civil) 879.

9. Learned counsel for respondents/plaintiffs, on the other hand, has asserted that principle of *res judicata* would not be applicable in the present case as in the previous suit declaration was not sought and same was a suit for permanent injunction. He further argued that exchange deed dated 22.07.1970 has rightly been accepted by learned Appellate Court. It is

argued that in State of Punjab oral exchange is also a valid exchange and even in absence of writing, exchange is valid and in view of the fact that the exchange was mentioned in jamabandi, therefore, reliance upon exchange pleaded by respondents/plaintiffs was validly accepted by learned First Appellate Court. Learned counsel for respondents/plaintiffs has also claimed right over the suit property on the basis of adverse possession, on the ground that right of adverse possession had accrued after passing of 12 years and, therefore, it was validly raised by respondents/plaintiffs. Learned counsel for respondents/plaintiffs has placed reliance upon the following judgments :-

1. **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs & Ors.**, 2008 (5) RCR (Civil) 879 (SC DB);
2. **Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple Vs. Rajanga Asari**, AIR 1965 MADRAS 355;
3. **Gurdial Singh Vs. Sohna Singh & Ors.**, 1987 (2) PLR 272;
4. **Rajendar Singh & Ors. Vs. Santa Singh & Ors.**, 1973 AIR Supreme Court 2537;
5. **Ram Sarup Vs. Ram Chander (Decd.)**, 1976 AIR Punjab and Haryana 246;
6. **Nazar Singh Vs. Balwinder Singh & Ors.**, 2025 NCPHHC 8846;
7. **Sardara Singh & Anr. Vs. Harbhajan Singh & Ors.**, 1974 PLJ 341;
8. **Sewa Singh Vs. Joginder Singh**, 1985 RRR 246;
9. **Bhagwan Kaur & Ors. Vs. Ranjit Singh & Anr.**, 1990 (1) RRR 417.
10. On consideration of pleadings, evidence and respective contentions raised by learned counsel for parties following substantial question of law arises in the present second appeal which this Court is bound

to decide :-

- A. Whether respondents/plaintiffs are entitled to claim ownership on the basis of adverse possession as they have succeeded to show their possession for more than 12 years ?
- B. Whether plea of ownership on the basis of exchange deed dated 22.07.1970 is barred by *res judicata*, in view of finality of previous *lis* between the same parties ?
- C. Whether unregistered exchange deed is admissible to decide rights of parties, if issue is not barred by *res judicata* ?

11. Before deciding above noted questions of law, it would be pertinent to note few facts which are clearly made out from the pleadings & evidence of parties and have not been disputed even at the time of arguments by either of the parties :-

- Kartar Singh father of respondents/plaintiffs and defendant No.1 Ajit Singh, sons of Masa Singh were real brothers.
- Suit land stated to be 58 kanals 19 marlas.
- Total land owned by Kartar Singh and Ajit Singh was 81 kanals and 5 marlas.
- 7 kanals 17 marlas were purchased in the name of plaintiff Bara Singh and Shingara Singh vide sale deed dated 29.06.1964 Ex.3/1.
- Land measuring 47 kanals was purchased in the name of Ajit Singh and Kartar Singh jointly through sale deed dated 01.07.1965 Ex.DW4/1.
- Land measuring 10 kanals 12 marlas was inherited by Ajit Singh and Kartar Singh from their father Masa Singh.
- Land measuring 15 kanals 16 marlas which is subject matter of

present litigation was purchased by Ajit Singh from Ujagar Singh vide sale deed dated 01.04.1965 Ex.DW4/2.

- Ajit Singh had sold suit land measuring 15 kanals 16 marlas vide sale deed dated 06.09.0979 Ex.DW4/1 to defendants/appellants.
- Respondents/plaintiffs Kartar Singh, Shingara Singh and Bara Singh had filed a suit for permanent injunction seeking to restrain defendants from interfering or taking forcible possession or alienating in any manner over part of suit land measuring 59 kanals 19 marlas. Suit was filed against Ajit Singh (proforma respondent) and Gurnam Singh, Bachittar Singh, Dilbag Singh (appellants/defendants) claiming that suit property is owned and possessed by respondents/plaintiffs in view of exchange deed dated 22.07.1970. Said suit bearing No.169 of 1980 instituted on 30.05.1980 was dismissed vide judgment and decree dated 09.06.1982, passed by learned Sub Judge, First Class, Amritsar.
- Respondents/plaintiffs had preferred first appeal being aggrieved by judgment and decree dated 09.06.1982 bearing Civil Appeal No.84 of 1982 instituted on 16.07.1982 and decided vide judgment and decree dated 10.09.1983, passed by learned Additional District Judge, Amritsar. The said appeal preferred by respondents/plaintiffs was dismissed as withdrawn.
- Judgment and decree dated 09.06.1982 and 10.09.1983, passed by learned Court of first instance and First Appellate Court respectively attained finality as no further appeal was preferred

by respondents/plaintiffs.

12. The question of law raised above, therefore, needs to be decided in light of admitted and established facts. Respondents/plaintiffs have claimed that they have become owners in possession of suit land on the basis of adverse possession as they are in open and hostile possession, as owner of suit property for more than 12 years. The principle of law regarding adverse possession is not *res integra*. Mere possession, no matter how long, does not necessarily mean that it is adverse to true owners. To claim adverse possession *animus possidendi* is one of the main ingredients of adverse possession. Unless person possessing the land has a requisite *animus*, the period of prescription does not commence. This view of mine finds support from judgment of Hon'ble Supreme Court titled as **Saroop Singh Vs. Banto & Ors.**, 2005 (4) RCR (Civil) 599 : 2005 (8) SCC 330, wherein it was held:-

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See **Vasantiben Prahladi Nayak Vs. Somnath Muljibhai Nayak**, 2004 (2) RCR (Civil) 276 : 2004 (3) SCC 376).

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See **Mohd. Mohd. Ali Vs. Jagadish Kalita** Para 21.)"

13. Above principle of law was reiterated in **T. Anjanappa & Ors. Vs. Somalingappa & Anr.**, 2007 (1) RCR (Civil) 19 : 2006 (7) SCC 570, wherein it was held that :-

"It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

14. Therefore, in order to show that respondents/plaintiffs had become owners by way of adverse possession, it was necessary to prove and show that it was open and hostile and was never objected to by true owners. However, in the present case Ajit Singh had duly asserted his right of ownership by way of executing sale deed dated 06.09.1979 and even thereafter, on purchase appellants/defendants have been asserting their rights of ownership and possession and this is the reason respondents/plaintiffs had filed suit for permanent injunction dated 30.05.1980. Admittedly, respondents/plaintiffs claimed their possession only from 20.07.1970 and till filing of present suit and even by way of present suit they had claimed their rights through exchange deed dated 22.07.1970. Therefore, till 10.09.1983, respondents/plaintiffs were not claiming their rights adverse to real owner, but through real owner on the basis of exchange deed which had not found favour with Courts as Suit No.169 of 1980 was dismissed vide judgment and decree dated 09.06.1983 and first appeal was withdrawn vide order dated

10.09.1983. Respondents/plaintiffs who had come in possession under exchange must disclaim thereunder, plead and prove indefinite hostile adverse possession as held in **Mohan Lal (Deceased) Through LRs Kachru & Others, Vs. Mirza Abdul Gaffar & Anr.**, 1996 AIR SC 910. Plea of title and adverse possession cannot be simultaneously taken and from same date as held in **Narasamma & Ors. Vs. A. Krishnappa (Dead) through LRs**, 2020 AIR SC 4178. Therefore, possession of respondents/plaintiffs cannot be held to be open and hostile to the rights of true owner till 1983 and accordingly, respondents/plaintiffs had got no right of ownership by way of adverse possession when he filed present suit in 1983.

15. The second legal issue which arises in the present case, is as regards to applicability of *res judicata* in the facts of the present case. It is the case of appellants/defendants that plea of ownership on the basis of exchange deed dated 22.07.1970 was duly taken by respondents/plaintiffs in their previous suit, same was opposed, issue regarding ownership was framed and was decided against plaintiffs/ respondents. Since findings on the issue of ownership has attained finality between the same parties i.e. parties of present suit as well as previous suit, therefore, issue of ownership on the basis of exchange deed dated 22.07.1970 cannot be raised in the present suit being barred by *res judicata*. On the other hand, it is the case of respondents/plaintiffs that principle of *res judicata* shall not be applicable as both the suits were/are of different nature. The earlier suit was for permanent injunction, whereas present suit is for declaration on the basis of exchange deed dated 22.07.1970.

16. Perusal of Civil Suit No.169 of 1980 preferred by

respondents/plaintiffs decided by judgment and decree dated 09.06.1982 by learned Sub Judge, First Class, Amritsar, goes to show that respondents/plaintiffs had sought relief of permanent injunction seeking to restrain appellants/defendants from taking forcible possession and alienation in any manner on the basis of exchange deed dated 22.07.1970, claiming that by virtue of exchange deed, they have become owners in possession of suit land.

17. Following issues were framed by Court of learned Sub Judge, First Class, Amritsar on 27.09.1980 :-

1. Whether the plaintiffs are owners in possession of the suit land ? OPP
2. Whether the suit is properly valued for the purposes of Court fee and jurisdiction ? OPP
3. Whether the suit is bad for mis-joinder of parties and cause of action, if so, to what effect ? OPP
4. Whether the defendants No.2 to 5 are the *bonafide* purchasers of land comprised in Khasra No.180/20, 185/16/2 and 186/16/1 for consideration of Rs.10,000/- ? OPD
5. Whether the plaintiffs are entitled to the injunction prayed for ? OPP

Following additional issues were framed by Court of learned Sub Judge, First Class, Amritsar on 06.01.1982 :-

6. Whether the plaintiffs are estopped from denying the title of defendant No.1 on account of the reason as contained in addition para No.1 of the written

statement ? OPD

7. Whether the partition deed 22.07.1970 is inadmissible in evidence as alleged ? OPD

8. Relief.

18. It is therefore, clearly made out that respondents/plaintiffs have claimed possession over the suit land on the basis of ownership and had claimed ownership on the basis of exchange deed dated 22.07.1970. For this reason, specific issue was framed that whether respondents/plaintiffs are owners in possession of suit land and onus of the same was upon respondents/plaintiffs. Similarly, appellants/defendants have also claimed ownership of suit property on the basis of sale deed and claimed themselves to be *bonafide* purchasers of land comprised in Khasra No.180/20, 185/16/2 and 186/16/1 for consideration of Rs.10,000/-, onus of prove which was upon appellants/defendants.

19. Perusal of judgment dated 09.06.1982 Ex.DW3/4 further goes to show that exchange deed was duly adduced in evidence as Mark A. Scribe of exchange deed dated 22.07.1970 had appeared as PW1 and its attesting witness was also examined as PW2 who was supported by PW3. They were also examined as witnesses in present case to prove exchange. Witnesses had claimed that exchange had taken place between the parties. Plaintiff Kartar Singh had appeared as PW4 and claimed ownership of suit property on the basis of partition deed dated 22.07.1970. However, partition deed Mark A was specifically rejected on the ground that it was not narration regarding partition, but was a document of exchange which was compulsorily registrable. It was also found that it was not duly stamped in accordance with Section 35 of Indian Stamp Act. It was further held that the

only land which is joint can be partitioned and land which is exclusively owned by Ajit Singh could not have been subject matter of said partition/exchange.

20. It was further held that appellants/defendants are *bonafide* purchaser for consideration vide sale deed dated 06.09.1979. Injunction was granted against appellants/defendants that they shall not dispossess respondents/plaintiffs forcibly except in due course of law. The suit of respondents/plaintiffs was dismissed to the effect that they are owners of suit land. It was also held that possession of respondents/plaintiffs over the land was permissible possession only for the management of agricultural land. The said findings were duly challenged by respondents/plaintiffs by way of first appeal bearing No.84 of 1982, however, first appeal preferred by respondents/plaintiffs was dismissed as withdrawn vide order dated 10.09.1983. Admittedly, no appeal was further preferred by respondents/plaintiffs. The judgment and decree dated 09.06.1982 and 10.09.1983, both had attained finality.

21. Now in the present suit, respondents/plaintiffs have again raised their claim on the basis of exchange deed dated 22.07.1970. Even the witnesses which have been examined to prove exchange deed dated 22.07.1970 are the same who were examined as PW1 and PW2 in earlier suit decided vide judgment and decree dated 09.06.1982. Since plaintiffs/respondents had specifically raised basis of their possession to be exchange deed and which had not found favour with the Courts, findings of Courts below would act as a bar against subsequent suits in view of the principle of *res judicata*. To attract principle of *res judicata*, previous suit and subsequent suit must be between same parties and issue raised should

substantially be the same and decided finally on earlier occasion. Both the conditions are fulfilled in the present case. This view of mine, finds support from judgment of Hon'ble Supreme Court in **Sulochana Amma Vs. Narayanan Nair**, 1993 (3) RRR 682: 1994 (2) SSC 14, wherein Court had observed that a finding as to title given in earlier injunction suit can operate as *res judicata* in subsequent suit for declaration of title. Hon'ble Court had observed as under :-

"Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of *res judicata* cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as *res judicata*."

This view was reiterated in **Annaimuthu Thevar Vs. Alagammal**, 2005 (6) SCC 202. Above noted reasoning was duly taken note of by Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs & Ors.**, 2008 (2) RCR (Civil) 879, wherein principle laid down in **Sajjadanashin Sayed Md. B.E. Edr. (D) by LRs Vs. Musa Dadabhai Ummer & Ors.**, 2000 (3) SCC 350 as well as in **Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple Vs. Rajanga Asari** (supra) were taken note of in following manner :-

"16. This Court in **Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer**, 2000 (3) SCC 350, noticed the apparent conflict in the views expressed in **Vanagiri** and **Sulochana Amma** and clarified that the two decisions did not express

different views, but dealt with two different situations, as explained in Corpus Juris Secundum (Vol.50, para 735, p.229):

"Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title."

In Vanagiri, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to

title.

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.”

22. Present case is fully covered by Clause (C) & (D) as noted above. Since in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) By LRs & Ors.** (supra) case, neither there were pleadings nor issues and it was held that issue of title would not be *res judicata*. Therefore, none of the judgments referred by learned learned counsel for respondents/plaintiffs is applicable to the present case.

23. Therefore, the principle for applicability of *res judicata* is simple, in cases where previous suit is for permanent injunction, the issue of ownership would act as *res judicata*, if it is raised and decided being direct or substantial between the same parties. It would operate as a bar in subsequent suit. In view of above discussion, it is clearly made out that learned First Appellate Court has wrongly decided that finding of previous suit regarding ownership rights flowing from exchange deed dated 22.07.1970 would not operate as *res judicata*. The said finding is accordingly set aside. It is held that since issue of ownership was specifically raised, issues framed, parties led their evidence and was decided

as a substantial issue between the parties, therefore, finding regarding admissibility of exchange deed dated 22.07.1970 would operate as *res judicata* in the present lis. Respondents/plaintiffs are barred from raising claim of ownership on the basis of exchange deed dated 22.07.1970. In view of above findings, issue regarding admissibility of exchange deed does not arise as any claim on the basis of exchange deed is barred by principle of *res judicata*.

24. Learned Appellate Court has also erred in holding that respondents/plaintiffs have become owners of suit property by way of adverse possession. Findings on issues No.1 to 4A of second suit and issues No.1 to 5, 6 to 8 and 10 of first suit were wrongly decided in favour of respondents/plaintiffs. The findings are accordingly set aside. Findings recorded by Court of first instance on all these issues is affirmed.

25. Appeals preferred by appellants/defendants merits acceptance. Suit preferred by respondents/plaintiffs is liable to be dismissed and suit preferred by appellants/respondents is decreed. The judgment and decree passed by Court of first instance dated 16.05.1992 is upheld and judgment and decree dated 16.12.1993 passed by learned First Appellate Court are set aside.

26. Pending application(s), if any, is/are disposed of accordingly.

(PARMOD GOYAL)
JUDGE

28.01.2026
chiranjeev

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No